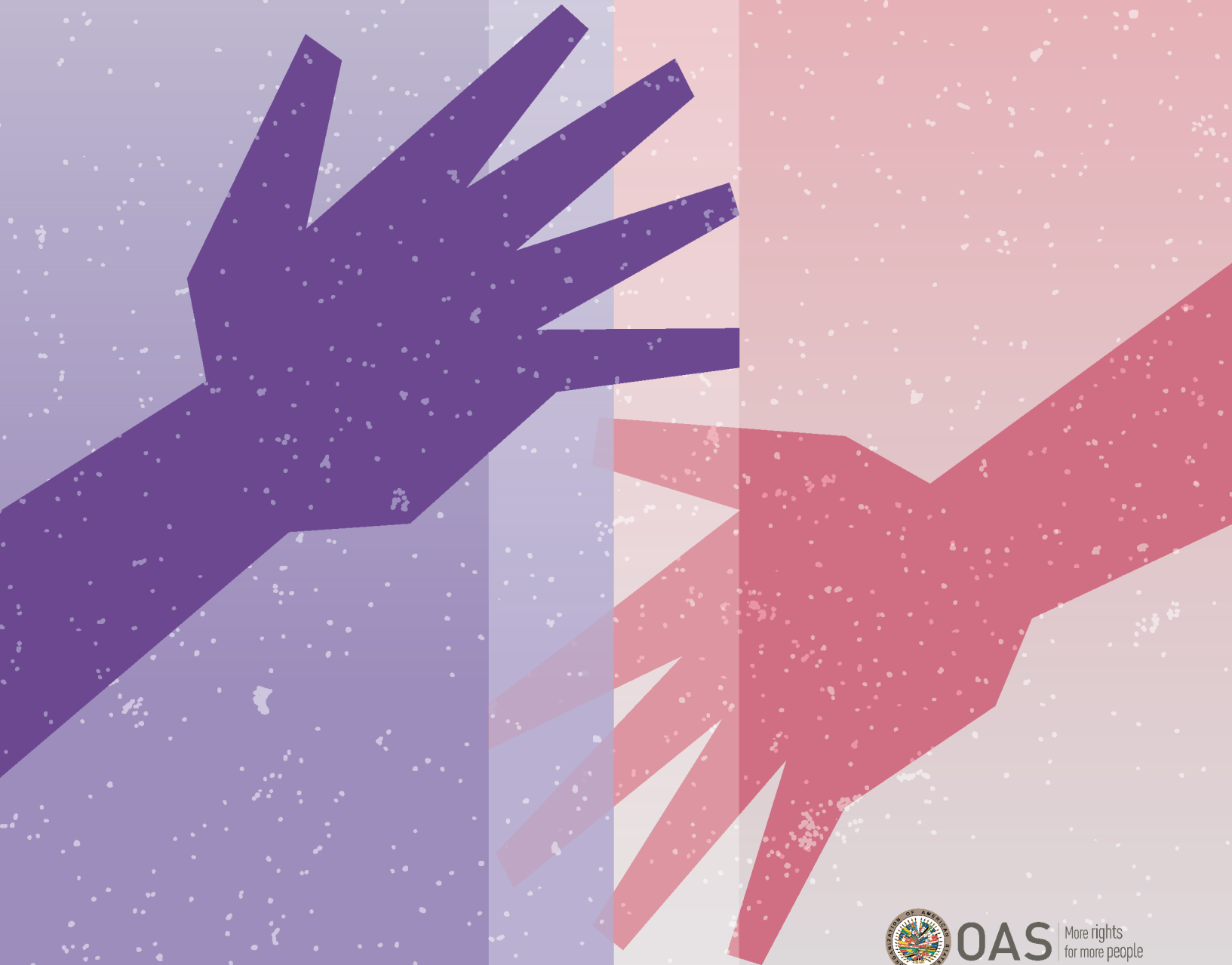




Pandemic and Human Rights



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Chapter 1

INTRODUCTION

INTRODUCTION

A. Background

1. In 2020, the world was affected by the outbreak and spread of the COVID-19 pandemic and the emergence of a humanitarian crisis. Faced with this, the States of the American region adopted measures to contain it. Among the mitigation measures, mandatory quarantines, curfews and others were established to control the movement of people based on health criteria, including the closure of workplaces and economic activities, the suspension of classes in school systems, the closure of borders, and other measures. In some cases, the measures adopted by the States to mitigate the effects of the pandemic and the campaigns to guarantee access to the vaccine against the disease had adverse consequences for the protection of human rights, particularly for groups and persons in situations of historical discrimination and special vulnerability, such as persons in situations of poverty and extreme poverty, women, LGBTI persons, Afro-descendants, indigenous peoples, children and adolescents, persons with disabilities, the elderly, among others.
2. Against this backdrop in the region, more than 2.7 million people have died in the continent following the outbreak of the COVID-19 pandemic, according to the World Health Organization (WHO). This is the biggest health crisis in recent history that the region has had to face with health systems in critical situations that did not have the health infrastructure or emergency policies to react to the magnitude of the crisis. This figure is equivalent to 32% of the world's total number of deaths, a proportion almost four times higher than that of the region's population in relation to the world population (8.4%). Two years after the sudden appearance of the virus and the declaration of a pandemic, the world continues to be plagued by different variants. According to the Pan American Health Organization (PAHO), by July 2022, more than 1.6 million new cases of COVID-19 were reported in our Region, and several countries continue to register an increase in the number of cases¹.
3. Among the impacts of the COVID-19 pandemic, the Inter-American Commission on Human Rights (hereinafter, the IACHR, the Commission or the Inter-American Commission) has identified the persistence of discrimination and violence, particularly against persons in a situation of human mobility; against human rights defenders, journalists and social leaders; the increased repression of social protest in some countries of the region through the disproportionate use of force; as well as the worsening conditions of persons deprived of liberty, due to conditions such as overcrowding and the lack of appropriate hygiene and health measures, which have aggravated cases of respiratory disease caused by the SARS-

¹ Pan American Health Organization: [Weekly press conference on the status of COVID-19 in the Region of the Americas](#), July 27, 2022.

COVID-19 virus. Thus, the effects of the pandemic add to the pre-existing challenges to the human rights of their populations.

4. The pandemic made visible and exacerbated the situation of inequality in the region, generating new risks for groups that were already suffering the affectation of their human rights, highlighting, among them, the increase in gender violence, human mobility, xenophobia, attacks on social leaders and human rights defenders, the precariousness of the exercise of Economic, Social, Cultural and Environmental Rights (hereinafter ESCR), among other serious issues. The IACHR has recognized that the pandemic generated two moments in which rights are recognized to be affected. First, the moment of irruption and impact on access to services. On the other hand, once vaccines against the disease were developed, the challenges for the enjoyment and exercise of human rights were centered on access to vaccines, together with challenges regarding distribution and debates on the use of patents. This context highlights the need to direct efforts from international cooperation and the development of public policies with a human rights approach.
5. Given this complex human rights situation in the region, the pandemic poses even greater challenges for the States of the Americas, both in terms of health policies and measures, as well as economic capacities, to implement the measures that are urgent and necessary to effectively protect their populations, in accordance with international human rights law, which on some occasions will require exceptional measures with a direct impact on individual freedoms and human rights. In such cases, the IACHR has emphasized, through its various monitoring mechanisms, that it is necessary to prevent possible violations of rights, to observe whether the conventional requirements are being observed in cases of suspension of guarantees, as well as to deepen the defense of democratic institutions, the transparency of public actions and to demand investigation and punishment of any abuse.
6. Within the framework of its mandate² and as part of the responses that the IACHR developed in response to the outbreak of the pandemic, on March 27, 2020, the installation of a Coordination and Timely and Integrated Response to the crisis in relation to the COVID-19 pandemic (SACROI COVID-19 or SACROI) was announced in order to strengthen the institutional capacities of the IACHR for the protection and defense of fundamental freedoms and human rights in this context, especially the right to health and other ESCR.
7. The creation of SACROI is part of the Commission's strategy to monitor and closely follow up on the human rights impacts of populations and groups in vulnerable situations in the context of the COVID-19 pandemic crisis, reinforcing comprehensiveness and intersectoral-

² The main function of the IACHR, according to Article 106 of the OAS Charter, is to promote the observance and defense of human rights and to serve as a consultative body of the Organization in this area. For its part, Article 41 of the American Convention on Human Rights establishes the functions and powers of the IACHR, which include making recommendations, requesting reports from the States, providing technical advice at the request of the States, among others.

ity, and in light of the protection of human rights. As a result of SACROI's work, the IACHR has issued six dozen press releases and tweets related to the human rights situation and pandemic with respect to various countries and groups in situations of special vulnerability, both with a country and thematic focus, including recommendations. Some twenty webinars and other events were also held to disseminate standards on various human rights issues in the context of the pandemic.

8. On the other hand, SACROI COVID-19 has sought to maintain and strengthen regular opportunities for bilateral and multilateral dialogue with States and civil society by holding meetings and social forums. Likewise, within the framework of its system of petitions and cases and precautionary measures, the Commission has also reinforced its attention through its working procedures to persons or groups of persons affected by COVID-19. In particular, the IACHR received and processed 534 requests for precautionary measures, half of which were received within the first six months of the outbreak of the crisis.
9. For the Commission, ongoing monitoring and action on the situation in the region is a priority, around which it coordinates all its mandates and mechanisms through its SACROI COVID-19, with the aim of identifying situations and trends of particular concern, promoting best practices, and providing guidelines to the States of the region for compliance with the Inter-American legal framework on human rights in their public policies. In this regard, the IACHR has published 4 practical guides containing specific guidelines on respect for mourning, funeral rites and tributes to persons who died during the pandemic; access to the right to education; universal access to the Internet; and protection of family unity and reunification in situations of human mobility in the context of the pandemic.
10. On the other hand, 3 resolutions were approved: Resolution No. 1/2020 on "Pandemic and Human Rights in the Americas"³; Resolution No. 4/2020 establishing Inter-American Guidelines on the "Human Rights of Persons with COVID-19"⁴ ; and Resolution No. 01/2021 on "COVID-19 Vaccines in the Framework of Inter-American Human Rights Obligations"⁵ . This Resolution responds to the urgency of ensuring rapid immunization in the Americas, in an equitable manner, as well as for States to put public health and human rights at the center of their decisions and policies on COVID-19 vaccines.

³ IACHR, *Resolution 1/2020: Pandemic and Human Rights in the Americas*, adopted on April 10, 2020.

⁴ IACHR, *Resolution 4/2020 "Human Rights of Persons with COVID-19"*, adopted on July 27, 2020.

⁵ IACHR, *Resolution 1/2021 "COVID-19 vaccines in the framework of inter-American human rights obligations"*, adopted on April 6, 2021.

11. Finally, following up on the SACROI COVID-19 Work Plan⁶, the IACHR proposed the preparation of this thematic report on *Pandemic and Human Rights*. The IACHR prepared the report bearing in mind that the COVID-19 pandemic continues to challenge the way we understand human relations, the role of States, international organizations and civil society. For the IACHR, this report provides a tool that makes it possible to account for the human rights impacts suffered by the region of the Americas during the two years of the pandemic and to use it and the lessons learned to contribute to the development of preventive policies and practices in the face of other possible crises of this nature. In doing so, the Commission hopes that the standards and recommendations contained herein can illustrate and prevent similar situations in the face of the new challenges that the hemisphere may face in the future.

B. Objective and scope

12. In this context, the objective of this report is to report on the impact on human rights following the outbreak of the pandemic, to analyze the public policies and measures adopted by the States to contain and reduce the effects of the health crisis, and to formulate recommendations for the adoption of measures and public policies to contain the effects on human rights caused by the COVID-19 pandemic. In this sense, it is proposed to expose the importance of ensuring the validity of democracy and the rule of law as an institutional model that guarantees participation, plurality, and the effective enjoyment and exercise of human rights in conditions of equality for all people.
13. In terms of scope, although in this report, the IACHR highlights the main impacts recorded during the first eight months since the disease caused by the SARS COV-2 virus was declared a pandemic by the World Health Organization (WHO), it remains valid as a tool for reflection, leading to the development of preventive policies and concrete actions to address the structural inequalities that plague the region. The lessons learned as a result of the impacts were closely related to the reactive and contagion prevention measures adopted by the States. On the other hand, the Commission has recorded that, once these containment measures were relaxed or replaced by less restrictive ones, they aggravated the challenging situations that preceded the outbreak of the health emergency. Simultaneously, once the restrictive measures were relaxed, a second moment related to access to vaccines and treatments was recognized, which generated very specific effects on the right to health. For this reason, although this report presents an updated overview of the impact of the pandemic on human rights, much of the evidence and findings related to the impact of the measures adopted by the States correspond to the first months of the pandemic period. Subsequent evidence is related to the process of distribution and access to vaccines and treatment of the disease.

⁶ IACHR, SACROI COVID-19 Work Plan 2020

C. Methodology and structure

14. The contents included in this report were developed from the perspective of systematizing the various IACHR products and publications produced since March 2020. In particular, Resolutions 1/20, 4/20 and 1/21 approved by the IACHR, the Press Releases issued in the context of the pandemic, the Practical Guides, the Annual Report 2020 and 2021, as well as the Thematic Reports issued during 2020 and 2021 that contain pronouncements on the subject were taken into account. It also includes information provided through bilateral meetings and Art. 41 and Art. 18 Letters, sources of monitoring and follow-up of measures adopted by the States surveyed by SACROI COVID-19 and the public hearings held during the 177th, 178th, 179th, 180th and 181st Sessions of the IACHR, among others. With respect to the references to specific cases in States, indicate that they are made in an illustrative and referential manner and do not imply the determination of whether or not their actions are in accordance with the American Convention on Human Rights or other applicable instruments to determine international responsibility.
15. The document is divided into five main chapters. In addition to the introduction, the second chapter contains references to the impact of the pandemic on democratic institutions and human rights institutions. In particular, it includes an analysis of public policies adopted by States to contain the health crisis, references to the State of Emergency and the restriction of fundamental freedoms, and considerations on the right to social protest and access to public information as a guarantee for accountability during the pandemic. The chapter also addresses the impacts on human rights as a consequence of the reduction of controls on public management, the independence of the justice sector and appointment of authorities, and the role of National Human Rights Institutions. On the other hand, the chapter presents the effects on the exercise of the defense of human rights and the increase in the situation of violence suffered by human rights defenders.
16. The third chapter develops the context and main impacts of the pandemic on the enjoyment and exercise of human rights. In particular, with respect to the right to health, the right to work and education, aspects related to freedom of expression, and access to information and the Internet, the right of access to justice; issues related to private and family life, as well as respect for bereavement and the right to personal freedom and integrity. And on the other hand, the fourth chapter addresses the differentiated impacts on persons and groups in situations of special vulnerability and historical discrimination, bearing in mind the particular situation of persons with COVID-19, persons living in poverty and extreme poverty, the elderly, persons deprived of liberty, women, indigenous peoples and communities, persons in situations of human mobility and displacement, children and adolescents (NNA), LGBTI persons, Afro-descendants, persons with disabilities. Finally, the fifth chapter will address conclusions and recommendations.

Chapter 2

STATES OF EMERGENCY, RESTRICTIONS ON FUNDAMENTAL FREEDOMS AND THE RULE OF LAW

STATES OF EMERGENCY, RESTRICTIONS ON FUNDAMENTAL FREEDOMS AND THE RULE OF LAW

2.1 Context

17. The Americas is a region characterized by deep social gaps, in which poverty and extreme poverty are a cross-cutting problem in all the States of the region⁷, with a common feature being the lack of or precarious access to drinking water and sanitation, food insecurity, environmental pollution, densely populated informal settlements in the region's cities and urban peripheries, the existence of isolated indigenous communities and groups, and the lack of housing or adequate habitat. In addition, there are asymmetries in medical and health infrastructure, with great difficulties of access and situations of overcrowding in hospitals, prisons and shelters. There are also high rates of labor informality and precarious work and income that affect a large number of people⁸.
18. In addition, the region is characterized by high rates of generalized violence, especially violence based on gender, race or ethnicity, as well as the persistence of scourges such as corruption and impunity. Likewise, in the region, the exercise of the right to social protest has been affected, in a context of repression through the disproportionate use of force, as well as acts of violence and vandalism. This is in addition to the serious prison crises affecting the vast majority of countries; and the worrying extension of the phenomenon of forced internal displacement, refugees and stateless persons; as well as structural discrimination against groups in situations of special vulnerability.
19. In the context described above, with the sudden appearance of the COVID-19 pandemic, the countries of the region and the world were confronted with an unprecedented disease with serious immediate, medium and long-term impacts on societies in general, and on individuals and groups in particularly vulnerable situations.
20. Since the onset of the global health emergency, efforts in the Americas to stop the virus and its disease have been negatively affected by the continent's pre-pandemic context, including discrimination, inequality, the structural weakness of public health systems and, in many cases, the lack of political and institutional stability. These factors have hindered the effectiveness of containment and social distancing measures and other actions, and at the same time have prevented millions of people from taking basic preventive measures against the disease, particularly when it affects particularly vulnerable groups.

⁷ IACHR, [Report on Poverty and Human Rights in the Americas](#), OEA/Ser.LV/II.164, Doc. 147, 7 September 2017.

⁸ IACHR, *Resolution 1/2020: Pandemic and Human Rights in the Americas*, adopted April 10, 2020.

21. In turn, the pandemic generates differentiated and intersectional impacts on the realization of economic, social, cultural and environmental rights (ESCR) for certain groups and populations in particularly vulnerable situations. Likewise, the health systems of the States in the region have been overwhelmed by the magnitude of the COVID-19 pandemic, particularly for those living in poverty and for those who do not have health coverage in case they need medical care or hospitalization.
22. The COVID-19 pandemic highlights gaps and deepens inequities in access to medicines, such as pharmaceuticals, vaccines and other health technologies, which affects the responsiveness of health systems and limits the delivery of health services. The health crisis has also revealed the vulnerability of global supply chains in emergency situations and the inequality in terms of vaccine research, development and production capacity in the Americas⁹.
23. In this context, the pandemic poses significant challenges for the States of the hemisphere, both in terms of health policies and measures, as well as economic capacities, to implement urgent and necessary care and containment measures to effectively protect their populations, in accordance with international human rights law¹⁰. As a result, the populations of the countries of the Americas have been and continue to be extremely affected by the global pandemic.

2.2 Democratic institutionalism and human rights institutionalism

24. The IACHR has understood democratic institutions and human rights institutions as transversal axes through which progress and setbacks in the exercise of political rights and freedoms, the right of association and assembly, freedom of expression and dissemination of thought are verified, as well as the challenges faced by democratic systems. It also includes the monitoring of the instances where public policies are designed, executed and controlled, particularly those related to the promotion, protection and mainstreaming of human rights.
25. The purpose of these axes is also to verify the mechanisms of social participation in order to understand, from a human rights perspective, the necessary relationship of the population with formal spaces to claim the effective protection of their rights from the State; the State strategies to encourage social participation in the elaboration, implementation and monitoring of public policies; and the provision of permanent instances of dialogue with civil society, respecting its autonomy, free functioning and independence, among other aspects¹¹.

⁹ OAS, General Assembly, Resolution 2977, OEA/Ser.PAG/doc.5755/21 corr. 1, Guatemala, 24 November 2021

¹⁰ IACHR, *Pandemic and Human Rights in the Americas*: Resolution 1/2020, April 10, 2020

¹¹ IACHR, Strategic Plan 2017-2021, OEA/Ser.LV/II.161, Doc. 27/17, March 20, 2017. Page 39

26. Thus, since the outbreak of the COVID-19 pandemic, the IACHR has identified a series of impacts that affect the integrity of these institutional schemes and pose risks to the exercise of human rights.

A. Institutional and public policies adopted by the States to contain the health crisis

27. The Commission recognized that the States of the region faced a complex emergency situation due to the rapid spread of the COVID-19 virus, declared a pandemic, which affected different population groups. This situation also has an impact on areas such as health, economic development, labor, education of children and adolescents, and public safety, among others. In this context, respect for and guarantee of human rights is the necessary basis for democracy and the rule of law. Therefore, the IACHR has called for the measures and initiatives adopted to contain the pandemic and other preventive measures in the future to be based on the strengthening of democratic institutions based on strict compliance with international obligations and the Inter-American Democratic Charter¹².

28. The Commission emphasizes that the rule of law in a democratic system implies a division of the functions of the branches of government and, at the same time, a system of controls for the exercise of those functions. This system of institutional control must be guaranteed with particular emphasis in emergency contexts. In this way, it is possible to provide the democratic system with solid foundations and ensure that human rights, although they may be limited in accordance with the norms of international human rights law, are not undermined or frustrated in their exercise¹³.

29. As for the spaces for social participation, even in exceptional situations, it is possible to include various strategies that allow people and social organizations to intervene in the process of formation and implementation of the measures adopted in this context and thus legitimize institutional management within the framework of representative democracy¹⁴. In this context, it is essential that public policies and measures adopted to contain the effects of the health crisis are focused on a comprehensive and interdependent approach to human rights, namely: equality and non-discrimination, social participation, access to justice, access to information and accountability, such as gender and intersectionality perspectives¹⁵. In this sense, the IACHR has recommended to the States the design of norms and public policies in accordance with a budget allocation necessary to guarantee their effec-

¹² IACHR, IACHR Calls to Ensure Democracy and the Rule of Law in the Context of the COVID-19 Pandemic, June 9, 2020

¹³ IACHR, IACHR Calls to Ensure Democracy and the Rule of Law in the Context of the COVID-19 Pandemic, June 9, 2020

¹⁴ IACHR, Public policies with a human rights approach, OEA/Ser.LV/II. Doc. 191 15 September 2018

¹⁵ IACHR, IACHR and its REDESCA call on American States to put public health and human rights at the center of their decisions and policies on COVID-19 vaccines, Feb. 5, 2021

tive implementation and sustainability, as well as to guarantee the budgetary principles of transparency, effectiveness, efficiency, equity and sustainability.

30. To combat COVID-19, most of the countries in the region have introduced containment measures. The IACHR has observed that the implementation of these measures has been carried out progressively from the detection of the first positive case of COVID-19 in each of the States, and it was possible to identify similarities and analogies in the first actions taken¹⁶. However, the IACHR did not recognize a regional approach among States to address the pandemic, and therefore recalls the importance of strengthening international and regional cooperation actions, as well as the technical cooperation of the competent entities to strengthen and coordinate national efforts in the design and implementation of public policies that have a regional scope.

B. States of emergency and restriction of fundamental freedoms

31. Since March 2020 and based on the exponential increase in the number of infected persons, the Commission has observed that various States in the region have declared states of emergency, states of exception, states of catastrophe due to public calamity or national health emergency, through regulations of various legal natures in order to protect public health, combat the pandemic and prevent the increase in contagion.
32. In response, the IACHR conducted, from March to July, a survey of State responses and measures adopted to address the outbreak of the pandemic. This survey was published on the specialized SACROI COVID-19 microsite through a chronology from March to July 2020 and an interactive map¹⁷. This tool developed by the IACHR makes it possible to identify, from a comparative perspective, variations in the responses of the States of the region. These measures have similarities between countries and were adopted at different times and immediately, an aspect that allows reflection on the design and implementation of effective policies to combat the health crisis.
33. As a result, the IACHR learned that, during the first months of the pandemic situation, half of the States of the Americas implemented mandatory mobility restriction measures to contain the spread of the disease. On the other hand, 9 countries recommended non-mandatory preventive isolation as a measure to stop the spread of the virus; more than a third of the countries established mandatory isolation under time restrictions through curfews; in 33

¹⁶ IACHR, Annual Report 2020, Chapter 1. Parr. 28 OEASer.LV/II.Doc. 2830 March 2021

¹⁷ IACHR, SACROI COVID - 19, [Chronology and measures adopted by the States and Methodological references](#). For the construction of the tool, 8 variables defined as state response measures common to each of the 35 States in the hemisphere were surveyed. The data were collected from openly and publicly available sources, taking into account the information published through State-owned or State media. This survey of measures, in addition to identifying the time at which each State responds for each category identified, makes it possible to calendar the events by country and geographical area and to analyze the degree of response.

States in the region, educational establishments were closed to prevent the spread of the virus; and 34 countries in the region adopted some type of restriction on their borders to prevent the circulation of the virus.

34. With regard to international regulations that entail obligations for States, the Commission has followed the provisions of Article 27 of the American Convention on Human Rights. This instrument establishes that the State Party that suspends the application of a treaty must immediately inform the other States Parties to the treaty, through the Secretary General of the Organization of American States, of the provisions whose application it has suspended, the reasons for the suspension, and the date on which the suspension was terminated. In this regard, the States of Argentina, Bolivia, Chile, Colombia, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Jamaica, Panama, Paraguay, Peru, Suriname and Venezuela have sent successive communications to the OAS notifying the suspension of guarantees between 2020 and 2021¹⁸. The IACHR calls on States that are not party to the treaty to adopt this practice as a safeguard to prevent abuse of the exceptional powers of suspension and as a suitable means of solidarity and cooperation among Member States regarding the measures that can be adopted to address the emergency.
35. In this regard, the Commission understands that in the case of a pandemic, it may in fact be imperative in certain circumstances to restrict the full enjoyment of rights such as the right to assembly and freedom of movement in tangible, public and/or common spaces, which are not indispensable for the supply of essential supplies or for medical care itself and in order to generate adequate social distance¹⁹. However, it is essential that States ensure that restrictions such as those indicated and any others imposed on a right in this context are necessary in a democratic society, meet the criteria of legality, legitimate purpose, suitability and, therefore, strictly proportional to meet the legitimate purpose of protecting life and health. Likewise, the IACHR recalls that any restriction adopted must particularly consider the effects it has on the most vulnerable groups and ensure that its im-

¹⁸ OAS, *Suspension of Recent Multilateral Treaty Guarantees*, Department of International Law.

American Convention on Human Rights, Article 27. Suspension of Guarantees.

1. *In time of war, public danger or other emergency threatening the independence or security of a State Party, it may take measures derogating from its obligations under this Convention to the extent and for such time as are strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law and do not involve discrimination on any ground such as race, color, sex, language, religion or social origin.*

2. *The preceding provision does not authorize the suspension of the rights determined in the following articles: 3 (Right to Recognition of Legal Personality); 4. (Right to Life); 5 (Right to Personal Integrity); 6 (Prohibition of Slavery and Servitude); 9 (Principle of Legality and Retroactivity); 12 (Freedom of Conscience and Religion); 17 (Protection of the Family); 18 (Right to a Name); 19 (Rights of the Child); 20 (Right to Nationality), and 23 (Political Rights), nor of the judicial guarantees indispensable for the protection of such rights.*

Any State Party exercising the right of suspension shall immediately inform the other States Parties to this Convention, through the Secretary General of the Organization of American States, of the provisions whose application it has suspended, the reasons for the suspension, and the date on which the suspension was terminated.

¹⁹ IACHR, *IACHR calls on OAS States to ensure that emergency measures adopted to address the COVID-19 pandemic are consistent with their international obligations*, April 17, 2020.

pact is not particularly disproportionate through the adoption of positive measures. Likewise, any decision must consider in a particularly relevant manner the gender, intersectional, linguistic and intercultural perspective²⁰.

36. In this regard, the case of Jamaica can be illustrated, where the administration relied on the Disaster Risk Management Act (DRMA) during the COVID-19 shutdown, granting the Prime Minister broad powers without accountability under the Constitution, nor oversight by Parliament, nor reference to the Governor General, nor to the judiciary²¹. Faced with this type of context, in Resolution 1/20 "Pandemic and Human Rights in the Americas" the IACHR reminded States that "restrictions imposed on human rights to protect health in the context of the pandemic must be lawful and proportionate to achieve health protection"²².
37. On the other hand, the IACHR became aware of a broad set of provisions ordered by the Executive and Legislative Branches of El Salvador, which, in addition to suspending the rights of the population, would have created a climate of uncertainty and lack of legal certainty re-

²⁰ IACHR, Resolution No. 01/2020, Pandemic and Human Rights in the Americas, April 10, 2020.

²¹ IACHR, SACROI COVID-19, Social Forum on Jamaica, June 19, 2020. *The IACHR evidenced that these orders had no sunset clause or right of appeal when they interfered with citizens' rights, and that they were issued in legal language that was not easily understood by society at large.*

²² IACHR, Resolution No. 01/2020, Pandemic and Human Rights in the Americas, April 10, 2020. Paragraph 20

garding the measures in force in the face of the health crisis²³. In response, the IACHR held that the purpose of protecting health cannot be invoked in an ambiguous or abusive manner to disregard the State's obligations with respect to human rights in accordance with the essential principles of a democratic society and must pursue a specific purpose, such as stop-

²³ As indicated, the Constitutional Chamber has declared some of these norms unconstitutional and others will continue under review. Among the legislation approved by the Legislative Assembly are: Declaration of the State of National Emergency due to the COVID-19 pandemic, contained in Legislative Decree no. 593, of March 14, 2020; Law of Temporary Restriction of Specific Constitutional Rights to Attend to the COVID-19 Pandemic, contained in Legislative Decree no. 594, of March 14, 2020. (Declared unconstitutional); the Law of Temporary Restriction of Specific Constitutional Rights to Attend to the COVID-19 Pandemic, contained in Legislative Decree no. 611, of March 29, 2020. (Declared unconstitutional); Law of Regulation for the Isolation, Quarantine, Observation and Surveillance by COVID-19, contained in Legislative Decree no. 639, of May 5, 2020. (Declared unconstitutional). For its part, the Executive approved, among others, the following: Executive Decree no. 18, of May 16, 2020, containing the State of National Emergency of the Pandemic by COVID-19. (Under review in the process of Inc. 63-2020 and subject to a precautionary measure suspending its effects) (Currently repealed); Executive Decree no. 19, of May 19, 2020, containing the State of National Emergency of the Pandemic by COVID-19. (Under review in the process of Inc. 63-2020 due to connection with Executive Decree no. 18 and subject to a precautionary measure suspending its effects). Report of the State of El Salvador to the Inter-American Commission on Human Rights on measures to prevent, address and contain the COVID-19 pandemic submitted in response to request made based on Article 41 of the American Convention on Human Rights. July 20, 2020. On file with the IACHR.

The IACHR was also informed of Executive Decree No. 12 of March 21, 2020, issued based on Legislative Decree 594 of 2020, by which the Ministry of Health decreed mandatory home quarantine at the national level and authorized public security authorities to "lead" those who unjustifiably failed to comply with the measure to "pandemic containment centers" or to the establishment indicated by the Ministry of Health for that purpose. Since that day, hundreds of people have been illegally or arbitrarily detained and held in bartolinas or police stations. See: *Executive Body in the Health Branch, Executive Decree No. 12, March 21, 2020 and Human Rights Watch (HRW), El Salvador: Police Abuses in the Response to Covid-19, April 15, 2020.*

In this regard, the IACHR learned that, by means of the accumulated unconstitutionality judgment 21-2020AC of June 8, 2020, the Chamber declared the unconstitutionality of Legislative Decrees 611 and 639 of 2020 on the grounds that the Legislative Assembly failed to document and accredit the reasons that justified the emergency regime. The executive decrees were also declared unconstitutional for having been issued in development of legislative decrees declared unconstitutional or by entities that lacked powers to restrict fundamental rights. See: *Constitutional Chamber of the Supreme Court of Justice, Unconstitutionality 21-2020AC, June 8, 2020.* The Commission also learned that the Legislative Assembly of El Salvador issued Decrees No. 661 of 2000 / June 12 (Special Emergency Law for the COVID-19 pandemic, comprehensive care of life, health and economic reopening that established provisions to regulate the comprehensive care of the health and life of people and to guarantee the right to work and the gradual resumption of labor, economic and administrative activities, within the framework of respect for democratic institutions and human rights) and 757 of 2000 / June 29, 2000 (Special Emergency Law for the COVID-19 pandemic, comprehensive care of life, health and economic reopening that established provisions to regulate the comprehensive care of the health and life of people and to guarantee the right to work and the gradual resumption of labor, economic and administrative activities, within the framework of respect for democratic institutions and human rights.) and 757 of 2000 / October 29 (Special Transitory Law to Contain the COVID-19 Disease Pandemic, which aims to establish provisions for the attention, management and integral control of the COVID-19 pandemic. Likewise, this decision was directed to follow up on the measures that would allow the continuity of labor, administrative and economic activities for the prevention and mitigation of the risks of contagion) See: *Legislative Assembly of the Republic of El Salvador, Legislative Decree No. 661 of 2020, June 12, 2020. Legislative Decree and Legislative Assembly of the Republic of El Salvador, Legislative Decree No. 757 of 2020, October 29, 2020. Decree 757 of 2020.* Both decisions were adopted to remedy the grounds for the declaration of unconstitutionality of 2 laws, 11 executive decrees and 1 ministerial resolution adopted between March 29 and June 2, 2020, which had declared the exception regime establishing the mandatory national quarantine with impacts on the rights to mobility and assembly. See: *Constitutional Chamber of the Supreme Court of Justice, Unconstitutionality 21-2020/23-2020/24-2020/25-2020, June 8, 2020.* Although the President of the Republic vetoed Decree No. 661 after its approval and alleging its unconstitutionality, on August 19, 2020, the Constitutional Chamber of the Supreme Court of Justice declared the constitutionality of the measure and ordered the President the immediate sanction of the decree and its consequent publication. In the same sense, after the approval of Legislative Decree 757, the President vetoed the Decree at the beginning of November 2020,

ping a threat to life, preventing contagion and providing the necessary care to those who are sick or affected. Likewise, the State that intends to impose a restriction of this type has the burden of proving that it satisfies the principle of legality, that it is suitable to achieve this end, that there are no less harmful means to achieve it and that the effect caused is not more detrimental to the right that is affected than the benefit obtained²⁴.

38. With respect to states of emergency, the Commission has held on several occasions that States cannot use this figure in a generic manner without first strictly justifying the existence of an exceptional emergency situation²⁵. Therefore, the declaration of a state of exceptional emergency to address the spread of the pandemic of the new coronavirus should not be used to suppress an indeterminate catalog of rights or ad infinitum, nor to justify actions contrary to international law by State agents, for example, the arbitrary use of force or the suppression of the right of access to justice for persons who are victims of human rights violations in the current context.
39. Thus, the Commission has been emphasizing that States may not suspend those rights that are non-derogable under international law. In particular, the right to recognition as a person before the law; the right to life; the right to personal integrity and the prohibition of torture, inhuman, cruel and degrading treatment; the prohibition of slavery and servitude; the principle of legality and retroactivity; freedom of conscience and religion; protection of the family; the right to a name; the rights of the child; the right to nationality; and political rights²⁶. States should not suspend the appropriate judicial procedures to guarantee the full exercise of rights and freedoms, including habeas corpus and amparo actions to control the actions of the authorities, including restrictions on personal liberty in this context. These guarantees must be exercised under the framework and principles of due process of law.
40. For the sake of completeness, as stated by the IACHR in its Resolution 1/20 "Pandemic and Human Rights in the Americas", under international human rights law, there are a series of material and formal requirements that States must comply with. In particular, States must ensure that in the event of the establishment of a state of emergency: "(i) there is justification that there is an exceptionality of the emergency situation in terms of its gravity, imminence and intensity constituting a real threat to the independence or security of the State; (ii) the suspension of certain rights and guarantees is only for the time strictly limited to the exigencies of the situation; iii) the measures adopted are proportional, in particular,

²⁴ IACHR, IACHR calls on OAS States to ensure that emergency measures adopted to address the COVID-19 pandemic are consistent with their international obligations. April 17, 2020.

²⁵ IACHR. Second Report on the Situation of Human Rights in Colombia 1993. Recommendation 2. IACHR, Annual Report 2015, Chapter IV. B Venezuela, para. 66.

²⁶ IACHR, IACHR calls on OAS States to ensure that emergency measures adopted to address the COVID-19 pandemic are consistent with their international obligations. April 17, 2020.

that the suspension of rights or guarantees constitutes the only means of dealing with the situation, that it cannot be dealt with through the use of the ordinary powers of the State authorities, and that the measures adopted do not generate a greater affectation of the right that is suspended in comparison with the benefit obtained; and iv) the measures adopted are not by their very nature or by their effects discriminatory and incompatible with the other obligations imposed by international law"²⁷.

41. In short, for the proclamation of a state of emergency to be carried out in accordance with the constitutional framework and other provisions governing such action, the rights whose full enjoyment will be limited must be clearly identified, as well as the temporal and geographic scope that justifies such an exception²⁸. "Any restriction or suspension adopted must be based on the best scientific evidence and consider, prior to its adoption and during its implementation, the particular effects it may have on the most vulnerable groups in order to ensure that its impact is not particularly disproportionate through the adoption of the necessary positive measures"²⁹.

Social protest and pandemic containment measures

42. Restrictions to address the pandemic focused on curtailing freedoms of expression and association, public assembly and other rights central to democracy³⁰. As a result of the regulations adopted by numerous states, the right to peaceful protest was restricted³¹.
43. For the IACHR, social protest is an essential element for the existence and consolidation of democratic societies and is protected by a constellation of rights and freedoms that the Inter-American system contains in both the American Declaration of the Rights and Obligations of Man and the American Convention on Human Rights. The rights to freedom of expression, peaceful assembly and association guarantee and protect diverse forms -individual and collective- of publicly expressing opinions, dissent, demanding the fulfillment of social, cultural and environmental rights and affirming the identity of historically discriminated

²⁷ IACHR, Resolution No. 01/2020, Pandemic and Human Rights in the Americas, April 10, 2020.

²⁸ IACHR, Annual Report of the Inter-American Commission on Human Rights 1980 - 1981, Washington, D. C., 1981, p. 115. IACHR, Application to the Inter-American Court of Human Rights in the case of Wilmer Zambrano Vélez, José Miguel Caicedo and Segundo Olmedo Caicedo (Case 11.579) against the Republic of Ecuador, June 24, 2006, para. 64

²⁹ IACHR, Report on Terrorism and Human Rights. OEA/Ser.L/V/II.116. Doc. 5 rev. 1 corr. 22 October 2002. Parr. 351

³⁰ Due Process of Law Foundation (DPLF). [The right to social protest and Inter-American standards](#). Justice in the Americas, Due Process Foundation Blog. December 8, 2020.

³¹ Human Rights Watch. [Covid-19 fuels wave of free speech abuses](#). February 11, 2021.

groups. As the Commission has stated, "protest also plays a central role in the defense of democracy and human rights³²".

44. The Commission has stated that gatherings³³ play a very dynamic role in mobilizing the population and formulating their claims and aspirations, facilitating the holding of events and, more importantly, influencing public policy in States³⁴. However, in the context of the pandemic, the Commission has observed that the regulations adopted by several States have been aimed at limiting or restricting activities that include the assembly of people, as well as activities that take place in public space, a privileged space for social protest in the region³⁵. In this regard, the IACHR recalls that such limitations are not, per se, contrary to the Convention. However, it is recalled that the measures resulting in restrictions of rights or guarantees, such as the right of assembly, "must conform to the *pro persona*" principles of proportionality, temporality, and must have as a legitimate purpose the strict fulfillment of public health and comprehensive protection objectives, such as the due and timely care of the population, over any other consideration or interest of a public or private nature³⁶".

Social protests carried out in the context of the health crisis

45. The Commission notes that, despite these restrictions, protests in the region continued unabated. In a context in which the numerous gaps and inequalities that existed prior to the pandemic worsened, there were numerous demonstrations related to discontent with the measures adopted by the States to deal with the pandemic and, at the same time, to formulate historical or emerging demands related to the impacts deepened by the pandemic³⁷. For example, in Venezuela, the situation of social, political and economic crisis, aggravated by the COVID-19 pandemic and the shortage of services and basic supplies, led to an increase in citizen protests throughout the country during the year 2020.

³² IACHR. Protest and Human Rights, Standards on the rights involved in social protest and the obligations that should guide the state response. OEA/Ser.L/V/II IACHR/RELE/INF.22/19. September 2019, p. 1.

³³ Defined as any intentional and temporary congregation of a group of people in a private or public space for a specific purpose. IACHR. Protest and Human Rights, Standards on the rights involved in social protest and the obligations that should guide the state response. OEA/Ser.L/V/II IACHR/RELE/INF.22/19. September 2019

³⁴ IACHR. Protest and Human Rights, Standards on the rights involved in social protest and the obligations that should guide the state response. OEA/Ser.L/V/II IACHR/RELE/INF.22/19. September 2019.

³⁵ Lovera Parmo, Domingo. Protests, pandemic and health: manner, time and place. Revista de Derecho (Valdivia). December 2021, pp. 137-157.

³⁶ IACHR. Pandemic and Human Rights in the Americas. Resolution 1/2020. April 10, 2020, operative part. para. 3.f.

³⁷ CIVICUS Monitor. Freedom of Peaceful Assembly and Covid-19: A Snapshot of Demonstrations and Restrictions. September 2021.

The Venezuelan Observatory of Social Conflict (OVCS) documented 4,414 protests during the first semester of 2020, equivalent to an average of 25 per day³⁸.

46. On numerous occasions, the IACHR warned that these protests were severely repressed by the authorities, including through the excessive use of force³⁹. Thus, in Honduras, the Rapporteurship for Freedom of Expression of the IACHR (RELE) received information on excessive use of force to disperse multiple demonstrations carried out during the year 2020, mainly motivated by the economic and health crisis resulting from the COVID-19 pandemic⁴⁰. In Paraguay, following the announcement of a rollback of flexibilization and the return of isolation in the department of Alto Paraná, demonstrations took place in which protesters allegedly threw stones and started fires with pyrotechnics, clashing with police officers who in turn allegedly used rubber bullets to disperse the protests, leaving several injured⁴¹. Similarly, the Commission noted the development of numerous protests in Guatemala and condemned the excessive use of force, particularly against indigenous peoples, journalists and the media⁴².
47. Moreover, the restrictions imposed to contain the pandemic arrived in numerous States at a particularly conflictive time, in relation to the citizen movements that in recent years took to the streets to raise their voices against racism, structural inequality, corruption or to ex-

³⁸ IACHR. Annual Report of the Inter-American Commission on Human Rights 2020 - Volume II. OEASer.LV/II Doc. 28. 30 March 2021.

³⁹ IACHR. Annual Report of the Inter-American Commission on Human Rights 2020 - Volume II. OEASer.LV/II Doc. 28. 30 March 2021.

⁴⁰ According to the Association for Democracy and Human Rights (ASOPODEHU), between March 23 and June 22, 2020, at least 19 demonstrations were repressed by the Police and the Army. According to a survey by the organization C-Libre, between March 23 and April 2, there were at least 83 social protests, linked to the emergency generated by COVID-19, in 12 departments of Honduras. IACHR. Annual Report of the Inter-American Commission on Human Rights 2020 - Volume II. OEASer.LV/II Doc. 28. 30 March 2021, para. 865.

⁴¹ IACHR. Annual Report of the Inter-American Commission on Human Rights 2020 - Volume II. OEASer.LV/II Doc. 28. 30 March 2021, para. 1111.

⁴² On October 22 and 23, 2020, agents of the National Civil Police (PNC) violently repressed, using excessive force and indiscriminate use of tear gas, demonstrators, journalists and members of the Mayan *Q'eqchi'* people, who maintained peaceful actions and blockades in protest against the operation of the Fénix mine in their territory. IACHR. Press Release No. 281/20. IACHR condemns excessive use of force and urges investigation of all forms of violence during social protests in Guatemala. November 23, 2020. In November of that same year, the approval of the 2021 budget was the detonator to which were added claims of rejection of corruption, questions about the destination of resources to address the COVID-19 pandemic and in general a social, economic and political crisis dramatically aggravated by the hurricane season. The days of peaceful protests were attended by a large number of demonstrators, including children, adolescents and the elderly, who were reportedly indiscriminately repressed with excessive use of force, including tear gas, water pressure, beatings and arbitrary detentions. Press Release No. 293/21 The IACHR condemns the excessive use of force and repression against indigenous Mayan Q'eqchi' peoples, journalists and media outlets in El Estor, Guatemala. November 4, 2021.

ercise the very defense of democracy⁴³. In the case of Chile, for example, the cycle of mass demonstrations against persistent inequality, initiated in October 2019 with the so-called "social explosion"⁴⁴, diminished because of the COVID-19 pandemic⁴⁵. The Chilean government declared in March 2020 a "state of catastrophe" due to the pandemic and extended it until December. This imposed restrictions on freedom of movement and a night-time curfew⁴⁶. It can be observed that, in the face of the restrictions imposed to contain the pandemic, although social mobilizations could not continue in the same way, they did not cease either. Thus, although mass demonstrations continued during the first months of 2020, they ceased to a large extent in compliance with the measures to contain the spread of COVID-19, and progressively resumed at the same time as restrictions on movement and social isolation were reduced. In fact, social movements were confronted with the challenge of devising new ways of demonstrating their legitimate demands, seeking to reconcile the right to protest with the health protection measures in force⁴⁷.

48. In the United States, the Commission also noted the numerous social protests against racial injustice that erupted in intensity after the murder of George Floyd. From May 26, 2020, and during the following weeks, citizens staged mass protests in conjunction with the "Black Lives Matter" movement. The Commission condemned the attacks, threats and intimidation of journalists and media outlets during their coverage, as well as the excessive and disproportionate use of force against protesters, journalists and media personnel⁴⁸.
49. As for Peru, between November 9 and 15, 2020, a series of social protests took place throughout the country after the Congress voted in favor of the motion of vacancy against President Martin Vizcarra and declared his "permanent moral incapacity"⁴⁹. This mobiliza-

⁴³ Due Process of Law Foundation (DPLF). [The right to social protest and Inter-American standards](#). Justice in the Americas, Due Process Foundation Blog. December 8, 2020; IACHR. Press Release No. 018/20. [IACHR culminates in loco visit to Chile and presents its preliminary observations and recommendations](#). January 31, 2020; IACHR. Press Release No. 285/19. [IACHR culminates observation mission to Ecuador](#). November 5, 2019; IACHR. Press Release No. 167/21. [IACHR culminates working visit to Colombia and presents its observations and recommendations](#). July 7, 2021; IACHR. Press Release No. 290/20. [IACHR concludes working visit to Peru](#). December 7, 2020; IACHR. Press Release No. 192/18. [IACHR Culminates Working Visit to Bolivia](#). August 28, 2018.

⁴⁴ IACHR. Press Release No. 270/19. [IACHR condemns excessive use of force and rejects all forms of violence in the context of social protests in Chile](#). October 23, 2019.

⁴⁵ Amnesty International. [The State of the World's Human Rights](#). 2021, pp. 143-145.

⁴⁶ Amnesty International. [The State of the World's Human Rights](#). 2021, pp. 143-145.

⁴⁷ CIPER. [Challenges for the social movement post COVID-19](#). July 27, 2019.

⁴⁸ IACHR. [Annual Report of the Inter-American Commission on Human Rights 2020 - Volume II](#). OEA/Ser.LV/II Doc. 28. 30 March 2021.

⁴⁹ IACHR. Press Release No. 275/20. [The IACHR condemns human rights violations that occurred in the context of the social protests in Peru, calls for the resolution of the institutional crisis through democratic means, and places itself at the disposal of the Peruvian State to conduct a working visit](#). November 16, 2020.

tion took place even when the State of National Emergency declared on March 16, 2020 due to the COVID-19 pandemic was in force, restricting the constitutional rights of assembly and free transit, with the purpose of protecting the life and health of the population⁵⁰.

50. In Colombia, a series of intense and massive social protests began on April 28, 2021, in rejection of a tax reform bill⁵¹. The protests that were triggered throughout the country had similar demands to those of the mobilizations of previous years⁵², and occurred at a time of a particular boom in COVID-19 contagions⁵³. The mobilizations were motivated by increasing levels of poverty, inequality and violence, coupled with the growing number of assassinations of human rights defenders, social leaders, representatives of indigenous and Afro-descendant peoples, as well as signatories of the Peace Agreement⁵⁴. Following its working visit to the country, the Commission highlighted the massive citizen participation in mostly peaceful protests, while condemning the numerous human rights violations in the context of the protests⁵⁵, all in a complex health context.
51. For example, in the case of the United States, the mass protests that led thousands of people to leave their homes resulted in various authorities in that country referring to the protests as possible "super-spreading events"⁵⁶. Similarly, in Peru, individuals who participated in protests in the context of such a pandemic, as well as the security officers who were present, faced various risks to their health and well-being related to their eventual exposure to the virus in mass gatherings of people, treatment by authorities, being placed in

⁵⁰ Ombudsman's Office of Peru. Prevention and Management of Social Conflicts in the Context of the Pandemic by COVID-19. July 2020. Although numerous protests had already been taking place in various parts of the country, the Commission noted that the protests in Peru in November had a novel aspect, as they were the first of this size in the region to take place in the context of the COVID-19 pandemic. These protests resulted in two deaths and hundreds of injured people, including journalists. El País. Inter-American Commission calls for guaranteeing the right to protest during the pandemic. December 4, 2020. In this scenario, the Commission and its RELE rejected the excessive use of force against demonstrators and journalists and called on the State to guarantee the right to peaceful protest in the context of the pandemic, in accordance with Inter-American standards on the matter. IACHR. Press Release R274/20. The Office of the Special Rapporteur expresses extreme concern over the excessive use of police force against demonstrators and journalists and arrests in the context of protests in Peru. November 13, 2020; IACHR. Press Release No. 27520. The IACHR condemns human rights violations that occurred in the context of the social protests in Peru, calls for the resolution of the institutional crisis through democratic means, and places itself at the disposal of the Peruvian State to conduct a working visit. November 16, 2020.

⁵¹ The New York Times. Colombia Police Respond to Protests With Bullets, and Death Toll Mounts. May 5, 2021.

⁵² IACHR. Press Release No. 137/21. The IACHR condemns the serious human rights violations in the context of the protests in Colombia, rejects all forms of violence and reiterates the importance of the State honoring its international obligations. May 25, 2021.

⁵³ El País. Colombia faces its worst moment in the pandemic in the midst of social unrest. May 6, 2021.

⁵⁴ IACHR. Observations and recommendations of the IACHR's working visit to Colombia, June 8-10, 2021. June 2021, para. 10.

⁵⁵ IACHR. Observations and recommendations of the IACHR working visit to Colombia, June 8-10, 2021, June 2021, para. 28.

⁵⁶ The New York Times. The risks of protesting during a pandemic. June 2, 2020 and The New York Times. Are Protests Dangerous? What Experts Say May Depend on Who's Protesting What. July 6, 2020

detention or requiring eventual medical interventions⁵⁷. In addition, in protests in the United States and Peru, tear gas and pepper spray used by law enforcement officers have caused protesters to cry, cough or remove their masks, increasing respiratory secretions from the eyes, nose and mouth, thus increasing the likelihood of transmission. In addition, police efforts to move crowds through tight urban areas, as happened in Peru, may result in corraling people closer together, or end up locking people into confined spaces, creating heightened contagion risk scenarios⁵⁸.

52. In this regard, the Commission has been highlighting the obligation of States to respect, protect and facilitate social protest. While the obligation to respect "is defined by the State's duty not to interfere with, obstruct or impede access to the enjoyment of the goods that constitute the object of the right, [those to] protect consist of preventing third parties from interfering with, obstructing or impeding access to those goods," the obligation to facilitate the exercise of a right includes obligations tending to "ensure that the holder of the right has access to the good when he can do so himself [...] and to promote, [obligations that] are characterized by the duty to develop conditions so that the holders of the right have access to the good when he can do so himself [...] and to promote, [obligations that] are characterized by the duty to develop conditions for right holders to access the property"⁵⁹.
53. In the same vein, the United Nations Human Rights Council urged States "to promote a safe and enabling environment for individuals and groups to exercise their rights to freedom of peaceful assembly, expression and association⁶⁰". The Commission also affirmed that the actions of the State in the development of protests range from the reorganization of pedestrian and vehicle traffic to accompanying the persons participating in the demonstration to guarantee their safety and facilitate the realization of the activities that motivate the convocation⁶¹. In this sense, States should facilitate social protest and take reasonable measures to ensure that they are carried out in a safe manner for all persons, mitigating the known public health risks, without this resulting in any obstacle to the realization of the

⁵⁷ Peru21. [Coronavirus in Peru: The risks of protesting during a pandemic](#). November 11, 2020.

⁵⁸ The New York Times. [The risks of protesting during a pandemic](#). June 2, 2020; Health with Magnifying Glass. November 11, 2020.

⁵⁹ IACHR. [Protest and Human Rights, Standards on the rights involved in social protest and the obligations that should guide the state response](#). OEA/Ser.L/V/II IACHR/RELE/INF.22/19. September , 2019, para. 54; IACHR. [Report on Citizen Security and Human Rights](#). OEA/Ser.L/V/II. Doc. 57. December 31, 2009, para. 35.

⁶⁰ Human Rights Council. [The promotion and protection of human rights in the context of peaceful demonstrations](#). AHRC/25/L.20. 24 March 2014, para. 3; Human Rights Council. [The promotion and protection of human rights in the context of public demonstrations](#). AHRC/RES/25/38. 11 April 2014, para. 3.

⁶¹ IACHR. [Protest and Human Rights, Standards on the rights involved in social protest and the obligations that should guide the state response](#). OEA/Ser.L/V/II IACHR/RELE/INF.22/19. September 2019, para. 97.

convocations⁶². Likewise, law enforcement protocols must be updated, taking into consideration the recommendations on the prevention of risks of contagion of COVID-19, particularly with regard to arrests, detentions and transfers.

Use of restrictions adopted to contain the pandemic as restrictions on the right to social protest

54. On the other hand, the Commission has warned that in some cases, according to the CIVICUS monitor, the restrictions adopted to contain the pandemic have been used as a way to restrict the right to social protest⁶³. In particular, the imposition of administrative sanctions and arrests of people participating in demonstrations was recorded, alleging compliance with measures of mandatory social isolation or curfews, as well as the prohibition of certain forms of demonstration, under the premise of safeguarding public health⁶⁴.
55. In this regard, the IACHR and its RELE have stated that "limitations on social protests must be aimed at achieving the legitimate objectives authorized by the American Convention⁶⁵". Article 15 of the Convention establishes that it may be subject to restrictions imposed "in the interests of national security, public safety or public order, or to protect public health or morals or the rights or freedoms of others". Article 13.2, in turn, determines that restrictions on the exercise of freedom of expression are legitimate only if they seek to ensure (i) respect for the rights or reputations of others; or (ii) the protection of national security, public order, or public health or morals⁶⁶. In turn, the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association warned that the pandemic should not be used as a pretext to suppress rights in general, and the right to freedom of peaceful assembly and of association in particular⁶⁷.

⁶² For example, the Commission noted the issuance, in the United States, of guidance to demonstrators on staying safe at protests during the pandemic or advice issued by U.S. health authorities to reduce the risk of contagion during demonstrations. [Open letter advocating for an anti-racist public health response to demonstrations against systemic injustice occurring during the COVID-19 pandemic](#); Salud con Lupa. 11 November 2020; Richmond City Health District. [Reduce the risk of spreading COVID-19 during a COVID-19 protest](#). July 2020. NYC Department of Health and Mental Hygiene. [Plan to protest? Here are tips to reduce the risk of spreading #COVID19](#). On Twitter. May 30, 2020.

⁶³ CIVICUS Monitor. [Freedom of Peaceful Assembly and Covid-19: A Snapshot of Demonstrations and Restrictions](#). September 2021.

⁶⁴ La Jornada. [Guatemala bans opposition protests because they "disturb" the pandemic](#). July 12, 2021.

⁶⁵ IACHR. [Protest and Human Rights, Standards on the rights involved in social protest and the obligations that should guide the state response](#). OEA/Ser.L/V/II IACHR/RELE/INF.22/19. September 2019, para. 36.

⁶⁶ IACHR. [Protest and Human Rights, Standards on the rights involved in social protest and the obligations that should guide the state response](#). OEA/Ser.L/V/II IACHR/RELE/INF.22/19. September 2019, para. 36.

⁶⁷ OHCHR. ["States responses to Covid 19 threat should not halt freedoms of assembly and association" - UN expert on the rights to freedoms of peaceful assembly and of association, Mr. Clément Voule](#). 14 April 2020.

56. In Paraguay, RELE was informed of a series of protests that led to criminal charges against demonstrators for allegedly attacking a historic building and the flag, and some people were even charged for allegedly violating quarantine⁶⁸. In the case of Peru, the Commission was informed that persons intervened in the framework of the protests were held in police custody based on the regulatory framework of the State of Emergency adopted to contain the effects of the COVID-19 pandemic⁶⁹.
57. Likewise, with respect to the protests that took place in the United States in 2020, according to public information, it is estimated that more than 14,000 people were arrested/detained while exercising their right to protest. RELE notes that, according to news sources, an overwhelming majority of those arrested were reportedly charged with non-violent misdemeanors, mostly on charges of violating curfew or emergency orders⁷⁰. In the same country, since the outbreak of the pandemic, numerous demonstrations have taken place, particularly against social isolation measures and the obligation to wear face masks⁷¹.
58. Social protest, which includes the rights of peaceful and unarmed assembly, association and freedom of expression, is a fundamental tool in the defense of democracy and human rights. Both in its individual and collective exercise, protest is aimed at publicly expressing opinions, visions or values of dissent, opposition, denunciation, or vindication, as well as demanding the fulfillment of rights⁷². In addition, the principle of non-discrimination applies especially to demonstrations and protests. Under Articles 13 and 16 of the American Convention, States

⁶⁸ IACHR. Annual Report of the Inter-American Commission on Human Rights 2020 - Volume II. OEA/Ser.L/V/II Doc. 28. 30 March 2021, para. 1112.

⁶⁹ IACHR. Press Release No. 29020. IACHR concludes working visit to Peru. December 7, 2020. Protesters were reportedly issued ballots with administrative sanctions for infractions of the rules on confinement and social isolation. Based on this norm, sanctions were imposed by equating participation in a protest with the celebration of social and recreational gatherings. According to information gathered by the Commission, this is being done with the aim of dissuading people from going out to demonstrate, despite the existence of less restrictive measures based on criteria of necessity and proportionality, such as the use of masks and social distancing.

⁷⁰ IACHR. Annual Report of the Inter-American Commission on Human Rights 2020 - Volume II. OEA/Ser.L/V/II Doc. 28. 30 March 2021, para. 650.

⁷¹ In California, for example, following a protest in front of the state capitol, in-person protests at state facilities were banned, while commercial activities were allowed to reopen New York Times, [The Right of the People to Protest Lockdown](#), May 19, 2020 Likewise, in New York City, individuals participating in protests, even while wearing face masks and practicing social distancing, were detained or reprimanded by the NYCLU City Police. NYCLU Statement on Demonstrations during Pandemic. May 7, 2020; The New York Times. [The Right of the People to Protest Lockdown](#). May 19, 2020. In Kentucky, the governor banned "mass gatherings" including social protests, but mall operations were still authorized as normal New York Times, [The Right of the People to Protest Lockdown](#), May 19, 2020. In North Carolina, after dispersing a protest, the police department stated that "social protest is not an essential activity NYCLU. NYCLU Statement on Demonstrations during Pandemic. May 7, 2020; The New York Times. [The Right of the People to Protest Lockdown](#). May 19, 2020

⁷² United Nations (UN) Special Rapporteur for the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights of the OAS. Joint Declaration on violence against journalists and communicators in the context of social demonstrations. September 13, 2013.

may not restrict social protest based on prejudices and intolerance that governments or societies have against a person or group⁷³. Likewise, States may not establish restrictions with discriminatory effects based on the type of claim, content or demand that participants in demonstrations seek to defend. When States impose limits on social protest based on prohibited grounds of discrimination, Article 24 of the American Convention is also violated⁷⁴. Based on the principle of non-discrimination, States must establish homogeneous criteria to restrict social protests. In this sense, it violates the principle of non-discrimination when States, under the pretext of the pandemic, restrict a particular social protest when, on the other hand, they allow other agglomerations to be encouraged⁷⁵. Therefore, States cannot apply more burdensome standards to a certain type of protests, nor can they do so to protests in general in comparison with other types of agglomerations such as those generated, for example, in commerce or at sporting events. In this type of situation, more burdensome standards would be imposed on protests than on other agglomerations.

Legal framework regarding the exceptionality of the restriction of the right to protest in the context of health crises

59. The Commission has affirmed that it is possible for States to establish restrictions to the right to social protest in the context of the health crisis caused by the COVID-19 pandemic, as long as such restrictions are in accordance with the Inter-American standards of the principle of proportionality, temporality, and must have as a legitimate purpose the strict compliance with the objectives of public health and comprehensive protection, such as the due and timely care of the population, above any other consideration or interest of a public or private nature⁷⁶.
60. In this regard, the Commission has underscored the fact that the right to protest should be considered the general rule, and that limitations to it should be the exception. Likewise, the IACHR has stressed that the protection of the rights and freedoms of others

⁷³ IACHR. Protest and Human Rights. Standards on the rights involved in social protest and the obligations that should guide the state response. OEA/Ser.LV/II IACHR/RELE/INF.22/19. September 2019, para. 46.

⁷⁴ IACHR, Office of the Special Rapporteur for Freedom of Expression. Inter-American Legal Framework on the Right to Freedom of Expression. December 30, 2009, para. 93; IA Court H.R., IA Court H.R., Case of López Álvarez v. Honduras. Case of López Álvarez v. Honduras. Series C No. 141. Judgment of February 1, 2006, para. 170.

⁷⁵ For example, the Commission has observed institutional actions that encourage agglomerations, such as the massive wake of Diego Armando Maradona in Argentina in the context of multiple restrictions for the population for health reasons, or the actions to encourage trade in Colombia, particularly the so-called "VAT-free days" that generated multiple agglomerations in commercial premises. See: Unidiversidad. Concerns about the spread of coronavirus after Maradona's massive wake. November 27, 2020; France24. Colombia: on VAT-free Day, hundreds crowd into stores and defy pandemic. June 20, 2020.

⁷⁶ IACHR. Pandemic and Human Rights in the Americas. Resolution 1/2020. April 10, 2020, pp. 6 and 9.

should not be employed as a mere excuse to restrict peaceful protests⁷⁷. Indeed, for restrictions on these rights to be legitimate, they must be expressly established by law and must be necessary to ensure respect for the rights of others or the protection of national security, public order, or public health or morals, in the terms of Articles 13, 15 and 16 of the American Convention⁷⁸.

61. As mentioned by the Human Rights Committee, the granting of exceptional powers, especially those related to the scope and exercise of important fundamental rights such as the rights involved in the exercise of social protest, increases the need for a robust system of checks and balances in order to avoid any abuse or arbitrariness⁷⁹. In this regard, the Commission warns that, especially in exceptional circumstances such as a pandemic, in which States increase the discretion of their decisions in order to protect public health in an effective and efficient manner, there must be spaces for citizens to exercise their right to protest, for example, to question such decisions taken by States. States must therefore guarantee both rights, namely the right to health and the right to protest, albeit adapted to the context of the health crisis.
62. Therefore, to be legitimate, all restrictions on freedom of expression must meet the "tripartite test" of legality, legitimacy and proportionality. With respect to the principle of legality, any limitation must be provided for by law. As both the Commission⁸⁰ and the Inter-American Court⁸¹ have pointed out, restrictions must be provided for in formal law, in a prior, express, specific, precise and clear manner, both in the formal and material sense. Laws establishing restrictions on social protests must be drafted in the clearest and most precise terms possible, since the legal framework regulating freedom of expression must provide legal certainty to citizens⁸².

⁷⁷ Human Rights Council. Effective measures and best practices to ensure the promotion and protection of human rights in the context of peaceful protests. Report of the Office of the United Nations High Commissioner for Human Rights. AHRC/22/28. 21 January 2013, para. 12.

⁷⁸ IACHR. Second Report on the Situation of Human Rights Defenders in the Americas. OEA/Ser.L/V/II. Doc. 66. 31 December 2011, para. 107; IACHR. Annual Report 2007, Chapter IV. December 29, 2007, paras. 260-261.

⁷⁹ UNESCO. COVID-19: The role of judicial operators and the protection and promotion of the right to freedom of expression. 2020, p. 6.

⁸⁰ IACHR. Protest and Human Rights, Standards on the rights involved in social protest and the obligations that should guide the state response. OEA/Ser.L/V/II IACHR/RELE/INF.22/19. September 2019, para. 34.

⁸¹ IACHR Court. Advisory Opinion OC-6/86. Series A No. 6. May 9, 1986.

⁸² The Office of the Special Rapporteur for Freedom of Expression has specified that vague or ambiguous legal norms that grant very broad discretionary powers to the authorities in this way are incompatible with the American Convention, because they can support potential acts of arbitrariness that amount to prior censorship or impose disproportionate responsibilities for the expression of protected speech. See: IACHR. Inter-American Legal Framework on the Right to Freedom of Expression, 2010, paras. 69 y 70. IACHR. Criminalization of the work of human rights defenders. OEA/Ser.L/V/II. Doc. 49/15. December 31, 2015, para. 120; IACHR. Annual Report 2007, Venezuela. OEA.Ser.L/II.130. 29 December 2007, para. 260; IACHR. Case of Baena Ricardo et al. v. Panama. Merits, Reparations and Costs. Series C No. 72. Judgment of February 2, 2001, para. 168.

63. In relation to legitimacy, limitations on social protests must be aimed at achieving the legitimate objectives authorized by the American Convention. Articles 15 on the right to peaceful assembly, 16.2 on freedom of association and 13.2 on freedom of expression of the Convention, share some assumptions that constitute the legitimate objectives expressly provided for in the Convention, namely, the interests of national security, public order and the protection of public health and morals, among others⁸³. As can be seen, the protection of public health constitutes a legitimate objective expressly provided for in the American Convention. Thus, the limitations must pursue the achievement of one of the objectives established exhaustively in the American Convention and be necessary to achieve public interests that, due to their importance, in specific cases, clearly outweigh the social need for the full enjoyment of the right to protest.
64. Finally, it is noted that restrictions must be necessary in a democratic society, a criterion from which the standards on proportionality are also derived. Limitations to the right to protest must be necessary in a democratic society for the achievement of the imperative ends they pursue and strictly proportional to the purpose they seek. Thus, in order for the restriction to be legitimate, the social, certain and imperative need for such limitation must be clearly established, i.e., that such legitimate and imperative objective cannot reasonably be achieved by a less restrictive means of the human rights involved⁸⁴. The requirement of necessity also implies that restrictions to rights should not go beyond what is strictly indispensable, so as to guarantee the full exercise and scope of these rights. This requirement suggests that the least burdensome means available be selected to protect fundamental legal goods from the most serious attacks that damage or endanger them, since the contrary would lead to the abusive exercise of State power⁸⁵. Among several options to achieve the same objective, the one that restricts on a smaller scale the rights protected by the American Convention must be chosen⁸⁶. Moreover, under the subprinciple of strict adequacy, the generalized application of legal restrictions on the right to participate in peaceful protests is inherently disproportionate, as it does not allow for taking into account the spe-

⁸³ IACHR. Protest and Human Rights. Standards on the rights involved in social protest and the obligations that should guide the state response. OEA/Ser.LV/II IACHR/RELE/INF.22/19. September 2019, para. 36.

⁸⁴ IACHR. Inter-American Legal Framework on the Right to Freedom of Expression. OEA/Ser.LV/II IACHR/RELE/INF.2/09. December 30, 2009, para. 85.

⁸⁵ IACHR. Inter-American Legal Framework on the Right to Freedom of Expression. OEA/Ser.LV/II IACHR/RELE/INF. 2/09. December 30, 2009, para. 86; IA Court H.R., Case of Tristán Donoso v. Panama. Case of Tristán Donoso v. Panama. Preliminary Objection, Merits, Reparations and Costs. Series C No. 193. Judgment of January 27, 2009, para. 119.

⁸⁶ IACHR, Inter-American Legal Framework on the Right to Freedom of Expression. OEA/Ser.LV/II IACHR/RELE/INF. 2/09. December 30, 2009, para. 86. IACHR Court. Compulsory Membership in an Association of Journalists (Articles 13 and 29, American Convention on Human Rights), Advisory Opinion OC-5/85 of November 13, 1985, Series A, No. 5, para. 46.

cific circumstances of each particular case⁸⁷. The authority imposing restrictions on a public demonstration must demonstrate that these conditions have been met and all of them must be respected simultaneously for the restrictions imposed on social protest to be legitimate under the American Convention⁸⁸.

C. Access to public information and accountability during the pandemic. Impacts on human rights as a consequence of the reduction of controls in public management

Restrictions on access to public information

65. In the context of the health emergency, the Commission has stated that human health depends not only on easy access to health care, but "it also depends on access to accurate information about the nature of the threats and the means to protect oneself, one's family and one's community⁸⁹".
66. In this context, the Commission and its Office of the Special Rapporteur for Freedom of Expression observed how, as the outbreak of COVID-19 and its effects in the region progressed, various States made efforts to strengthen the capacity of their public institutions to develop active transparency portals with reliable and updated data in areas that had not previously been prioritized, such as health and science. For example, in Chile, the Council for Transparency issued a series of official letters that established requirements related to the publication of health protocols, epidemiological information disaggregated by different variables and scientific evidence reports that support the COVID-19 therapies used in the country⁹⁰. Likewise, Mexico's National Institute for Transparency, Access to Information and Protection of Personal Data (INAI) set up a working group in conjunction with the Health sector to analyze the attributes of the information on the government's coronavirus portal, ensure accessibility and disseminate useful information⁹¹.
67. On the other hand, the Commission highlights as one of the most consulted tools to access information related to the pandemic, the interactive map of the Johns Hopkins Center for

⁸⁷ IACHR. Inter-American Legal Framework on the Right to Freedom of Expression. OEA/Ser.LV/II IACHR/RELE/INF. 2/09. December 30, 2009, para. 87.

⁸⁸ IACHR. Inter-American Legal Framework on the Right to Freedom of Expression. OEA/Ser.LV/II IACHR/RELE/INF. 2/09. See also the Committee's General Comment No. 34 on freedom of opinion and freedom of expression, para. 34; Communication No. 1119/2002, Jeong-Eun Lee v. Republic of Korea, Views adopted on 20 July 2005, para. 7.2; and Belyatsky et al. v. Belarus, Communication No. 1296/2004, decision of 7 August 2007, para. 7.3.

⁸⁹ IACHR. Press Release R58/20. COVID-19: Governments must promote and protect access and free flow of information during pandemic - International experts. March 19, 2020.

⁹⁰ Ministry of Health of Chile. New Coronavirus COVID-19. No date.

⁹¹ Source: quoted in document "Towards an Active Transparency Index in a Health Emergency Context" (RELE 2021 Archive).

Systems Science and Engineering⁹². From then on, each country created its own dashboards to communicate epidemiological figures; number of people tested with molecular tests; number of people who tested positive for COVID-19; localities with the highest number of infections; number of patients in intensive care; number of people who died in health services; as well as the number of people recovered. However, this was done in a heterogeneous manner and without defined analysis criteria, since they were implemented according to the response capacity of the epidemiological surveillance systems of each country and their level of preparedness for data management⁹³.

68. Notwithstanding the efforts made, the Commission warned that the outbreak of the pandemic brought significant challenges to the exercise of the right of access to public information. In this regard, the Office of the Special Rapporteur for Freedom of Expression recorded restrictions, based on the framework of the declaration of states of emergency that restricted fundamental freedoms⁹⁴. For example, the IACHR identified restrictions on the access of journalists to press conferences, restrictions on the possibility of asking questions about the pandemic and limitations to their work due to the virtual formats of press conferences⁹⁵. Likewise, the Commission was informed about the suspension or ex-

⁹² This map reports real-time coronavirus cases worldwide, compiling official data available from various sources, including: WHO; the U.S. and Chinese Centers for Disease Control and Prevention; as well as DXY. Health with Magnifying Glass. [Interactive map: the coronavirus pandemic in real time](#). March 6, 2020.

⁹³Source: quoted in document "Towards an Active Transparency Index in a Health Emergency Context" (RELE 2021 Archive).

⁹⁴ IACHR. [Annual Report of the Inter-American Commission on Human Rights 2020 - Volume II](#). OEA/Ser.L/V/II Doc. 28. 30 March 2021, para. 29.

⁹⁵ For example, in **Chile**, journalists have reported greater difficulty in accessing public information about the pandemic, as well as in asking questions at virtual press conferences. See: IACHR. [Annual Report of the Inter-American Commission on Human Rights 2020 - Volume II](#). OEA/Ser.L/V/II Doc. 28. March 30, 2021, para. 331. In **Ecuador**, numerous journalists have reported difficulties in the process of participating in press conferences, denouncing a lack of clarity in the process for asking questions, as well as a lack of response to multiple requests for information. See: IACHR. [Annual Report of the Inter-American Commission on Human Rights 2020 - Volume II](#). OEA/Ser.L/V/II Doc. 28. 30 March 2021, para. 565; In **Trinidad and Tobago**, on the occasion of the pandemic, press workers expressed lack of clarity in the criteria for accreditation to government conferences. See: Media Association of Trinidad & Tobago/Facebook. April 15, 2020.

tension of deadlines for processing administrative procedures for requesting public information related to the pandemic or due to the pandemic⁹⁶.

69. In relation to the above, the Commission and its RELE have also recognized and welcomed the fact that in the States, the internal control bodies reversed some of the most restrictive initial measures on access to information⁹⁷. It is also noted that many of these decisions take up the Inter-American standards on the matter and follow up on the recom-

⁹⁶ For example, in **Colombia**, an extension of the deadlines was ordered to attend to petitions that are in progress or that are filed during the period of the Sanitary Emergency. See: IACHR. Press Release R78/20. [IACHR and its RELE express concern about restrictions to freedom of expression and access to information in the response of States to the COVID-19 pandemic](#). April 18, 2020; In **Brazil**, on March 23, the federal government issued Provisional Measure 928/2020 limiting the right of access to information in the context of the pandemic, establishing in particular the prioritization of requests related to the pandemic and the impossibility of appealing negative responses. Likewise, the IACHR was informed of numerous requests for access to information that were denied or answered in an altered manner. See: Artigo 19. [Nota Conjunta: Só venceremos a pandemia com transparência](#). March 24, 2020; Fórum de Direito de Acesso a Informações Públicas. [Pandemia foi usada para negar atendimento a pedidos de informação mesmo após suspensão da MP 928.4 de mayo de 2020](#); In **El Salvador**, media and civil society organizations denounced an increase in the already existing restrictions to the right of access to information by the Government, so that there was an almost total closure of the institutional channels of responses and public information. See: IACHR. [Annual Report of the Inter-American Commission on Human Rights 2020 - Volume II](#). OEA/Ser.L/V/II Doc. 28. March 30, 2021, para. 581; In the **United States**, various federal, state and local agencies have reportedly suspended or extended the deadlines for processing requests for access to public information. See: IACHR. Press Release R78/20. [IACHR and its RELE express concern about restrictions on freedom of expression and access to information in the response of States to the COVID-19 pandemic](#). April 18, 2020; In **Honduras**, the Office of the Special Rapporteur received information on various situations that hindered access to information for journalists and citizens in general; in particular to information related to the impact and management of the COVID-19 pandemic. The Institute for Access to Public Information (IAIP) suspended its work during the COVID-19 crisis, according to the directives approved in Executive Decree PCM-021-2020. See: Presidency of Honduras - Press Room. [Executive Decree Number PCM-021-2020](#). March 16, 2020; In **Mexico**, the National Institute for Transparency, Access to Information and Data Protection (INAI) suspended the deadlines to attend to requests for information and personal data protection. See: IACHR. Press Release R78/20. [IACHR and its RELE express concern over restrictions on freedom of expression and access to information in the response of States to the COVID-19 pandemic](#). April 18, 2020.

⁹⁷IACHR. Press Release R78/20. [IACHR and its RELE express concern over restrictions on freedom of expression and access to information in States' response to the COVID-19 pandemic](#). April 18, 2020.

mendations made by the IACHR in its resolutions related to the protection and promotion of human rights in the context of the pandemic, particularly IACHR Resolution 1/2020⁹⁸.

70. On the other hand, RELE has warned that important challenges persist in relation to restrictions on access to public information. This includes reports of limitations on disclosure of information to the media⁹⁹; restriction of access to certain public documents¹⁰⁰; as well as reduced frequency and delays in the release of pandemic-related information¹⁰¹. Also

⁹⁸ See among the examples highlighted were: in the case of **Brazil**, the Provisional Measure suspending the deadlines for responding to requests for access to information in cases not related to the health situation was suspended by the Supreme Federal Court days later. See: IACHR. [Annual Report of the Inter-American Commission on Human Rights 2020 - Volume II](#). OEA/Ser.LV/II Doc. 28. March 30, 2021, para. 214. In **Argentina**, the Agency for Access to Public Information exempted from the suspension of deadlines the procedures for access to public information, and expressly cited Resolution 1/20 of the IACHR. In the case of **Chile**, the Commission recognized the public statement and other actions taken by the Council for Transparency of Chile, which issued recommendations to the obligated subjects, among them, to give special priority to disaggregated information on the pandemic and to adopt measures in line with Resolution 1/20 of the IACHR. See: IACHR. Press Release R7820. [IACHR and its RELE express concern over restrictions on freedom of expression and access to information in States' response to the COVID-19 pandemic](#). April 18, 2020. In **Costa Rica**, the Constitutional Chamber ordered the Minister of Health to deliver within one month the public information that had been denied to journalists of the digital media Interferencia, belonging to Radioemisoras de la Universidad de Costa Rica. The sentence was given after the communicators requested to the state organism a depersonalized database of all the confirmed COVID-19 patients, receiving a denial answer based on the work demand that implies the attention of the pandemic. See: UCR Radio Stations. [Sala IV orders Health Minister to hand over pandemic data he denied to journalists](#). August 3, 2020. In **Guatemala**, in addition to graphically informing the population, including languages of the Maya, Garifuna and Xinka peoples, the IACHR took note of Article 19 of Decree 12-2020 of the *Emergency Law to protect Guatemalans from the effects caused by the COVID-19 coronavirus pandemic*, noting that the deadlines established in the law on access to public information were exempted from the suspension of administrative deadlines according to the aforementioned rule. See: IACHR. [Annual Report of the Inter-American Commission on Human Rights 2020 - Volume II](#). OEA/Ser.LV/II Doc. 28. 30 March 2021, para. 773.

⁹⁹ In the **Bahamas**, during the pandemic, health authorities reportedly limited the dissemination of information to the media and the general public on coronavirus cases. When questioned on this point at a press conference, the Minister of Health, Renward Wells, maintained that "the involvement of the press is not the first priority of the health teams". He pointed out that there would be no evidence that Health is withholding information from citizens and the media, since "it does not serve them any purpose to do so". See: IACHR. [Annual Report of the Inter-American Commission on Human Rights 2020 - Volume II](#). OEA/Ser.LV/II Doc. 28. 30 March 2021, para. 70.

¹⁰⁰ In **Brazil**, on June 8, the Office of the Comptroller General of the Union (CGU) reportedly decided to restrict access to certain public documents, establishing that legal opinions issued by the various ministries to guide the president regarding the approval or veto of bills passed by Congress will be considered confidential. See: IACHR. [Annual Report of the Inter-American Commission on Human Rights 2020 - Volume II](#). OEA/Ser.LV/II Doc. 28. 30 March 2021, para. 220. In **El Salvador**, information on the pandemic was declared confidential, preventing access to data related to hospital management, food purchases and police reports related to Covid-19. The decision was reportedly made after the Attorney General's Office began raids of government offices to investigate cases of corruption related to the health crisis. See: Salud con Lupa. [The Government of El Salvador puts information on the pandemic under secrecy](#). December 1, 2020.

¹⁰¹ In **Brazil**, according to a report by Fórum de Direito de Acesso a Informações Públicas, the frequency of press conferences on the pandemic held by the Ministry of Health decreased throughout the year. Between January 23 and May 23, the average time between conferences was 1.6 days, and thereafter the average time became 4.3 days. Likewise, there was a period of 13 days between October 29 and November 12 in which no press conferences were held. See: IACHR. [Annual Report of the Inter-American Commission on Human Rights 2020 - Volume II](#). OEA/Ser.LV/II Doc. 28. March 30, 2021, para. 220. In Ecuador, information on deaths and contagions by COVID-19 has reportedly decreased. According to reports, the Ministry of Public Health reportedly issued very general reports, did not update its communication channels and even withdrew some reports from its website. See: El Universo. [The Ministry of Health reduces information on deaths and contagions due to COVID-19](#). July 11, 2020.

reported were cases of limitation of access of certain journalists to government sources in the coverage of the health crisis¹⁰².

71. Likewise, the Commission received reports of deficiencies in the information provided, highlighting the absence of information made public regarding: number of cases of sick or deceased persons; availability of medical and sanitary supplies and resources, including COVID-19 virus detection tests; as well as failures to duly disaggregate the information¹⁰³.
72. The Commission notes that the context of the health emergency has shown how the guarantee of the right of access to public information, despite legal and institutional advances, continues to be fragile in the region. It also notes that various measures to contain the pandemic have highlighted the persistence and deepening of previously known barriers to access to information, such as the digital divide, as well as the challenges of access for people with disabilities or for those who are part of groups in special situations of vulnerability¹⁰⁴.
73. In particular, and in relation to requests for access to information, the IACHR has indicated that States may give priority to those requests related to COVID-19, but should not establish general limitations with respect to other requests. In case of postponement of deadlines, States must justify the refusal, establish a time frame for compliance with the obligation and allow appeals of the resolutions¹⁰⁵.

¹⁰² In the **United States**, an internal e-mail from the U.S. Centers for Disease Control and Prevention (CDC) reported that its staff was barred from accepting interviews requested by "anyone affiliated with Voice of America" specifically because the White House condemned the broadcaster's work and accused it of spreading Chinese propaganda about the coronavirus. Members of the White House coronavirus task force were briefly barred from giving interviews on CNN without prior approval from the vice president. See: Politico. [White House rips U.S.-funded outlet Voice of America in daily newsletter](#). April 10, 2020; The Washington Post. [White House attacks Voice of America, claiming it promoted Chinese propaganda](#). April 10, 2020. In **Guatemala**, journalists questioning the actions of the State in the health crisis reportedly denounced having been expelled from instant messaging groups through which the Ministry of Health discloses information to the press. See: IACHR. [Annual Report of the Inter-American Commission on Human Rights 2020 - Volume II](#). OEA/Ser.L/V/II Doc. 28. March 2021, para. 769.

¹⁰³ In **Chile**, the Council for Transparency (CPLT) pointed out that there are still deficiencies in the information provided, which had already been notified to the government. For example, it points out that no information is provided on the total number of negative cases, the sources of exposure to new confirmed cases, the type and quantity of medical and hospital supplies used, the number of tests available or the number of medical and health personnel working. See: IACHR. [Annual Report of the Inter-American Commission on Human Rights 2020 - Volume II](#). OEA/Ser.L/V/II Doc. 28. 30 March 2021, paras. 336, 338 and 339. In **Uruguay**, the media denounced that the Government did not provide detailed and complete information on the coronavirus. In addition, the local press reported that the Ministry of Public Health (MSP) had allegedly declared "confidential" the information on the progress of the disease in the country, specifically on the mathematical models used by the health authority to calculate the progress of contagions in the national territory. See: IACHR. [Annual Report of the Inter-American Commission on Human Rights 2020 - Volume II](#). OEA/Ser.L/V/II Doc. 28. 30 March 2021, para. 1266.

¹⁰⁴ IACHR. [Guide No. 3 How to promote universal access to the Internet during the COVID-19 pandemic?](#) 26 March 2021.

¹⁰⁵ IACHR. Press Release R78/20. [IACHR and its RELE express concern over restrictions on freedom of expression and access to information in States' response to the COVID-19 pandemic](#). April 18, 2020.

74. On the other hand, the Commission recalls that transparency and accountability of public authorities strengthen democratic systems. Principle 4 of the IACHR Declaration of Principles on Freedom of Expression establishes that "[a]ccess to information held by the State is a fundamental right of individuals. States are obliged to guarantee the exercise of this right. This principle admits only exceptional limitations that must be previously established by law in the case of a real and imminent danger that threatens national security in democratic societies"¹⁰⁶.
75. Likewise, the IACHR has affirmed that access to information held by the State is a fundamental right of individuals and States are obligated to guarantee the exercise of this right. States have the obligation to allow access to official press conferences to all media, without discrimination based on their editorial line, except for necessary and proportional measures to protect health. Even questions asked in virtual spaces must be answered by the authorities with due diligence, since the press is the main channel to bring questions or queries to the authorities in view of the emergency situation and isolation of the population¹⁰⁷.
76. The Commission also notes that access to information and the duty of active transparency are central to guarantee citizen participation and collaboration in a complex scenario such as the public health emergency caused by the COVID-19 virus. For this reason, achieving a constant flow of communication that allows consultations, doubts and questions from citizens and civil society to be formulated, listened to and answered is key to strengthen the bonds of trust required when collective actions are needed to benefit the common good, such as sanitary measures, quarantines or vaccination campaigns, for example¹⁰⁸.

Restrictions on information regarding the progress and impacts of the pandemic

77. The Commission and its Special Rapporteurs have viewed the situation in Nicaragua with particular concern given the persistence of official misinformation about the scope of the COVID-19 pandemic. The IACHR has warned that the information provided by the Nicaraguan government throughout the pandemic has been confusing, unspecific and unreliable. This is due to the fact that medical terminology is not used, the numbers of infected, recovered and deceased persons are not clearly established, and in some cases the

¹⁰⁶ IACHR. Resolution No. 1/20. *Pandemic and Human Rights in the Americas*. April 10, 2020, paras. 29 and 32; IACHR. Press Release R58/20. *COVID-19: Governments must promote and protect access to and free flow of information during pandemic - International experts*. 19 March 2020.

¹⁰⁷ IACHR. Press Release R58/20. *COVID-19: Governments must promote and protect access and free flow of information during pandemic - International experts*. March 19, 2020.

¹⁰⁸ Source: quoted in document "Towards an Active Transparency Index in a Health Emergency Context" (RELE 2021 Archive).

origin of the infected persons is not mentioned¹⁰⁹. PAHO has repeatedly expressed its concern about the lack of detailed information in Nicaragua, which does not allow a correct assessment of the situation. Likewise, several physicians have reported that they have been forced by the Ministry of Health to modify death certificates so that there would be no record that people had died from COVID-19¹¹⁰.

78. Similarly, in Brazil, the Inter-American Commission learned of measures related to the public registration and dissemination of data on deaths and infection by the COVID-19 virus that could compromise the duty of transparency and the right to health. In particular, the IACHR expressed its concern about the change in the methodology of disclosure of information and the removal of 550,000 records of deaths and their causes from the "Transparency Portal"¹¹¹. The Ministry of Health stopped reporting the accumulated data on deaths and infections on June 5, 2020, just when cases reached record levels in the country. Almost a month later, on July 9, the Supreme Court of Justice issued a resolution stating that all previously published information should be reinstated by the Ministry, which complied with the ruling¹¹².
79. In the case of Venezuela, several civil society organizations informed the Commission that, since the outbreak of the pandemic, official information on its impact, the number of infections and the situation of the health system has been scarce. For example, according to the NGO *Espacio Público*, no details were provided on the evaluation of potential COVID-19 cases or on the situation of diagnosed patients¹¹³. Nor was concrete and detailed information disseminated on the situation of health centers to deal with the high number of patients. In turn, the circulation of unconfirmed and confusing information on the disease and

¹⁰⁹ IACHR. Press Release 11920. [IACHR and its Special Rapporteurs RELE and REDESCA express grave concern over violations of the right to information in Nicaragua and its consequences for access to health in the context of the Covid-19 pandemic](#). May 27, 2020; IACHR. [Annual Report of the Inter-American Commission on Human Rights 2020 - Volume II](#). OEA/Ser.LV/II Doc. 28. 30 March 2021, para. 1053 et seq.

¹¹⁰ With the onset of the pandemic, independent investigations have questioned the figures reported by official agencies. For example, according to the Nicaraguan Medical Association, health authorities reported only 2% of deaths due to COVID-19 as of August 31, 2020. Likewise, the group "Anonymous" hacked the Ministry of Health (Minsa), leaking files that reveal that the Ministry had hidden at least 6,245 positive cases of COVID-19 until then CIDH. Press Release 11920. [IACHR and its Special Rapporteurs RELE and REDESCA express grave concern over violations of the right to information in Nicaragua and its consequences for access to health in the context of the Covid-19 pandemic](#). May 27, 2020; IACHR. [Annual Report of the Inter-American Commission on Human Rights 2020 - Volume II](#). OEA/Ser.LV/II Doc. 28. 30 March 2021, para. 1053 et seq.

¹¹¹ IACHR. [Annual Report of the Inter-American Commission on Human Rights 2020 - Volume II](#). OEA/Ser.LV/II Doc. 28. 30 March 2021, para. 219.

¹¹² IACHR. [Annual Report of the Inter-American Commission on Human Rights 2020 - Volume II](#). OEA/Ser.LV/II Doc. 28. 30 March 2021, para. 218.

¹¹³ IACHR. [Annual Report of the Inter-American Commission on Human Rights 2020 - Volume II](#). OEA/Ser.LV/II Doc. 28. 30 March 2021, para. 1337; Espacio Público. [Coronavirus in Venezuela: more questions than answers](#). 20 March 2020.

its seriousness was accentuated "by the threats and indirect restrictions imposed by the national government, which, far from dispelling rumors and generating certainty, increased uncertainty in the face of the little official information"¹¹⁴.

80. In this regard, the IACHR has stated that human health does not only depend on easy access to health care. It also depends on access to accurate information about the nature of threats and the means to protect oneself, one's family and one's community. The right to freedom of expression, which includes the right to seek, receive and impart information and ideas of all kinds, regardless of frontiers, through any media, applies to everyone, everywhere, and can only be subject to limited restrictions¹¹⁵. Likewise, the Commission and its EHRN particularly recall that, based on the obligation of active transparency, States must proactively provide truthful and reliable information on all aspects of public interest related to the pandemic, in open formats and in a manner accessible to all. Given the existence of the digital divide, States must find effective ways to realize the active transparency obligation in such circumstances¹¹⁶.
81. In addition, the Office of the Special Rapporteur for Freedom of Expression has reiterated during the health emergency the close link between the availability of public information by communities to save lives, take precautions and monitor the government's response from every point of view¹¹⁷. Likewise, governments should be transparent about the measures that communities should take to protect themselves, paying special attention to people with difficulties in accessing mass media and the Internet¹¹⁸.
82. Furthermore, the RELE has shown that an essential international standard related to the duty of active transparency is the use of the open format¹¹⁹. In this regard, experts in the field have recommended the need to identify the databases generated by governments in order to work on those that are relevant in addressing public health needs and social im-

¹¹⁴ IACHR. Annual Report of the Inter-American Commission on Human Rights 2020 - Volume II. OEA/Ser.LV/II Doc. 28. 30 March 2021, para. 1337; Espacio Público. Coronavirus in Venezuela: more questions than answers. 20 March 2020.

¹¹⁵ IACHR. Press Release R58/20. COVID-19: Governments must promote and protect access and free flow of information during pandemic - International experts. March 19, 2020.

¹¹⁶ IACHR. Press Release R78/20. IACHR and its RELE express concern over restrictions on freedom of expression and access to information in States' response to the COVID-19 pandemic. April 18, 2020.

¹¹⁷ IACHR. Press Release 119/20. IACHR and its Special Rapporteurs RELE and REDESCA express grave concern over violations of the right to information in Nicaragua and its consequences for access to health in the context of the Covid-19 pandemic. May 27, 2020.

¹¹⁸ IACHR. Press Release 119/20. IACHR and its Special Rapporteurs RELE and REDESCA express grave concern over violations of the right to information in Nicaragua and its consequences for access to health in the context of the Covid-19 pandemic. May 27, 2020.

¹¹⁹ For more information about open data, see: Government of the State of São Paulo and the Government of the United Kingdom. Open Data Guideline: What is "Open Data"? 2015.

pacts; to build repositories that facilitate the publication, consultation and use of data by any person or organization that requires information for their own purposes. In the health crisis, the global scientific community has proven the need for open data to provide evidence and collaborate in government decisions¹²⁰.

Infodemia and disinformation

83. The Inter-American Commission and its RELE have cautioned that "human health depends not only on easy access to health care but also on access to accurate information about the nature of the threats and the means to protect oneself, one's family and one's community"¹²¹. In the context of the above, the Commission notes that the COVID-19 pandemic is the first in history to employ technology and social networking on a large scale to help people stay safe, informed, productive and connected. However, this same technology also enables and amplifies the phenomenon of infodemia¹²². As the WHO has warned, infodemia is a phenomenon related to "the overabundance of information, online or in other formats, and includes deliberate attempts to spread misinformation to undermine the public health response and promote other interests of particular groups or individuals"¹²³. The Commission has also warned that infodemia can include the spread of misinformation, misinformation or rumors about the virus, prevention methods, cures and possible vaccines¹²⁴.
84. In addition, the Commission has warned that one of the elements that characterizes the general situation of freedom of expression in the region is related to the attempts to capture the public debate enhanced by disinformation¹²⁵. In this sense, the IACHR warns that disin-

¹²⁰ The Executive Committee of the German Commission for UNESCO has issued a statement stressing that open science is a matter of survival and necessary to overcome the pandemic. See: UNESCO. [Open access to facilitate research and information on COVID-19](#). 2020.

¹²¹ IACHR. Press Release R58/20. [COVID-19: Governments must promote and protect access and free flow of information during pandemic - International experts](#). March 19, 2020.

¹²² World Health Organization (WHO). [COVID-19 infodemic management: Promoting healthy behaviors and mitigating harm from misinformation and disinformation](#). September 23, 2020.

¹²³ World Health Organization (WHO). [COVID-19 infodemic management: Promoting healthy behaviors and mitigating harm from misinformation and disinformation](#). September 23, 2020.

¹²⁴ IACHR. [Practical Guide 03 How to promote universal internet access during the COVID-19 pandemic](#). 26 March 2021.

¹²⁵ IACHR. Press Release 26/21. [IACHR warns of a turning point for freedom of expression on the Internet and calls for dialogue in the region](#). February 5, 2021.

formation exists when there is massive dissemination of false information that is put into circulation knowingly false and with the intention of deceiving the public or a fraction of it¹²⁶.

85. According to WHO, false information about the pandemic fuels hate speech; increases the risk of conflict, violence and human rights violations; and threatens the long-term prospects for advancing democracy, human rights and social cohesion¹²⁷. For its part, PAHO has stated that, in a pandemic, many false or misleading stories are invented and disseminated without checking their veracity or quality. In this context, inaccurate and false information has circulated about all aspects of the disease, such as the origin of the virus, the cause, the treatment and the mechanism of spread. Furthermore, "misinformation can spread and be assimilated very quickly, leading to behavioral changes that can lead people to take greater risks (...) harm more people and jeopardize the reach and sustainability of the global health system¹²⁸".
86. In this context, the IACHR expressed its concern regarding the dissemination of information without scientific basis or that does not refer exclusively to the scientific basis of the information, by high-level authorities in States such as Brazil¹²⁹, United States¹³⁰, Cuba, Nicaragua¹³¹

¹²⁶ This definition makes it possible to distinguish disinformation from *satire* (false information protected by freedom of expression, because it is not intended to mislead) and *propaganda* (which implies a discourse that seeks to persuade people to act or think in a certain way, but does not necessarily have to be based on false information). But it should be taken as a provisional definition: the phenomenon of disinformation is dynamic and changing and cannot be captured in a limited and permanent definition. Likewise, the Pan American Health Organization (PAHO) defines misinformation as "false or incorrect information with the deliberate intent to mislead". Pan American Health Organization (PAHO). Understanding infodemia and misinformation in the fight against COVID-19. 2020. See also Catalina Botero. "State regulation of so-called "fake news" from the perspective of the right to freedom of expression," in *Freedom of Expression: 30 years after the Advisory Opinion on Compulsory Membership of Journalists*. OEA/Ser.D/XV.18. November 2017, p. 69; M. Verstraete; D. E. Bambauer; J. R. Bambauer. Identifying and Countering Fake News. Social Science Research Network, Rochester, NY. August 1, 2017; IACHR. Guide to guarantee freedom of expression in the face of deliberate disinformation in electoral contexts. October 2019.

¹²⁷ World Health Organization (WHO). COVID-19 infodemic management: Promoting healthy behaviors and mitigating harm from misinformation and disinformation. September 23, 2020.

¹²⁸ Pan American Health Organization (PAHO). Understanding infodemia and misinformation in the fight against COVID-19. 2020.

¹²⁹In the case of Brazil, there was a confrontation between the declarations made by the Executive and its actions, as opposed to the activities carried out by local or state authorities to contain COVID-19 transmission, affecting the capacity and difficulties of the States in the face of the pandemic. REDESCA. *IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA) of the Inter-American Commission on Human Rights (IACHR), 2020* OEA/SER.LV/II. Doc. 28 March 30, 2021, para.213.

¹³⁰ CNN, Trump made 33 false claims about the coronavirus crisis in the first two weeks of March, March 22, 2020; The New York Times, Trump's Response to Virus Reflects a Long Disregard for Science, Oct. 7, 2020; CNBC, Trump claims the worsening U.S. coronavirus outbreak is a 'Fake News Media Conspiracy' even as hospitalizations rise, Oct. 29, 2020; The Atlantic, All the President's Lies About the Coronavirus, Nov. 2, 2020; The New York Times, Study Finds 'Single Largest Driver' of Coronavirus Misinformation: Trump, Oct. 6, 2021.

¹³¹ In Nicaragua, it has been reported that on certain occasions the State harassed and persecuted people, particularly health sector workers, who asked for or requested information on the status of the pandemic. REDESCA. *IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA) of the Inter-American Commission on Human Rights (IACHR), 2020*, OEA/SER.LV/II. Doc. 28 March 30, 2021, para. 839.

and Venezuela¹³². In relation to the above, and in the context of the pandemic, the Commission has reaffirmed the State's duty to provide reliable and disaggregated information on the pandemic, avoiding the promotion of disinformation, and that, when making decisions on the matter, it must act diligently and reasonably rely on the best scientific evidence¹³³. Likewise, the IACHR has affirmed that it is essential that governments provide truthful information on the nature of the threat posed by the coronavirus. The Commission has also recalled that governments are obligated under human rights law to provide reliable information in formats accessible to all, with particular attention to ensuring access to information by persons with limited access to the Internet or those with disabilities who have difficulty accessing it¹³⁴.

87. In addition, the IACHR has stated that it is essential that governments and Internet companies address disinformation by providing reliable information. With respect to other measures, such as content reduction and censorship, it may result in limiting access to information important to public health and should only be undertaken when the standards of necessity and proportionality are met¹³⁵. Any attempt to criminalize pandemic-related information may create distrust of institutional information, delay access to reliable information, and have a chilling effect on freedom of expression¹³⁶. On this issue, the Commission recalls that addressing disinformation requires strong civil society institutions, including the press, that enjoy the trust of the population. In particular, the IACHR recalls that the press can only have that confidence if they can fulfill their role in an independent manner.

Accountability in public management

88. The Commission notes that natural disasters, epidemics, humanitarian crises or activities to stimulate the economy are situations in which there is often a high risk of misuse of public resources¹³⁷. For this reason, and even with exceptional rules in force, States are oblig-

¹³² Transparencia Venezuela, [Opacity and misinformation set the public agenda in pandemic](#), April 2, 2021.

¹³³ IACHR. [Human Rights of Persons with COVID-19](#). Resolution No. 4/2020. July 27, 2020. J. A. Whitson; A. D. Galinsky. [Lacking Control Increases Illusory Pattern Perception](#). *Science*, vol. 322, 5898, 2008; S. E. Gorman, J. M. Gorman. [Denying to the Grave: Why We Ignore the Facts That Will Save Us](#). Edition: 1, Oxford University Press, Oxford: 2016.

¹³⁴ IACHR. Press Release R58/20. [COVID-19: Governments must promote and protect access and free flow of information during pandemic - International experts](#). March 19, 2020.

¹³⁵ IACHR. Press Release R58/20. [COVID-19: Governments must promote and protect access and free flow of information during pandemic - International experts](#). March 19, 2020.

¹³⁶ IACHR. Press Release R58/20. [COVID-19: Governments must promote and protect access and free flow of information during pandemic - International experts](#). March 19, 2020.

¹³⁷ Source: quoted in document "Towards an Active Transparency Index in a Health Emergency Context" (RELE 2021 Archive).

ed to account for their decisions and actions¹³⁸. In the framework of the above, the IACHR and its RELE have pointed out that freedom of expression is one of the most effective ways of denouncing corruption and allows social participation in decision-making and in the control of public administration¹³⁹.

89. However, in the context of the sanitary emergency, the Commission became aware of a series of damages that occurred as a consequence of the reduction and lack of controls in public management resulting from this situation¹⁴⁰. This could have a serious impact on the human rights situation and at the same time could lead to acts of corruption. Among the most relevant, the Commission was informed about facts related to harassment, stigmatization and persecution of journalists investigating or denouncing alleged acts of corruption in the management of the pandemic, as well as restrictions on access to information, as mentioned above. In addition, it was also reported a lack of publicity of public contracting and public procurement; lack of complete, timely, accurate, accessible, updated and disseminated information through regular channels; lack of clear criteria for accountability of expenditures made in the framework of the health emergency¹⁴¹.
90. For example, the Bolivian Ministry of Government issued a communiqué accusing a journalist of conducting a "dirty war" and a "political war" against the government, and ordered him to "rectify" a report on the allegedly irregular purchase of chemical agents by the State, which the ministry described as "false" and damaging to its "prestige and dignity"¹⁴². The journalist had published several articles on alleged cases of corruption in the government. Weeks earlier he had denounced being a victim of "political attacks" by the Mayor's Office of La Paz after questioning the mayor about a contract with a hotel to provide an isolation site for mild and suspected cases of coronavirus¹⁴³.

¹³⁸ The Open Government Partnership issued a call to action for its 78 member countries to include as an integral part of their mitigation measures the principles of open government - transparency, accountability, participation and innovation - called "Open Response, Open Recovery" with the aim of strengthening trust between governments and citizens. See: <https://www.opengovpartnership.org/es/>

¹³⁹ IACHR. Press Release 22320. [IACHR Calls to Combat Corruption and Guarantee Human Rights through Transparency and Accountability in Public Management in Context of COVID-19 Pandemic](#). September 16, 2020.

¹⁴⁰ New York Times. [Vaccination scandals in Latin America: the powerful and their allies jump the line](#). February 25, 2021.

¹⁴¹ IACHR. Press Release 22320. [IACHR Calls to Combat Corruption and Guarantee Human Rights through Transparency and Accountability in Public Management in Context of COVID-19 Pandemic](#). September 16, 2020.

¹⁴² IACHR. [Annual Report of the Inter-American Commission on Human Rights 2020 - Volume II](#). OEA/Ser.LV/II Doc. 28. 30 March 2021, para. 110; Twitter account of the Bolivian Ministry of Government (@MindeGobierno). May 31, 2020.

¹⁴³ Oxygen. [Journalist denounces being victim of 'political attacks' by the Mayor's Office of La Paz for questioning Revilla](#). April 22, 2020; Twitter account of Ollie Vargas (@OVargas52). April 27, 2020.

91. Likewise, the IACHR was informed that, in El Salvador, the Information and Response Offices denied information on topics such as hiring statistics, quarantine centers, emergency public procurement, tests to detect the progress of COVID-19, requests for shelter or economic compensation, persons detained for circulating on public roads, among other topics¹⁴⁴. The Commission also noted that, in December 2020, official information related to pandemic care was declared confidential, including data related to hospital management, food purchases and police reports¹⁴⁵.
92. On the other hand, in Honduras, the director of Inversión Estratégica de Honduras (INVEST-H), threatened to criminally denounce the directors of the National Anti-Corruption Council (CNA), after the organization presented a report denouncing the acquisition of masks at a higher price than the purchase of these by the Ministry of Health (SESAL)¹⁴⁶. Likewise, with respect to Paraguay, the IACHR expressed its alarm at facts related to an alleged network of spying on journalists and politicians who investigated or denounced acts of corruption and irregularities in the purchase of supplies to deal with COVID-19¹⁴⁷.
93. In this regard, the Commission recommended as a measure to prevent corruption in the pandemic context, to give priority to requests for access to information related to the public health emergency and the allocation of public funds, in particular, on the budget allocated to procurement and contracting during the duration of the emergency, as well as to report proactively, in open formats and in an accessible manner on the impacts of the pandemic and emergency expenditures, disaggregated in accordance with international best practices¹⁴⁸.
94. In this framework, subject to the obligation of active transparency, the Commission has recalled the duty of the States to proactively disclose data on registries, studies, vaccination plans and, in general, information related to the acquisition, importation, distribution, prioritization and application of vaccines, as well as the surveillance and control processes and procedures applied¹⁴⁹. Similarly, States have the obligation to eradicate corruption in the

¹⁴⁴ El Faro. [The Government also quarantined access to public information](#). April 9, 2020. In addition, it has been pointed out that there was minimal information proactively published by the State on emergency purchases, the amount of inputs available or direct contracting. Factum Magazine. [All the information we were denied](#). June 2, 2020.

¹⁴⁵ Health under Magnifying Glass. [The Government of El Salvador puts information on the pandemic under secrecy](#). December 1, 2020.

¹⁴⁶ Confidential. [Director of Investh threatens to sue ANC leadership for reporting on rigged purchases](#). 27 April 2020; C-Libre. [Head of INVEST-H threatens to sue those responsible for the report on corruption by COVID 19](#). 8 May 2020.

¹⁴⁷ IACHR. [Annual Report of the Inter-American Commission on Human Rights 2020 - Volume II](#). OEA/Ser.L/V/II Doc. 28. 30 March 2021, paras. 1098, 1106 et seq.

¹⁴⁸ IACHR. Press Release 223/20. [IACHR Calls to Combat Corruption and Guarantee Human Rights through Transparency and Accountability in Public Management in Context of COVID-19 Pandemic](#). September 16, 2020.

¹⁴⁹ IACHR. Resolution 1/2021. [COVID-19 vaccines in the framework of inter-American human rights obligations](#). April 6, 2021, para. 20.

distribution and application of vaccines, seeking to prevent and sanction their use as gifts or personal and/or political favors, particularly in electoral contexts. Likewise, they must protect people who report corruption offenses in the health sector or in other sectors¹⁵⁰.

95. In response to the right of access to public information, States should deploy monitoring and oversight mechanisms on the manufacture, acquisition, access, distribution and application of vaccines. Such mechanisms should take into consideration the right of access to justice, as well as the allocation of resources to seriously, timely and diligently investigate possible acts of corruption, attempts at State capture, undue influence and pressure and/or abuses by public or private actors to the detriment of human rights and the equitable distribution of vaccines¹⁵¹.
96. The IACHR recalls that States must conform to the strict Inter-American regime of exceptions to the disclosure of information, in the application of reservations or grounds for confidentiality of vaccine-related information. For any limitation on access to information to be compatible with the American Convention, it must pass a three-step proportionality test already established by the Commission and its RELE¹⁵². When invoking the existence of a ground of confidentiality, the "public interest test" must be applied and with it, the collision of rights must be accredited based on elements of suitability, necessity and proportionality. Furthermore, the exceptions to the disclosure of information cannot be applied in cases of serious human rights violations or crimes against humanity. Reservations and grounds for confidentiality may not be invoked when dealing with information related to acts of corruption of public officials, as defined by the laws in force and in accordance with the Inter-American Convention against Corruption¹⁵³.

¹⁵⁰ IACHR. Resolution 1/2021. COVID-19 vaccines in the framework of inter-American human rights obligations. April 6, 2021, para. 21.

¹⁵¹ Permanent Council of the OAS. CP/RES.1165 (2312/21). Equitable distribution of vaccines against COVID-19. February 17, 2021. See also: OAS. Press Release C-020/21. Declaration of the Secretary General of the Organization of American States on the equitable distribution of vaccines. March 9, 2021; IACHR. Resolution 1/2021. COVID-19 vaccines in the framework of inter-American human rights obligations. April 6, 2021, para. 22.

¹⁵² That is, i) it must be related to one of the legitimate aims that justify it; ii) it must be shown that disclosure of the information actually threatens to cause substantial harm to that legitimate aim; and iii) it must be shown that the harm to the aim outweighs the public interest in having the information. To this end, States must take into account the following parameters: a. When invoking the existence of a ground for withholding, the "harm test" must be applied and with it prove in writing: (i) that the disclosure of the information may generate a real, demonstrable and identifiable harm; (ii) that there is no less harmful means than the application of the reservation; (iii) that the risk of harm that the disclosure of the information would entail outweighs the public interest of its dissemination; (iv) that the limitation is in accordance with the principle of proportionality and represents the least restrictive means available to avoid the harm; (v) the concurrence of the requirements of temporality, legality and reasonableness. IACHR. Resolution 1/2021. COVID-19 vaccines in the framework of inter-American human rights obligations. April 6, 2021, para. 23.

¹⁵³ IACHR. Resolution 1/2021. COVID-19 vaccines in the framework of inter-American human rights obligations. April 6, 2021, para. 23.

D. Independence of the justice sector and appointment of authorities in the context of pandemics

97. The IACHR reaffirms the fundamental role of the independence and performance of all public authorities and oversight institutions, whose functioning must be ensured even in contexts of exception. In this context, the Commission notes with concern that during the pandemic, high-level government authorities have been involved in a process of regression in the effective separation of state powers, as well as in the reduction of democratic spaces for social participation, situations of interference in the judiciary or its complete paralysis, and the making of institutional governance decisions in a concentrated manner and with authoritarian traits. Therefore, States must ensure the functioning of independent and impartial courts and guarantee the effective enforcement of judicial decisions issued by jurisdictional bodies¹⁵⁴.
98. In the framework of a Public Hearing held during the 177th Period of Sessions, the petitioning organizations highlighted before the IACHR their concern about the lack of judicial independence in the region, specifically, they noted that the Judiciary Councils did not respect the impartiality and independence of judges. They also indicated the need for judicial decisions to be respected by the various executive branches, and not to have undue interference by the other branches and encouraging coordination in order to establish adequate budgets to address the pandemic¹⁵⁵.
99. The IACHR obtained information about attacks, threats and harassment, as well as stigmatization or smear campaigns against justice operators investigating cases of great public interest and social impact, by public authorities. In some cases, when these operators have adopted decisions controlling measures adopted by such instances during the pandemic, they have been held directly and publicly responsible for the consequences of their decisions on the life and health of the population¹⁵⁶.
100. In the context of the declaration of states of emergency, the functioning of independent justice systems is a fundamental component for the control of the legality of the decisions implemented by the different branches of government. The main purpose of this function is to satisfy the realization of the law and the guarantee of the legal order and individual freedom in specific cases and through decisions that bind the parties to the respective process so that

¹⁵⁴ IACHR, Joint Declaration on Access to Justice in the Context of the COVID-19 Pandemic, January 27, 2021.

¹⁵⁵ IACHR, Public Hearing, Challenges and Obstacles to Justice Systems in the Context of COVID-19. 177th Period of Sessions, October 9, 2020. Report submitted to the IACHR by the petitioning organizations "[Functioning of justice in the pandemic by COVID -19](#)".

¹⁵⁶ IACHR, Public Hearing, Challenges and Obstacles to Justice Systems in the Context of COVID-19. 177th Period of Sessions, October 9, 2020. See also, United Nations, Statement by the UN Special Rapporteur on the Independence of Judges and Lawyers, Diego García-Sayán "[Emergence of the coronavirus: challenges for justice](#)," April 22, 2020; Human Rights Council, Report of the Special Rapporteur on the independence of judges and lawyers, Diego García-Sayán, A/HRC/47/35, April 9, 2021.

there is peace and social harmony. Thus, non-compliance with court rulings not only affects legal security but also violates the essential principles of the rule of law, as well as the right to judicial protection, in applicable cases¹⁵⁷. The enforcement of court rulings thus constitutes a fundamental aspect of the very essence of the rule of law¹⁵⁸, that is, the principle of the rule of law that governs even the State itself and its authorities. In addition, the provisions governing the independence of the judiciary must be formulated in such a way as to ensure the timely execution of judgments without interference by the other branches of government and to guarantee the binding and mandatory nature of the decisions of last instance¹⁵⁹. In a state governed by the rule of law, all public authorities, within the framework of their competence, must heed judicial decisions, as well as give impetus and execution to them without hindering the meaning and scope of the decision or unduly delaying its execution¹⁶⁰.

101. At the Public Hearing, the IACHR was informed that in several countries in the region, selection and appointment processes of their high judicial and prosecutorial authorities are taking place during the pandemic. Due to the institutional importance of these processes, they should not be paralyzed; however, in the aforementioned hearing, civil society organizations reported that the restrictions inherent to this situation were also a major obstacle to effective citizen scrutiny, which increased the risk of undue interference that could not be noticed or denounced in a timely manner by the citizenry. The potential impact of these reforms on the independence of justice bodies and the limitations on citizen participation may create incentives for rushed approval or the risk that necessary reforms will not be processed in a timely manner¹⁶¹.
102. In this regard, the IACHR recalls that an adequate process of appointment and selection of judges and justice operators is an essential element that contributes to the independence of the sector¹⁶². Thus, the processes carried out during the emergency situation must comply with the principles of publicity and transparency, and the candidates must be selected on the basis of their independence, knowledge and experience¹⁶³. In this way, it must be

¹⁵⁷ American Convention on Human Rights. Article 25.

¹⁵⁸ IACHR, Application to the Inter-American Court of Human Rights in the case of Members of the Association of Retired and Dismissed Employees of the Office of the Comptroller General of the Republic (Case 12.357) v. the Republic of Peru. April 1, 2008, paras. 51- 54.

¹⁵⁹ I/A Court H.R., Case of Mejía Idrovo v. Ecuador. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 5, 2011. Series C No. 228, para. 106.

¹⁶⁰ I/A Court H.R., Case of Furlán and family members v. Argentina. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 31, 2012. Series C No. 246, para. 211.

¹⁶¹ IACHR, Public Hearing, Challenges and Obstacles to Justice Systems in the Context of COVID-19. 177th Period of Sessions, October 9, 2020. Report presented to the IACHR by the petitioning organizations "Functioning of the justice system in the COVID-19 pandemic". A similar situation was denounced with respect to the judicial and fiscal reform processes.

¹⁶² IACHR, Public Hearing, Challenges and Obstacles to Justice Systems in the Context of COVID-19. 177th Period of Sessions, October 9, 2020.

¹⁶³ IACHR, Joint Declaration on Access to Justice in the Context of the COVID-19 Pandemic, January 27, 2021.

ensured that all institutions of the justice system can perform their functions in conditions of transparency and under the principle of accountability.

E. National Protection Systems and National Human Rights Institutions

103. Within the framework of SACROI COVID-19, the IACHR has strengthened ties with the National Human Rights Institutions (NHRIs) in order to improve information channels and offer the necessary technical assistance to strengthen the efforts that the Institutions are making to effectively enforce human rights in each of the countries of the region.
104. The Inter-American Commission has recognized the important role of National Institutions as autonomous, independent and pluralistic bodies for the promotion and protection of human rights in the States of the region, in line with the Paris Principles and the United Nations system. Likewise, the IACHR considers that they can play a critical role in the promotion of inter-American standards of protection for those persons or groups in situations of vulnerability, such as children and adolescents, women and those who face situations of structural discrimination, among others.
105. The IACHR has noted with concern the institutional attacks suffered by some NHRIs in the region in the context of the pandemic. The Commission was informed of the effects, pressures and persecution reported by NHRIs in Bolivia, Costa Rica, Haiti, Mexico and Peru during the pandemic¹⁶⁴. Likewise, the IACHR has closely followed the institutional crisis that affected the States of El Salvador¹⁶⁵ and Guatemala¹⁶⁶ in the context of the pandemic, with the consequent impacts that this had on the human rights Ombudsman's Offices in those countries.
106. The IACHR has recognized in its Resolution 1/2020 the importance of promoting broad and effective spaces for dialogue with National Human Rights Institutions as a mechanism to establish and consolidate channels for the exchange of best practices in terms of successful strategies and public policies with a human rights approach, timely information, as well as challenges to face the global crisis caused by the outbreak of the COVID-19 pandemic¹⁶⁷.

¹⁶⁴ Iberoamerican Federation of Ombudsman (FIO), [Attacks and pressures faced by NHRIs during the pandemic](#), Spain, Thursday, 17 December 2020

¹⁶⁵ Office of the Human Rights Ombudsman of El Salvador, [Ombudsman participated in IACHR Virtual Seminar on NHRIs facing the pandemic](#), Federación Iberoamericana del Ombudsman (FIO), [Pronunciamiento Nro2/2021](#). May 2021

¹⁶⁶ International Federation for Human Rights, [Guatemala: Harassment of Augusto Jordán Rodas, Human Rights Ombudsman](#), July 17, 2020z

¹⁶⁷ IACHR, [Pandemic and Human Rights](#), Resolution 1/2020

2.3 Human rights advocacy in the context of the pandemic

A. Impacts on the exercise of the defense of human rights and main impacts on its activity.

107. Given the importance that the work of human rights defenders represents for the consolidation of democracy and the rule of law, the existence of the right to defend human rights has been recognized both nationally and internationally. The Commission has identified the exercise of the right to defend human rights as the possibility of freely and effectively promoting and defending rights and freedoms whose acceptance is undisputed, and also those new rights whose formulation is still under discussion¹⁶⁸.
108. For its part, the Inter-American Court of Human Rights has pointed out that the right to defend human rights and the correlative duty of States to protect it are related to the enjoyment of several rights contained in the American Declaration of the Rights and Duties of Man and in the American Convention on Human Rights, such as life, personal integrity, freedom of expression, association, judicial guarantees and judicial protection, which, as a whole, constitute the vehicle for the realization of this right, and allow the free exercise of activities for the defense and promotion of human rights¹⁶⁹.
109. The IACHR has identified that a series of measures adopted by the States have had a disproportionate impact on the exercise of the right to defend rights. The IACHR took note of the impact on the activity of human rights defenders of the closure of courts of justice and the implementation of so-called tele-justice, as well as the limitations on Internet access for the proper management of work through virtual means. There were also limitations on the exercise of the activity due to restrictions on movement due to the imposition of quarantines or curfews.
110. In some countries in the region, the judiciaries have provided for virtual hearings¹⁷⁰. In this regard, the IACHR recalls that, although the adequate defense of human rights does not assume as a *sine qua non* that there is a face-to-face justice system, especially in contexts where it was essential to implement these mechanisms of justice, it is important to note that due to the sensitivity of some issues in particular that involve the exercise of the right to defend rights, these issues cannot be addressed through the use of technologies or at a distance. On the other hand, at the Public Hearing, the IACHR became aware of the concern of society regarding the risk of normalization of virtual hearings in ordinary judicial

¹⁶⁸ IACHR, Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser. L/VII.124 Doc. 5 rev.1, March 7, 2006, para. 36.

¹⁶⁹ I/A Court H.R., I/A Court H.R. Case of Escaleras Mejía et al. v. Honduras. Judgment of September 26, 2018. Series C No. 361.

¹⁷⁰ Rafael Prado Bringas and Francisco Zegarra Valencia, *Due Process in Times of Pandemic*, October 5, 2020.

proceedings. At the same hearing, the OHCHR warned that any permanent reform on the virtuality of proceedings should be based on evidence with a human rights perspective¹⁷¹.

111. On the other hand, the IACHR was alerted about the publicity of the trials as a guarantee of defense, but so far there have been no technological formulas that allow anyone to attend, after publication of the complete agenda, schedules and passwords on an accessible platform. Likewise, the limitations of technology imply a need for additional diligence for the protection of those who are exercising the right to defend rights, ensuring confidentiality between the participants and their representatives¹⁷².
112. The pandemic also had an impact on the possibilities of direct communication with defenders, interpreters or other persons involved in human rights defense proceedings¹⁷³. In this regard, previous jurisprudence of the Inter-American system is applicable, which has ruled on the guarantees of defense, its different components and its relationship with the principle of equality, which is an obligation that the State must guarantee in the processes¹⁷⁴.
113. The authorities should not use the restrictions imposed during the pandemic to suppress or limit the flow of information or use the crisis situation as a pretext to repress human rights defenders. In this regard, States should recognize that the defense of human rights is an essential activity during times of emergency and ensure that human rights defenders can carry out their work without reprisals, intimidation or threats¹⁷⁵.

B. Worsening situation of violence against human rights defenders in the context of the pandemic

114. The IACHR understands a human rights defender to be a person who in any way promotes or seeks the realization of human rights and fundamental freedoms recognized at the national or international level and whose identifying criterion is the activity carried out. Human rights defenders are usually spokespersons for those who are most vulnerable and help to ensure that justice and respect for human rights standards prevail. In this way, they com-

¹⁷¹ IACHR, Public Hearing, Challenges and Obstacles to Justice Systems in the Context of COVID-19 177th Period of Sessions, October 9, 2020. OHCHR intervention by the deputy representative for the regional office for South America.

¹⁷² IACHR, Hearing on the Use of Virtual Hearings in Criminal Proceedings in the Region in the Context of the COVID-19 Pandemic, June 30, 2021, 180th Period of Sessions.

¹⁷³ IACHR, Hearing on the Use of Virtual Hearings in Criminal Proceedings in the Region in the Context of the COVID-19 Pandemic, June 30, 2021, 180th Session. See also: Office of the United Nations High Commissioner for Human Rights, [Human Rights Defenders: Protecting the Right to Defend Human Rights](#), Fact Sheet No. 29.

¹⁷⁴ I/A Court H.R., I/A Court H.R. Case of Escaleras Mejía et al. v. Honduras. Judgment of September 26, 2018. Series C No. 361

¹⁷⁵ IACHR Court. Case of Defensor de Derechos Humanos et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 28, 2014. Series C No. 283. para. 142

plement the role, not only of States, but of the Inter-American Human Rights System (IAHRS) as a whole, and are a fundamental pillar in the construction of a democratic society¹⁷⁶. The defense of human rights in the Americas is characterized by a hostile climate, being considered the deadliest region in the world for those who defend human rights¹⁷⁷.

115. In the context of the pandemic, the Commission received information indicating that in some countries of the region, human rights defenders have been killed while complying with orders of confinement, quarantine or mandatory preventive isolation in their homes. In this regard, the Commission warned with alarm that the context of emergency measures adopted by countries in the region meant an additional risk, with human rights defenders being victims of attacks against their personal integrity and security and even ending their lives¹⁷⁸.
116. Likewise, the IACHR has received information from civil society organizations according to which human rights defenders were prevented from continuing their work without any exceptions or grounds for excluding the limitation of freedom of movement for this group, as is the case with other actors, such as journalists¹⁷⁹. In this regard, the Commission reminds the States that they must weigh the need to adopt restrictive measures to protect public health against the duty to guarantee the defense and oversight of human rights.
117. In this regard, in its Resolution 1/2020, the Commission noted the need to adopt additional positive protection measures for these groups, given the restrictions on the work of the press and arbitrary detentions of journalists and human rights defenders that are occurring in the context of the pandemic. In this sense, when issuing emergency and containment measures in the face of the pandemic, States should provide and apply intersectional perspectives and pay special attention to the needs and the differentiated impact of such measures on the human rights of historically excluded or at special risk groups, among which are human rights defenders and social leaders¹⁸⁰.

¹⁷⁶ IACHR, Towards a comprehensive policy for the protection of human rights defenders, OEA/Ser.LV/II. Doc. 207/17 December 29, 2017, para. 12.

¹⁷⁷ Global Witness, Defending Tomorrow. Climate Crisis and Threats to Land and Environmental Defenders, July 2020.

¹⁷⁸ IACHR, The IACHR calls on States to protect and guarantee the work of human rights defenders in the face of the COVID-19 pandemic, May 5, 2020. Notes from the Social Forums held in the framework of SACROI COVID-19 actions,

¹⁷⁹ IACHR, The IACHR calls on States to protect and guarantee the work of human rights defenders in the face of the COVID-19 pandemic, May 5, 2020.

¹⁸⁰ IACHR, Pandemic and Human Rights, Resolution 1/2020

118. The IACHR published troubling information about acts of harassment against women human rights defenders in El Salvador¹⁸¹. The Commission received information regarding at least two women human rights defenders who were detained when they left their homes to obtain medicine or food, at which time they were allegedly detained for a COVID test. At the time of their arrests, the police reportedly informed them that they would only be given a test and then they could go home. However, both were held for more than a month in a "holding center". Both defenders were released after 38 days of detention¹⁸². In this regard, in the same country, the IACHR was informed about digital attacks of different types against women defenders who publicly denounce the alleged irregularities of the State in the steps taken to address the crisis by COVID-19. As a result of these complaints, several women defenders have reportedly received intimidating messages on different social networks, which allegedly contain strong misogynistic and gender-based messages. Similarly, the IACHR learned of stigmatizing speeches made by the highest State authorities that seek to discredit the complaints filed by the women defenders. The IACHR reminds the State of the importance of publicly and unequivocally recognizing the fundamental role played by human rights defenders in guaranteeing democracy and the rule of law.
119. During its 179th period of sessions, the IACHR was informed about the worsening situation of persecution suffered by human rights defenders in Venezuela. Civil society organizations stated that in the month of April 2020 the highest number of arbitrary detentions was recorded with 32% occurring in the capital district, the massive detention of trade unionists and the occurrence of more arbitrary detentions, including 5 activists including the director of the Center for Action and Defense of Human Rights (CADEF), who was allegedly detained for several hours in the state of Cojedes, when he was managing the delivery of mouth covers on behalf of his organization¹⁸³.
120. With respect to the limited functioning of protection mechanisms, the Commission took note of the situation in Mexico, where persecution of human rights defenders increased during the first months of the pandemic¹⁸⁴. Those fighting for the protection of land and its

¹⁸¹ Cited, Salvadoran Network of Women Human Rights Defenders, CEJIL, Association for Progressive Communications, Mesoamerican Initiative of Women Human Rights Defenders, Increasing digital violence against women human rights defenders in the context of the COVID - 19 pandemic, June 24, 2020 (on file with IACHR).

¹⁸² Civil Society Report, Increase of digital violence against women defenders in the framework of the COVID pandemic - 19, June 18, 2020. On file with the IACHR.

¹⁸³ IACHR, Public Hearing Criminalization of human rights defenders in the context of the COVID-19 pandemic in Venezuela, 179th Period of Sessions, March 23, 2021. IACHR, IACHR expresses its concern over the continued acts of harassment and stigmatization against human rights defenders in Venezuela, July 15, 2020.

¹⁸⁴ IACHR, Annual Report 2020, Chap IVA. Cited, Comité Cerezo Mexico, Report: 14 Human Rights Defenders extrajudicially executed in 2020, January 12, 2021; Red Nacional de Defensoras de Derechos Humanos, Exige Red Nacional de Defensoras de Derechos Humanos en México respeto a derechos humanos de defensoras y periodistas, December 10, 2020.

resources were harassed in the context of the health crisis. The information received indicates that the measures taken by the State have been insufficient to address the problem and exposed defenders to greater risk. Likewise, on March 31, 2020, after declaring a sanitary emergency and issuing austerity measures, the budget for the Indigenous Rights Program, focused on accompanying communities in the legal defense of their territories and natural resources, was suspended¹⁸⁵.

121. On the other hand, the Commission was informed about the worsening of violence against defenders in Colombia. Social organizations denounced that the confinement measures meant an increase in the ordinary risk of leaders. Thus, during the first four months of 2020, although homicides decreased in the country, murders against social leaders increased by 53%, even in the midst of the pandemic. While mobility restrictions were in force as the main health measure, defenders in that country were easily located by their aggressors and violated even inside their homes¹⁸⁶.
122. The IACHR takes note of the information reported by the OHCHR regarding the situation of human rights defenders in Honduras, where 219 incidents and attacks were recorded in 2021, ranging from smear campaigns to threats and injuries¹⁸⁷. On the other hand, according to information from Brazilian civil society¹⁸⁸. Justicia Global documented a worrying number of attacks against human rights defenders, registering, in addition, a total of 92 people who lost their lives between March and August 2020, many of whom died of the disease¹⁸⁹.
123. Due to the above, the IACHR reminds States that they must facilitate the work and movement of human rights defenders who play a central role during the public health emergency, in order to inform and monitor the actions of the State. This obligation takes on particular relevance in the context of the spread of the COVID-19 pandemic, especially when human rights defenders find themselves in a situation of increased risk due to emergency measures that limit, among others, freedom of movement.

¹⁸⁵ Dejusticia, [Un camino hacia la pospandemia: el rol de los defensores y líderes sociales](#), June 4, 2020.

¹⁸⁶ Fundación Ideas para la Paz - FIP "[El conflicto armado, su impacto humanitario ambiental: tendencias durante la pandemia](#)", May 24, 2020. Of particular concern is the information received indicating that at least 21 social leaders have been killed in that country since the beginning of the mandatory preventive isolation measure that began on March 25, 2020.

¹⁸⁷ IACHR, Public Hearing, Situation of Human Rights in the Context of the Pandemic in Honduras, 181st Period of Sessions, October 27, 2021, In particular, the IACHR was alerted to the serious human rights consequences of the reform of the criminal procedure code that was approved in 2021 because these policies reduce civic spaces and could cover up repressive actions or actions to silence human rights defenders.

¹⁸⁸ FIDH, [Observatório para a Protecção dos Defensores dos Direitos Humanos. Justiça Global. O Impacto da Covid-19 na Defesa dos Direitos Humanos no Brasil](#), February 2021.

¹⁸⁹ FIDH, Observatório e a Justiça Global, [List of 92 human rights defenders who lost their lives between March and August 2020](#).

124. The IACHR reiterates that the States must implement specific measures to protect the work of human rights defenders and social leaders through a public policy of security guarantees, the adoption of collective protection measures and with a differential approach in the measures adopted to address the health crisis.

2.4 Stigmatization and use of criminal law against journalists or people reporting on the pandemic

125. The Commission has reiterated that journalism plays a crucial role in a time of public health emergency, particularly when its purpose is to inform the public about critical information and to monitor government actions¹⁹⁰. The IACHR notes with extreme concern the stigmatization of the work of journalists reporting on the pandemic, as well as the use of criminal law against journalists or individuals who publish information related to the pandemic¹⁹¹.
126. The Commission also notes that, on some occasions, the restrictions adopted resulted in obstacles to the work of journalists covering or reporting on social protests. In Chile, for example, Carabineros officers detained press workers who were covering live a demonstration scheduled for Workers' Day 2020 in Santiago's Plaza Dignidad. They were duly identified as press workers and were complying with the required biosecurity measures¹⁹². On the other hand, in Panama, the journalist of *La Estrella de Panamá*, Juan Alberto Cajar, was detained by units of the National Police when he was covering a protest called by civil society groups on the premises of the National Assembly to complain about alleged cases of corruption in the context of the pandemic. The journalist was summoned to a hearing for the following day, accused by the authorities of "disturbing the public order¹⁹³". In the case of Bolivia, within the framework of the measures adopted to prevent the spread of COVID-19 in the country, se-

¹⁹⁰ IACHR. Press Release R58/20. [COVID-19: Governments must promote and protect access and free flow of information during pandemic - International experts](#). March 19, 2020.

¹⁹¹ IACHR. Press Release No. 130/20. [IACHR calls to guarantee the validity of democracy and the rule of law in the context of the COVID 19 pandemic](#). 9 June 2020.

¹⁹²The Association of International Press Correspondents (ACPI) reported that 15 professionals were "put into a police cellular car and taken to the ninth police station of Providencia". Later, when the demonstration had ended, at least five other reporters were arrested, one of whom had already been detained hours earlier. According to the Observatorio del Derecho a la Comunicación de Chile, as a result of what happened, Señal 3 de La Victoria filed an appeal for protection before the Court of Appeals of Santiago, which on May 29 was rejected by the court. Subsequently, General Enrique Bassaletti, head of the East Metropolitan Zone of Carabineros, justified the police action by stating that "they were not all with their credentials and were with cell phones and therefore what corresponds in this case is to effectively verify their status as journalists". However, the journalists stated that they did have their credentials and safe conduct passes in order, and that they carried out their work under the pertinent sanitary conditions in the context of the COVID-19 pandemic; some videos and images would show how the journalists explain to the agents their right to be able to move around the streets in accordance with their journalistic profession. See: IACHR. [Annual Report of the Inter-American Commission on Human Rights 2020 - Volume II](#). OEA/Ser.LV/II Doc. 28. 30 March 2021.

¹⁹³ La Estrella de Panamá. ['La Estrella' journalist Juan Cajar is detained for covering Assembly protest](#). October 29, 2020.

vere sanctions were imposed on those who did not comply with the quarantine, which resulted in difficulties for the circulation of printed media and journalists¹⁹⁴.

127. With respect to the foregoing, the Commission recalls that it should be especially kept in mind that journalists, cameramen, photo-reporters, and communicators who cover protests fulfill the function of gathering and disseminating information about what happens in demonstrations and protests, including the actions of the security forces; freedom of expression protects the right to record and disseminate any incident¹⁹⁵. Therefore, State agents must respect and guarantee the work of journalists, photo-reporters and cameramen of the media covering protests, and any aggression, destruction or kidnapping of equipment or materials and arrests constitute violations of freedom of expression, in addition to other rights involved. Particularly in the context of the pandemic, the Commission has affirmed that States must refrain from restricting the work and movement of journalists who play a central role during the public health emergency, in order to inform and monitor the actions of the State¹⁹⁶.
128. In this regard, the Commission documented in several States of the region¹⁹⁷ situations of stigmatization of the press derived from its role in the coverage of the pandemic by different authorities, who even established disproportionate restrictions on access to informa-

¹⁹⁴ IACHR. Annual Report of the Inter-American Commission on Human Rights 2020 - Volume II. OEA/Ser.LV/II Doc. 28. 30 March 2021.

¹⁹⁵ IACHR. Protest and Human Rights, Standards on the rights involved in social protest and the obligations that should guide the state response. OEA/Ser.LV/II IACHR/RELE/INF.22/19. September 2019, para. 535.

¹⁹⁶ IACHR. Pandemic and Human Rights in the Americas. Resolution 1/2020. April 10, 2020, para. 29.

¹⁹⁷For example, in **Antigua and Barbuda**, the head of state singled out the *Observer* newspaper as "spiteful" and unreliable. See: Antigua Newsroom. PM Lashes Out At Observer Over False Coronavirus Reporting. February 2, 2020. In **Argentina**, the Office of the Special Rapporteur recorded with concern statements against journalists reporting on matters of public interest including the management of the pandemic, the purchase and distribution of vaccines. See: IACHR. Annual Report of the Inter-American Commission on Human Rights 2020. Volume II: Annual Report of the Office of the Special Rapporteur for Freedom of Expression. OEA/Ser.LV/II. March 30, 2021, para. 40. In **Brazil**, the president, referring to the coronavirus pandemic, accused the Brazilian press of "politicizing the virus", of "spreading panic among the population" and "bringing social chaos to the country", see: Presidency of the Republic. Discurso do Presidente da República, Jair Bolsonaro, na abertura da 75ª Assembleia Geral da Organização das Nações Unidas (ONU). September 22, 2020. In the **United States**, the Commission observed that from the beginning of the pandemic and throughout 2020, a pattern of stigmatizing statements by officials in high public office towards various media outlets and journalists, both in official acts, press conferences, political rallies and through their social networks, was maintained on the occasion of the coverage of the COVID-19 pandemic. See: United States. U.S. Court of Appeals for the Ninth Circuit. October 9, 2020. *Index Newspapers v. City of Portland*. No. Case No. 3:20-cv-01035-SI. See Columbia University's Global Freedom of Expression website for additional case law. In **Honduras**: IACHR. Annual Report of the Inter-American Commission on Human Rights 2020. Volume II: Annual Report of the Office of the Special Rapporteur for Freedom of Expression. OEA/Ser.LV/II. March 30, 2021, para. 847 et seq. In **Mexico**. See: Article 19. Special Report C.O.V.I.D.: Freedom of expression and information during COVID-19 pandemic in Mexico and CA. July 9, 2020, p. 94. In **Nicaragua**, the Office of the Special Rapporteur has recorded stigmatizing statements against the press by high-level public officials. In particular, the government published a document called "Al pueblo de Nicaragua y al Mundo informe sobre el Covid-19 y una estrategia singular-Libro Blanco", in which they accused the media of carrying out "information terrorism", see: Despacho 505. Rosario Murillo's White Paper on Covid-19 is an attack on media. May 25, 2020. Confidential. Government lies in "White Paper" on covid-19. May 25, 2020. Journalists have been stigmatized and harassed in **Venezuela**, who have reportedly received threats and whose houses have reportedly been painted with graffiti.

tion, as well as on the circulation of information on the Internet¹⁹⁸. Likewise, within the framework of the hostile environment generated against the press due to the coverage of the pandemic, the Commission learned of numerous acts of violence, harassment and intimidation against journalists and the media¹⁹⁹.

129. In this regard, the IACHR recalls that freedom of expression is closely and indissolubly linked to the democratic system of government. States and public officials should refrain from undermining the role of the press in their pronouncements, should not harass those who disseminate information or criticize the government, and should strengthen mechanisms for access to public information during the pandemic²⁰⁰. In addition, Resolution 1/2020 establishes that public officials should observe special care in their statements and declarations regarding the evolution of the pandemic, and be aware that they are exposed to increased scrutiny and public criticism, even during special periods. Public officials have a duty to ensure that their pronouncements do not infringe on the rights of those who contribute to public deliberation through the expression and dissemination of their thoughts, such as journalists, the media, and human rights organizations²⁰¹. The Commission has stated on several occasions that public authorities are called upon to maintain a discourse favorable to public deliberation and freedom of expression.
130. On the other hand, the IACHR and its RELE have observed with extreme concern the use of criminal law by public figures, state officials or candidates for elective office, for the publication of opinions or information related to issues of public interest, par-

¹⁹⁸ IACHR. Press Release No. 130/20. IACHR Calls to Guarantee Democracy and the Rule of Law in the Context of the COVID 19 Pandemic. June 9, 2020; IACHR. Press Release R78/20. IACHR and its RELE express concern over restrictions on freedom of expression and access to information in the response of States to the COVID-19 pandemic. April 18, 2020.

¹⁹⁹ IACHR. Annual Report of the Inter-American Commission on Human Rights 2020. Volume II: Annual Report of the Office of the Special Rapporteur for Freedom of Expression. OEA/Ser.L/V/II. March 30, 2021.

²⁰⁰ IACHR. Press Release No. 130/20. IACHR calls to guarantee the validity of democracy and the rule of law in the context of the COVID 19 pandemic. 9 June 2020.

²⁰¹ IACHR. Press Release R78/20. IACHR and its RELE express concern over restrictions on freedom of expression and access to information in States' response to the COVID-19 pandemic. April 18, 2020.

ticularly the pandemic and its management²⁰² in many States of the region²⁰³. Likewise, in some States these regulations were also used to prosecute journalists, ac-

²⁰² IACHR. Press Release R78/20. [IACHR and its RELE express concern over restrictions on freedom of expression and access to information in States' response to the COVID-19 pandemic](#). April 18, 2020; IACHR. [Annual Report of the Inter-American Commission on Human Rights 2020. Volume II: Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.LV/II. 30 March 2021, para. 15.

For example, in **Argentina**, the IACHR has had information reporting the opening of legal cases against journalists and others publishing about the pandemic on social networks, as well as the detention and criminalization of people for having published allegedly false expressions. IACHR. [Annual Report of the Inter-American Commission on Human Rights 2020. Volume II: Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.LV/II. March 30, 2021, para. 49. The **Bahamas and Belize** have established criminal penalties for the dissemination of false information. See: Government of The Bahamas. Official Gazette. Quarantine (Novel Coronavirus "2019-NCOV") (No. 2) Order 2020. March 16, 2020; Government of The Bahamas. Official Gazette. Proclamation of Emergency. March 17, 2020; Government of The Bahamas. Official Gazette. Emergency Powers (COVID-19) Regulations, 2020. March 17, 2020; Eyewitness. [New COVID-19 regulations would criminalize fake news](#). March 18, 2020; Breaking Belize News. [Do new "fake news" regulations give GOB total control of the flow of public information?](#) In **Bolivia**, Supreme Decree 4200 was issued which established that "persons who incite non-compliance with this Supreme Decree or who misinform or generate uncertainty among the population will be subject to criminal charges for the commission of crimes against public health" See: Bolivia: [Supreme Decree No. 4200](#). March 25, 2020. In **Cuba**, several journalists have been sanctioned through the application of Decree-Law 370, which regulates the "informatization of society in Cuba", after they expressed themselves on social networks and in the media regarding the pandemic and the State's response. See: Reporters Without Borders. [Cuba and its Decree Law 370: annihilating freedom of expression on the Internet](#). May 6, 2020. In **Guatemala**, the government announced that it could denounce people for incitement to sedition, if it understands that their expressions misinform or generate panic through social networks, according to the provisions of the Law of Public Order and the presidential provisions in case of public calamity of April 12, 2020. See: Human Rights Watch. [Guatemala: Attacks on press freedom](#). February 18, 2021. In addition, in the context of the coverage of the pandemic, the Commission recorded threats, including death threats, attacks on women journalists, the filing of defamation lawsuits, physical and verbal attacks, arbitrary detention, censorship, cyber attacks, and judicial harassment. See: Association of Journalists of Guatemala (APG). Press release APG September 23, 2020. Article 19. [Guatemala: the press subject to violence](#). November 30, 2020. In the case of **Honduras**, the Commission received information on the entry into force, on June 25, of a new Penal Code in Honduras in 2020. Of particular concern were articles of the Code that punish with imprisonment anyone who "spreads a human epidemic through the dissemination of pathogenic agents or germs," which could result in limiting the exercise of citizen protests in a context of scarce resources and economic crisis, and that criminalize the dissemination of "false" economic news or rumors. See: Article 19. [Special Report C.O.V.I.D: Freedom of expression and information during COVID-19 pandemic in Mexico and CA](#). July 2020. In **Paraguay**, the Office of the Special Rapporteur took note of several aggressions and intimidations against journalists and media outlets, who are also often the target of criminal actions as a result of their coverage and investigations on issues of high public interest, in the context of social protests motivated by government policies to prevent COVID-19. See: IACHR. [Annual Report of the Inter-American Commission on Human Rights 2020. Volume II: Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). OEA/Ser.LV/II. March 30, 2021, para. 1115. In **Peru**, the Ministry of Justice noted that those who misinform the public with false news to obtain a benefit or disturb the public tranquility could be punished with imprisonment of up to 6 years, as stipulated in the Penal Code. See: El Peruano. [Coronavirus: imprisonment for up to 6 years for those who spread false news](#). April 8, 2020. In **St. Kitts and Nevis**, the Head of State announced his intention to review the existing legal frameworks to severely punish those who create "confusion and disruption" in the context of the pandemic. See: Times Caribbean Online. [St. Kitts Opposition Labour Party condemned for scare-mongering and dissemination of fake news in effort to use COVID-19 to score political points](#). March 19, 2020; SKN Vibes. [Prime Minister Harris: There will be strong penalty for COVID-19 scaremongering](#). 18 March 2020. In **Venezuela**, journalists and doctors who published information on the spread of the virus, the hospital situation, and questioned the government's response to the crisis were reportedly arrested and charged with incitement to hatred and public incitement for publishing information on the contagions. See: Amnesty International. [Venezuela: Jailed journalist reporting on covid-19: Darvinson Rojas](#). March 23, 2020; Efecto Cocuyo. [Detienen a dirigente de salud y persigue a otros dos en Monagas, denuncia VP](#). March 17, 2020. Reporters Without Borders. ²⁰³

tivists or citizens in general who questioned the official data on infection in the different jurisdictions²⁰⁴.

131. The Commission also noted that in some countries "cyber patrols" are being carried out with the aim of identifying accounts that disseminate false information²⁰⁵. In the case of Argentina, criminal cases for "public intimidation" have been initiated against at least five people who published false information on their social networks, while the Ministry of Security of the Nation stated that these tasks seek to detect "social humor"; on this matter, the Argentine government reported that the Secretary of State stated that the activity will be regulated by a protocol of action, which is built in line with Inter-American standards and in consultation with civil society. In the case of Bolivia, the IACHR expressed its concern regarding the provisions contained in Supreme Decree No. 4200, which made the alleged commission of crimes against public health, and the facts related to activities aimed at misinforming the population, subject to criminal charges. In this regard, the State informed the Commission of the abrogation of said norm through Supreme Decree N. 4236 of May 14, 2020²⁰⁶. In Ecuador, a citizen was reportedly detained in the city of Esmeraldas, after publishing on his Facebook page images and comments on the way in which medical personnel in his city attended to patients with coronavirus. The State reported that the citizen was released and the prosecutor's office did not file charges²⁰⁷.
132. In this regard, the Commission has stated that the fear of criminal sanctions necessarily discourages and inhibits citizens from expressing themselves on matters of public inter-

²⁰⁴ IACHR. *Annual Report of the Inter-American Commission on Human Rights 2020. Volume II: Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. OEA/Ser.L/V/II. March 30, 2021, para. 17.

²⁰⁵ IACHR. Press Release R78/20. *IACHR and its RELE express concern over restrictions on freedom of expression and access to information in States' response to the COVID-19 pandemic*. April 18, 2020.

²⁰⁶ The State of Bolivia informed the IACHR and its Office of the Special Rapporteur for Freedom of Expression that "cyberpatrolling" tasks have been carried out in the country since 2018 for criminal investigation. The State has indicated to consider the use of technological advances as "essential for the prosecution and resolution of crimes, especially in which TIVs occupy a very important role". The above, within the framework of the recommendations of international bodies for adapting investigative measures to the specific nature of investigations involving computer systems and electronic communications; the Convention on Cybercrime, and UN Resolution A/RES/73/187. Office of the Attorney General of the State (Bolivia), Response of the Bolivian State to the request for information regarding the use of criminal charges and cyberpatrolling for the dissemination of disinformation. PGE-SPDRLE-DGDDHMa N.218/2020, IACHR Archive. May 25, 2020. Office of the Special Rapporteur for Freedom of Expression (RELE). Request for information on the use of criminal charges and cyberpatrolling for the dissemination of disinformation, attacks against public health and sedition. Procedural situation of persons being prosecuted for these reasons. IACHR/RELE/Art. 41/5-2020/13. May 5, 2020. IACHR Archive.

²⁰⁷ IACHR. Press Release R78/20. *IACHR and its RELE express concern over restrictions on freedom of expression and access to information in States' response to the COVID-19 pandemic*. April 18, 2020.

est²⁰⁸. Likewise, the establishment or use of criminal offenses to punish disinformation or dissemination of false news could have a strong inhibiting effect on the dissemination of ideas, criticism and information²⁰⁹. Similarly, the IACHR has stated that the use of criminal mechanisms to punish speech on matters of public interest, especially related to public officials, is incompatible with Inter-American standards²¹⁰. RELE observes that these types of restrictions on freedom of expression in the context of the pandemic, while seeking to discourage the phenomenon of disinformation, are disproportionate responses that do not conform to inter-American standards on the matter²¹¹.

133. In this regard, the IACHR notes the difficulty that remains in determining simply and quickly when information is clearly false and when it is not, even more so when professional journalism has worked with limited resources in the development of units for checking content and verifying data on statements of public interest²¹². Likewise, this type of punitive measures cannot be implemented in situations where there is a lack of knowledge about factual aspects central to the information circulating, which was particularly clear in the case of the

²⁰⁸ RELE recalls that Article 13(2) of the American Convention provides for the possibility of establishing restrictions to freedom of thought and expression through the application of subsequent liability for the abusive exercise of this right. In this sense, although whoever spreads false information knowing that it is false and causes damage may be subject to reproach, this should preferably be through the exercise of the right of rectification or response or, in the event that the damage produced is serious, through proportionate civil liabilities. Likewise, the Inter-American Court has pointed out that criminal law is the most restrictive and severe means to establish liability for unlawful conduct. IACHR. Annual Report of the Inter-American Commission on Human Rights 2020. Volume II: Annual Report of the Office of the Special Rapporteur for Freedom of Expression. OEA/Ser.LV/II. 30 March 2021.

²⁰⁹ The IACHR has stated that the introduction of criminal offenses could take the region back to a logic of criminalizing expressions about public officials or matters of public interest and establish a tool with a strong inhibitory effect on the dissemination of ideas, criticism and information. Resolution 1/20 adopted by the IACHR emphasizes that in the event that subsequent liability is established for the dissemination of information or opinions, based on the protection of public health interests, it must be established by law, in a manner proportional to the compelling interest that justifies it and must be closely adjusted to the achievement of that legitimate objective. IACHR. Resolution No. 1/20. Pandemic and Human Rights in the Americas. April 10, 2020, paras. 33 and 34; IACHR. Press Release No. 58/20. COVID-19: Governments should promote and protect access to and free flow of information during pandemic. 19 March 2020.

²¹⁰ The IACHR and its RELE emphasize that under Article 13 of the American Convention speeches on matters of public interest have reinforced protection, especially those that express essential elements of identity or denounce situations of violence and structural discrimination. Principle 11 of the IACHR Declaration of Principles on Freedom of Expression states that "[p]ublic officials are subject to greater scrutiny by society. Laws that criminalize offensive speech directed at public officials [...] infringe on freedom of expression and the right to information." The use of criminal law as a mechanism to prosecute those who express opinions, information or criticism of government authorities or policies, as well as on issues of public interest, generates a chilling effect that limits freedom of expression. IACHR. Annual Report of the Inter-American Commission on Human Rights 2020. Volume II: Annual Report of the Office of the Special Rapporteur for Freedom of Expression. OEA/Ser.LV/II. March 30, 2021, para. 905.

²¹¹ IACHR. Resolution No. 1/20. Pandemic and Human Rights in the Americas. April 10, 2020, paras. 33 and 34; IACHR - Office of the Special Rapporteur for Freedom of Expression. Press Release No. 58/20. COVID-19: Governments should promote and protect access to and free flow of information during the pandemic. March 19, 2020.

²¹² There are several networks of fact-checking agencies or "fact-checkers". The main global one, which also establishes professional standards, is the International Fact-Checking Network (IFCN). In Latin America, disinformation in electoral processes and the SARS-CoV-2 pandemic also seem to have pushed local verifiers, who are in contact with each other and have been part of regional networks. See: Public Eye. More than 20 Latin American factchecking organizations join forces to verify coronavirus information. April 2, 2020.

COVID-19 pandemic. Central aspects of the health crisis, such as the modes of contagion or the effectiveness of containment measures, were progressively discovered, investigated and proven, while being widely discussed. This virtuous process was possible thanks to the reasonable margin of freedom of expression within the scientific community, which allowed information to be shared, alternatives to be discussed and evidence to be contrasted.

134. The IACHR has warned about the use of vague and ambiguous criminal figures that do not comply with the requirements demanded by international law to criminalize journalistic work, the defense of human rights and expressions of criticism through social networks. Similarly, the IACHR in its Declaration of Principles on Freedom of Expression established that prison sentences to punish expressions about public officials or issues of public interest are contrary to the Inter-American legal framework²¹³. Thus, the IACHR has insisted that "those who engage in debates of general interest participate in a public space that they are also called upon to protect. While the exchange of arguments and public exposure of disagreements enrich the debate, violence and hate speech erode the democratic system"²¹⁴.

²¹³ IACHR. Press Release R78/20. IACHR and its RELE express concern over restrictions on freedom of expression and access to information in States' response to the COVID-19 pandemic. April 18, 2020.

²¹⁴ IACHR. Press Release No. 026/21. IACHR warns of a turning point for freedom of expression on the Internet and calls for dialogue in the region. February 5, 2021.

Chapter 3

HUMAN RIGHTS IMPACTS IN THE CONTEXT OF THE PANDEMIC

HUMAN RIGHTS IMPACTS IN THE CONTEXT OF THE PANDEMIC

3.1 Context

135. As indicated in the preceding chapters, the populations of the countries of the Americas have been and continue to be significantly affected by the global pandemic, in part due to pre-existing conditions, such as deep social gaps resulting from inequality and poverty. Therefore, the broad social groups impacted by COVID-19, especially those in vulnerable situations, require priority attention to protect and guarantee their rights²¹⁵. In this regard, the prolongation of the health emergency has brought with it serious difficulties for economic recovery and has threatened progress in welfare. Thus, according to the OECD, despite considerable improvements in welfare between 2010 and 2019 -including poverty reduction, increased access to drinking water and internet, increased life expectancy, reduction in the mortality rate of children under five and of mothers during pregnancy-, the pandemic would have aggravated the pre-existing situation of vulnerability, which was translated into a drastic increase in unemployment and poverty²¹⁶.
136. Given that pandemics have the potential to seriously affect the right to health directly and indirectly, impacting on social organization; health systems; general health care²¹⁷; the protection of the right to life and health; the States took measures to contain contagion such as mandatory social isolation, prolonged quarantines, closure of establishments and productive activities, prohibition or limitations of national and international travel, among others. This had serious effects, particularly on the right to work and education, exposing hundreds of thousands of people to poverty and extreme poverty and generating tension between the safeguarding of public health and the exercise of individual rights and freedoms.

3.2 Main impacts of the pandemic on the enjoyment and exercise of human rights

A. Right to health

137. The right to health is recognized by Article XI of the American Declaration of the Rights and Duties of Man, which enshrines the right to the preservation of health and well-being. The Additional Protocol to the American Convention on Human Rights in the Area of Eco-

²¹⁵ IACHR, *Human Rights of Persons with COVID-19*, Resolution 4/2020 July 27, 2020.

²¹⁶ REDESCA. *V Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA) of the Inter-American Commission on Human Rights (IACHR)*, 2021 OEA/SER.LV/II. Doc. 64 Rev 1 para. 1665.

²¹⁷ IACHR, *Pandemic and Human Rights in the Americas*: Resolution 1/2020, April 10, 2020

nomic, Social and Cultural Rights refers specifically to the right to health in Article 10, which defines health as "the enjoyment of the highest level of physical, mental and social well-being" and establishes the obligations of States in this area. In the Charter of the Organization of American States, Article 34 (i) and (l) are linked to the right to health, insofar as they refer to the knowledge of medical science and urban conditions that make a healthy life possible. Mention may also be made of Article 45, paragraphs b) and h), which indirectly refer to the right to health.

138. Health is an inclusive public good that, while corresponding to the enjoyment of other rights, includes basic and social determinants as a set of factors that condition its effective exercise and enjoyment. The right to health contemplates timely and appropriate health care, in accordance with the essential and interrelated elements of availability, accessibility, acceptability and quality of health services, goods and facilities. Access to the right to health also includes access to the benefits of scientific progress – such as medicines, treatments and vaccines – under conditions of equality and non-discrimination²¹⁸ and according to the "*pro persona*" principle, so that the due and timely care of the population prevails over any other guideline or interest of a public or private nature.
139. Among the impacts identified on the right to health, the Commission and REDESCA were concerned about the drop in care and consultations for non-COVID-19 related emergencies in medical centers in the first months after the pandemic was declared²¹⁹. REDESCA has also learned of the refusal to test for HIV in Antigua and Barbuda because of the risks of COVID-19 infection that this posed.²²⁰ In Bolivia, for example, people living with HIV or AIDS faced serious obstacles in accessing retroviral treatments, and later, rationing of some drugs²²¹. The IACHR observed similar complaints in Ecuador²²², Venezuela²²³ and

²¹⁸ IACHR, *Pandemic and Human Rights in the Americas*: Resolution 1/2020, April 10, 2020

²¹⁹ In the case of Argentina, for example, as of April 2020, it was reported that consultations fell by 74%, which could imply a risk of 6 to 9 thousand extraordinary deaths in patients with cardio and cerebral vascular diseases. REDESCA. *IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA) of the Inter-American Commission on Human Rights (IACHR)*, 2020 OEA/SER.LV/II. Doc. 28 March 30, 2021 para. 91

²²⁰ REDESCA. *IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA) of the Inter-American Commission on Human Rights (IACHR)*, 2020 OEA/SER.LV/II. Doc. 28 March 30, 2021 para. 76

²²¹ REDESCA. *IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA) of the Inter-American Commission on Human Rights (IACHR)*, 2020 OEA/SER.LV/II. Doc. 28 March 30 2021 para. 195

²²² REDESCA. *IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA) of the Inter-American Commission on Human Rights (IACHR)*, 2020 OEA/SER.LV/II. Doc. 28 March 30, 2021 para. 425

²²³ REDESCA. *IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA) of the Inter-American Commission on Human Rights (IACHR)*, 2020 OEA/SER.LV/II. Doc. 28 March 30, 2021 para. 1152

Cuba²²⁴, in addition to obstacles to receiving adequate food²²⁵. During 2021, services were resumed in the countries of the region, by way of example, in Venezuela, care for people with chronic diseases – such as renal and oncology patients, people with diabetes, HIV/AIDS, hypertension, among others²²⁶ – continued to be neglected. Similarly, mobile people in Mexico reportedly faced restrictions in access to health services and goods, including those related to sexual and reproductive health, prenatal care and childbirth, as well as access to antiretrovirals for people with HIV²²⁷.

140. On the other hand, the Commission has observed that the lack of transparency and reliable and detailed information increases public distrust and reduces the capacity to take adequate measures and policies to protect and guarantee the health of the population. It also prevents citizens from making informed decisions to avoid contracting the disease or to seek specialized care²²⁸. The IACHR and REDESCA consider particularly serious the case of Nicaragua where the lack of transparent and truthful information was revealed by former Nicaraguan authorities who denounced in a letter addressed to the directors of WHO and PAHO, that health personnel "have been forced, under penalty of severe sanctions, to manipulate health information to deny or artificially reduce the number of cases and deaths due to the pandemic"²²⁹. For its part, the Office of the United Nations High Commissioner for Human Rights (OHCHR), noted its concern about the lack of access to information on testing and controls in that country²³⁰.
141. Similarly, the IACHR and REDESCA have heard reports that hospitals and containment centers were not keeping adequate records of patients, nor were the results of laboratory

²²⁴ REDESCA. *IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA) of the Inter-American Commission on Human Rights (IACHR)*, 2020 OEA/SER.LV/II. Doc. 28 March 30, 2021 para. 383

²²⁵ REDESCA. *IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA) of the Inter-American Commission on Human Rights (IACHR)*, 2020 OEA/SER.LV/II. Doc. 28 March 30, 2021 para. 383

²²⁶ REDESCA. *V Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA) of the Inter-American Commission on Human Rights (IACHR)*, 2021 OEA/SER.LV/II. Doc. 64 Rev 1 para. 1584

²²⁷ REDESCA. *V Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA) of the Inter-American Commission on Human Rights (IACHR)*, 2021 OEA/SER.LV/II. Doc. 64 Rev 1 para. 1183

²²⁸ REDESCA. *IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA) of the Inter-American Commission on Human Rights (IACHR)*, 2020 OEA/SER.LV/II. Doc. 28 March 30 2021 para. 839

²²⁹ REDESCA. *IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA) of the Inter-American Commission on Human Rights (IACHR)*, 2020 OEA/SER.LV/II. Doc. 28 30 March 2021 para. 841
Letter to the Director of WHO and Director of PAHO from 4 former Nicaraguan Ministers of Health, May 11, 2020

²³⁰ REDESCA. *IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA) of the Inter-American Commission on Human Rights (IACHR)*, 2020 OEA/SER.LV/II. Doc. 28 March 30 2021 para. 842

tests provided in writing, as in the case of El Salvador²³¹. They also noted the inadequacy of health systems to meet the demand for supplies such as protective materials, medicines, PCR tests, among others. For example, in the case of Brazil, more than 17,000 complaints were reported from March to May 2020²³². On the other hand, in countries such as Bolivia, the lack of medical supplies has been reported, together with the neglect of people with other diseases or pathologies²³³.

142. The IACHR reported that in Guatemala, the Human Rights Ombudsman warned in mid-June 2020 about the saturation of the health system and urged the Ministry of Public Health and Social Assistance to present plans of action and response to the crisis.²³⁴ In some countries, such as Guyana, inadequate physical isolation or quarantine conditions for people with COVID-19²³⁵ were reported, despite the fact that States should ensure that these conditions are adequate and with access to sanitary facilities²³⁶. A similar situation was reported in Cuba, since through various complaints from people in isolation centers, either because they were returning from abroad or because they were suspected of having contracted the virus, it was learned that they did not have sanitary conditions or sufficient food supply²³⁷.
143. In the case of the United States, the IACHR is concerned that, in the midst of an unprecedented pandemic, the loss of medical coverage has especially affected those living in poverty and extreme poverty²³⁸. In this regard, the lack of distribution, availability and timely provision of sufficient quantities of biosecurity materials, essential medical supplies and

²³¹ REDESCA. *IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA) of the Inter-American Commission on Human Rights (IACHR), 2020 OEA/SER.LV/II*. Doc. 28 March 30 2021 para. 446

²³² REDESCA. *IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA) of the Inter-American Commission on Human Rights (IACHR), 2020 OEA/SER.LV/II*. Doc. 28 March 30, 2021 para. 216

²³³ In addition, the IACHR became aware of a large number of contagions and an increase in the number of people dying in the streets and hospitals due to the saturation of the demand for medical services and lack of oxygen in the country. REDESCA. *IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA) of the Inter-American Commission on Human Rights (IACHR), 2020 OEA/SER.LV/II*. Doc. 28 March 30, 2021 paras. 180 and 182.

²³⁴ REDESCA. *IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA) of the Inter-American Commission on Human Rights (IACHR), 2020 OEA/SER.LV/II*. Doc. 28 March 30, 2021 para. 606

²³⁵ REDESCA. *IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA) of the Inter-American Commission on Human Rights (IACHR), 2020 OEA/SER.LV/II*. Doc. 28 30 March 2021 para. 671-672

²³⁶ REDESCA. *IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA) of the Inter-American Commission on Human Rights (IACHR), 2020 OEA/SER.LV/II*. Doc. 28 March 30, 2021 para. 673

²³⁷ REDESCA. *IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA) of the Inter-American Commission on Human Rights (IACHR), 2020 OEA/SER.LV/II*. Doc. 28 March 30, 2021 para. 379

²³⁸ REDESCA. *IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA) of the Inter-American Commission on Human Rights (IACHR), 2020 OEA/SER.LV/II*. Doc. 28 March 30, 2021, para. 515.

supplements for use by health personnel, as well as health facilities, goods and services, does not justify any acts of discrimination²³⁹.

Fair and equitable distribution of vaccines

144. More than two years after the onset of the COVID-19 pandemic, the global effort resulted in the development and distribution of safe and effective vaccines endorsed by the relevant health authorities. However, immunization of a critical mass of the world's population faced a new set of challenges. While one set of challenges included the emergence of new strains of the virus, global competition for a supply of doses, and public skepticism about vaccines, the most pressing problem revolved around obstacles in the production, distribution and equitable access to vaccines, generated by the decisions of States and companies to prioritize the purchasing power of high- and middle-income countries. Thus, some countries in the region made rapid progress in the immunization of their populations, while in others access to doses was more limited.²⁴⁰ According to the Organization of American States (OAS), 90% of people in low-income countries would not have access to any COVID-19 vaccine by 2021²⁴¹. Thus, by October 2021, it is noted that although some countries in the region had vaccinated more than 70% of their population, most did not exceed 40% coverage with a complete vaccination schedule, of which six countries had not even reached 20% of their population, these being: Jamaica, Saint Lucia, Saint Vincent and the Grenadines, Haiti, Guatemala and Nicaragua²⁴². The Commission and the DESCA Special Rapporteurship consider it imperative to highlight this situation in order to promote the fair and equitable distribution of vaccines, with special attention to those countries with less financial, institutional and technological capacity, so it is essential to direct efforts to facilitate the implementation of tools and mechanisms that seek to ensure the development and production of tests, treatments and vaccines against COVID-19, such as C-TAP and COVAX²⁴³.
145. The Commission and REDESCA have made an emphatic call to guarantee fair and equitable access to COVID-19 vaccines, understanding them as a global and regional public good. This, taking into special consideration that the COVID-19 pandemic has had a differential and disproportionate impact in the Americas, although with a greater weight on low- and middle-

²³⁹ REDESCA. *IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA) of the Inter-American Commission on Human Rights (IACHR), 2020* OEA/SER.LV/II. Doc. 28 March 30 2021 para. 217

²⁴⁰ IACHR. *COVID-19 vaccines in the framework of inter-American human rights obligations*: Resolution No. 1/2021.

²⁴¹ OAS Permanent Council, CPRES.1165 (231221) "The Equitable Distribution of COVID-19 Vaccines," February 17, 2021. See also, OAS, Declaration of the Secretary General of the Organization of American States on the Equitable Distribution of Vaccines. March 9, 2021

²⁴² IACHR and REDESCA, IACHR and REDESCA express concern over lack of universal and equitable access to COVID-19 vaccines in the Americas, calling for regional solidarity with low-income countries, Press Release no. 282, October 25, 2021.

²⁴³ IACHR. *COVID-19 vaccines in the framework of inter-American human rights obligations*: Resolution No. 1/2021.

income countries, as well as on groups in conditions of vulnerability and/or historical exclusion²⁴⁴. Thus, the immunization process in the region showed serious disparities, in which, by way of example, as of July 2021, while in some North American countries the proportion of the population with a complete vaccination schedule was approximately 49.3%, in Latin America and the Caribbean the rate was 16.8% (with South America at 17.2%, Central America at only 7.4% and the Caribbean at 10%), with some countries not even reaching 1% inoculation. While access improved over time, it is noteworthy that, despite continued calls for global solidarity, by September 2021, only 20% of people in low- and lower-middle-income countries would have received a first dose of vaccine, compared to 80% of people in high- and upper-middle-income countries²⁴⁵. Similarly, by December 15, 2021, only 56% of people in Latin America and the Caribbean would have been fully immunized²⁴⁶. This, while new variants were emerging that threatened progress against the pandemic, and with it, calls for the need for booster doses by some countries, even though the WHO had requested a moratorium on additional doses while more people in the world received their first vaccine²⁴⁷.

146. In this regard, equity must be the key component not only between countries, but also within countries in order to put an end to the pandemic. Therefore, vaccines against this virus must be a global and regional public good, and must be available to all people, with equity and without discrimination²⁴⁸. In line with the principles upheld by the IACHR, the International Bioethics Committee of Unesco (IBC) and the United Nations Educational, Scientific and Cultural Organization (UNESCO) World Commission on the Ethics of Scientific Knowledge and Technology (COMEST) have warned that "for real equity in global access to vaccines, a shared ethical recognition of health as a global common good without territorial limits is needed, as well as new global legal instruments for economic and political agreements and treaties". This document recalls that the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the World Trade Organization (WTO) agreements were not designed to handle situations such as pandemics, and new global approaches and mechanisms must urgently be established to enable the efficient development and production of vaccines and, at the same time, support the necessary investments to ensure access for all

²⁴⁴ REDESCA. *V Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA) of the Inter-American Commission on Human Rights (IACHR), 2021 OEA/SER.LV/II. Doc. 64 Rev 1 para. 1656*

²⁴⁵ WHO. *Joint statement on COVAX in relation to supply forecast for 2021 and early 2022* September 8, 2021 [Joint statement on COVAX in relation to supply forecast for 2021 and early 2022 \(who.int\)](https://www.who.int/news/item/08-09-2021-joint-statement-on-covax-in-relation-to-supply-forecast-for-2021-and-early-2022)

²⁴⁶ REDESCA. *V Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA) of the Inter-American Commission on Human Rights (IACHR), 2021 OEA/SER.LV/II. Doc. 64 Rev 1 para. 1661*

²⁴⁷ REDESCA. *V Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA) of the Inter-American Commission on Human Rights (IACHR), 2021 OEA/SER.LV/II. Doc. 64 Rev para. 1662*

²⁴⁸ IACHR. *COVID-19 vaccines in the framework of inter-American human rights obligations: Resolution No. 1/2021.*

under fair conditions²⁴⁹. In this regard, according to the World Trade Organization Doha Declaration on the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and Public Health (2001), the intellectual property regime must be interpreted and applied in a manner that supports the duty of States to "protect public health"²⁵⁰. Despite continued calls for global solidarity, by September 2021, only 20% of people in low – and lower-middle-income countries would have received a first dose of vaccine, compared to 80% of people in high – and upper-middle-income countries²⁵¹.

147. As variants emerge, the IACHR finds troubling the announcements and plans to provide booster doses against COVID-19 by some States, of which, as of October 2021 alone, almost one third of the countries in the Americas had already initiated booster doses. This, while a large proportion of people still did not receive the first dose. In this regard, REDESCA shares the opinion of the WHO Director General, who indicated that "widespread booster programs are likely to prolong the pandemic, rather than end it, by diverting supply to countries that already have high levels of vaccination coverage, giving the virus more opportunities to spread and mutate"²⁵².
148. Given the magnitude of the pandemic and the risk to global health, national and international intellectual property regimes must cease to be an obstacle to the production of safe and effective vaccines in order to guarantee universal and equitable access to them. To this end, it is urgent that States take the necessary measures to achieve the adequacy of the flexibilities and exceptions provided for in such regimes when public health is at risk, as well as other relevant complementary measures. In this regard, the IACHR has pointed out the priority of intellectual property over human rights, which would have resulted in the absence of sufficient exchange of information and technology on vaccination and treatments, as well as the lack of consensus to release vaccine patents, and thus, delays for the production of more vaccines and related treatments to address COVID-19²⁵³. In light of this, it considers as a priority the proposal for a temporary exemption of patents for products

²⁴⁹ IBC UNESCO/COMEST UNESCO. *UNESCO ethics commissions call for equity and solidarity of global vaccines Joint declaration of the UNESCO International Bioethics Committee (IBC) and the UNESCO World Commission on the Ethics of Scientific Knowledge and Technology (COMEST) SHS/BIO/IBC-COMEST/COVID-19 Vaccines* Paris, 24 February 2021 Original: English [UNESCO ethics commissions call for equity and solidarity of global vaccines: joint statement of the UNESCO International Bioethics Committee \(IBC\) and the UNESCO World Commission on the Ethics of Scientific Knowledge and Technology \(COMEST - UNESCO Digital Library\)](#).

²⁵⁰ IACHR. *COVID-19 vaccines in the framework of inter-American human rights obligations: Resolution No. 1/2021*.

²⁵¹ WHO. *Joint statement on COVAX in relation to the supply forecast for 2021 and early 2022* September 8, 2021 [Joint statement on COVAX in relation to the supply forecast for 2021 and early 2022 \(who.int\)](#)

²⁵² UN News, *Widespread COVID-19 vaccine boosters may lengthen pandemic, WHO warns*, December 22, 2021

²⁵³ IACHR, *IACHR and REDESCA express concern over lack of universal and equitable access to COVID-19 vaccines in the Americas, calling for regional solidarity with low-income countries*, Press Release No. 282, October 25, 2021.

developed to address COVID-19, since its implementation will allow for a more rapid response to the pandemic and its profound socioeconomic impacts²⁵⁴.

149. In this regard, the IACHR and REDESCA remind States and pharmaceutical companies that they must also ensure fair distribution of all active ingredients and devices needed to produce the vaccine. It is the responsibility of governments and the pharmaceutical industry to decentralize vaccine production, investing in manufacturing plants capable of producing the most effective vaccines possible and facilitating rapid and fair distribution where needed, as well as the importance of knowledge and technology transfer to boost international production and ensure equitable access to safe and effective vaccines to all countries²⁵⁵.

Right to mental health

150. The realization of mental health is intrinsically linked to the full enjoyment of human rights²⁵⁶. Mental health is a determinant for people to fully develop in their life projects, since psychological and emotional wellbeing enables people to use their abilities and contribute effectively to their personal wellbeing, their environments and communities. The IACHR and REDESCA are extremely concerned about the threats to the mental health of the population caused by the pandemic.
151. During the term of the confinement measures, some countries in the Americas reported a worsening of mental health conditions: in Peru, the prevalence of depression symptoms in 2020 was five times higher than the 2018 values; in Brazil, depression and anxiety rates

²⁵⁴ IACHR, *IACHR and REDESCA express concern over the lack of universal and equitable access to COVID-19 vaccines in the Americas, calling for regional solidarity with lower income countries*. 25 October 2021. See also: IBCUNESCO/COMEST. *Joint Declaration of the UNESCO Commission on Ethics to ensure equal access for all to vaccines and therapeutics developed to address COVID-19*, Joint Statement of the UNESCO International Bioethics Committee (IBC) and the UNESCO World Commission on the Ethics of Scientific Knowledge and Technology, (COMEST). SHS/COMEST-IBC/ COVID-19 Vaccines IP Paris, September 21, 2021. [Joint statement of the UNESCO Commission on Ethics to ensure equal access for all to vaccines and therapeutics developed to address COVID-19: joint statement of the International Bioethics Committee of UNESCO \(IBC\) and the UNESCO World Commission on the Ethics of Scientific Knowledge and Technology \(COMEST\) - UNESCO Digital Library](#)

²⁵⁵ IBCUNESCO / COMEST. *Joint Declaration of the UNESCO Commission on Ethics to ensure equal access for all to vaccines and therapeutics developed to address COVID-19*, Joint Statement of the UNESCO International Bioethics Committee (IBC) and the UNESCO World Commission on the Ethics of Scientific Knowledge and Technology, (COMEST). SHS/COMEST-IBC/ COVID-19 Vaccines IP Paris, September 21, 2021. [Joint statement of the UNESCO Commission on Ethics to ensure equal access for all to vaccines and therapeutics developed to address COVID-19: joint statement of the International Bioethics Committee of UNESCO \(IBC\) and the UNESCO World Commission on the Ethics of Scientific Knowledge and Technology \(COMEST\) - UNESCO Digital Library](#)

²⁵⁶ IACHR, Press Release No. 243/20 [States of the region must adopt urgent measures towards the effective protection of mental health in the context of the pandemic and the guarantee of its universal access \(oas.org\)](#), October 2, 2020.

were 61% and 44%, respectively, at the national level; in Argentina 33% of the population reported depression symptoms and 23% anxiety symptoms, to mention a few cases²⁵⁷.

152. According to the Pan American Health Organization (PAHO), an unprecedented mental health crisis has occurred in the Americas as a result of the increase in stress, alcohol and drug consumption due to the mobility restriction measures imposed in response to the pandemic; a situation aggravated by the fact that the States, by directing their efforts to respond to the physical effects related to COVID-19, are neglecting the mental health care of the population²⁵⁸.
153. The IACHR and REDESCA highlight the special impact of the pandemic and the measures imposed by confinement or mobility restrictions on the mental health of the population living in poverty due to overcrowded conditions or the sharp drop in income, being particularly serious in the case of people who perform care tasks and in particular, in women who must reconcile schooling of children at home, teleworking and household chores. Likewise, health professionals are subjected to situations of stress or anxiety due to increased workload, daily critical decision making, the risk of individual and family contagion and exposure to situations of abuse. In this scenario, it is essential that States include mental health as a right in health coverage, and not only attend to the problems, symptoms and physical ailments derived from COVID-19, taking into account the principles of equality and non-discrimination; gender perspective, diversity and intersectionality; inclusion; accountability; respect for the rule of law and strengthening cooperation among States²⁵⁹.

²⁵⁷Taush, Amy & Anselm JM Hennis. "Strengthening mental health responses to Covid 19 in the Americas: a health policy analysis and recommendations". *The Lancet Regional Health Americas*, 15 Sept 2021. IACHR, Press Release No. 243/20 [States in the region must adopt urgent measures towards the effective protection of mental health in the context of the pandemic and the guarantee of its universal access \(oas.org\)](#), October 2, 2020.

²⁵⁸ It should be noted that funding for mental health services was already limited before the pandemic. This was in a context in which the income level of the countries determined the proportion of the health budget spent on mental health, and with it, its availability and quality. Even so, all the States in the region had an imbalance between spending on mental health and the burden caused by mental disorders. Thus, according to PAHO, as of 2018, high-income countries had a gap between burden and expenditure of three times, while low-income countries had a gap of 435 times, with a regional median of 34 times.

In the Dominican Republic, for example, the IACHR noted that during 2020, 366 suicides were recorded in the first eight months of the year, most of which were committed by young and middle-aged men. REDESCA. *IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA) of the Inter-American Commission on Human Rights (IACHR), 2020* OEA/SER.LV/II. Doc. 28 March 30, 2021 para. 973 and IACHR, Press Release No. 243/20 [States of the region must adopt urgent measures towards the effective protection of mental health in the context of the pandemic and the guarantee of its universal access \(oas.org\)](#), October 2, 2020.

²⁵⁹ REDESCA. *IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA) of the Inter-American Commission on Human Rights (IACHR), 2020* OEA/SER.LV/II. Doc. 28 March 30, 2021, para. 89.

154. The IACHR and REDESCA expressed concern about the shortage of psychotropic drugs in Cuba, which compromised the treatment of people with mental and psychiatric disorders in the context of the pandemic²⁶⁰. The lack of mental health care has also been reported in El Salvador²⁶¹. In the case of Argentina, the Ombudsman's Office of Buenos Aires indicated that 21% of people with addictions before the pandemic increased their consumption of substances, especially among people addicted to alcohol, tobacco and antidepressants²⁶².
155. The IACHR and the Office of the Special Rapporteur on DESCA remind the States that there is an imperative need to adopt a human rights approach in this area, through which the dignity and psychological and psychosocial well-being of all persons is pursued. In particular, guaranteeing universal access to mental health means having information to reduce uncertainty and advancing campaigns for emotional and psychological well-being accessible to the population²⁶³. The IACHR urges States to consider mental health in the different areas in which policies are adopted in the face of the pandemic, which should include psychological and psychosocial wellbeing services, palliative care and addiction treatment.²⁶⁴

Right to sexual and reproductive health

156. Within the framework of medical care and access to sexual and reproductive health services, the various COVID-19 measures for containment and prevention of contagion have deepened the structural discrimination historically suffered by groups in vulnerable situations, generating a setback in an area in which significant progress had been made.
157. Among the most serious consequences, the Commission and REDESCA highlight the cut-back of personnel, human, material and technological resources due to the relocation to medical areas directly related to the pandemic; the closure of specialized clinics in this area and the shortage of contraceptive methods and specific medicines related to sexual and

²⁶⁰ In this regard, it is reported that authorities of the Ministry of Health acknowledged shortages of basic medicines in pharmacies and hospitals, including medicines within the group of so-called Benzodiazepines, among others REDESCA. *IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA) of the Inter-American Commission on Human Rights (IACHR), 2020 OEA/SER.LV/II. Doc. 28 March 30 2021 para. 385*

²⁶¹ REDESCA. *IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA) of the Inter-American Commission on Human Rights (IACHR), 2020 OEA/SER.LV/II. Doc. 28 March 30, 2021 para. 451*

²⁶² REDESCA. *IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA) of the Inter-American Commission on Human Rights (IACHR), 2020 OEA/SER.LV/II. Doc. 28 March 30, 2021 para. 92*

²⁶³ IACHR, Press Release No. 243/20 [States of the region must adopt urgent measures towards the effective protection of mental health in the context of the pandemic and the guarantee of its universal access \(oas.org\)](#), October 2, 2020.

²⁶⁴ IACHR, Press Release No. 243/20 [States of the region must adopt urgent measures towards the effective protection of mental health in the context of the pandemic and the guarantee of its universal access \(oas.org\)](#), October 2, 2020.

reproductive health. They also take note of the temporary suspension of prenatal care programs and educational programs for the prevention of sexually transmitted infections.

158. In terms of cuts and reallocation of resources, the IACHR and REDESCA note with concern the case of Venezuela, in the general context of shortages and shortages of medicines, supplies, materials and medical treatment²⁶⁵. For its part, REDESCA has learned that, in Mexico, the denial of care in public medical centers has even led to women giving birth in public streets²⁶⁶. The Commission reiterates that the States have the duty to eliminate all obstacles that impede access to maternal health, sexual health and reproductive health services, as well as to ensure access to timely, adequate and effective remedies to remedy these violations in a comprehensive manner and prevent the recurrence of these events in the future²⁶⁷.
159. The United Nations Population Fund (UNFPA) has warned about the serious impacts that the pandemic has had on ensuring access to sexual and reproductive health. Thus, in August 2020, it indicated that, considering the three effects that impact on access to contraception (reduction of procurement in the private sector, shortages in the public sector and reduction of demand in the public sector), and assuming that countries would not incorporate corrective measures, it was estimated that the drop in access to contraception would result in 1.7 million unplanned pregnancies, about 800 thousand abortions, 2.9 thousand maternal deaths and about 39 thousand infant deaths²⁶⁸. Following up on these estimates, as of March 2021, UNFPA noted that almost 12 million women lost access to contraceptive methods due to interruptions generated by the pandemic, resulting in 1.4 million unplanned pregnancies²⁶⁹. This situation is even more worrisome considering that, as expressed by the IACHR in August 2021, at the regional level there is evidence of an increase in sexual violence against women, girls and adolescents, which, added to the lack of access to contraceptive methods and comprehensive sexual education, could result in an increase in unwanted pregnancies, especially among girls and adolescents. In addition, as a conse-

²⁶⁵ This situation occurred particularly at the Concepción Palacios Maternity Hospital, which has suffered the deterioration and undermining of the services that provide medical care in sexual and reproductive health, and has reported a high number of deaths of newborns, which would be related to the lack of access to timely and adequate treatment, including the shortage of medical supplies and specialized personnel, as well as the serious unsanitary conditions that affect the Hospital.

²⁶⁶ REDESCA. *IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA) of the Inter-American Commission on Human Rights (IACHR)*, 2020 OEA/SER.LV/II. Doc. 28 March 30, 2021 para. 786

²⁶⁷ IA Court H.R. *I.V. v. Bolivia*, (Preliminary Objections, Merits, Reparations and Costs) Judgment of November 30, 2016, para. 299.

²⁶⁸ UNFPA. *The Impact of Covid-19 on Access to Contraceptives in Latin America and the Caribbean August 2020 Latin America and the Caribbean Technical Report*. [technical report. impact of covid 19 on access to contraceptives in alc 1.pdf \(unfpa.org\)](https://www.unfpa.org/sites/default/files/technical-report-impact-of-covid-19-on-access-to-contraceptives-in-alc-1.pdf)

²⁶⁹ UNFPA. New UNFPA data reveal that nearly 12 million women lost access to contraception due to terminations caused by the pandemic, resulting in 1.4 million unintended pregnancies. March 12, 2021

quence of the COVID-19 pandemic and containment measures, access to sexual and reproductive health facilities, goods and services has been restricted²⁷⁰.

160. In turn, it should be noted that some aspects of sexuality education, particularly access to information regarding menstrual health, take place in schools. Consequently, the temporary closure of educational establishments restricted the possibility of access to such information and the possibility of accessing health centers that offer sexual and reproductive health care, as well as broader social support²⁷¹.
161. During the COVID-19 pandemic, the exercise of sexual and reproductive rights was affected by the magnitude of the health crisis and its severe economic and social effects, including difficulties in accessing public services, and this situation is expected to continue in the near future²⁷². In this regard, the Commission and REDESCA reinforce the call made in Resolution 01/2020, regarding the obligation of States to adopt comprehensive and immediate measures to respect and guarantee the rights to sexual and reproductive health, reinforcing the availability and continuity in the supply of services of this nature in the context of emergency. In particular, they urge States to guarantee access to screening tests and treatment for people living with HIV; to guarantee access to quality maternal health care; to ensure safe access to contraception; to facilitate access to truthful and uncensored information, as well as to education with a comprehensive gender perspective necessary for people, particularly women and girls, to be able to make free and autonomous decisions. Likewise, comprehensive health care for survivors of domestic violence and sexual violence must be guaranteed, including psychological care, emergency contraception and voluntary interruption of pregnancy, when applicable in accordance with the relevant legal systems. The IACHR stresses the need to adopt a differentiated and intersectional approach taking into account the factors and situations of particular risk of human rights violations mentioned above in the adoption of legislation, public policies, programs and judicial protection mechanisms to remedy acts of violence²⁷³, also adopting measures to pre-

²⁷⁰ IACHR, IACHR expresses concern over the adoption of regressive measures on sexual and reproductive rights in the region, Press Release no. 2018, August 11, 2021 See also: UNFPA. *The Impact of Covid-19 on Access to Contraceptives in Latin America and the Caribbean August 2020 Latin America and the Caribbean Technical Report*.

²⁷¹ IACHR, Room for Coordination and Timely and Integrated Response to the COVID-19 Pandemic Crisis (SACROI COVID-19), *Practical Guide No. 2 Guia Practica02_Educacion_Es.pdf (oas.org)* p. 4.

²⁷² ECLAC/Observatory for Gender Equality/UNFPA/Covid Response. *The risks of the COVID-19 pandemic for the exercise of women's sexual and reproductive rights*. 20-00906_brochure_risks_of_the_gender_pandemic-.pdf (unfpa.org) December 2020.

²⁷³ IACHR, *Annex 1 Main standards and recommendations on violence and discrimination against women, girls and adolescents Violence and discrimination against women, girls and adolescents: Good practices and challenges in Latin America and the Caribbean*. *Violence-discrimination-women-Annex1-en.pdf (oas.org) para.10

vent abuse and domestic violence, facilitating access to means of reporting and acting with due diligence to the complaints made, according to the context of the pandemic²⁷⁴.

162. The Commission and REDESCA emphasize that it is not possible to achieve the full enjoyment of human rights without timely access to comprehensive sexual and reproductive health care services, as well as education and information on the subject.²⁷⁵ Therefore, they reiterate the exhortation to the States to informally provide information²⁷⁶ and guarantee the availability and continuity of sexual and reproductive health services, in the context of the COVID-19 pandemic, since they are essential to make effective the rights to equality and non-discrimination, personal integrity, health, dignity, access to information, among others. Similarly, the IACHR emphasizes the heightened duties of prevention and protection of States towards women in situations of intersection between two or more factors of discrimination²⁷⁷.

B. Right to work

163. The right to work is key to strengthening economic and social systems from a rights-based approach and also constitutes a way to guarantee a dignified life for people²⁷⁸. The right to work is enshrined in Article 14 of the American Declaration of the Rights and Duties of Man, which recognizes the right to work in decent conditions and to fair remuneration. The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights establishes in Article 6 that "everyone has the right to work, which includes the opportunity to obtain the means to lead a decent and dignified life through the performance of a freely chosen or accepted lawful activity" and refers to the measures that States undertake to adopt. The Charter of the Organization of American States enshrines work as a right and a social duty (Article 45). In turn, Article 34 (g) refers to "fair wages, employment opportunities and acceptable conditions of work for all."

164. The measures taken to deal with the pandemic have had consequences in the labor sphere, generating unemployment, underemployment and inactivity; causing loss of income for workers and businesses, even leading to closures and bankruptcies of compa-

²⁷⁴ IACHR. *Pandemic and Human Rights in the Americas*, Resolution 1/2020, para. 65.

²⁷⁵ IACHR. *Access to Reproductive Health Information from a Human Rights Perspective*, OEA Ser.LV/II. Doc.61 [*Access to reproductive information from a human rights perspective \(oas.org\)](#) para.4.

²⁷⁶ IACHR. *Access to Reproductive Health Information from a Human Rights Perspective*, OEA Ser.LV/II. Doc.61 [*Access to reproductive information from a human rights perspective \(oas.org\)](#) para. 25.

²⁷⁷ IACHR, *Annex 1 Main standards and recommendations on violence and discrimination against women, girls and adolescents Violence and discrimination against women, girls and adolescents: Good practices and challenges in Latin America and the Caribbean*. [*violencia-discriminacion-mujeres-Anexo1-en.pdf \(oas.org\)](#) para .7.

²⁷⁸ IACHR. *Compendium on Labor and Trade Union Rights: Inter-American Standards*: approved by the Inter-American Commission on Human Rights on October 30, 2020 OEA/Ser.LV/II para.1.

nies, particularly micro, small and medium-sized enterprises; entire sectors paralyzed or affected, interruptions in supply chains; informality and job and income insecurity, exacerbating poverty and economic and social inequalities²⁷⁹. Activities such as tourism and entertainment have collapsed, affecting those who had precarious jobs²⁸⁰.

165. These non-pharmacological intervention measures²⁸¹, had a strong impact on economic activity, generating the loss of millions of jobs, aggravated by the context of high labor informality and precarious work and income affecting a large number of people in the region. According to the ILO, the COVID-19 pandemic would have caused the loss of 49 million jobs in Latin America and the Caribbean between the end of 2019 and the second quarter of 2020, and despite the rebound experienced in 2021, jobs would not have been fully recovered, while 4.5 million jobs would still have to be recovered in the region²⁸² and at the beginning of 2022 there would be approximately 28 million people looking for work without finding it²⁸³. According to UNDP and World Bank data collected through the High Frequency Telephone Survey Series in 2021, for the region as a whole, the employment rate stood at around 62%, almost 11 percentage points below the pre-pandemic level. There was a drop in formal employment and a deterioration in the quality of available employment, as well as a decrease in weekly hours of paid work, from 43% to 37% at the regional level. According to the data collected, 28% of the people who were employed before the pandemic lost their jobs, with a much greater impact on women workers with young children: 40% lost their jobs, compared to 18% of men²⁸⁴. As a result of the setbacks in the labor market, just over 50% of households in the region have not yet been able to recover their pre-pandemic household income. This is despite the efforts made by governments through direct transfer programs and other benefits implemented to help families; approximately 38.0% of the population received some type of emergency subsidy²⁸⁵.

²⁷⁹ ILO. *Global call to action for a people-centered recovery from the crisis caused by COVID-19 that is inclusive, sustainable and resilient*. Adopted at the International Labour Conference, 2021, para. 2; UN Women, *Executive Summary, Report on Impacts of COVID-19 on Women and Men. An analysis of the impact of COVID-19 in 12 Caribbean countries*. February/March 2021 Author: Tara Padmore. Series: Response to COVID-19

²⁸⁰ ILO *COVID-19 has revealed the fragility of our economies* sCOVID-19: *La pandemia en el mundo del trabajo: El COVID-19 ha revelado la fragilidad de nuestras economías* (ilo.org)

²⁸¹ IACHR, *Pandemic and Human Rights in the Americas*: Resolution 1/2020, April 10, 2020

²⁸² ILO. *Labor Outlook 2021. Latin America and the Caribbean. 2021*

²⁸³ United Nations, *4.5 million jobs still to be recovered in the region, February 1, 2022*. ILO *COVID-19 has revealed the fragility of our economies* COVID-19: *The pandemic in the world of work: COVID-19 has revealed the fragility of our economies* (ilo.org)

²⁸⁴ World Bank/UNDP. *An uneven recovery: the aftermath of COVID-19 in Latin America and the Caribbean* (bancomundial.org) 29 November 2021.

²⁸⁵ World Bank/UNDP. *An uneven recovery: the aftermath of COVID-19 in Latin America and the Caribbean* (bancomundial.org) November 29, 2021

166. The Commission and the Office of the Special Rapporteur on ESCR noted with concern the massive loss of jobs in the region. The Caribbean region has been particularly affected in these rights²⁸⁶. For example, in the Bahamas, by August 2020, the IDB projected that 100,000 working people would lose their jobs, income or both²⁸⁷; while in Barbados, the measures adopted had serious repercussions on the country's tourism sector, with reports of widespread use of furloughs and temporary closures of hotels. There, the unemployment rate rose by 11% in 2020, with middle-income households being the most affected²⁸⁸. Similarly, in Costa Rica, official data in October 2020 indicated that 24% of the working population lost their jobs²⁸⁹, while in Chile, according to official data, nearly two million jobs were lost during the pandemic²⁹⁰, while in Argentina, a report by the Economic Commission for Latin America and the Caribbean (ECLAC) revealed that in 2020 unemployment in Argentina reached 20.9% as a result of the impact of the pandemic on the economy²⁹¹.

Health care workers

167. Health workers have had to face an enormously demanding scenario including physical and verbal aggressions, together with threats and discriminatory acts in the workplace, public transportation and their own homes, making the protection of health workers urgent. Considering the various pressures on the health system, the general situation of the provision of personal protective equipment in the public health system has had a great impact on the life, integrity and health of workers in this sector.²⁹² This situation has been reported

²⁸⁶ UN Women, [Executive Summary, Report on Impacts of COVID-19 on Women and Men. An analysis of the impact of COVID-19 in 12 Caribbean countries](#). February/March 2021 Author: Tara Padmore. Series: Response to COVID-19. Pag 9

²⁸⁷ REDESCA. *IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA) of the Inter-American Commission on Human Rights (IACHR)*, 2020, OEASER.LV/II. Doc. 28, para. 128

²⁸⁸ REDESCA. *IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA) of the Inter-American Commission on Human Rights (IACHR)*, 2020, OEASER.LV/II. Doc. 28, para. 143

²⁸⁹ REDESCA. *IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA) of the Inter-American Commission on Human Rights (IACHR)*, 2020, OEASER.LV/II. Doc. 28 para. 360

²⁹⁰ REDESCA. *V Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA) of the Inter-American Commission on Human Rights (IACHR)*, 2021 OEASER.LV/II. Doc. 64 Rev 1 para. 454

²⁹¹ REDESCA. *V Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA) of the Inter-American Commission on Human Rights (IACHR)*, 2021 OEASER.LV/II. Doc. 64 Rev 1 para. 135

²⁹² REDESCA. *IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA) of the Inter-American Commission on Human Rights (IACHR)*, 2020 OEASER.LV/II. Doc. 28 March 30, 2021, para. 613.

in several countries, including Argentina²⁹³ and Brazil²⁹⁴. In addition, there have been complaints and demonstrations by health personnel due to lack of recognition of their rights, payments, social security, formal labor relations and even fear of repression as the main concerns of the union²⁹⁵. In Belize in May 2020, the Belize Medical and Dental Association denounced labor abuse of medical personnel during the pandemic, citing arbitrary transfers of doctors to distant cities and deplorable conditions and lack of resources²⁹⁶. In Colombia, the country's front-line personnel have experienced aggression, stigmatization and threats, denouncing that they would not have decent working conditions, including job stability²⁹⁷. REDESCA became aware of a particularly serious case in El Salvador, where the highest number of nurse deaths in Central America and the Caribbean has been reported in 2020, and the second highest in Ibero-America²⁹⁸. In Guatemala, the lack of safety has been reported in workplaces called "call centers", where up to 100 people work in the same space, there were not enough antibacterial soap, masks, or alcohol gel.

168. Another of the impacts recorded on health personnel is on mental health²⁹⁹. In the case of Chile, in a study with more than 2500 professionals involved, from 36 health centers in different parts of the country, it was reported that at least 54.8% of the personnel reported psychological distress, doubling the pre-pandemic number. Among them, 31.4% reported moderate to severe depressive symptoms, 7.1% reported suicidal ideation, as well as 30%-40% reported eating disorders, sleep disturbances, lack of energy and fatigue³⁰⁰. In the United States, the CDC reported that 41% of people would have experienced some type of symptoms related to some type of mental disorder, including symptomatology related to

²⁹³ REDESCA. *IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA) of the Inter-American Commission on Human Rights (IACHR)*, 2020, OEASER.LVII. Doc. 28 para. 108

²⁹⁴ REDESCA. *IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA) of the Inter-American Commission on Human Rights (IACHR)*, 2020, OEASER.LVII. Doc. 28 para.230

²⁹⁵ REDESCA . *IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA) of the Inter-American Commission on Human Rights (IACHR)*, 2020, OEASER.LVII. Doc. 28 para. 230

²⁹⁶ REDESCA . *IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA) of the Inter-American Commission on Human Rights (IACHR)*, 2020, OEASER.LVII. Doc. 28 para. 165

²⁹⁷REDESCA . *IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA) of the Inter-American Commission on Human Rights (IACHR)*, 2020, OEASER.LVII. Doc. 28 para. 327

²⁹⁸ REDESCA. *IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA) of the Inter-American Commission on Human Rights (IACHR)*, 2020 OEASER.LVII. Doc. 28 March 30, 2021, para. 454.

²⁹⁹ REDESCA. *IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA) of the Inter-American Commission on Human Rights (IACHR)*, 2020 OEASER.LVII. Doc. 28 March 30 2021 para. 1169

³⁰⁰ REDESCA. *IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA) of the Inter-American Commission on Human Rights (IACHR)*, 2020 OEASER.LVII. Doc. 28 30 March 2021 para. 273

some type of trauma, depression or anxiety³⁰¹. Likewise, in the case of Brazil, 96.1% of health care workers reported mental health complications in the face of the pandemic³⁰². Thus, anxiety and mental disorders are not only associated not only with the fear of contagion, suffering of oneself or loved ones, but also with stigmatization, discrimination, lack of solidarity, scarcity of family economic resources, instability and uncertainty, unemployment, overload of tasks, fear of the future, restrictions on movement, isolation, difficulties in family dynamics, increased domestic violence, lack of access or precariousness in health care and access to food, water or housing, among others.

169. With regard to the working conditions to which health personnel would be exposed in international missions, it should be borne in mind that these workers face great risks and, in accordance with the guidelines issued in Resolution 4/2020, it is essential that they be guaranteed reinforced protection in which all their rights, especially their ESCR, are guaranteed. For example, in the case of Cuba, REDESCA has learned that, since March 2020, that State has sent approximately 1,500 workers who have joined the 30,000 already abroad to support health system responses at the local and regional levels. According to some reports, their working conditions could be qualified as "forced labor" in terms of personal exploitation, coupled with inadequate wages, harassment and pressure³⁰³.
170. In this regard, the IACHR and the DESCA Special Rapporteur call for the protection of the labor rights of health and care workers, which should include the protection of their labor stability, rest, fair and adequate remuneration, the due balance of overload and long working hours to which they are exposed, as well as refraining from forcing them to perform their duties when they are at risk due to their health condition³⁰⁴. The IACHR and REDESCA recommend that States adopt measures for the effective protection of health and care workers, which fulfill a special role in the defense of human rights, ensuring the construction of contexts and environments free of harassment and threats.³⁰⁵ The IACHR and REDESCA remind the States of the need to implement clear protocols that allow people to carry out their

³⁰¹ According to this same study, the CDC observed that symptoms of mental health disorders are more prevalent among essential service workers, unpaid caregivers of adults, and those receiving treatment for pre-existing mental health disorders. REDESCA. *IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA) of the Inter-American Commission on Human Rights (IACHR)*, 2020 OEASER.LV/II. Doc. 28 March 30 2021 para. 523

³⁰² REDESCA. *IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA) of the Inter-American Commission on Human Rights (IACHR)*, 2020, OEASER.LV/II. Doc. 28 para. 231

³⁰³ REDESCA. *IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA) of the Inter-American Commission on Human Rights (IACHR)*, 2020, OEASER.LV/II. Doc. 28 para. 387

³⁰⁴ IACHR, *Human Rights of Persons with COVID-19*, Resolution 4/2020 July 27, 2020.

³⁰⁵ IACHR, *Human Rights of Persons with COVID-19*, Resolution 4/2020 July 27, 2020.

activities in the safest possible way, seeking to reduce the risks of contagion and allowing people to have the guarantee of enjoying the right to work in safe and dignified conditions³⁰⁶.

171. In this regard, the IACHR and REDESCA express the need to ensure the rights and integrity of workers, especially those most exposed to the virus, since both their mental health and physical integrity are part of their right to work in dignified and satisfactory conditions³⁰⁷. These obligations are reinforced when dealing with activities that are dangerous for the life, personal integrity or health of people.³⁰⁸ In addition, the protection of their labor stability, rest, and fair and adequate remuneration must be guaranteed. Finally, their social recognition must be promoted, and mental and care support must be ensured for these workers and caregivers who professionally care for people with COVID-19³⁰⁹.

Status of labor rights

172. Regarding the protection of labor rights, the situation in some countries is of concern, as in the case of Brazil, for October 1, 2020, local and state governments in Brazil accounted for 30% of the more than 230 labor complaints filed during the pandemic. In this regard, information has been obtained on the possible violation of ILO Conventions 98, 144, 154 and 155 to various unions, including the health sector. One of the issues that stand out is the provisional measure No. 927, which establishes COVID-19 as a non-occupational disease, leaving thousands of workers unprotected. The IACHR and REDESCA recall that, in this context, the States must protect the ESCR of workers, taking measures to ensure their economic income and means of subsistence, so that they have equal conditions to comply with the containment and protection measures during the pandemic, as well as conditions of access to food and other essential rights. In addition, those who continued to work should be protected from the risk of contracting the virus.
173. The IACHR and REDESCA highlight the efforts of the States to draw up containment plans with the objective of alleviating the impact on workers and supporting companies. Among them, they recognize a series of decisions that the States have taken to guarantee labor continuity in order to alleviate the impacts of the social isolation measure. They also value and welcome measures such as leave of absence and the organization of teleworking or remote

³⁰⁶ REDESCA. *IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights* (REDESCA) of the Inter-American Commission on Human Rights (IACHR), 2020, OEASER.LV/II. Doc. 28 para. 637

³⁰⁷ REDESCA. *IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights* (REDESCA) of the Inter-American Commission on Human Rights (IACHR), 2020, OEASER.LV/II. Doc. 28 para. 231

³⁰⁸ IACHR. *Compendium on Labor and Trade Union Rights: Inter-American Standards*: Approved by the Inter-American Commission on Human Rights on October 30, 2020 OEA/SerLV/II para. 49 p. 78

³⁰⁹ REDESCA. *IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights* (REDESCA) of the Inter-American Commission on Human Rights (IACHR), 2020, OEASER.LV/II. Doc. 28 para. 560

work that have been adopted by various countries in the region. They also recognize a multiplicity of initiatives such as the extraordinary payment for public servants who support the implementation of measures against the pandemic; the temporary prohibition of dismissals and contractual suspensions; the prohibition of forcing to take unpaid leave or reduce wages while the declaration of bankruptcy of companies is resolved; the allocation of unemployment benefits and the creation of special assistance funds for self-employed workers. In particular, the IACHR welcomes the measures adopted to contain the productive system and labor sources as a whole, which include exceptional contributions by the State to the social security funds and a supplementary salary paid by the State for private sector employees, with companies committing not to reduce the number of registered workers.

174. The Commission urges the States to integrate mitigation and attention measures specifically focused on the protection and guarantee of ESCR, recalling that the economic, political or any other type of measures adopted should not accentuate existing inequalities in society³¹⁰. The IACHR and the Office of the Special Rapporteur on ESCR urge States to ensure compliance with these recommendations and also to protect people against unjustified dismissal as a guarantee of employment stability, affirming the need to include sick leave related to COVID-19³¹¹.
175. States must ensure the right of people to stable and dignified work under equitable and satisfactory conditions. Likewise, regardless of the formality or sector of work, all workers have the right to social security, as well as adequate working conditions and decent wages³¹². The Commission and the Office of the Special Rapporteur on ESCR reiterate that States must protect the ESCR of those workers most at risk from the pandemic and its consequences, including those working in the informal sector and with a gender perspective. In this context, it is essential to take measures to ensure economic income and livelihoods for all workers, as well as access to food and other essential rights³¹³.

C. Right to education

176. The right to education is protected by Article XII of the American Declaration of the Rights and Duties of Man, which establishes the right of everyone to education, equality of oppor-

³¹⁰ IACHR, *Pandemic and Human Rights in the Americas*: Resolution 1/2020, April 10, 2020 para. 15.

³¹¹ REDESCA. *IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights* (REDESCA) of the Inter-American Commission on Human Rights (IACHR), 2020, OEASER.LXVII. Doc. 28 para.228

³¹² REDESCA. *IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights* (REDESCA) of the Inter-American Commission on Human Rights (IACHR), 2020, OEASER.LXVII. Doc. 28 para. 229

³¹³ REDESCA. *IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights* (REDESCA) of the Inter-American Commission on Human Rights (IACHR), 2020, OEASER.LXVII. Doc. 28 para. 478.

tunity and free primary education, at a minimum. Article 13 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights specifically enshrines the right to education. This article establishes that education "shall be directed to the full development of the human personality and the sense of its dignity and shall strengthen respect for human rights, ideological pluralism, fundamental freedoms, justice and peace". In addition, it refers specifically to primary, secondary, higher education and education for persons with disabilities.

177. The health crisis has had an impact on the right to education, as the closure of educational establishments aggravated inequalities in access to education, particularly with respect to historically discriminated communities and groups. In this context, different factors can significantly increase inequality gaps. The decision to temporarily close educational establishments³¹⁴ not only affects school attendance and backwardness rates, but could also have an impact on the educational and economic gap, with a disproportionate impact on the poorest population.
178. In the Americas, the vast majority of countries closed their educational institutions completely during the first months of 2020 as a measure to contain the contagion. This measure involved a transfer of the educational process to online and distance formats and in other cases education continued through alternative non-face-to-face mechanisms³¹⁵. These closures increased school dropout rates and exposed more young people to child labor³¹⁶. According to 2021 data from UNDP and the World Bank, school enrollment would be below pre-pandemic levels and slightly less than a quarter of students at the regional level would attend face-to-face classes³¹⁷. Thus, in El Salvador, school dropout rates quadrupled between the end of 2019 and the beginning of 2020 compared to 2018 and 2019³¹⁸. In Venezuela, the discontinuity of school trajectories is due to worsening socio-economic conditions, which affect school attendance and educational performance. The IACHR and the DESCA Special Rapporteurship urge States to monitor school attendance

³¹⁴ IACHR, SACROI COVID-19, [Measures and chronology of the pandemic](#).

³¹⁵ IACHR, Room for Coordination and Timely and Integrated Response to the COVID-19 Pandemic Crisis (SACROI COVID-19), Practical Guide No. 2 [GuiaPractica02 Educacion Es.pdf \(oas.org\)](#) pp. 2-3.

³¹⁶ IACHR, IACHR, Room for Coordination and Timely and Integrated Response to the COVID-19 Pandemic Crisis (SACROI COVID-19), Guía Práctica Nro. 2 [GuiaPractica02 Educacion Es.pdf \(oas.org\)](#) 'p 8

³¹⁷ World Bank/UNDP. [An uneven recovery: the aftermath of COVID-19 in Latin America and the Caribbean \(bancomundial.org\)](#) 29 November 2021.

³¹⁸ REDESCA. *IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA) of the Inter-American Commission on Human Rights (IACHR)*, 2020, OEASER.LV/II. Doc. 28 para. 486

and to take measures considering the particular contexts of population groups, thus adapting strategies to guarantee access to quality education without discrimination³¹⁹.

179. Among the new obstacles in the educational field, difficulties have been reported in accessing educational materials, technology and its tools, and difficulties in ensuring food security and other aspects of their physical and mental health³²⁰. Since the use of technology is one of the strategies to address school closures, the digital divide exposes the limitations of this approach. Not all students and teachers have access to computer equipment or an efficient connection to the Internet, radio, or television, or adequate skills and working conditions to use and take advantage of available digital platforms. For example, in Honduras at least 800,000 children living in poverty are at risk of dropping out of school due to the closure of schools, so there would be a dropout rate of close to 50% due to the COVID-19 crisis, in addition to this, the lack of connectivity would have prevented the regular delivery of classes³²¹. In Ecuador, on the other hand, it was reported that only 30% of students had connectivity and computers in 2020³²². Likewise, most of the teaching staff did not have enough time to obtain the necessary pedagogical and methodological training³²³.
180. In addition to the aforementioned challenges, there is a lack of basic hygiene supplies in educational establishments. In 2019, according to UNICEF and WHO figures, approximately 28% of establishments had limited access to toilets and 12% would have no toilets. The requirement for consistent basic hygiene practices such as hand washing or protocols requiring social distancing, ventilation and adequate cleaning may be difficult for schools with limited resources to comply with³²⁴. REDESCA learned that in Brazil, in August 2020, there were complaints and a labor strike due to the lack of protocols and

³¹⁹ REDESCA, *IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights* (REDESCA) of the Inter-American Commission on Human Rights (IACHR), 2020, OEASER.LVII. Doc. 28parr 1086

³²⁰ IACHR, Room for Coordination and Timely and Integrated Response to the COVID-19 Pandemic Crisis (SACROI COVID-19), Practical Guide No. 2 [GuiaPractica02_Educacion_Es.pdf \(oas.org\)](#) p. 3.

³²¹ REDESCA, *IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights* (REDESCA) of the Inter-American Commission on Human Rights (IACHR), 2020, OEASER.LVII. Doc. 28 para. 723 and 724.

³²² REDESCA, *IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights* (REDESCA) of the Inter-American Commission on Human Rights (IACHR), 2020, OEASER.LVII. Doc. 28 para. 433

³²³ IACHR, Room for Coordination and Timely and Integrated Response to the COVID-19 Pandemic Crisis (SACROI COVID-19), Practical Guide No. 2 [GuiaPractica02_Educacion_Es.pdf \(oas.org\)](#) p 4

³²⁴ IACHR, Room for Coordination and Timely and Integrated Response to the COVID-19 Pandemic Crisis (SACROI COVID-19), Practical Guide No. 2 [GuiaPractica02_Educacion_Es.pdf \(oas.org\)](#) p. 3.

compliance with protective measures; also, 20 days after the return to school, at least 342 teachers were infected with COVID-19³²⁵.

181. The IACHR has taken note of the impact of increased rates of depression, anxiety, sleep and eating disorders due to school closures and the reduction of spaces for socializing. On the other hand, social distancing implies using virtual platforms for learning and in some States an increase of up to 70% of online bullying among children and adolescents was observed during school closures³²⁶. Likewise, the closure of educational establishments represents a greater risk of exposure to situations of abuse, including domestic and sexual violence, since the establishments are spaces for channeling complaints of these abusive situations³²⁷. Additionally, according to data compiled by WHO and UNICEF, the quarantine has hindered the immunization of essential vaccines that took place in educational establishments³²⁸.
182. The pandemic and confinement have deepened educational inequalities, increasing the educational backwardness of those who do not have access to communication technologies and depriving them of an appropriate educational environment.³²⁹ Since the right to education is the main way out of poverty³³⁰, the IACHR and REDESCA remind States of the importance of focusing their efforts on transforming education systems into inclusive and resilient systems in a structural way³³¹, with an intersectional and human rights approach, and urges them to take urgent action to monitor dropouts in order to reincorporate them as soon as possible³³².

³²⁵ REDESCA, *IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights* (REDESCA) of the Inter-American Commission on Human Rights (IACHR), 2020, OEASER.LVII. Doc. 28 para. 233

³²⁶ IACHR, Room for Coordination and Timely and Integrated Response to the COVID-19 Pandemic Crisis (SACROI COVID-19), Practical Guide No. 2 [GuiaPractica02_Educacion_Es.pdf](#) (oas.org) p.4

³²⁷ IACHR, Room for Coordination and Timely and Integrated Response to the COVID-19 Pandemic Crisis (SACROI COVID-19), Guía Práctica Nro. 2 [GuiaPractica02_Educacion_Es.pdf](#) (oas.org)p 4

³²⁸ IACHR, Room for Coordination and Timely and Integrated Response to the COVID-19 Pandemic Crisis (SACROI COVID-19), Practical Guide No. 2 [GuiaPractica02_Educacion_Es.pdf](#) (oas.org)p 7

³²⁹ REDESCA, *IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights* (REDESCA) of the Inter-American Commission on Human Rights (IACHR), 2020, OEASER.LVII. Doc. 28 para 1121

³³⁰ CESCR, General Comment No. 13, *The right to education*, E/C.12/1999/10, December 8, 1999.

³³¹ REDESCA . *IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights* (REDESCA) of the Inter-American Commission on Human Rights (IACHR), 2020, OEASER.LVII. Doc. 28 paras. 724-726.

³³² REDESCA. *IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights* (REDESCA) of the Inter-American Commission on Human Rights (IACHR), 2020, OEASER.LVII. Doc. 28 para. 299-301.

D. Right to freedom of expression, access to the Internet and data protection

183. The rights of freedom of expression and access to information are enshrined in Article 13 of the American Convention on Human Rights, which recognizes freedom of thought and expression, and includes the right to seek, receive and impart information and ideas of all kinds. For its part, Article IV of the American Declaration of the Rights and Duties of Man states that "everyone has the right to freedom of investigation, opinion, expression and dissemination of thought by any means". In addition, the Declaration of Principles on Freedom of Expression of the Inter-American Commission on Human Rights is specific to these rights.
184. In the context of the COVID-19 contingency, Internet connection has been the tool par excellence to continue with daily tasks that previously required face-to-face contact and for the exercise of civil, political, economic and cultural rights³³³. In particular, the IACHR noted that Internet access is essential in terms of access to information, as it provides the possibility of keeping people informed about the state of the pandemic situation and health recommendations. It is also central in terms of freedom of expression, as it facilitates global interaction, is an important arena for discussions on public health, and is an alternative for the work of the press, as well as for monitoring and citizen control of policies to address the pandemic³³⁴.
185. During the period of physical confinement and mobility restrictions, Internet connection also represents the possibility of maintaining family and social interactions and community life. At the same time, the Commission noted that the pandemic has exponentially increased work in remote modalities, making Internet access indispensable for the work and professional development of millions of people. Likewise, in terms of access to health, the possibility of holding medical consultations, therapies or even access to entertainment or support for physical activities, are essential to guarantee the aforementioned right of all people³³⁵.
186. According to figures published by the International Telecommunication Union (ITU) at the end of 2019, almost 23% of the population in the Americas did not have internet access,

³³³ IACHR. Press Release R206/20. States in the region should accelerate universal internet access policies during the COVID-19 pandemic and adopt differentiated measures to incorporate groups in vulnerable situations. August 31, 2020.

³³⁴ IACHR. Practical Guide 03 How to promote universal access to the Internet during the COVID-19 pandemic? 26 March 2021.

³³⁵ According to UNICEF, in Latin America and the Caribbean approximately 154 million children and adolescents -more than 95% of those enrolled in the region- are temporarily out of school because of Covid-19, and a large percentage of them have no way of accessing educational content virtually. This situation extended more than initially expected, and could increase the risk of definitive school dropout, especially for the most vulnerable children. IACHR. Press Release R206/20. States in the region should accelerate universal internet access policies during the COVID-19 pandemic and adopt differentiated measures to incorporate groups in vulnerable situations. August 31, 2020.

rising in some countries to over 70%³³⁶. Thus, the use of virtual educational platforms has deepened the inequality gap. In a pattern that is repeated throughout the region, in Barbados and Bolivia, for example, inequitable access to Internet service has a particular impact on the poor³³⁷. According to figures from the National Institute of Statistics of Honduras for the year 2020, more than 60% of the population lacks internet access and 91% has access through a prepaid cell phone³³⁸.

187. In the context of the health emergency generated by COVID-19, the IACHR and its Office of the Special Rapporteur for Freedom of Expression (RELE) warned that access to the Internet with minimum quality standards is essential for the exercise and enjoyment of other human rights³³⁹. In particular, the right to information, the rights of assembly and association, civil and political rights, the right to education, the right to participate in cultural life, the right to health, among others, find in the network a space that compensates to some extent the limitations to the exercise of rights in the pandemic³⁴⁰. In this sense, the lack of access to the Internet in the context of the pandemic affects, deteriorates or delays the guarantee of all human rights that are currently exercised totally or partially through this channel³⁴¹.
188. In this regard, the Commission noted that, despite the efforts and commitments made by the States of the region to expand access to the network, among the multiple inequalities ex-

³³⁶ IACHR, Room for Coordination and Timely and Integrated Response to the COVID-19 Pandemic Crisis (SACROI COVID-19), Practical Guide No. 2 [GuiaPractica02_Educacion_Es.pdf \(oas.org\)](#) p 5

³³⁷ REDESCA, *IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights* (REDESCA) of the Inter-American Commission on Human Rights (IACHR), 2020, OEASER.LV/II. Doc. 28 para. 146

³³⁸ REDESCA. *IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights* (REDESCA) of the Inter-American Commission on Human Rights (IACHR), 2020, OEASER.LV/II. Doc. 28 paras. 687-8 and 724.

³³⁹ IACHR. Press Release No. 07421. The IACHR publishes the Practical Guide How to promote universal access to the Internet during the COVID-19 pandemic. 26 March 2021.

³⁴⁰ IACHR. [Practical Guide 03 How to Promote Universal Internet Access during the COVID-19 Pandemic](#). 26 March 2021; IACHR - Special Rapporteurship for Freedom of Expression of the Inter-American Commission on Human Rights. [Standards for a Free, Open and Inclusive Internet](#). OEA/Ser.LV/II IACHR/RELE/INF.17/17 March 15, 2017, para. 46; United Nations (UN) Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Representative on Freedom of the Media of the Organization for Security and Cooperation in Europe (OSCE), Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (OAS), and Special Rapporteur on Freedom of Expression and Access to Information of the African Commission on Human and Peoples' Rights (ACHPR). June 1, 2011. [Joint Declaration on Freedom of Expression and the Internet](#). June 1, 2011.

³⁴¹ IACHR. [Practical Guide 03 How to promote universal internet access during the COVID-19 pandemic](#). 26 March 2021.

posed by COVID-19, the digital divide has been one of the most evident³⁴², a phenomenon that increases vulnerability and deepens inequality, perpetuating the exclusion of many³⁴³. The Commission expressed its concern about the serious limitations in the lack of access to the Internet in the region for the most vulnerable sectors of the population. This affects indigenous communities, women, Afro-descendants, children and adolescents³⁴⁴, the elderly, among other groups with specific needs, who are suffering disproportionately from limitations in the access and affordability of digital technologies³⁴⁵. Likewise, even when there is connection, the devices that are usually used in vulnerable sectors are often of low quality, in addition to having very limited units with respect to the number of household members³⁴⁶.

189. Likewise, the IACHR and its RELE especially called the attention of the States to the problem of the disconnection of persons in a particularly vulnerable situation, given the difficulties that this entails in accessing rights, including the financial assistance that governments have offered to alleviate the needs derived from the pandemic. In general, public agencies have used the web to disseminate information about this assistance, and in most cases applications require online registration and tracking. In other cases, even if the population could access such information, they encounter language barriers, as for example there is little or no information on COVID-19 in native languages³⁴⁷.
190. The Commission noted that transitory measures to guarantee Internet access need to be accompanied by solid, planned, long-term public policies and plans, with special emphasis on vulnerable groups. Also crucial are the generation of public information regarding the lack of access to the Internet and its differentiated impacts; the actions and measures

³⁴²The latest figures released by the International Telecommunication Union (ITU) at the end of 2019 indicate that globally only 53.6% of the population (4.1 billion people) has access to the internet, while the remaining 47% (3.6 billion people) are still offline. In the Americas, almost 23% of the population does not have access to the Internet; at the same time, access levels vary by country, sub-region and community. In Latin America and the Caribbean, it is estimated that at least 300 million people do not have Internet access, with the highest rates of disconnection found mainly in Central America, the Caribbean and South America. See: ITU Publications. *Measuring digital developments: Facts and figures*. 2019; IACHR. *Guía Práctica 03 ¿Cómo promover el acceso universal a internet durante la pandemia de COVID-19?* March 26, 2021; IACHR. Press Release R20620. *States in the region should accelerate universal internet access policies during the COVID-19 pandemic and adopt differentiated measures to incorporate groups in situation of vulnerability*. August 31, 2020.

³⁴³ IACHR – Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights. *Standards for a Free, Open and Inclusive Internet*. OEA/Ser.L/V/II IACHR/RELE/INF.17/17 March 15, 2017, para. 33.

³⁴⁴ IACHR. *Practical Guide 02 How to guarantee access to the right to education for children and adolescents during the pandemic*. 16 December 2020.

³⁴⁵ IACHR. Press Release R20620. *States in the region should accelerate universal internet access policies during the COVID-19 pandemic and adopt differentiated measures to incorporate groups in vulnerable situations*. August 31, 2020.

³⁴⁶ IACHR. *Practical Guide 03 How to promote universal internet access during the COVID-19 pandemic*. 26 March 2021.

³⁴⁷ IACHR. Press Release R20620. *States in the region should accelerate universal internet access policies during the COVID-19 pandemic and adopt differentiated measures to incorporate groups in vulnerable situations*. August 31, 2020.

adopted by other actors in the digital ecosystem, such as private telecommunications companies or Internet service providers; and the role of civil society and academia, in terms of training, as well as research, to offer alternative, non-profit, social and community-based solutions to make the right to information effective³⁴⁸.

191. In relation to the above, the IACHR warns of the need to accelerate policies for affordable and pluralistic access to the Internet, expanding the infrastructure that supports it, facilitating access to suitable devices and promoting digital literacy, as well as adopting positive measures to reduce the digital divide³⁴⁹. Therefore, in its Resolution 1/2020, the IACHR established as one of the obligations of the States in the face of the pandemic the obligation to guarantee the broadest and most immediate access to Internet service to the entire population and to develop positive measures to rapidly reduce the digital divide faced by vulnerable groups and those with lower incomes through support systems, communication strategies and accessible content³⁵⁰. Likewise, the Commission has affirmed that access to the Internet should not be interrupted by blocking, filtering pages or shutting down service for political or discriminatory reasons³⁵¹.

Content moderation

192. The Commission has been observing how, in reaction to demands for greater accountability, large intermediary platforms in the flow of information on the Internet have, in recent years, modified their policies on content moderation to flag "disinformation" as questionable or prohibited speech, which may fall under criteria of what is acceptable and what is not in their virtual spaces. However, the IACHR notes that such actions are not always in line with Inter-American standards regarding the protection of freedom of expression, particularly when they are in the form of private law such as terms and conditions or community guidelines.
193. In this regard, in the context of the pandemic, the Commission observed an increase in moderation actions motivated by the willingness of companies to exercise their prerogative in a more robust manner and with more transparent criteria³⁵². Thus, in the face of the health emergency, efforts have been made by companies to act on content considered

³⁴⁸ IACHR. Press Release R206/20. States in the region should accelerate universal internet access policies during the COVID-19 pandemic and adopt differentiated measures to incorporate groups in vulnerable situations. August 31, 2020.

³⁴⁹ IACHR. [Practical Guide 03 How to promote universal internet access during the COVID-19 pandemic](#). 26 March 2021.

³⁵⁰ IACHR. [Pandemic and Human Rights in the Americas](#). Resolution 1/2020. April 10, 2020.

³⁵¹ IACHR. Press Release R206/20. States in the region should accelerate universal internet access policies during the COVID-19 pandemic and adopt differentiated measures to incorporate groups in vulnerable situations. August 31, 2020.

³⁵² Reuters Institute, University of Oxford. [How the coronavirus pandemic is changing social media](#). July 6, 2020.

false, both in electoral matters and in issues related to disinformation, while favoring official speeches, especially those of global and local health authorities³⁵³.

194. Given a scenario in which moderation actions and the demand for them seem to have increased, it is recalled that in addition to the minimum criteria that companies should respect when moderating the content of their users³⁵⁴, in accordance with the human rights standards that should guide companies, the IACHR has affirmed the need for intermediaries not to be held responsible for content produced by their users, due to the incentives of "private censorship" that such rules could generate³⁵⁵. The Commission also recalls that private actors have a responsibility to respect human rights online, which includes both the responsibility not to restrict rights, to establish and implement conditions of service that are transparent, clear, accessible³⁵⁶ and the positive obligation to create an environment in which rights are respected. In particular, in designing and shaping their terms of service, companies should not disproportionately or unnecessarily limit or restrict freedom of expression. Intermediaries should establish effective monitoring systems, impact assessments and accessible and effective complaints systems in order to identify actual or potential harm to human rights caused by their services or activities³⁵⁷.

Data privacy, cybersecurity and the use of surveillance technologies

195. In the context of the pandemic, the Commission noted the emergence of numerous initiatives by States to use information technology and surveillance tools to track the spread of the virus and in support of containing the health crisis, as well as applications that use

³⁵³ The large intermediary platforms-Google, Facebook and Twitter, especially-have acted in this direction. Cf. J. D'Urso (Ibid.) ("Social media companies' immediate response was to proactively promote health-related information from sources which it deemed more reliable"). When one searches for "coronavirus" in Google the result is a special page with information from reliable sources, including media, aggregated information according to the user's location, information from local health authorities, and so on. It would be difficult, by that way, to reach false information. Facebook and Twitter have also acted in the context of the pandemic. In the case of Facebook, a search for the term also leads to a Coronavirus (COVID-19) Information Center with access to advice and official sources of information. And on Twitter, the search for information on the virus yields as first result the account of the Ministry of Health of the Nation (Argentina, in this case), under the promising invitation to "know the facts". See: Twitter. Know the Facts.

³⁵⁴ See: [The Santa Clara Principles on Transparency and Accountability in Content Moderation](#).

³⁵⁵ IACHR. [Freedom of expression and the Internet](#). OEA/Ser.LV/II. IACHR/RELE/INF. 11/13. 31 December 2013, paras. 92-94; [Standards for a Free, Open and Inclusive Internet](#). 15 March 2017, para. 102 et seq; United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, Representative on Freedom of the Media of the Organization for Security and Cooperation in Europe (OSCE), Organization of American States (OAS) Special Rapporteur on Freedom of Expression, and Special Rapporteur on Freedom of Expression and Access to Information of the African Commission on Human and Peoples' Rights (ACHPR). [Joint Declaration on Freedom of Expression and the Internet](#). 2011.

³⁵⁶ IACHR. [Freedom of expression and the Internet](#). OEA/Ser.LV/II. IACHR/RELE/INF. 11/13. 31 December 2013, para. 112.

³⁵⁷ IACHR. [Standards for a free, open and inclusive Internet](#). March 15, 2017, para. 98.

sensitive personal information in the context of the pandemic³⁵⁸. In this regard, the IACHR stated that while there is a clear need for active efforts to address the pandemic, it is also crucial that the use of such tools be limited, both in terms of purpose and time, and that individual rights to privacy, non-discrimination, protection of journalistic sources, and other freedoms be rigorously protected³⁵⁹. The Commission reminded States that they must protect patients' personal information and has therefore urged that any use of such technology be subject to the strictest protections and only be made available in accordance with national legislation that is compatible with international human rights standards³⁶⁰.

196. In this regard, in its *Inter-American Guidelines on the Rights of Persons with COVID-19*, the Commission affirmed that in the development of geolocation and COVID-19 exposure alert applications, States must ensure that public or private actors providing this service obtain the informed consent of persons with COVID-19 whose personal data are incorporated into them. This includes duly informing the purpose for which these data will be used, the type of tracing to which they will be subjected, and with which health authorities, companies or other users the information will be shared³⁶¹.
197. Likewise, States must carry out a prior and public assessment of the impact on the privacy of persons affected by the virus of the technological applications and geo-referencing tools that are planned to be developed to preserve health, in order to justify in a well-founded manner the benefit of these tools compared to other alternatives that affect privacy to a lesser extent. Likewise, they must prevent the selective identification of individuals and ensure that personal data are collected and used only to the extent necessary to combat the spread of COVID-19³⁶².
198. Regarding the processing of personal data in the context of the pandemic, the Commission recalls that the storage of data of persons with COVID-19 should be limited to the legitimate and limited purpose of containing and reversing the pandemic, for the time strictly necessary and shall be unlinked to identity and other highly personal aspects³⁶³. It is es-

³⁵⁸ IACHR. Practical Guide 03 How to promote universal internet access during the COVID-19 pandemic. 26 March 2021. IACHR. Press Release R58/20. COVID-19: Governments should promote and protect access and free flow of information during the pandemic - International experts. 19 March 2020.

³⁵⁹ IACHR. Press Release R58/20. COVID-19: Governments must promote and protect access and free flow of information during pandemic - International experts. March 19, 2020.

³⁶⁰ IACHR. Press Release R58/20. COVID-19: Governments must promote and protect access and free flow of information during pandemic - International experts. March 19, 2020.

³⁶¹ IACHR. Human Rights of Persons with COVID-19. Resolution No. 4/2020. July 27, 2020.

³⁶² IACHR. Human Rights of Persons with COVID-19. Resolution No. 4/2020. July 27, 2020.

³⁶³ IACHR. Human Rights of Persons with COVID-19. Resolution No. 4/2020. July 27, 2020.

essential to ensure access to this information to the persons who hold it. In cases involving human research related to COVID-19, individuals should be informed and consent to the circumstances under which their data or samples of biological material may be shared with public health authorities or other research groups³⁶⁴. With regard to vaccination, States should safeguard personal data and information contained in health records, including biographic and biometric information collected. In particular, guarantees should be provided to protect the personal data of migrants, refugees and other persons in the context of human mobility, considering the risks of using this information for migration control purposes³⁶⁵.

E. Right of access to justice and its guarantees

199. Access to justice is an internationally recognized human right and a basic principle of the rule of law. It is fundamental to the realization of other rights, such as the right to liberty, health, education, work, civil and political liberties. International human rights law has developed standards on the right to judicial and other remedies that are suitable and effective to claim for the violation of fundamental rights³⁶⁶. In this sense, States have the obligation not to impede access to these remedies, and at the same time to organize the institutional apparatus in such a way that all individuals may have access to these remedies, for which purpose States must remove the normative, social or economic obstacles that prevent or limit the possibility of access to justice.
200. This right is specifically contemplated in Article XVIII of the American Declaration of the Rights and Duties of Man and in Articles 8 and 25 of the American Convention on Human Rights. These articles establish that all persons have the right of access to judicial remedies and the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent and impartial tribunal when they believe their rights have been violated.
201. Since the onset of the COVID-19 pandemic in March 2020, the functioning of judicial systems around the world has been affected. Faced with the spread of the virus, States adopted various measures to mitigate its effects. The measures to contain the virus involved partial and motivated restrictions of some freedoms, which has resulted in some suspensions of activities of jurisdictional bodies and the establishment of emergency measures in the branches of government, all of which affected access to justice and related rights.
202. During the first months of the pandemic, the IACHR received information about disruptions in the functioning of judicial bodies in some of the States of the region. It learned

³⁶⁴ IACHR. [Human Rights of Persons with COVID-19](#). Resolution No. 4/2020. July 27, 2020.

³⁶⁵ IACHR. [COVID-19 vaccines in the framework of inter-American human rights obligations](#). Resolution 1/2021. April 6, 2021, para. 17.

³⁶⁶ IACHR, [Access to Justice as a Guarantee of Economic, Social and Cultural Rights](#). Estudio de los estándares fijados por el Sistema Interamericano De Derechos Humanos, OEA/Ser.LV/II129Doc. 4, 7 September 2007. Para. 41

about the suspension of jurisdictional and prosecutorial activity, the suspension of deadlines and procedural acts in extraordinary cases, with some exceptions considered urgent. In this regard, the suspension of judicial activity must be analyzed under strict scrutiny. These restrictions must comply with the principle of legality and proportionality, be the least restrictive measures and be necessary in a democratic society for the achievement of common objectives³⁶⁷.

203. In a significant number of countries in the region, more than 60 days passed without judicial services³⁶⁸. In most of them, only the courts were kept operational to attend to urgent matters. In some places it was expressly determined which cases would be considered urgent. These included criminal cases, especially juvenile justice matters; issues related to deprivation of liberty; domestic violence cases; family matters requiring urgent attention (judicial payment of alimony, restitution of minors, etc.)³⁶⁹.
204. According to information received by the IACHR, legal activities were limited to the minimum service in most countries, and at least during the first months of the pandemic, there was no increase in the installed capacity of the judiciary to respond to the additional demand caused by COVID-19³⁷⁰. As a result, many people were prevented from having adequate channels to address their conflicts; and the lack of access and limited availability of justice services was accentuated.
205. The Commission understands that access to justice is a fundamental pillar of democracy that cannot be suspended or limited in its exercise and functioning³⁷¹. Thus, the context of the emergency cannot be a reason to suspend judicial procedures that guarantee the exercise of rights and freedoms, particularly those actions aimed at controlling the actions of the authorities in this context. Therefore, it is essential to ensure the existence of suitable and flexible means to file appeals that allow the control of the provisions issued in an emergency situation. In this regard, all public institutions must have sufficient capacity to control each of the temporary suspension or restriction measures adopted. Likewise, States must adopt measures aimed at protecting justice operators by guaranteeing the functioning of services.

³⁶⁷IACHR, Joint Declaration on Access to Justice in the Context of the COVID-19 Pandemic, January 27, 2021.

³⁶⁸IDB, *Justice and COVID-19: 3 ways to deliver justice during a pandemic*, Mauricio Garcia Medina, June 2, 2020,

³⁶⁹NAMATI, *State of Justice in Latin America under Covid-19: general measures adopted and use of ICTs in judicial processes*, August 2020.

³⁷⁰Asociación Civil por la Igualdad y la Justicia (ACIJ) and others, "[Informe sobre la situación de acceso a la justicia en contexto de pandemia, desde la perspectiva de las organizaciones de la sociedad civil y activistas](#)", November 2020.

³⁷¹IACHR, IACHR Calls to Ensure Democracy and the Rule of Law in the Context of the COVID 19 Pandemic, June 9, 2020; IACHR, Strategic Plan 2017-2021, OEA/Ser.LV/II.161, Doc. 27/17, March 20, 2017.

Tele-audiences and use of technology

206. During the first months of the pandemic, some States in the region have made use of digital tools as a way of guaranteeing the functioning of the organs of justice within the framework of the health emergency. These tools have very positive aspects as a way of guaranteeing the continuity of their operation. However, they have also posed challenges that can lead to violations of the right to justice and due process.
207. Although all of the countries suspended face-to-face hearings at some point, not all of them expressly ordered their rescheduling based on specific regulations or clear parameters, nor did they provide for the requirement that these hearings be prioritized for rescheduling in the future. This is relevant, given the judicial moratorium that existed prior to the pandemic in the countries of the region. In this regard, the IACHR has found that most judicial services do not have their own platforms; training in their use for internal or external operators was not widespread; and in many cases protocols were not developed for the holding of hearings to facilitate their virtual realization³⁷².
208. In this regard, during the 180th Period of Sessions of the IACHR, civil society organizations informed the Commission about the impact that the use of remote hearings has had on criminal proceedings in the region. The use of these digital media should not undermine the due process rights of the parties and participants in virtual hearings, especially the right to defense, to legal counsel, to an adversarial proceeding, and the right to be tried without delay. The confidentiality and security of information transmitted through this type of mechanism must be guaranteed at all times. Another challenge identified was the difficulty of maintaining confidentiality during a hearing, or the difficulty of being able to identify objects and persons through a screen, which can have consequences for the examination of evidence. At the same time, information was received about hearings in virtual courtrooms where only the parties are granted access without allowing the public or the media to attend, which could call into question the transparency of these processes³⁷³.
209. An important aspect is to differentiate the impact of holding a hearing in person or virtually. Initial, control or custody hearings have extremely important implications for the legal situa-

³⁷² Justice Studies Center of the Americas (JSCA), *State of Justice in Latin America under COVID-19. General Measures Adopted and Use of ICTs in Judicial Processes*, May 2020.

³⁷³ IACHR, Hearing on the Use of Virtual Hearings in Criminal Proceedings in the Region in the Context of the COVID-19 Pandemic, June 30, 2021, 180th Period of Sessions. With respect to Mexico, the petitioners informed the Commission about the absence of measures and guidelines, in the use of virtual hearings, to protect tortured persons. They mentioned that the use of videoconferences was established as a rule by the Federal Judiciary while, at the local level, no state adopted measures and guidelines to protect the personal integrity of the accused or exceptions to the use of virtual hearings. They highlighted the absence of an intersectional perspective with respect to indigenous persons and persons with disabilities, as well as a lack of access to translators and interpreters and no provisions were established to allow for reasonable adjustments to the process when required.

tion of the accused and, sometimes, the digital medium is not the most suitable for their discharge. Conducting these hearings virtually may mean continuing with torture practices that could not be evidenced through digital platforms³⁷⁴.

210. On the other hand, in addition to the challenges already mentioned, the digital divide generated by the use of technological means has also been reflected in the impact it has had on guaranteeing the continuity of jurisdictional activities³⁷⁵. This has had a greater impact on the most vulnerable groups, in rural areas or remote indigenous communities³⁷⁶. In this regard, the Commission takes note of the OHCHR's statement³⁷⁷ that hearings by video-conference require that all parties have access to these tools and not everyone has access to a stable and secure internet connection, or to the necessary devices. Therefore, consideration needs to be given to people without the necessary skills to use virtual platforms, as well as those with sensory disabilities. Thus, the effectiveness of these audiences and the barriers people face in effectively using or participating in hearings using such technology must be considered.

211. In this regard, the IACHR has taken note of a series of measures adopted during the first months of the pandemic that made it possible to make procedures more flexible and advance in guaranteeing access to justice. Among them, the Supreme Court of Justice of the State of Chile, in April 2020 authorized the holding of virtual hearings, where all parties, in some cases judges, were able to connect by video from their offices or homes³⁷⁸. For its part, the State of Costa Rica made progress in the adoption of a series of rules for the identification of persons by digital signature, e-mail addresses validated by special systems, or by showing the identity document to the camera³⁷⁹. In the case of the Colombian judiciary, it adopted an application for making legal consultations from cell phones³⁸⁰. In

³⁷⁴ IACHR, Hearing on the Use of Virtual Hearings in Criminal Proceedings in the Region in the Context of the COVID-19 Pandemic, June 30, 2021, 180th Period of Sessions. With respect to Brazil, the petitioners indicated to the Commission that the impacts of videoconferencing in the fight against torture are devastating and questioned that only three months after the WHO declared the pandemic, complaints of torture decreased by 83% in the country.

³⁷⁵ IACHR, Joint Declaration on Access to Justice in the Context of the COVID-19 Pandemic, January 27, 2021.

³⁷⁶ IACHR, Public Hearing on Challenges and Obstacles to Justice Systems in the Context of COVID-19, October 9, 2020, 177th Session.

³⁷⁷ Xavier Mena, Deputy Representative for the Regional Office for South America of the United Nations High Commissioner for Human Rights, Hearing on the Use of Virtual Hearings in Criminal Proceedings in the Region in the Context of the COVID-19 Pandemic, June 30, 2021, 180th Session, Geneva, Switzerland, June 30, 2021.

³⁷⁸ Supreme Court of Justice of Chile, Act No. 53-2020, Auto acordado sobre funcionamiento del Poder Judicial durante la emergencia sanitaria nacional provocada por el brote del nuevo coronavirus. April 8, 2020.

³⁷⁹ Judicial Branch of Costa Rica, Protocolo de Manejo de Audiencias Virtuales en los Procesos Laborales, May 4, 2020.

³⁸⁰ Ministry of Justice of the Republic of Colombia, LegalApp is an electronic tool for all citizens who need to find out how to carry out a procedure or make use of any service related to Justice.

Argentina, where judicial orality is still at an early stage, measures were taken such as disseminating the use of electronic files, the use of digital signatures for judges, and the possibility of presenting documents signed digitally by the parties without the need to present paper support³⁸¹. Likewise, the Peruvian Judicial Branch set up a virtual table of parties and an e-mail account to which individuals can send their briefs and the Court includes them in the files³⁸². On the other hand, the IACHR was informed of the measure adopted by the State of Uruguay with respect to sustaining the operation of its judicial offices with face-to-face hearings by implementing special measures to mitigate health risks and maintain social distancing³⁸³.

212. The IACHR recalls that States are responsible for guaranteeing access to justice, the functioning of an independent justice system and its proximity to the population:

F. Right to private and family life and respect for bereavement

213. According to information from the World Health Organization (WHO), in figures updated to August 2022, as a result of the COVID-19 pandemic to date more than 2.7 million people have died in the Americas³⁸⁴. After the outbreak of the pandemic, thousands of these deaths occurred in hospital isolation, or in their homes, without the knowledge or possibility of access to their families, which has hindered the timely delivery of the bodies or, in some extremes, these have been directly cremated or buried, when they are not claimed. In that context, the IACHR took note of extensive delays in the delivery and burial of mortal remains due, among other factors, to the large number of deceased persons, administrative difficulties in issuing death certificates, the fragility of the funeral services that hinder transportation, as well as the difficulties in being received by the cemeteries due to their saturation. This delay, and in some cases, the collapse of funeral services caused extremely serious situations³⁸⁵.

214. Due to the large number of people who died during the first months of the pandemic, challenges have been identified related to the institutions in charge of collecting the corpses of people who died in private homes. Likewise, with respect to persons who died in public places, hotels or nursing homes, there were delays in the collection of corpses, as well as challenges in the management of corpses in hospitals. In certain cases this has led to the

³⁸¹ Supreme Court of Justice of Argentina, [Acordada 12/2020](#), April 13, 2020.

³⁸² Judicial Branch of Peru, [Judicial Branch designs digital instructions for filing pleadings and lawsuits through the electronic filing desk](#), May 4, 2020

³⁸³ Judicial Branch of the Oriental Republic of Uruguay, 084/2020 - End of the Extraordinary Fair, October 28, 2020.

³⁸⁴ World Health Organization and Pan American Health Organization, [Situation of the Region of the Americas due to the outbreak of COVID-19](#).

³⁸⁵ IACHR, [Respect for the mourning of the families of those who died in the COVID19 Pandemic](#), May 1, 2020.

accumulation of bodies in the streets, due to the saturation of the emergency services. With respect to the functioning of the administration, there were difficulties in the correct identification of mortal remains; omission or lack of clarity in the death records in relation to the causes of death determined by COVID-19. In some cases, family members reported confusing or contradictory information in death certificates and medical reports; there were also delays in the delivery and burial of mortal remains and administrative difficulties in the issuance of death certificates. On the other hand, the Commission has been concerned about the fact that a large number of mortal remains were buried in mass graves without being identified or without observing the necessary technical aspects³⁸⁶.

215. These situations affected the mourning process of family members and loved ones and violate rights protected in the inter-American legal framework³⁸⁷. The Commission observed with concern situations that impacted the conditions necessary for the preservation of homage to the deceased, whose dignified treatment is inherent to their human condition and essential in respect to the ties and bonds existing between their next of kin and closest persons. The Commission has considered that the possibility of disposing of the final destination of the deceased relatives in accordance with their beliefs provides a certain degree of closure to the mourning process, contributing to mitigate the aftermath of trauma, mourning and pain.

216. The Commission recalls that death is related in some cases to deep symbolic and religious elaborations³⁸⁸. In this sense, the IACHR recalls that the right to religious freedom implies that no one may be subjected to restrictive measures that affect the freedom to maintain his or her religion or beliefs or to change his or her religion or beliefs. Thus, respect for and protection of the right of all persons to exercise their own cultural practices, within the limits of respect for human rights, includes religious practices, worship or belief in relation to death, which are closely related to the forms of cultural participation and worldviews in societies. This right is recognized in Art. 3 of the American Declaration. Article 12 of the American Convention and Article 13 of the American Declaration, which establish the right to participate in the cultural life of the community, as well as Article 26 of the American Convention and Article 14 of the Protocol of San Salvador also protect this right.

³⁸⁶ IACHR, Room for Coordination and Timely and Integrated Response to the crisis in relation to the COVID-19 pandemic (SACROI COVID-19), Practical Guide No. 1 *What are the standards to ensure respect for mourning, funeral rites and tributes to persons killed during the COVID-19 pandemic?*, 2020.

³⁸⁷ IACHR, Room for Coordination and Timely and Integrated Response to the crisis in relation to the COVID-19 pandemic (SACROI COVID-19), Practical Guide No. 1 *What are the standards to ensure respect for mourning, funeral rites and tributes to persons killed during the COVID-19 pandemic?*, 2020.

³⁸⁸ I/A Court H.R., *Case of "The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile*, Judgment of February 5, 2001.

217. The Inter-American Court has indicated that the mortal remains of a person deserve to be treated with respect and that the value that their memory has for their loved ones be recognized. It adds that the knowledge of the whereabouts of the remains and their delivery to the next of kin allows to close the mourning process and to bury them according to their beliefs³⁸⁹.
218. In particular, in cases involving indigenous and Afro-descendant communities, both the Commission and the Inter-American Court have considered that the impossibility of performing funeral rituals or visiting sacred sites constitute serious obstacles to their worldview and religiosity, which severely affect their identity and cultural integrity³⁹⁰. In some indigenous communities it is not possible to access the bodies to perform the rites in accordance with their cosmovision.
219. In addition to the concerns mentioned above, the Commission appreciates that some States have taken steps to coordinate with hospitals to facilitate the registration of sick persons in databases that contribute to their identification and location and, in the event of death, make it easier to contact family members. Likewise, it is especially important to prohibit the cremation of bodies without proper identification, even if they are not claimed by their loved ones. In such cases, the IACHR identified that some States prohibited the burial of persons deceased by COVID-19 in general mass graves and designated the use of specific graves for suspected or confirmed cases of COVID-19, which subsequently facilitate their identification and location. This, together with a detailed and individualized registry of persons who died in the context of the pandemic. In this regard, the IACHR recalls that the right to the truth, in certain cases, is related to the right of access to information, contemplated in Article IV of the American Declaration and Article 13 of the American Convention. Under these provisions, the right to the truth includes the right of the victims and their next of kin to know the truth, and also for society as a whole.

G. Right to personal freedom and integrity

220. With regard to the containment measures taken to confront and prevent the effects of the pandemic, the IACHR observed that the rights to liberty and personal integrity were restricted. The main violations of which the IACHR became aware had to do with the detention of persons, the use of physical violence, the use of firearms and those considered "less lethal" by the security forces on the grounds that they allegedly contravened the epidemic control measures in response to COVID-19³⁹¹. In particular, the arrests were based on non-compliance with imposed measures, such as restrictions on movement or gather-

³⁸⁹ I/A Court H.R., *Case of the Massacres of El Mozote and nearby places v. El Salvador*, Judgment of October 25, 2012.

³⁹⁰ I/A Court H.R., *Case of XákmokKásek Indigenous Community v. Paraguay*, Judgment of August 24, 2010.

³⁹¹ IACHR, *The IACHR calls on the States of the region to implement democratic and participatory citizen security policies focused on the protection of the individual*, September 25, 2020.

ings. The Commission noted with concern that, in many of these cases, the detentions or prevention of the exercise of rights were arbitrary or carried out under excessive use of public force. In other cases, detentions were arbitrary because taking people into custody in the context of a pandemic was often not reasonable, necessary or proportionate, and could cause significant harm given the risk of contagion in confined spaces³⁹². In many countries, arrest and detention have been used in response to non-compliance with public health measures, often increasing the risk of infection due to lack of social distancing.

221. The right to integrity is recognized in Articles I of the Declaration and Article 5 of the ACHR, in particular in numeral one, which establishes that *every person has the right to respect for his physical, mental and moral integrity*. The right to personal liberty is recognized in Articles I and XXV of the American Declaration and Article 7 of the Convention³⁹³.
222. Among the particular cases, the IACHR was informed about the registration of more than 30 cases of institutional violence and excessive use of force to contain measures involving limitations to displacement in Argentina³⁹⁴. With respect to Ecuador, the IACHR received information on the use of the armed forces to control the limitation of the rights of transit and assembly. The state of emergency was extended for several months exceeding the maximum of 90 days provided for in the Constitution and even though the Constitutional Court ordered the State to adopt protective measures in the face of the pandemic that do not result in the suspension of rights or the mobilization of the armed forces³⁹⁵.
223. The IACHR highlights the information provided by Amnesty International indicating that, between March and June, the authorities of El Salvador published more than 80 decrees in re-

³⁹² Amnesty International, [The use of force in the context of COVID-19. Violence as a State Response](#), August 11, 2020.

³⁹³ American Convention on Human Rights, signed in the city of San José, Costa Rica, on November 22, 1969. *Article 7. Right to Personal Liberty. 1. No one shall be subjected to arbitrary arrest or detention. 4. Anyone arrested or detained shall be informed of the reasons for his arrest and shall be promptly notified of the charge or charges against him. 5. Anyone arrested or detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release without prejudice to the continuation of the proceedings. His liberty may be conditioned by guarantees to ensure his appearance at trial. Everyone who is deprived of his liberty shall have the right to take proceedings before a competent court or tribunal, in order that the court or tribunal may decide without delay on the lawfulness of such a threat, and such proceedings may not be restricted or abolished. Appeals may be lodged by himself or by another person. 7. No one shall be detained for debt. This principle does not limit the orders of a competent judicial authority issued for non-fulfillment of maintenance obligations.*

³⁹⁴ Amnesty International, [The Use of Force in the Context of COVID-19. Violence as a State response](#), August 11, 2020, p. 3. Particularly, the IACHR observed with concern the alleged murder of Luis Espinoza in Tucumán on May 22, 2020, after he was reported missing on May 15, 2020 following a police operation; as well as the acts of violence by security force agents against the Qom community in Fontana, in Chaco on May 31, 2020, where several young people who were detained denounced assaults, as well as acts of torture and sexual violence. The Commission also followed up on the alleged forced disappearance of Facundo Astudillo Castro in the Province of Buenos Aires, who was the subject of precautionary measures granted by the IACHR since August 1, 2020 for his disappearance, and learned of the identification of his lifeless body on September 2, 2020.

³⁹⁵ Meeting with Civil Society: Violation of human rights and ESCR in the context of the COVID-19 pandemic, Ecuador. July 13, 2020. 176th Session. GK, [Constitutional Court declares current state of emergency unconstitutional](#), January 2, 2021.

sponse to the COVID-19 pandemic, among which were provisions limiting movement and that the Constitutional Chamber subsequently declared at least 11 of them unconstitutional³⁹⁶. Likewise, the IACHR learned of situations in which the Constitutional Chamber of the Supreme Court of Justice of El Salvador issued habeas corpus decisions to safeguard the rights to integrity and liberty of persons in the context of the pandemic. On March 26, 2020, this Court resolved the request of three women who were apprehended by police officers while shopping for food and medicine. In ruling on the request, the Constitutional Chamber noted that forced internment for sanitary purposes is subject to constitutional requirements and decided that all persons who continued to be deprived of their liberty in police or administrative facilities, other than a place set up for sanitary quarantine, should be taken immediately to their homes or places of residence to comply with home quarantine³⁹⁷. Despite this decision, the IACHR learned that, on March 29, 2020, the President issued a communiqué announcing that those who violated the home quarantine would be transferred to containment centers where they should remain in order to reduce the probability of

³⁹⁶ Amnesty International, When Protection Becomes Repression: Compulsory Quarantines during COVID-19 in the Americas, September 2020, p. 35.780 persons had served quarantine in State custody as a result of different situations: the violation of mandatory national confinement, the return of Salvadoran persons from abroad, the deportation of persons from the United States and Mexico, and the alleged contact with COVID-19 patients Amnesty International, When Protection Becomes Repression: Mandatory Quarantines During COVID-19 in the Americas, September 2020, p. 20. 20. In this regard, civil society organizations and the Human Rights Ombudsman's Office (PDDH) pointed out that, in this context, the Police and the Army had illegally detained and violated the personal integrity of many people IDHUCA, Informe sobre la situación de los derechos humanos en el marco de la emergencia por Covid-19, March-August 2020, 2020, p. 20: March-August 2020, 2020; HRW, El Salvador: Abusos Policiales en la Respuesta a la Covid-19, April 15, 2020; El Faro, PDDH constata "tratos crueles e inhumanos" contra los detenidos en la cuarentena, April 24, 2020. Likewise, the PDDH indicated having received hundreds of complaints about the conditions of the quarantine centers, as well as about the lack of information from the authorities in charge of these centers and about people who were detained for more than 30 days even without a COVID-19 diagnosis. PDDH, Reporte de casos atendidos durante emergencia nacional por COVID 19, April 20, 2020; PDDH, Informe Preliminar sobre COVID-19 y derechos humanos en El Salvador, June 2020.

³⁹⁷ Constitutional Chamber of the Supreme Court of Justice, Habeas corpus 148-2020, March 26, 2020.

COVID-19 infection. In view of the President's refusal to comply with the decision of the Constitutional Chamber, this Court issued two follow-up resolutions on April 8 and 15, 2020³⁹⁸.

224. In particular, with respect to Honduras, the IACHR was informed about two cases of extrajudicial executions at the hands of the security forces during the state of emergency, particularly at checkpoints or roadblocks, and 8 victims of forced disappearance, whose whereabouts are unknown and for whom no progress has been reported in the investigation³⁹⁹. Likewise, the Commission expresses deep concern with respect to the statements made by civil society organizations regarding the suspension of guarantees during the confinement in said country⁴⁰⁰, where 17 persons were reported missing; the murder of more than 500 women since the health emergency was declared and more than 80 cases of massacres, without a clear explanation of these facts⁴⁰¹.

³⁹⁸ Constitutional Chamber of the Supreme Court of Justice, [Habeas corpus 148-2020](#), April 8, 2020 and [Habeas corpus 148-2020AC](#), April 15, 2020. In the last resolution, the Chamber recalled that compliance with judicial decisions is an obligation of public authorities and a manifestation of the separation and independence of public powers. Furthermore, it warned that the guarantee of *habeas corpus* cannot be suspended even in a regime of exception and that disrespect for judicial decisions in these processes could lead to their de facto suspension. *Similarly, in decision No. 204-2020 issued on April 17, 2020, this same Court accumulated three habeas corpus petitions filed on behalf of four women who were detained in a quarantine center for being outside their place of residence. The Constitutional Chamber of the Supreme Court of Justice of El Salvador decreed precautionary measures in favor of these women, ordering the authority in charge of the quarantine center to transfer them immediately to their residence. The Chamber recalled that the authorities cannot restrict or deprive people of their freedom for the mere non-compliance of the home quarantine and that the transfer to a containment center cannot be imposed as a sanction either, since it is an arbitrary and illegal measure* Constitutional Chamber of the Supreme Court of Justice, [Habeas Corpus 204-2020](#), April 17, 2020. Finally, in the same vein, the IACHR learned that on June 5, 2020, the Constitutional Chamber of the Supreme Court of Justice of El Salvador issued decision No. 467-2020 in favor of a pregnant woman who, after attending a medical consultation, was detained in a containment center for more than 10 days, despite not showing symptoms of COVID-19 and that the tests she underwent were negative. The Chamber granted precautionary measures in favor of the applicant, and ordered her immediate release and transfer to her place of residence. According to the Chamber, keeping the applicant in this containment center could irreparably affect her rights and those of her son.

³⁹⁹ IACHR, Public Hearing, Situation of Human Rights in the Context of the Pandemic in Honduras, 181st Period of Sessions, October 27, 2021, Intervention by the Representative of the Office of the United Nations High Commissioner for Human Rights in Honduras.

⁴⁰⁰ IACHR, Public Hearing, Situation of Human Rights in the Context of the Pandemic in Honduras, 181st Period of Sessions, October 27, 2021, Testimony of Heidi Amaya, who told the Commission: "*one of the restrictions on mobility due to the pandemic was that you could leave on certain days, depending on the last number on your identity card*". She said that one day she went out to do some banking errands, and that due to the militarized control and fear of COVID-19 infection, she asked her brother Roberto to accompany her, although he was not allowed to go out because of the last number of his ID card. Heidi said that, at the first checkpoint, they explained the situation and let them continue, but, after doing their errands, they were stopped in the center of town, where the police asked them for their identity cards and asked them if they were armed, to which they answered no. She said that her brother was not. She stated that her brother was aggressively removed from the vehicle they were in, so she began to question the policemen. Seeing how they assaulted her brother, she called her family to tell them what was happening, when suddenly she felt blows on her back, they threw her cell phone at her and began to hit her in the face. She said that the police officers mistreated them and then took them to some cells. She said that she and her brother thought they were going to kill them and that they were stripped of all the protection they had against COVID-19. She said that they were detained for 3 hours, during which the aggressions and mistreatment did not stop. He affirmed that after the events, his brother Roberto has received threats and that they feel unprotected.

⁴⁰¹ IACHR, Public Hearing, Situation of Human Rights in the Context of the Pandemic in Honduras, 181st Period of Sessions, October 27, 2021,

225. For their part, civil society organizations highlighted that Paraguay had deployed 24,000 police officers and 3,000 military personnel to supervise compliance with pandemic containment measures and to guard the borders⁴⁰². Given the participation of military forces in public security tasks, the Commission noted that the National Mechanism for the Prevention of Torture called on the military forces to observe international standards of respect for human rights in the context of the health emergency⁴⁰³.
226. On the other hand, the IACHR has received information on the excessive use of force in the detention of persons on public streets in areas surrounding urban centers or marginalized neighborhoods. In the situations reported, security agents resort to the use of firearms as a first resort in the performance of their public security functions. The indiscriminate use of lethal force has resulted in deaths in unclear contexts of alleged crossfire with security agents and of people, including adolescents, who were walking peacefully in the area. The Commission emphasizes that the use of lethal force is not authorized in order to detain a person who does not represent a real or imminent threat or danger to the agents or third parties. In the case of the use of force, States should adopt concomitant and subsequent measures after the use of force to ensure the review of the performance of their public agents and the determination of disciplinary and criminal responsibilities, if any. All police actions should be recorded and there should be precise inventories of the weapons assigned to each officer. It is necessary to establish a clear chain of command with specific powers regarding the authorization of the use of force and an adequate police communication system that safeguards the totality of operational orders issued⁴⁰⁴.
227. The IACHR further notes that, to ensure compliance with the health and security protocols of COVID-19, the Saint Lucia police employed vigilantes, and has called on the population to report anyone entering the country illegally⁴⁰⁵. For its part, the Costa Rican State informed the IACHR about the measures implemented and deployed various operations to

⁴⁰² Amnesty International, *When Protection Becomes Repression*, p. 21.

⁴⁰³ MNPT, *MNP exhorta al respeto irrestricto de los derechos humanos en el marco de la emergencia sanitaria*, March 18, 2020. ABC, *Fiscalía asegura que no se puede hablar de accidente*, June 1, 2020. In this regard, the Commission learned about a police operation in the framework of quarantine supervision activities in San Lorenzo, in which a 6-year-old boy suffered three gunshot wounds on May 30, 2020. ABC, *Family denounces alleged police abuse*, June 8, 2020 as well as reports of physical violence against a man in Asuncion and against a woman and her father in Santa Rosa de Lima, San Pedro. Paraguay.com, *Police officer is recorded assaulting a woman and her father*, June 8, 2020. According to publicly available information, the Public Prosecutor's Office initiated the corresponding investigations in these cases. Paraguay.com, *Procesan a policías 'gatillo fácil'*, May 31, 2020 and ABC, *Familia denuncia supuesto abuso policial*, June 8, 2020.

⁴⁰⁴IACHR, The IACHR calls on the States of the region to implement democratic and participatory citizen security policies focused on the protection of the individual, September 25, 2020.

⁴⁰⁵St. Lucia Government, *Police Force take action against violations of COVID-19 protocol*, December 7, 2020.

ensure compliance with the administrative measures and health provisions of the Ministry of Health to prevent the spread of COVID-19⁴⁰⁶.

228. The IACHR received information from civil society organizations in Uruguay that communicated to the Commission their concern about the use of police force against people in public spaces during mobility restrictions during the health contingency, particularly in the police intervention carried out on November 1, 2020 in Liber Seregni Square, in Montevideo⁴⁰⁷. In this regard, the IACHR called on the State to adopt a human rights approach in the measures to contain the pandemic, guaranteeing the right to peaceful assembly, without arms, freedom of expression and dialogue, in observance of the Inter-American standards on the use of public force⁴⁰⁸. In response to this call, the State reported that the Police acted diligently, highlighting that none of the people were injured, while three National Police officers received injuries that led them to be treated in medical institutions⁴⁰⁹.
229. With regard to the impact of measures to contain the spread of the virus in Brazil, the IACHR was informed about the increase in police violence against people of African descent, particularly in the quilombola communities, which has resulted in more arrests and killings, at times when the Afro-descendant population was in quarantine, without receiving any health policy or medical assistance⁴¹⁰. The Commission reiterates that States must adopt measures to combat the use of racial profiling of people of African descent and other discriminatory practices, explicit or implicit, based on ethno-racial origin or socioeconomic status, which are directly or indirectly contrary to their international obligations regarding

⁴⁰⁶ Among them: Permanent road control operations in Lourdes de Abangares and Potrerillos; Vehicle restriction operations according to the current measure, in the yellow and orange zones; Control and supervision of the regulation of 50% of capacity in stores, bars, restaurants and banks; Control and supervision of the regulation of 50% of capacity in stores, bars, restaurants and banks; Operative control of public places with entry restrictions, for which patrols are carried out on beaches and parks; Operative control of immigration control, in quarantines, agro-industries, constructions and bus stops; Attention to complaints about parties in sports squares, concentration of people in places of worship and crowds on public roads. Ministry of Foreign Affairs and Worship of Costa Rica. Note no. CROEA-OG-1157-20, October 2, 2020, pp. 40-47.

⁴⁰⁷ Montevideo, [Eleven arrested and two police with minor injuries in confrontation in Plaza Seregni](#), November 2, 2020; Portal Montevideo, [Pereira communicated with Larrañaga: "In Plaza Seregni we saw facts that were unconscionable"](#), November 3, 2020. La Diaria, [Organizaciones sociales denuncian "operativos represivos" de la Policía durante el fin de semana](#), November 2, 2020, CNN, ["La pandemia se transformó en fachada para justificar el atropello a nuestras libertades", dicen organizaciones en Uruguay. Police accuse them of provocateurs](#), November 8, 2020. 180, ["We do not understand that there is any need to diminish the use of public spaces."](#) November 6, 2020.

⁴⁰⁸ IACHR, [Tweet](#), November 3, 2020.

⁴⁰⁹ Government of Uruguay, Diplomatic Note Press Release 116-20

⁴¹⁰ IACHR, Public Hearing, Police violence and racism against Afro-descendants in the region, 178th Period of Sessions, December 9, 2020.

equality and non-discrimination, in connection with their duties to respect and guarantee the rights to life and integrity⁴¹¹.

230. In this regard, the Commission reiterates that States must avoid arbitrary detentions during restrictions on the movement of persons, and all detentions must be subject to due judicial control, in accordance with human rights standards. Likewise, the IACHR has condemned the disproportionate use of police force and has called on the States of the Americas to thoroughly investigate the circumstances in which they took place and adequately punish those responsible⁴¹².

⁴¹¹ IACHR, Press Release, The IACHR calls on the States of the region to implement democratic and participatory citizen security policies focused on the protection of the individual, September 25, 2020.

⁴¹² IACHR, Press Release, The IACHR calls on the States of the region to implement democratic and participatory citizen security policies focused on the protection of the individual, September 25, 2020.

Chapter 4

DIFFERENTIATED IMPACTS ON INDIVIDUALS AND GROUPS IN SITUATIONS OF SPECIAL VULNERABILITY AND HISTORICAL DISCRIMINATION IN THE CONTEXT OF THE PANDEMIC

DIFFERENTIATED IMPACTS ON INDIVIDUALS AND GROUPS IN SITUATIONS OF SPECIAL VULNERABILITY AND HISTORICAL DISCRIMINATION IN THE CONTEXT OF THE PANDEMIC

4.1 Context

231. Persons and groups in situations of special vulnerability and historical discrimination, such as: the elderly and persons of any age with pre-existing medical conditions, persons deprived of liberty, women, indigenous peoples, persons in a situation of human mobility, children and adolescents, LGBTI persons, persons of African descent, persons with disabilities, workers, and persons living in poverty and extreme poverty, especially informal workers and persons in street situations, among others, have suffered differentiated affectations with respect to the impact of the pandemic on the enjoyment and exercise of their rights.

232. In this chapter, the IACHR presents a summary of the main impacts that various groups and populations suffered in the context of the pandemic. These differentiated impacts reflect the particular situation of discrimination, marginalization and violence suffered by these groups as a result of the worsening of the conditions of vulnerability in which they found themselves prior to the outbreak of the health emergency. To address this situation, the IACHR has indicated that when issuing emergency and containment measures in response to the COVID-19 pandemic, the States of the region must provide and apply intersectional perspectives and pay special attention to the needs and the differentiated impact of such measures on the human rights of these individuals and groups. Thus, the measures adopted must guarantee the universal, indivisible and interdependent nature of human rights, taking into account the principles of equality and non-discrimination and seeking to mitigate those actions that may accentuate human rights violations against individuals, groups and collectivities in situations of vulnerability and historical discrimination.

4.2 Main impacts on individuals and groups in situations of special vulnerability and historical discrimination

A. General considerations

233. In this approach, the disproportionate impacts suffered by individuals and groups in particular, it is necessary to highlight the situation of people with COVID-19 as well as people living in poverty and extreme poverty. With respect to persons with COVID-19, these persons are at particular risk of not having their human rights, particularly to life and health, ensured through

the adequate provision of health or medical facilities, goods and services. Complaints about deficiencies in the medical care and treatment provided to persons with COVID-19 include poor infrastructure conditions, hygiene, lack of adequately trained and competent professionals, lack of required technical supplies and materials, and lack of information regarding the medical treatment to be followed, which is aggravated by the scarcity of resources⁴¹³.

234. With respect to this group, the IACHR approved its Resolution 4/2020, on "Inter-American Guidelines on the Human Rights of Persons with COVID-19", which were prepared by SACROI-COVID-19. Through said Resolution, the IACHR established as a general guideline that States must comply with their obligations to respect and guarantee to ensure the enjoyment and exercise of the human rights of persons with COVID-19, including through the integration of an intersectional and multidisciplinary approach, which recognizes and affirms human dignity, the elimination of all forms of discrimination, as well as the indivisibility and interdependence of such rights in their norms, policies and decision-making, and within all public authorities of the States⁴¹⁴.
235. As part of the cross-cutting guidelines to be considered, the IACHR has highlighted the fundamental importance of the protection of the right to health; the protection of the right to free, prior and informed consent; the protection of the right to equality and non-discrimination; the prioritization of the lives of persons with COVID-19 in public policies, resources and cooperation; the protection of the rights of persons with COVID-19 in relation to the intervention of private actors or companies in the field of health; the protection of the right of access to information; the protection of the right to confidentiality, privacy and use of personal data; the protection of the rights of health and care workers who care for persons with COVID-19; the protection of other DESCA and the need to guarantee access to justice for persons with COVID-19.
236. The Inter-American Commission also considers poverty as a structural problem that affects all States in the region and translates into violations of the enjoyment and exercise of human rights, which may imply violations that entail the international responsibility of the State⁴¹⁵. In this regard, the spread of the virus in the region has generated serious economic and social effects on the population⁴¹⁶. The IACHR and REDESCA expressed their concern about the substantial increase in poverty and extreme poverty in the region due to the COVID-19 pandemic and its consequences, as well as the serious negative impacts

⁴¹³ IACHR, *Human Rights of Persons with Covid19: Resolution 4/2020*, July 27, 2020.

⁴¹⁴ IACHR, *Resolution 4/2020, Human rights of persons with COVID-19*, 27 July 2020.

⁴¹⁵ IACHR, *Report on Poverty and Human Rights in the Americas*, 2017.OEA/Ser.L/V/II.164 Doc. 147, para 101.

⁴¹⁶ IACHR, *Press Release N°124/20 IACHR and its REDESCA urge States to effectively protect people living in poverty and extreme poverty in the Americas in the face of the COVID-19 pandemic (oas.org) 2 June 2020*

that people in this situation must face in order to achieve minimum levels of protection of their human rights, particularly ESCR⁴¹⁷.

237. In this context, ECLAC has warned that, by the end of 2021, there will be an estimated 200 million poor people and 78 million people in extreme poverty. Although this figure is of great concern, and without detriment to this, due to the efforts made by some countries to weigh households against confinement policies, by the end of 2021 we would be talking about 230 million people in poverty and 98 million in extreme poverty – 30 million and 20 million more people, respectively⁴¹⁸. In addition, the pandemic also led to a worsening of the situation of hunger and food insecurity at the regional level. Thus, hunger in Latin America and the Caribbean would be at its highest point since 2000, since in just one year -between 2019 and 2020- the number of people living with hunger would have increased by 13.8 million, reaching 59.7 million. Likewise, four out of ten people – for a total of 267 million people – would have experienced moderate or severe food insecurity in the last year, according to a report by the Food and Agriculture Organization of the United Nations (FAO), the International Fund for Agricultural Development, the Pan American Health Organization (PAHO), the World Food Program and the United Nations Children's Fund (UNICEF)⁴¹⁹.
238. These impacts are being borne in a totally disproportionate and dramatic manner by the most vulnerable and poorest groups, who desperately seek means to survive in the absence of state policies and measures to adequately protect them⁴²⁰. The IACHR and REDESCA warn that poverty, and extreme poverty, violate the principle of non-discrimination, which is one of the pillars of any democratic system and one of the fundamental bases of the human rights protection system established by the OAS⁴²¹
239. Within this context, the existing asymmetries in access to health systems in the region stand out, with clear negative impacts on people living in poverty. Given the marked absence of investment in public health, the pandemic makes even more evident the existing weaknesses

⁴¹⁷ IACHR, Press Release N°124/20 *IACHR and its REDESCA urge States to effectively protect people living in poverty and extreme poverty in the Americas from the COVID-19 pandemic* (oas.org) 2 June 2020

⁴¹⁸ REDESCA. V Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA) of the Inter-American Commission on Human Rights (IACHR), 2021 OEA/SER.LV/II. Doc. 64 Rev. 1 para. 1665.

⁴¹⁹ REDESCA. V Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA) of the Inter-American Commission on Human Rights (IACHR), 2021 OEA/SER.LV/II. Doc. 64 Rev. 1 para. 1668.

⁴²⁰ IACHR, Press Release N°124/20 *IACHR and its REDESCA urge States to effectively protect people living in poverty and extreme poverty in the Americas from the COVID-19 pandemic* (oas.org) 2 June 2020

⁴²¹ IACHR, *Report on Poverty and Human Rights in the Americas*, 2017.OEA/Ser.LV/II.164 Doc. 147, para147.

of health systems to serve the poor population and ensure their rights to life and health, through the availability of health facilities, goods and services in an adequate manner⁴²².

240. The IACHR noted with concern the situation in El Salvador, where according to a study by the United Nations Development Programme (UNDP), 85.8% of households suffer from at least some deprivation in relation to overcrowded housing, lack of access to social security, job instability, lack of access to drinking water, health services and sanitation.⁴²³ Likewise, 90% of the people in Venezuela lack sufficient income to be able to buy food, causing food insecurity in 80% of households, reducing their life expectancy by 3.5 years; and of the 96% of the population living in poverty, 41% would suffer from chronic poverty, thus living under its threshold systematically and progressively, without being even close to getting out of it.⁴²⁴ It is worth noting the increasing level of poverty in Uruguay, since, although the poverty rate is the lowest in the region, there is information that indigence increased by 25.3% from 2019 to 2020 in Montevideo⁴²⁵.
241. The high levels of discrimination and social exclusion suffered by groups living in poverty make their citizen participation and access to justice illusory and limit their effective enjoyment of rights, particularly ESCR. On the other hand, the pandemic context has also made visible the extreme difficulties faced by people living in poverty and, in particular, by the population living on the streets or lacking access to their rights to housing, water and a healthy environment. In this context, the problems of precarious housing, limited access to drinking water and sanitation, or to clothing and basic hygiene measures, family overcrowding, segregation and spatial inequality in cities, lack of security of tenure, high rental costs, among others, accentuate an inequitable and disproportionate exposure to the risks that the pandemic generates on the human rights of these large groups⁴²⁶. This requires that States adopt emergency measures to mitigate such risks and advance in actions under a

⁴²² IACHR, Press Release N°124/20 *IACHR and its REDESCA urge States to effectively protect people living in poverty and extreme poverty in the Americas from the COVID-19 pandemic* (oas.org) 2 June 2020

⁴²³ UNDP, *COVID-19 y vulnerabilidad: una mirada desde la pobreza multidimensional en El Salvador*, UNDP LAC C19 PDS No. 12, May 2020, p. 14, REDESCA, *IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights* (REDESCA) of the Inter-American Commission on Human Rights (IACHR), 2020, OEASER.LV/II. Doc. 28, para.468

⁴²⁴ REDESCA, *IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights* (REDESCA) of the Inter-American Commission on Human Rights (IACHR), 2020, OEASER.LV/II. Doc. 28, paras.1094-5.

⁴²⁵ REDESCA, *IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights* (REDESCA) of the Inter-American Commission on Human Rights (IACHR), 2020, OEASER.LV/II. Doc. 28, para. 1070

⁴²⁶ IACHR and REDESCA, Press Release N°124/20 *IACHR and REDESCA Urge States to Effectively Protect People Living in Poverty and Extreme Poverty in the Americas in the Face of the COVID-19 Pandemic* (oas.org) June 2, 2020 In the case of Chile, the growing lack of protection for those who cannot continue to pay the rent for their homes is a cause for concern, as they have been forced to move to new territories and create informal housing made of pieces of wood, aluminum, bags and blankets REDESCA. *IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights* (REDESCA) of the Inter-American Commission on Human Rights (IACHR), 2020, OEASER.LV/II. Doc. 28, para. 268

rights-based approach to ensure lasting solutions regarding the rights to adequate housing, access to drinking water and sanitation for people living in poverty or with low incomes⁴²⁷.

242. In this regard, some States adopted transitory measures, such as the installation of shelters for homeless people and assistance measures through specific incentive funds for people with lower incomes. These measures included unconditional transfers, granted on an extensive and temporary basis to provide families with minimum resources to enable them to meet minimum needs during the critical situation. Other countries developed strategies that included measures with positive impacts on the guarantee of the right to housing, such as limitations on the prices of public services, housing rents, suspension of evictions, debt forgiveness, extensions in the maturity of debt payments and temporary suspension of the cut-off of public services and mortgage installments.
243. The Commission and its REDESCA remind the States that, in accordance with international standards, the obligations to adopt measures, the prohibition of discrimination and to guarantee the minimum content of economic, social and cultural rights are of an immediate nature⁴²⁸ and must be considered by the States when adopting the relevant measures and public policies with respect to persons living in poverty and extreme poverty⁴²⁹. Likewise, the "progressive" nature of ESCR does not minimize their roots in human dignity or in the same inter-American instruments as civil or political rights. On the contrary, the universality, indivisibility, interdependence and interrelation of all human rights increasingly appear as central elements in ensuring their effective protection, as well as the preservation of Democracy and the Rule of Law⁴³⁰.
244. In relation to people living in poverty and extreme poverty, it is necessary to intensify efforts to guarantee progressive access to minimum social protection, including the possibility of a basic income, which facilitates decent living conditions and makes it possible to cope with economic insecurities⁴³¹. Likewise, States should facilitate and create relevant channels for their effective participation in these processes, ensuring their adequate information, inclusion and empowerment as rights holders, especially of ESCR.

⁴²⁷ IACHR and REDESCA, Press Release N°124/20 *IACHR and its REDESCA urge States to effectively protect people living in poverty and extreme poverty in the Americas in the face of the COVID-19 pandemic* (oas.org) June 2, 2020.

⁴²⁸ IACHR, *Report on Poverty and Human Rights in the Americas*, 2017.OEA/Ser.LV/II.164 Doc. 14, para. 235.

⁴²⁹ IACHR, *Report on Poverty and Human Rights in the Americas*, 2017.OEA/Ser.LV/II.164 Doc. 147, para. 179.

⁴³⁰ REDESCA. *IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights* (REDESCA) of the Inter-American Commission on Human Rights (IACHR), 2020, OEASER.LV/II. Doc. 28, para.71

⁴³¹ IACHR, *Pandemic and Human Rights in the Americas: Resolution 1/2020, April 10, 2020 para.4*

B. Older persons

245. According to the Pan American Health Organization, the 76 million older persons living in the region of the Americas⁴³² are at greater risk from the COVID-19 virus because they have a weaker immune system and in some cases have more than one chronic disease⁴³³. In this regard, the IACHR warns that the pandemic has demonstrated the serious consequences of ageism on the health, well-being and enjoyment of human rights of older persons⁴³⁴. The prevalence of mortality due to the virus for the population between 65-74 years of age is eight times higher than for people between 40-49 years of age⁴³⁵.
246. In this context, the IACHR is deeply concerned about the high rates of infection, hospital admissions, and mortality among older persons. The Commission is concerned that, in the face of the health crisis and the subsequent shortage of medical supplies, older persons suffered a greater degree of discrimination and stigmatization in health services, for example, when triaging or assigning ventilators⁴³⁶. The IACHR calls on States to monitor that medical protocols, bioethical guidelines, decisions on medical resources and treatments in relation to COVID-19 are developed and implemented without discrimination on the basis of age⁴³⁷. In this regard, the IACHR indicated that it is incumbent upon States to guarantee the right of older persons suffering from COVID-19 to give prior, full, free and informed consent regarding the treatments and medications they are to receive⁴³⁸.
247. A situation of special attention for the IACHR are the elderly who reside in long-stay institutions. In this regard, the IACHR has noted with particular concern the high prevalence of infections and deaths in residences for this population⁴³⁹. In addition, the isolation to which the elderly have been subjected in several countries in the region is of greater concern given the particular need of this population to connect with their families.

⁴³² Pan American Health Organization (PAHO), Accelerated growth of the adult population aged 60 years and older: Challenge for public health.

⁴³³ IACHR, Annual Report 2020, Ch. IV A. See also Pan American Health Organization (PAHO), People over 60 have been the most affected by COVID-19 in the Americas, 30 Sep 2020.

⁴³⁴ IACHR, In commemoration of "World Elder Abuse Awareness Day", the IACHR and its REDESCA recall the importance of prioritizing the elderly in the vaccination process against COVID-19, June 15, 2021

⁴³⁵ IACHR, Annual Report 2020, Chapter IVA Parr. 8

⁴³⁶ Focus Right, For ICU there is no age: criteria for non-discriminatory access to care in times of COVID-19. May 28, 2020

⁴³⁷ IACHR, IACHR Urges States to Guarantee the Rights of the Elderly in the Face of the COVID-19 Pandemic, April 23, 2020.

⁴³⁸ IACHR, Resolution 4/2020, Human Rights of Persons with COVID-19, July 27, 2020. Guideline III.

⁴³⁹ National Post, "Emergency COVID-19 measures enacted for Canada's seniors' homes where pandemic hits hardest," March 30, 2020, Politico, Canadian military details horrific conditions in nursing homes battling COVID-19, May 26, 2020, Centers for Medicare and Medicaid Centers, COVID-19 Nursing Home Dataset, November 15, 2020.

248. The IACHR appreciates the efforts of States such as Costa Rica⁴⁴⁰ and Canada⁴⁴¹, which have implemented budget increases to strengthen the response of their national entities to protect the elderly in the context of the pandemic. The Commission urges States to guarantee the right of older persons to physical and mental health by adopting the necessary measures to prevent infection in all areas, particularly in long-term care homes, hospitals and detention centers. The Commission is also concerned about the measures adopted that create obstacles and barriers for the access of the elderly to their supplies, public services, care, information and communication during the period of isolation⁴⁴².
249. On the other hand, the IACHR urges the States to adopt special measures to mitigate the differential economic impact on the elderly, facilitating access to their pensions, as this is their fundamental means of subsistence; evaluating the possibility of advancing or facilitating their electronic access. In some States, measures have been taken to facilitate priority access with special schedules for their attention in banking institutions. These measures should be accompanied by secure payment strategies to avoid overcrowding and contagion, assisted by personnel trained in appropriate treatment of the elderly and disseminated in accessible communication campaigns⁴⁴³. The Commission also appreciates the measures that allow caregivers of the elderly to circulate on public roads, allowing the continuation and guarantee of the assistance system⁴⁴⁴.
250. The IACHR stresses the importance of isolation measures considering the balance that must exist between protection from COVID-19 and the need for older persons to connect with their families, and to facilitate means of communication by telephone or internet, in order to avoid their emotional deterioration⁴⁴⁵. Likewise, contingency measures should address the digital divide that makes it difficult for the elderly to communicate with family members or do virtual work.

⁴⁴⁰ Asamblea Legislativa de la República de Costa Rica, [Ley para que el Consejo Nacional de la Persona Adulta Mayor hacer frente a la emergencia nacional por el covid-19](#)N° 9886, August 19, 2020.

⁴⁴¹ Office of the Prime Minister of Canada, [A secure and dignified retirement for Canada's seniors](#), May 3, 2021. The government pledged C\$9 million to help the country's seniors get groceries, medicines and other critical items during the CARP pandemic, "Federal government pledges \$9 million to support seniors during pandemic," March 30, 2020. the Ministry of Seniors announced in June 2020 changes to the "New Horizonsfor Seniors Program," a grant program for organizations serving seniors, which allows organizations with approved projects in 2019-2020 to use their funds to support the needs of seniors due to COVID-19, regardless of the nature of the project initially approved Ministry of Seniors, [New Horizonsfor Seniors Program projects can now be usedfor COVID-19 support](#), April 6, 2020

⁴⁴² The Gleaner, [Seniors are locked in! - 75-Y-Os ordered to stayput, 65-Y-Os and over to work from home](#), March 24, 2020.

⁴⁴³ See: La Prensa, [INSS exposes seniors. Long lines at branches during management of payment to retirees and pensioners](#), April 20, 2020; Telam, [Banks with extended hours for retirements and pensions, in accordance with the completion of the DNI](#), April 4, 2020.

⁴⁴⁴ ECLAC, [Care in Latin America and the Caribbean in times of COVID-19. Towards Comprehensive Systems to Strengthen Response and Recovery](#), BRIEF v 1.1. August 19, 2020.

⁴⁴⁵ UN, [Policy Brief: COVID-19 and the need for action on mental health](#), Executive Summary, May 13. Page 10

251. Also of concern is the risk of increased gender-based violence, abuse and neglect against older persons during solitary confinement⁴⁴⁶. The IACHR recommends that States strengthen supervision and monitoring measures for the protection of older persons and facilitate accessibility to complaint mechanisms.
252. The IACHR recognizes the efforts of several States that have decreed grants, subsidies or vouchers, with secure payment or have set up shelters for these people⁴⁴⁷. In particular, in Bolivia, shelters have been set up for elderly people living on the streets. This initiative is intended for people over 60 years of age who are in good health, who can go to the centers to maintain isolation and prevent contagion. People are also offered the possibility of locating contacts in order to favor family reunification⁴⁴⁸.
253. Immunization of the elderly against COVID-19 has reduced the risk of infection, as well as counteracting the negative impact on the mental health of the elderly as a result of the containment measures imposed in some countries⁴⁴⁹.

C. Persons deprived of liberty

254. As COVID-19 has progressed, the Commission has followed up on the serious consequences of prison overcrowding for the life, integrity, and health of persons deprived of liberty. In this regard, the IACHR expressed its deep concern about the alarming conditions of the prison population in the region, which include precarious health and hygiene conditions and extreme levels of overcrowding, highlighting that in some countries the occupancy rate is over 300%⁴⁵⁰. This context means a greater risk for the advance of COVID-19.
255. As established in its Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas⁴⁵¹, all persons deprived of liberty under its jurisdiction have the right to receive humane treatment, with unrestricted respect for their inherent dignity, their

⁴⁴⁶ Noticias R7, Violência contra vulneráveis cresce durante a pandemia da covid-19, Dados do governo federal apontam aumento significativo de agressões a mulheres, idosos e crianças durante período de isolamento social no país, April 13, 2020.

⁴⁴⁷ Government of Costa Rica, "Gobierno Lanza Estrategia Para Atención Integral De Persona Adulta Mayor Por Covid-19", April 24, 2020.

⁴⁴⁸ PaginaSiete, La Paz and El Alto set up three centers for homeless people, March 27, 2020

⁴⁴⁹ IACHR, Resolution No. 1/2021, COVID-19 Vaccines in the Framework of Inter-American Human Rights Obligations, Adopted by the IACHR on April 6, 2021.

⁴⁵⁰ IACHR, IACHR Urges States to Guarantee the Health and Integrity of Persons Deprived of Liberty and their Families in the Face of the COVID-19 Pandemic, March 31, 2020.

⁴⁵¹ IACHR, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, Adopted during the 131st regular session, held March 3-14, 2008.

fundamental rights, especially their right to life and personal integrity, and their fundamental guarantees, such as access to the judicial guarantees essential to protect rights and freedoms. States are in a special position of guarantor vis-à-vis persons deprived of liberty, which implies that they must respect their life and personal integrity, as well as ensure minimum conditions that are compatible with their dignity. Thus, States are obliged to carry out concrete and immediate actions to guarantee the rights to life, integrity and health of persons deprived of liberty, in the context of the pandemic.

256. In light of the aforementioned principles, the IACHR was concerned about the application of measures such as the restriction of visits⁴⁵² and the entry of products for the consumption of persons deprived of liberty. In this context, in countries such as Colombia, Honduras, Mexico, and Venezuela, regular access to personal hygiene products provided by family members to detainees was severely restricted⁴⁵³. Faced with these restrictions, the IACHR has been emphatic in indicating that it is the responsibility of the States to ensure the supply of basic necessities, hygiene and food, without which it is not possible to guarantee conditions of dignified life and health for detainees. Likewise, given the restriction of in-person visits, States must guarantee contact through other measures such as videoconferencing, increased telephone communications, and electronic communication⁴⁵⁴. Likewise, the IACHR warns that the adoption of these restrictive measures cannot be justified under any circumstances by confinement, confinement or absolute incommunicado detention. To this extent, the States of the region should accompany such restrictions with other policies or programs compatible with the right to personal integrity and health of persons deprived of liberty, such as the extension of outdoor hours or the optimization of spaces and times for recreation.

257. In relation to containment and prevention measures aimed at detention centers, the IACHR reminds the States of the need to clearly define and inform the reasons for imposing such restrictive measures, the estimated initial duration and the time period for their review. In this regard, the IACHR was informed about the lack of information on the scope of the State's response to the health crisis, which prevents it from knowing the reality of what is happening inside the prisons, as well as the impact of the measures adopted, due to the aforementioned closures and restrictions on visits. Human rights organizations indicated to the IACHR that they were prevented from monitoring the implementation of the measures adopted in the detention centers, so it is necessary that the State guarantees access to information and that persons deprived of liberty can maintain communication with their families, lawyers, civil society organizations as part of the

⁴⁵² National Committee for the Prevention of Torture. Situation of persons deprived of liberty in Argentina during 2020. Global Observatory on Immigration Detention, [Belize Immigration Detention Data Profile](#), August 15, 2020.

⁴⁵³ IACHR, Press Release 21/20 - [Faced with the COVID-19 pandemic, the IACHR expresses concern about the special situation of risk faced by persons deprived of liberty in the region](#), September 9, 2020.

⁴⁵⁴ IACHR, Annual Report 2020, Chap IVA. Parr. 18

guarantees of access to justice⁴⁵⁵. The implementation of protection measures must be carried out diligently and adequately to prevent persons in isolation from suffering ill-treatment or any type of stigmatization, marginalization or violent treatment.

258. The Commission is also concerned about the exponential increase in violence in detention centers. According to information received by the IACHR, several riots have reportedly occurred in protest against overcrowding and the lack of hygiene and protection elements to prevent contagion⁴⁵⁶. Due to the above, the IACHR reiterates that the State must be able to maintain order and security inside prisons and detention centers. In this regard, from El Salvador, information was recorded that shows inhuman and degrading treatment to which persons deprived of liberty were subjected in the context of transfer operations where people were kept in their underwear and without shoes, as well as piled up one next to the other. In addition, these persons were allegedly subjected to invasive searches by prison personnel⁴⁵⁷.
259. In the context of a pandemic, States must ensure the adequate provision of basic preventive elements in detention centers. Likewise, the IACHR has learned of *habeas corpus* decisions of the Constitutional Chamber of the Supreme Court of Justice of El Salvador to safeguard the rights of persons deprived of liberty in a special situation of risk⁴⁵⁸. Likewise,

⁴⁵⁵ IACHR, Public Hearing, Situation of Persons Deprived of Liberty in Honduras in the Context of the COVID-19 Pandemic, 177th Period of Sessions, October 2, 2020. IACHR, Public Hearing, Situation of persons deprived of liberty in El Salvador in the context of the pandemic, with a gender perspective, 178th Period of Sessions, December 8, 2020.

⁴⁵⁶ IACHR, The IACHR urges States to guarantee the health and integrity of persons deprived of liberty and their families in the face of the COVID-19 pandemic, March 31, 2020. The IACHR highlights the riots in Colombia, in particular the events that occurred at La Modelo prison in Bogota where 23 people died and more than 80 were injured on March 21, 2020. Likewise, the Commission was informed that inmates of the El Milagro prison in Trujillo, Peru, rioted demanding better conditions due to the health emergency caused by COVID-19 and the lack of food, leaving 31 inmates injured. Similarly, in Argentina, two riots took place between March 23 and 25 in the prisons of Coronda and Las Flores, province of Santa Fe, in protest against the health measures adopted in response to the pandemic. In these episodes, five people died and another ten were injured. The IACHR also recorded the massive escape of 84 persons deprived of liberty as in the case of Venezuela on March 18, 2020. In addition, the IACHR documented that in at least 3 immigration detention centers in New Jersey, United States, hunger strikes were promoted by inmates to protest in response to the measures promoted by the State in the face of the spread of COVID-19.

⁴⁵⁷ IACHR, Press Release 93/20, IACHR calls on El Salvador to guarantee the rights of persons deprived of liberty, April 29, 2020.

⁴⁵⁸ Constitutional Chamber of the Supreme Court of Justice. By decision No. 488-2020 of July 6, 2020, this authority heard the request for review of the provisional detention of a person deprived of liberty, considering his aggravated health situation and the risk he faced in case of COVID-19 infection. Although the Chamber did not grant the request, considering that it corresponds to the judges in criminal matters, it decreed precautionary measures to guarantee her medical attention and adequate treatment, in the context of the COVID-19 pandemic. Likewise, the Chamber pointed out that, with respect to the groups of persons in a situation of greater vulnerability in the face of the health emergency, it is necessary to guarantee the right to health of those in the care of the State. In a similar decision, this Chamber issued decision No. 491-2020 by which it decreed precautionary measures to safeguard the rights of a defendant, in order to attend to his health condition and provide him with adequate medical treatment. In this regard, the Chamber reiterated that it is necessary to adopt measures that include the reevaluation of the cases of preventive detention, especially in cases related to populations at risk of COVID-19 infection. To this end, this authority pointed out that this reevaluation should be carried out "through a thorough analysis of the requirements, in accordance with the principle of proportionality and the applicable Inter-American standards".

the IACHR learned that on July 8, 2020, the Constitutional Chamber of the Supreme Court of Justice of El Salvador issued judgment 521-2020 by which it decided a collective *habeas corpus* in favor of persons deprived of liberty in seven detention centers, whose rights were disproportionately restricted as a reaction to the increase in homicides in the country registered between April 24 and 26, 2020⁴⁵⁹.

260. The Commission recognizes the efforts made by some States in the region to contain the pandemic in prisons. These initiatives were aimed at persons who committed non-violent crimes, and who belong to groups at special risk, such as the elderly, persons suffering from chronic illnesses, pregnant women, and mothers of minors. This situation requires States to make a great coordinated effort to decongest penitentiary units and police stations through release criteria or the adoption of alternative measures to the deprivation of liberty in order to guarantee the validity and enjoyment of human rights for all persons.⁴⁶⁰
261. On the other hand, the IACHR was informed about the increase in the application of pre-trial detention related to the extended use of remote hearings⁴⁶¹. In this regard, the Commission noted the special diligence that must be given in these cases due to the disproportionate impact that the use of remote hearings may have on the situation of persons deprived of liberty due to the special risk they face⁴⁶². However, the Commission also welcomes a series of initiatives adopted by States in the region whose approved regulations seek to optimize the application of automatic conversion of sentences for persons convicted of the crime of failure to provide family assistance, in order to reduce prison overcrowd-

⁴⁵⁹ Constitutional Chamber of the Supreme Court of Justice, [Habeas Corpus 491-2020](#), July 20, 2020. Among the measures decreed, the Chamber ordered precautionary measures such as the suspension of the penitentiary regime imposed as of April 24, 2020. In addition, it indicated that the General Director of Penitentiary Centers (DGCO) must ensure the execution of the protocol for the prevention and protection of people from COVID-19 in the centers, considering aspects such as: the designation of quarantine and isolation spaces; the supply of hygiene supplies; the performance of COVID-19 tests; the treatment and adequate separation of infected and suspected infected population, and the attention of people with higher health risks.

⁴⁶⁰IACHR, Resolution No. 1/200, [Pandemic and Human Rights in the Americas](#), April 10, 2020.

⁴⁶¹IACHR, Public Hearing, Use of virtual hearings in criminal proceedings in the region in the context of the COVID-19 pandemic, 180th Period of Sessions, June 30, 2021. With respect to Mexico, the petitioners stated that pretrial detention for men has increased by more than 5% and for women by 11.7%, where four out of every ten men in prison have been sentenced and, in the case of women, one out of every two has been sentenced.

⁴⁶² IACHR, Public Hearing, Use of virtual hearings in criminal proceedings in the region in the context of the COVID-19 pandemic, 180th Period of Sessions, June 30, 2021.

ing and prevent the spread of COVID-19 and which establishes its application to all requests for automatic conversion that have been submitted⁴⁶³.

262. The IACHR was also informed about the situation of women deprived of liberty. In this regard, civil society organizations indicated that the population of incarcerated women increased by 57% in 2020, while the overall prison population increased by about 20%. In addition, women in detention usually do not have access to drinking water and/or electricity, or to an education system or good food⁴⁶⁴. In Argentina, a woman reportedly lost a pregnancy in a solitary confinement center in the province of Formosa due to isolation conditions as a consequence of the measures adopted in the wake of the pandemic⁴⁶⁵.
263. Likewise, given the seriousness of the situation of elderly persons deprived of their liberty, the Commission reiterates to the States that they should evaluate the possibility of granting alternative measures to those who are not dangerous or who are about to serve their sen-

⁴⁶³ IACHR, The IACHR expresses its concern about the situation of persons deprived of liberty in Brazil in the face of the COVID-19 pandemic, August 8, 2020. In Brazil, the National Council of Justice (CNJ) recommended to courts and judges to reduce the population of persons deprived of liberty, adopting alternative measures to imprisonment as well as the actions carried out by the National Penitentiary Department (DEPEN), to prevent the spread of the virus in prison systems, with the development of control and prevention protocols. Recommendation 062/2020 of the National Council of Justice of Brazil, March 17, 2020. IACHR, Press Release 195/20 - The IACHR expresses its concern about the situation of persons deprived of liberty in Brazil, in the face of the COVID-19 pandemic, August 8, 2020. The IACHR also learned that the Chilean Public Defender's Office has filed appeals requesting that urgent measures be ordered to reduce the prison population, particularly with regard to persons at particular risk in light of the pandemic. Additionally, the Commission welcomes the law that grants general commutative pardon to persons deprived of liberty due to COVID-19 disease. Law No. 21.228 that "Grants general commutative pardon because of the Covid-19 disease in Chile", April 16, 2020. The bill proposes to commute the sentence to persons older than 55 if they are women, and older than 60 if they are men, as well as to pregnant women or women who remain with their children in prisons. Additionally, the IACHR notes that the National Committee for the Prevention of Torture of Argentina has been monitoring the situation of persons deprived of liberty in the country. Likewise, the Local Mechanism for the Prevention of Torture of the Province of Buenos Aires requested measures such as house arrest for vulnerable groups and the use of commutation of sentences by the Executive Branch, among others. National Committee for the Prevention of Torture, Annual Report to the Bicameral Commission of the Ombudsman's Office, 2020, pp. 10-11. In turn, the Commission values Legislative Decree N°546-2020 of Colombia, and the policies adopted by the National Penitentiary and Prison Institute (INPEC) through guidelines and care protocols to ensure the safety of persons deprived of liberty. Government of Colombia. Contributions of Colombia for the preparation of the Annual Report of the IACHR -Chapter IV, Section A "Annual Overview of the Human Rights Situation by Country" Corresponding to 2020. October 14, 2020. The IACHR also highlights Decree No. 36-2020 of Honduras that opens the possibility of alternative measures to pretrial detention being imposed with respect to offenses considered non-imprisonable by Article 184 of the Code of Criminal Procedure; Peru's Legislative Decrees No. 1459 and No. 1513 and Supreme Decree OO6-2020-JUS that establishes criteria for granting pardons with respect to adolescents in contact with criminal law. For its part, the IACHR notes that Mexico's Amnesty Law and Peru's Supreme Decree No. 004-2020-JUS of April 22 seek to grant pardons for the release of detained persons. IACHR, Press Release 212/20 - Faced with the COVID-19 pandemic, the IACHR expresses concern about the special situation of risk faced by persons deprived of liberty in the region, September 9, 2020.

⁴⁶⁴ IACHR, Public Hearing, Situation of the Human Rights of Women Deprived of Liberty in the Context of the COVID-19 Pandemic in the Region, 179th Period of Sessions, March 18, 2021.

⁴⁶⁵ IACHR, Annual Report 2021, Chap IVA. Para. 32 Cited: La Nación, Formosa: una mujer perdió un embarazo en un centro de aislamiento por estrés, January 23, 2021; TN. Una mujer perdió un embarazo en un centro de aislamiento en Formosa y denuncia que fue consecuencia de las condiciones de encierro, 25 January 2021.

tences⁴⁶⁶. This is without prejudice to the fact that requests from persons at risk, convicted of serious human rights violations, should be evaluated according to the corresponding criteria, with a more demanding analysis and requirements, in accordance with the principle of proportionality and the applicable inter-American standards⁴⁶⁷. The Commission highlights the measures adopted by the Argentine State through Resolution 9/20 of the Federal Chamber of Criminal Cassation⁴⁶⁸ which provides measures to alleviate the situation of prison overcrowding and reduce risk factors by facilitating health care in cases of COVID 19 and recommends alternative measures to imprisonment for the elderly – among other groups in vulnerable situations – such as house arrest. Likewise, the Commission took cognizance of the action of the Public Defender's Office of São Paulo, Brazil to request habeas corpus for 3,089 elderly persons deprived of their liberty in the context of the pandemic⁴⁶⁹.

264. The Commission has taken cognizance of the social isolation measures that several countries have adopted, which include restricting the freedom of movement of persons on public roads and whose non-compliance in many cases involves sanctions such as detention⁴⁷⁰. In this regard, the IACHR instructs States to adopt alternative measures to the deprivation of liberty to enforce the validity of measures restricting movement, providing administrative sanctions, such as fines and/or coercive driving to private homes, with a view to avoiding overcrowding in detention units. Likewise, States should prevent the occurrence of arbitrary detentions, in particular of persons who circulate on public roads to obtain food, medicine and other basic necessities, in addition to respecting the principle of legality and judicial guarantees.

D. Women

265. The Inter-American Commission notes that women in the Americas have been subjected to a structural situation of violence, exclusion and even marginalization, commonly characterized by limited access to their human rights, particularly ESCR⁴⁷¹. In the context of the pandemic, structural inequality has deepened, among other reasons, due to the economic

⁴⁶⁶ [Law No. 21.228 that "Grants general commutative pardon due to the Covid-19 disease in Chile"](#), April 16, 2020. [SUPREME DECREE N°004-2020-JUS](#), "Supreme Decree that establishes special cases for the evaluation and proposal of recommendation of Presidential Graces, and determines its procedure, in the framework of the health emergency due to COVID-19", April 23, 2020.

⁴⁶⁷ IACHR, Annual Report 2020, Chap IV A. Para. 45

⁴⁶⁸ [Federal Chamber of Criminal Cassation, Agreed 9/20 paragraph 2f](#), April 13, 2021.

⁴⁶⁹ [Globo, a Defensoria Pública pede ao STF a liberdade de 3 mil presos idosos no estado de SP devido ao coronavírus](#), July 27, 2020.

⁴⁷⁰ United States Department of State, US Response: Situation of persons deprived of liberty in the United States in the context of the COVID-19 pandemic (Article 18 - IACHR Statue), October 23, 2020.

⁴⁷¹ IACHR, [In anticipation of the International Day of Afro-Latin American, Afro-Caribbean and Diaspora Women, the IACHR calls on States to adopt special measures to eradicate the multiple discrimination faced by Afro-descendant women in the context of the COVID-19 pandemic](#), July 24, 2020.

recession, the increase in unemployment and the accelerated increase in informal employment. This has had a particular impact on domestic service workers, women in street situations, sex workers, women heads of household, migrants, women living in poverty and extreme poverty, trans women, and rural workers, who have been affected by a drastic decrease in their income and consequently in their economic autonomy; presenting, in addition, difficulties in accessing health services⁴⁷². The IACHR has also recorded that the tasks of caring for people who are ill or in need of special attention fall mainly on women, at the expense of their personal or work development, with little institutionalization and little social or economic recognition for such care tasks, which in times of pandemic become even more necessary and demanding.

266. On the other hand, the Commission noted with concern high levels of violence against women in the region, which have been aggravated by the confinement policies implemented in the context of the pandemic. According to public information sources and monitoring carried out by specialized international organizations⁴⁷³, at least 1,400 women have been reportedly murdered in the region in the context of confinement due to the COVID-19 pandemic⁴⁷⁴. In this regard, the Commission takes note of the measures adopted by some States to strengthen the attention and mechanisms for reporting women victims of domestic violence⁴⁷⁵.
267. The American Declaration of the Rights and Duties of Man, the American Convention on Human Rights and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women⁴⁷⁶ (hereinafter "Convention of Belem do Para") affirm the right of women to have access to a simple and effective judicial remedy with due guarantees when reporting acts of violence, as well as the obligation of States to act with due diligence to prevent, investigate, punish and redress these acts. The IACHR has expressed its deep alarm at the figures that have shown an increase in reports of domestic violence following the establishment of the measures of confinement and social distancing

⁴⁷² UN Women, [Executive Summary, Report on Impacts of COVID-19 on Women and Men. An analysis of the impact of COVID-19 in 12 Caribbean countries](#). February/March 2021 Author: Tara Padmore. Series: Response to COVID-19. Pag 12

⁴⁷³ UN Women, [The Shadow Pandemic: Violence against women in confinement](#).

⁴⁷⁴ France 24, [Women's rights in Latin America, between two pandemics](#), December 29, 2020

⁴⁷⁵ Agencia Presentes, [Women and LGBT+ people who come out to denounce violence are exempted from quarantine](#), April 5, 2020. In the State of Guatemala, the IACHR found that there was an increase in crimes related to violence against women, for example, the National Civil Police assists to acts of domestic violence registered an upward trend of 26.3% UNDP Info Segura, [Analysis on the Situation of Violence and Citizen Security 1st Semester 2020](#), October 1, 2020, pp. 11 et seq. Regarding Barbados, it takes note of 2020 statistics that report a 38% increase in domestic violence cases in the context of the pandemic Barbados Government Information Service. [Domestic Violence Increased with COVID-19](#), March 2, 2021.

⁴⁷⁶ OAS, A-61, *Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women "Convention of Belem do Para"* adopted in: Belem do Para, Brazil, 06/09/94

adopted to contain the spread of COVID-19⁴⁷⁷. In particular, the Commission has become aware of the significant increase in these figures in countries such as Brazil⁴⁷⁸ and the United States, which are repeated in other countries in the region⁴⁷⁹. Likewise, in Chile there was a 70% increase in the number of telephone reports of women at risk of domestic violence at the national level⁴⁸⁰.

268. The IACHR calls on States to incorporate a gender perspective in responses to the crisis and to combat sexual and domestic violence, as well as discrimination against women in the context of the pandemic⁴⁸¹. In this regard, the IACHR issued a series of recommendations in its thematic reports⁴⁸², and in Resolutions 1 and 4 of 2020 reminding States that they have a duty to ensure access to justice and enhanced due diligence. In this regard, they must prevent, protect, investigate, punish and redress all forms of gender-based violence and discrimination with the support of competent and impartial authorities trained in the subject, including gender identity and specialized care for victims⁴⁸³.
269. On the other hand, the Commission notes with extreme concern that, during the context of domestic confinement and the decrease in the movement of people in the streets, acts of sexual violence and rape against women, girls, and adolescents have increased⁴⁸⁴. The

⁴⁷⁷ Stabroek News, Covid-19 and the current domestic violence crisis: A view from Barbados, May 18, 2020. La Razon, There were 346 reports of family or domestic violence in 16 days of quarantine, April 7, 2020. NWAC, Survey finds nearly one in five indigenous women have been victims of violence since pandemic hit our shores: The impact of COVID-19 on Indigenous Peoples of Canada. June 2020. NWAC, Background Information for News Conference of June 3 2020. June 3 2020. El Tiempo, Cada día hay 249 denuncias por violencia intrafamiliar en Colombia, September 12, 2020.

⁴⁷⁸ Fórum Brasileiro de Segurança Pública, Anuário Brasileiro de Segurança Pública, Edição 2020. In Brazil, the Ministry of Women, Family and Human Rights recorded a 17% increase in complaints of gender-based violence following measures to contain the pandemic.

⁴⁷⁹ Global Voices, Stay-at-home orders accompanied by rise in domestic violence in Trinidad & Tobago, April 10, 2020. UN, Enlisting all of society in the elimination of gender-based violence in Trinidad and Tobago, May 2020. Submission to the UN special rapporteur on violence against women, its causes and consequences regarding COVID-19 and the increase of domestic violence against women, July 3, 2020.

⁴⁸⁰ Telesurtv.net, Gender violence in Chile increases 70% during quarantine, April 6, 2020. Only in Providencia, legal, psychological and social assistance during the quarantine would have increased by 500% through calls during the quarantine. Cooperativa.cl, Providencia: Complaints for domestic violence increased 500% during quarantine, April 14, 2020.

⁴⁸¹ IACHR, Resolution No. 1/200, Pandemic and Human Rights in the Americas, April 10, 2020.

⁴⁸² IACHR, Violence and Discrimination against Women, Girls and Adolescents: Good practices and challenges in Latin America and the Caribbean, OEA/Ser.L/V/II. Doc. 233 14 November 2019

⁴⁸³ IACHR, International Women's Day: IACHR calls on States to guarantee the principle of enhanced due diligence and the right of access to justice during the pandemic, March 8, 2021

⁴⁸⁴ Plan International, Know the statistics of violence against women during the pandemic in 2021, January 17, 2021. In Peru, for example, authorities have reported that, during the first 17 days of confinement, 34 women, including 27 girls, were victims of sexual abuse. According to available information, these numbers represent an increase of this type of violence in the country.

IACHR calls on the States of the region to strengthen services to respond to gender-based violence, particularly domestic violence. This, through greater availability and accessibility of comprehensive health care for women survivors, including psychological care, emergency contraception and voluntary interruption of pregnancy, when applicable in accordance with the relevant legal systems, as well as the development of alternative reporting mechanisms, the expansion of shelters for victims of domestic violence, and the strengthening of the capacity of security agents and justice actors to provide timely responses in the context of the pandemic. The IACHR reminds States to comply with their duty of due diligence, investigating the facts promptly and thoroughly, prosecuting and punishing those responsible, and ensuring adequate reparations to victims and their families. Likewise, States should promote communication campaigns focused on the dissemination of information on the mechanisms available for complaints and support to victims.

270. In this regard, the IACHR highlights the measure taken by the Argentine State, which exempts persons who are in a situation of gender-based violence from mandatory isolation when they need to seek assistance or file a complaint, as well as the provision of telephone lines and special shelters for care and follow-up during the situation of social isolation or quarantine. In other States, an accessible form for reporting domestic and gender-based violence has been made available through the web. Likewise, some guardianship councils were considered essential services so that they can continue their work during the period of prevention actions.
271. In the context of the pandemic, the Commission highlights that the loss of income and reduction of economic activity is an additional factor to the increased levels of inequality and poverty that affected women, particularly female heads of household. The IACHR highlights the need for a specific focus on the 126 million women workers in the informal economy⁴⁸⁵, as well as domestic workers, rural workers and sex workers, and other groups disproportionately affected by the pandemic, such as migrant women, women in street situations and transgender women. In this regard, States should adopt measures aimed at overcoming the disproportionate impact of the economic crisis on women, promoting their socioeconomic reintegration through relief or economic support measures, by expanding their social safety nets and aimed at promoting sustainable development. The Commission is concerned that women and girls spend three times more time than men in domestic and care activities, which have been increased by social isolation and the need to provide childcare during the duration of classes online⁴⁸⁶.

⁴⁸⁵ ILO. Thematic Labor Overview, N°5. Women in the World of Work. 2019

⁴⁸⁶ United Nations, UN Women, [The Impact of COVID-19 in Latin America and the Caribbean](#), July 2020. UN Women, [Executive Summary, Report on Impacts of COVID-19 on Women and Men. An analysis of the impact of COVID-19 in 12 Caribbean countries](#). February/March 2021 Author: Tara Padmore. Series: Response to COVID-19

272. In addition, the Commission calls on States to provide adequate protection for women health and social work professionals who were on the front lines of the response to the COVID-19 pandemic during the critical months following the outbreak. According to the ILO, globally, women represent 70% of those employed in the health sector, and women disproportionately occupied frontline roles in the world's struggle to treat infected persons and to provide care in the context of social isolation measures⁴⁸⁷. In this context, women have, in addition to the risks of infection and the impact on their mental health of their professional work, unpaid family care work, including caring for children, the elderly and people with disabilities.
273. The IACHR also expressed concern about the impact on women's sexual and reproductive health rights due to the various measures to contain and prevent the spread of COVID-19⁴⁸⁸. In this regard, among these measures, the Commission highlights the budget cuts in health policies with a gender perspective; the absence of personnel, human, material and technological resources due to the relocation to medical areas directly related to the pandemic. The Commission also notes with concern the temporary suspension of prenatal care programs and educational programs for the prevention of sexually transmitted infections, including HIV.
274. The Commission reiterates the essential nature and indispensable character of these services for the effectiveness of the rights of women and girls to life, equality and non-discrimination, personal integrity, health, dignity, access to information, among others. This includes the distribution of contraceptive methods, prenatal and postnatal care, services to prevent sexually transmitted infections and those for the termination of pregnancy within the possibilities established by its legal system. In this sense, the Commission reinforces the call it made in Resolution 01/20, regarding the obligation of States to adopt comprehensive and immediate measures to respect and guarantee the sexual and reproductive health rights of women, reinforcing the availability and continuity in the supply of services of this nature in the context of emergency⁴⁸⁹. In particular, the IACHR urges States to guarantee access to quality maternal health care, for example, Jamaica provided a food basket for adolescent mothers. States should also facilitate access to accurate and uncensored information, as well as to the comprehensive gender-sensitive education necessary for women and girls to make free and autonomous decisions.
275. The Commission reiterates that the adoption of measures must have as an indispensable condition the participation of women and gender experts in decision-making positions in the committees and working groups responding to the crisis caused by COVID-19, so as to

⁴⁸⁷International Labour Organization (ILO), *ILO Observatory: COVID-19 and the world of work. Second edition*, April 7, 2020

⁴⁸⁸IACHR, *IACHR Calls on States to Incorporate Gender Perspective in Response to COVID-19 Pandemic and to Combat Sexual and Domestic Violence in this Context*, April 11, 2020.

⁴⁸⁹IACHR, Resolution No. 1/200, *Pandemic and Human Rights in the Americas*, April 10, 2020.

ensure the incorporation of a gender perspective in the design, implementation, execution and monitoring of the measures and policies adopted in response to the pandemic. In particular, States should strengthen social protection systems and food security policies with a gender perspective, including basic income policies and the provision of health care focused on the specific needs of these women in the framework of the economic recovery processes following the pandemic⁴⁹⁰.

E. Indigenous peoples and communities

276. The historical discrimination against indigenous peoples has translated into a structural and systematic violation of their human rights, especially their economic, social, cultural and environmental rights. In relation to the impact of the COVID-19 pandemic on indigenous peoples, the IACHR has identified shortcomings in medical care with a multicultural approach, delays in the State's response in terms of care for these populations, and the lack of consultation and consent in relation to prevention and mitigation policies⁴⁹¹. In addition, the Commission has warned the States on various occasions about the growing risks faced by indigenous peoples in the region, especially with respect to territorial and environmental conflicts associated with extractive activities, which, in turn, have a direct impact on the right to food, water and health⁴⁹².

277. The proportion of indigenous and non-indigenous people living in poverty and extreme poverty in the region is a reflection of this. In Latin America and the Caribbean, indigenous peoples make up more than 8.5% of the population and have the highest proportion of people living in extreme poverty. Data from nine countries indicate that indigenous peoples comprise about 30% of the people living in extreme poverty, which means that indigenous peoples in Latin America are three times more likely to suffer from this scourge than other population groups⁴⁹³.

278. Regarding the right to health of indigenous peoples, the IACHR is concerned about the insufficient number of beds available in hospitals and health care centers located in regions with high percentages of indigenous population in several countries in the region, such as Bolivia,

⁴⁹⁰IACHR, *In anticipation of the International Day of Afro-Latin American, Afro-Caribbean and Diaspora Women, the IACHR calls on States to adopt special measures to eradicate the multiple discrimination faced by Afro-descendant women in the context of the COVID-19 pandemic*, July 24, 2020.

⁴⁹¹ IACHR, Annual Report 2020, Chap IV A. Para. 13.

⁴⁹² IACHR, The IACHR warns about the special vulnerability of indigenous peoples in the face of the COVID-19 pandemic and calls on the States to take specific measures in accordance with their culture and respect for their territories, May 6, 2020.

⁴⁹³ ILO, *Implementation of ILO Indigenous and Tribal Peoples Convention No. 169: Towards an inclusive, sustainable and just future*, Geneva, 2019.

Ecuador, Honduras, Mexico⁴⁹⁴, Nicaragua, and Peru. Likewise, the IACHR notes with concern the special situation of risk faced by Native Hawaiian, Pacific Islander, American Indian and Alaskan Native people, since they would be affected with an infection rate approximately 3.5 times higher than that of the non-Hispanic white population, and their mortality rate from COVID-19 would be 1.8 times higher than that of the non-Hispanic white population⁴⁹⁵.

279. For its part, according to the information provided, Colombia provides care to these populations through the general social security health system and has a special system in which the indigenous health promotion companies, which attend to the needs of their communities, receive a specific resource for the application of traditional medicine⁴⁹⁶. On the other hand, the Commission values a guide for the care of indigenous peoples and Afro-Mexican communities in the face of the health emergency generated by the COVID-19 virus⁴⁹⁷.
280. In particular, the IACHR is concerned that the majority of services are not culturally appropriate, which is expressed in care that ignores the practices of traditional medicine and the linguistic and cultural diversity of indigenous peoples. In this regard, the Commission

⁴⁹⁴ The State of Mexico informed the IACHR about the measures it has taken for the prevention of contagion, as well as for the care of possible cases of indigenous persons with COVID-19. In this regard, it is reported that there are more than 24 thousand people trained to provide exclusive care to patients with COVID-19 of the IMSS-BIENESTAR program, which operates in areas of high vulnerability, with 80 Rural Hospitals, 3 thousand 622 Rural Medical Units, 45 Rural Obstetric Care Centers (CARO), 140 Mobile Medical Units and 184 Health Brigades. According to the State, this is in addition to the dissemination and prevention strategy, which has generated 2,172 messages transmitted through 110 local radio stations in indigenous communities, in their own languages.

⁴⁹⁵ CDC, COVID-19 Mortality Among American Indian and Alaska Native Persons - 14 States, January-June 2020, Morbidity and Mortality Weekly Report, December 11, 2020.

⁴⁹⁶ Organización Nacional Indígena de Colombia (ONIC) Plan of urgent actions in indigenous territories for the mitigation of the COVID-19 pandemic and for self-care within the framework of the SISPI in coordination with the SGSSS, May 11, 2020. In the context of the emergency, the State also provided information on the initiative "Urgent action plan in indigenous territories for the mitigation of the COVID-19 pandemic and for self-care within the framework of the SISPI in coordination with the SGSSS", which aims at education, training, generation and use of health knowledge, as well as self-care and intercultural health care.

⁴⁹⁷ This guide includes 8 guidelines that contemplate the linguistic adequacy and cultural relevance of the measures, indications on case management and population transfers, and a strategy for economic and social recovery. However, with respect to Mexico, the Office of the Special Rapporteur has indicated the lack of information to indigenous communities, one of the most affected by the pandemic. According to the information received, some information related to the pandemic would have been translated into some indigenous languages, "but its dissemination was limited mainly to content in text format, through the Internet, on official websites and social networks, demonstrating, once again, the lack of cultural relevance and the late dissemination of the same". See: Article 19. Special Report C.O.V.I.D: Freedom of expression and information during COVID-19 pandemic in Mexico and CA. July 9, 2020, p. 26.

learned about the lack of prevention and medical care protocols aimed at indigenous populations in several countries in the region⁴⁹⁸.

281. On the other hand, the Commission takes note of the recommendations for the prevention, containment and mitigation of COVID-19 in ethnic groups in Colombia⁴⁹⁹, including indigenous peoples, which were disseminated in coordination with the leaders and authorities of the communities in their territories. The essential elements of the document have been translated into 10 native languages.
282. Monetary poverty affects 43% of indigenous households and extreme poverty is 2.7 times higher than in other populations. The difficulty of access to education and health services, language and cultural barriers, and the epidemiological sensitivity of these communities expose them to conditions of greater vulnerability to contagion and the effects of COVID-19⁵⁰⁰. The IACHR notes that in Chile, the indigenous people, especially the Mapuche have been the most affected populations, who, despite their historical marginalization, can be added an even greater educational backwardness due to the lack of technologies to continue with an *ad hoc* education⁵⁰¹.

⁴⁹⁸ For example, the IACHR received information indicating that Ecuador has adopted a medical care protocol for indigenous peoples in voluntary isolation. On this topic, the Commission takes note of the information presented by the State of Ecuador on the "Protocol for prevention and contingency of Coronavirus (COVID-19) in the area of influence of the Tagaeri-Taromenane Intangible Zone," issued by the National Emergency Operations Committee (COE), which provides the procedure for institutions with competence in the territory, such as the Decentralized Autonomous Governments, the Ministry of National Defense, the Ministry of Environment and Water, the Secretariat of Human Rights and the Ministry of Public Health, to act both in prevention measures and in the treatment of a suspected case or a positive diagnosis for COVID-19. According to the information provided, the Protocol also includes community action guidelines adapted to the traditions and customs of each community, being the community leaders the ones called to disseminate them. However, the IACHR draws attention to information received indicating that this protocol was drafted without the participation of indigenous peoples' representatives. See: Servicio Nacional de Gestión de Riesgos, Protocolo para prevención y contingencia de Coronavirus (COVID-19) en el área de influencia de la Zona Intangible Tagaeri-Taromenane, MTT4N-002, July 2020. The document establishes an inter-institutional articulation procedure in the territory for the prevention and care of cases of people with suspected diagnosis of COVID-19 in communities, peoples and nationalities (indigenous, Afro-Ecuadorian and Montubios, as appropriate), through health care and risk management with intercultural relevance. It also provides for coordinated action through an Inter-Institutional Committee, in which leaders of organizations and indigenous peoples participate, as well as state entities such as the Ministry of Public Health, the Secretariat of Human Rights, the General Secretariat of Communication, among others. Public Hearing, Situation of the human rights of cross-border indigenous peoples in the context of the COVID-19 pandemic in Ecuador, Colombia and Peru, 179th Session, March 24, 2021.

⁴⁹⁹ External Circular No. 000015, Recommendations for the prevention, containment and mitigation of COVID-19 in ethnic groups. March 15, 2020. The guidelines include remaining in isolation in their territories to avoid exposure and risk of contagion, as well as limiting the entry of outsiders and not carrying out community activities or mass attendance.

⁵⁰⁰ IACHR, Room for Coordination and Timely and Integrated Response to the COVID-19 Pandemic Crisis (SACROI COVID-19), Practical Guide No. 2 GuiaPractica02 Educacion Es.pdf (oas.org) p 5

⁵⁰¹ REDESCA. *IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights* (REDESCA) of the Inter-American Commission on Human Rights (IACHR), 2020, OEASER.L/VII. Doc. 28 para. 1033

283. States, in consultation and coordination with indigenous peoples, should promote intercultural systems or practices in medical and health services provided in indigenous communities, including the training of indigenous health technicians and professionals. The pandemic has highlighted the importance of ensuring that indigenous peoples can exercise their self-government and self-determination. Therefore, based on the right to self-determination, it is essential that States ensure the participation of indigenous peoples through their representative entities, leaders and traditional authorities in the formulation and implementation of public policies to address the high risk of physical and cultural extinction of indigenous peoples⁵⁰².
284. Another consequence of the historical discrimination affecting indigenous peoples in the Americas is food insecurity⁵⁰³. The IACHR takes note of a series of measures implemented by the States to support food security⁵⁰⁴ and humanitarian aid to mitigate the food security needs of vulnerable families⁵⁰⁵. At the same time, the Commission recognizes the efforts of the States in relation to the development of resource transfer policies. It also takes note of the public expressions regarding the insufficiency of these contributions and/or the

⁵⁰² IACHR, [Amazon Indigenous at "grave risk" from COVID-19. warn UN Human Rights and IACHR](#), June 4, 2020

⁵⁰³ For example, in Guatemala, more than 60% of indigenous children under 5 years of age suffer from chronic malnutrition, a percentage that is almost double that of non-indigenous children. In this regard, the State of Guatemala has informed the Commission that before the Pandemic crisis, the State already had among its plans the Great National Crusade for Nutrition, which aims to prioritize 114 municipalities to combat this problem. The criteria for prioritization were high levels of extreme poverty and cases of chronic malnutrition in children under five years of age. In addition, the IACHR takes note of the State's information that, aware of the situation of chronic malnutrition registered in a portion of Guatemalan children, the necessary methodology has been implemented in Guatemala so that despite the suspension of classes, the school breakfast program can continue for the benefit of Guatemalan children. This food is distributed through Parents' Organizations. Likewise, the State of Guatemala informed about the distribution of "food kits we will get ahead", which contains basic dietary food, benefiting 200,000 Guatemalan families, with the objective of protecting families in vulnerable situations. REDESCA. *IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights* (REDESCA) of the Inter-American Commission on Human Rights (IACHR), 2020, OEASER.LXIII. Doc. 28 para. 643

⁵⁰⁴ The State of Honduras submitted information to the Commission on Operation Honduras Solidarity, according to which it has provided food to vulnerable populations, prioritizing the delivery of food to indigenous communities. In this context, the information indicates that as of April 17, the National Human Rights Commissioner (CONADEH) has monitored the delivery of 4,700 food rations to communities in the departments of Intibucá, Lempira, Atlántida and Gracias a Dios. The IACHR also takes note of the granting of a writ of amparo by the Administrative Court of San Pedro Sula in favor of the families of the Tolupán de Locomapa Tribe, department of Yoro, which ordered compliance with Executive Decree PCM-025-2020 so that in coordination with the authorities of the community's preventive council, they deliver sufficient and quality food in accordance with international standards; in addition, they must provide medical care that respects their cultural diversity.

⁵⁰⁵ The State of Colombia informed the IACHR about the support program "Colombia Está Contigo-Un Millón de Familias," whose purpose is to manage and deliver humanitarian food aid to indigenous communities, among others, in 32 departments and 720 municipalities. As indicated, the program was previously coordinated with the indigenous authorities in order to mitigate the food needs of families in vulnerable conditions.

difficulties for indigenous peoples to access them, considering their situation of special socioeconomic vulnerability and the food risk in which they find themselves⁵⁰⁶.

285. On the other hand, the IACHR received information on attempts to carry out consultations regarding exploitation permits in indigenous territories. It also received information on the possible legislative treatment of regulations that directly affect the material and spiritual life of these groups⁵⁰⁷. The Commission has also been informed that the States of the Amazonia and Gran Chaco region continue to grant environmental licenses, many without prior consultation with indigenous peoples, for the implementation of extractive and infrastructure projects in and around their territories⁵⁰⁸. The IACHR reaffirms to the States that the consultation and free, prior and informed consent affirmed in the jurisprudence of the Inter-American system and in other international human rights instruments is a central element for the guarantee and protection of the rights of indigenous peoples⁵⁰⁹. It also recalls that, for the development of this procedure, it is necessary to consider the cultural practices of indigenous peoples, especially their ancestral forms of collective organization, which usually involve the holding of community assemblies. Likewise, in relation to virtual consultations, the IACHR warns that, due to structural discrimination, many indigenous peoples do not have access to the Internet, so that the imposition and implementation of consultative processes through digital platforms would represent a violation of the right to real and effective participation of these groups⁵¹⁰.

⁵⁰⁶ IACHR, *The IACHR warns about the special vulnerability of indigenous peoples in the face of the COVID-19 pandemic and calls on States to take specific measures in accordance with their culture and respect for their territories*, May 6, 2020. The IACHR took note of the initiative published by Canada to provide financial support to indigenous communities living in the country's northern territories so that they are prepared to deal with the impacts of the pandemic, including continued assistance for the supply of food and medicines.

⁵⁰⁷ The Commission learned of External Circular CIR2020-29-DMI-1000, numeral ii, issued by the Colombian Ministry of the Interior on March 27, 2020, which opens the possibility of implementing the free, prior and informed consultation and consent procedure through digital platforms. Colombian civil society organizations stated that the measure was approved without consultation and free, prior and informed consent of indigenous peoples and pointed out that 90% of the territories occupied by indigenous communities in Colombia lack internet access.

⁵⁰⁸ IACHR, *The IACHR urges the States of the Pan-Amazonian and Gran Chaco region to adopt urgent measures to address the critical situation of indigenous peoples due to the pandemic*, August 17, 2020.

⁵⁰⁹ IACHR, *Report on Business and Human Rights: Inter-American Standards*, OEA/Ser.LV/II, IACHR/REDESCA/INF.1/19, November 1, 2019, para. 49 "The IACHR and its REDESCA emphasize the importance of the recognition and strict compliance with Inter-American standards for the realization of the right to consultation and free, prior and informed consent as a more specific aspect of participation schemes regarding matters involving the rights of indigenous peoples and Afro-descendant tribes in the framework of business activities. They also underscore the obligation of the State to ensure participatory and inclusive spaces for those whose rights and fundamental freedoms may be at risk of being affected as a result of business activities, insofar as it will allow them to express their opinion and have it taken seriously. The assurance of participation mechanisms in issues involving business and human rights should be broad and should be oriented to include the effective hearing of persons, communities and populations directly affected, human rights defenders and civil society human rights organizations.

⁵¹⁰ IACHR, *Room for Coordination and Timely and Integrated Response to the COVID-19 Pandemic Crisis (SACROI COVID-19)*, Practical Guide No. 3 How to Promote Universal Internet Access during the COVID-19 Pandemic, March 26, 2021.

286. The IACHR emphasizes its alert regarding the special vulnerability of indigenous peoples in voluntary isolation and initial contact to external pathogens such as COVID-19⁵¹¹. In particular, it takes note of the situation of the peoples who have recently chosen to isolate themselves in the Amazon, after confirming the first cases of COVID-19 in members of their communities or in people close to them, as is the case of the Nukak community in Colombia, and other peoples in Bolivia, Brazil⁵¹², Ecuador⁵¹³ and Peru.

F. People in a situation of human mobility and displacement

287. With respect to the rights of persons in human mobility, the Commission noted the persistence of immigration detention practices, accelerated expulsion or deportation procedures, a decrease in resettlement actions for refugees, limitations on entry into the territories of States and obstacles to the presentation of asylum or protection applications or to the continuation of such processes, restrictions on access to public services, the closing of borders to groups of migrants returning to their own States of origin or nationality, the forced displacement of persons, as well as acts of xenophobia⁵¹⁴.

288. In addition, the Commission notes with concern that migration and displacement impose greater risk and disproportionate impacts during the emergency, due to social and economic asymmetries, the existence of language barriers, as well as access to health services, including the fear of accessing these services due to the incidence of migratory controls. Such factors produce patterns of exclusion and violation of rights that merit the special attention of States.

⁵¹¹ IACHR, [Amazon Indigenous at "grave risk" from COVID-19, warn UN Human Rights and IACHR](#), June 4, 2020

⁵¹² The Commission received information on the infection of COVID-19 and subsequent death of a member of the Yanomami people in the state of Roraima, Brazil, after presenting symptoms of this disease for several days, during which he was in contact with other members of his community. As reported, the 15-year-old adolescent was also suffering from malnutrition and anemia, which reflects the structural situation and nutritional risk in which these communities find themselves.

⁵¹³ Ecuador informed the IACHR about the coordination of planning and execution of prevention and contingency activities regarding COVID-19 in the Tagaeri-Taromenane Intangible Zone (ZITT), and its area of influence, for the protection of the populations of the territory of peoples in voluntary isolation, such as the Waorani, Shuar, Kichwa, and mestizos. In addition, it has reported that it has coordinated with the Ministry of Public Health in order to carry out rapid COVID-19 tests on officials working in the ZITT to protect their health, as well as that of the indigenous populations living in neighboring areas -with whom constant contact is maintained-, considering the high vulnerability of the Amazonian indigenous peoples and especially the indigenous peoples in voluntary isolation living in the Intangible Zone and its surrounding areas.

⁵¹⁴ IACHR, Public Hearing, Situation of the Human Rights of Migrants and Refugees in the Context of the COVID-19 Pandemic in South America, 179th Period of Sessions. Civil society organizations indicated that the governments of Peru, Ecuador, Chile, Brazil and Colombia have increased military and police operations at the borders. They indicated that summary expulsions were carried out in several countries. It was mentioned that the absolute closing of borders does not prevent migration, but rather creates an increase in irregular crossings with greater risks. On January 4 of this year, 6 migrants died between the border between Colombia and Panama, 6 migrants died on the border between Chile and Bolivia and 3 people died in the river on the border of Argentina.

289. The Commission emphasizes that migratory phenomena, whether for economic reasons or in search of protection, require a priority approach by States based on the principles of solidarity, cooperation and shared responsibility in the context of the pandemic, with a focus on guaranteeing access to protection mechanisms and ensuring non-refoulement to persons whose lives and integrity are at risk. Furthermore, the pandemic has not only aggravated the situation of previously displaced persons, but has also caused new migratory movements, internal or international, with forced characteristics, being susceptible to harassment and xenophobia.
290. In the case of total or partial closure of borders, the Commission recalls that, while States have the prerogative to take measures to manage public health risks that may arise through the arrival of persons at their borders and the sovereign power to regulate the entry of non-nationals, these actors also have the responsibility to respect the principle of non-refoulement⁵¹⁵. In this sense, the IACHR warns that establishing measures to prevent the admission of refugees or asylum seekers, or migrants of a particular nationality or nationalities, without evidence of a health risk and without measures to protect against refoulement, is discriminatory and contrary to applicable international and inter-American human rights obligations and commitments⁵¹⁶.
291. In this regard, it notes that many refugees, asylum seekers and those in need of protection have returned to their countries of origin where the risks to their lives, health and safety persist. In this regard, the Commission recognizes the forced nature of such displacements to the countries of origin, and calls special attention to the scenarios of human mobility in Central America and Venezuela⁵¹⁷, urging host States to take additional affirmative measures to safeguard the integrity and lives of such persons and to refrain from applying refugee cessation clauses to those who have this protection status.
292. In particular, the Commission has received information on the serious situation of Nicaraguan persons stranded at the border with Costa Rica. According to information re-

⁵¹⁵ IACHR, [On the occasion of the World Refugee Day, the IACHR observes serious challenges in the comprehensive protection of the rights of refugees, and urges States to adopt effective and urgent measures in the context of the COVID-19 pandemic](#), June 20, 2020.

⁵¹⁶ IACHR, [IACHR expresses concern over restriction of rights of migrants and refugees in the United States in the face of the COVID-19 pandemic](#). July 25, 2020. The IACHR notes that the continuity and combined effects of previously adopted policies such as the Migration Protection Protocols (MPPs), coupled with the use of the special powers derived from the Suspension of Entry of Persons into the United States Order issued by the Centers for Disease Control and Prevention (CDC) in response to the COVID-19 pandemic, have made it even more difficult for migrants and refugees to gain access to the United States through the United States, have made it even more difficult for asylum seekers and other persons in human mobility in need of protection to access legal protection processes that respond to the United States' compliance with its international obligations and its own regulations on the matter, a situation that would result in a risk to the comprehensive protection of the human rights of this population.

⁵¹⁷ IACHR, [IACHR reiterates its call on States to guarantee the human rights of Venezuelan returnees to Venezuela in the context of the COVID-19 pandemic](#), December 22, 2020.

ceived by the IACHR, the State of Nicaragua prevented entry due to the lack of a negative COVID-19 test result. The IACHR notes with concern that these persons, in addition to not having access to the tests, found themselves in overcrowded conditions in makeshift camps or outdoors, without access to drinking water, food, and personal hygiene services⁵¹⁸.

293. The Commission also took note of the growing tension and violence in immigration detention centers and other facilities where migrants and asylum seekers are locked up for administrative procedures, often in a situation analogous to detention, with no time limit, for fear of contagion by the disease generated by the new coronavirus⁵¹⁹. In this sense, the use of immigration detention measures must be applied in accordance with due process of law, in adequate sanitary conditions, for a determined and limited period of time.

294. In particular, any migration policy and administrative or judicial decision related to the entry, stay, detention, expulsion or deportation of children or other State action considered in relation to any of the parents, primary caregivers or legal guardians, including measures adopted in relation to their migratory status, must prioritize the evaluation, determination, consideration and protection of the best interests of the child involved⁵²⁰. Situations that present the risk of family separation must be addressed with absolute priority, and all protection procedures must be adapted to the circumstances demanded by affected children, in order to guarantee immediate and effective access to information and relevant protection mechanisms⁵²¹. Furthermore, detention is never in line with the best interests of migrant children and adolescents.

295. On the other hand, the IACHR especially welcomes the measures to adapt administrative flows that allow non-discriminatory access to health and assistance services for migrants and refugees, as well as measures that facilitate the continuity of administrative migration

⁵¹⁸ IACHR, The IACHR urges the State of Nicaragua to guarantee the rights of Nicaraguans returning in the context of the COVID-19 pandemic, July 31, 2020.

⁵¹⁹ Fundación para la Justicia y el Estado Democrático de Derecho, Informe sobre los efectos de la pandemia de covid-19 en las personas migrantes y refugiadas. Violaciones a derechos humanos documentadas por organizaciones defensoras y albergues en México, Mexico, 2020, p. 52. MODH, Informe de hallazgos de la misión de observación de derechos humanos en la frontera sur de México, Mexico, p. 35. Civil society organizations in Mexico documented that the migratory stations, temporary stays or places set up for this purpose do not have the minimum conditions of hygiene, are unsafe and prone to the spread of the virus among the population due to uninhabitable conditions that prevent social distancing, adequate hygiene and other preventive practices and medical care. According to public information, similar situations have led to demonstrations, including hunger strikes in detention and processing centers for migrants in the United States, whose sanitary and hygienic conditions may aggravate the risks of contamination in the context of the pandemic. These conditions were the subject of considerations by the IACHR during its working visit to the southern border of the country IACHR, IACHR conducted visit to the southern border of the United States of America, September 16, 2019.

⁵²⁰ IACHR, Resolution 4-2019, Inter-American Principles on the Human Rights of All Migrant Persons, Refugees, Stateless Persons and Victims of Trafficking in Persons, on December 7, 2019.

⁵²¹ IACHR / UNHCR, Practical Guide on How to make family unity protection and family reunification more effective in situations of human mobility and mixed movements, and in the context of pandemics, 21 June 2021.

and protection procedures, such as extending deadlines, creating telephone hotlines, and computerizing procedures for remote monitoring⁵²². In this regard, the IACHR established guidelines for the adaptation of public policies to ensure the comprehensive protection of human rights in the context of the pandemic⁵²³.

296. The Commission has closely accompanied the repatriation processes of nationals by the countries of the region, under their specific conditions⁵²⁴. The IACHR observes that these actions are developed in different ways, from the use of consular assistance channels for coordination with private transporters or official vehicles, to the adjustment of specific protocols in cases where the States had decreed total closure of borders, demanding the creation of structures for evaluation and preventive isolation or quarantine.
297. In turn, the IACHR values the initiatives of countries that suspended or reduced in a timely manner the application of expulsion measures, such as Peru, and detention for deportation, such as the Dominican Republic⁵²⁵. Other States, such as Panama and Argentina, suspended deadlines in procedures managed by their migration services, with a positive impact on the maintenance of migratory regularity during this period. Likewise, according to the official information provided, Mexico suspended the obligation of weekly signatures for persons with an open procedure for recognition of refugee status, guaranteeing attention to urgent requests. For its part, Chile reported the extension of the validity of the identity cards of more than 200,000 foreigners who currently have their documentation in process, in addition to adopting electronic procedures and non-face-to-face attention. In addition, the Commission notes as positive the measure taken by Colombia to establish humanitarian corridors in 3 international bridges on the border with Venezuela for people with critical or chronic health conditions in the same period⁵²⁶.
298. Migrant workers also contribute to economic resilience in host countries. Therefore, migrants and their families must be fully integrated into national recovery plans, and States

⁵²² UNHCR, [Brazil recognizes another 7,700 Venezuelan persons as refugees](#), August 28, 2020, Government of Argentina, Comisión Nacional para los Refugiados - Canales de atención no presencial - Co.Na.Re, March 2020.

⁵²³ IACHR / UNHCR, [Practical Guide on How to make family unity protection and family reunification more effective in situations of human mobility and mixed movements, and in the context of pandemics](#), 21 June 2021.

⁵²⁴ Los tiempos, [Repatriación en cifras: 76% de los bolivianos retornaron por vía terrestre](#), May 13, 2020, La razón, [Tensión en Pisi-ga, bolivianos que volvieron de Chile protestan y piden alimentos al Gobierno](#), April 7, 2020. Info defensa, [Las FFAA chilenas y el retorno de los bolivianos](#), July 15, 2020; Ministerio de Relaciones Exteriores, Chile, [Tercer vuelo de operativo conjunto de repatriación lleva a colombianos a su país](#), July 23, 2020.

⁵²⁵ Permanent Mission of the Dominican Republic to the Organization of American States, Informe del Poder Ejecutivo sobre el Estado de Emergencia para Enfrentar el COVID-19 Primero, Segundo, Tercero, Cuarto, Quinto, June 1, 2020.

⁵²⁶ IACHR, [IACHR reiterates its call on States to guarantee the human rights of Venezuelan returnees to Venezuela in the context of the COVID-19 pandemic](#), December 22, 2020.

must address pandemic recovery in a more inclusive and sustainable manner while implementing their public health regulations⁵²⁷.

299. The Commission urges States to strictly observe the special protection needs of populations that are forced to move as a result of violence, persecution, and serious threats to their lives and personal integrity, to respect the principle of non-refoulement, and to preserve the best interests of children and adolescents and the family unity of persons in a situation of mobility. It also urges States to guarantee the right of return of their nationals who wish to do so, in the face of health barriers and border closure actions taken⁵²⁸.

G. Children and adolescents (NNA)

300. The measures adopted to contain the pandemic, such as social isolation and quarantine, can have a specific impact on children and their families, particularly when measures of prolonged confinement in their homes are adopted. The Commission has received with concern reports of increased violence against women and girls, especially in the context of domestic violence, during the health emergency and by social isolation policies that often mean isolation with their aggressors⁵²⁹. Indeed, six out of ten children in the Americas are exposed to violent parenting methods including physical punishment and psychological aggression, which may be aggravated during the period of isolation. Countries such as Argentina, particularly in the provinces of Jujuy, Formosa, Salta, Buenos Aires and Chaco; Brazil; Colombia; Mexico; Paraguay and Peru have reported an increase in reports of domestic violence during quarantine.

301. Given that the State is obliged to act with due diligence in the prevention, investigation and punishment of domestic violence and abuse, in this scenario, the Commission requested the States to strengthen the systems of protection and reporting of abuse and/or violence, including telephone and online referrals, as well as the implementation of awareness campaigns through television, radio and other media. Similarly, the Commission called on States to provide psychosocial and pedagogical support mechanisms for families and children and adolescents, especially for those with disabilities or mental health conditions.

302. Physical isolation also imposes other effects on rights and the Commission is particularly concerned about the guarantee of the right to education in the face of the cessation of school activities and the closure of educational establishments. In its Resolution 1/20, the IACHR

⁵²⁷ IACHR, Migrants must be included in all COVID-19 recovery plans - regional and UN experts, December 17, 2020.

⁵²⁸ IACHR, IACHR Urges States to Protect the Human Rights of Migrants, Refugees and Displaced Persons in the Face of the COVID-19 Pandemic, April 17, 2020.

⁵²⁹ IACHR, On International Day of the Girl Child, IACHR urges States to strengthen protection of girls and adolescents during pandemic, October 11, 2020.

emphasized that States must have mechanisms that allow children and adolescents to continue their studies, with the mechanisms that their age and level of development require.

303. The Commission notes that most of the States in the region have adopted distance education measures as a way of providing continuity of access to education through various platforms or distance learning modules via the Internet or through media such as radio and television. Although distance education is an important tool, this is a measure that does not serve all children and adolescents equally, since access to computer equipment and the Internet is not universal in the Americas, where 33% of the population does not have access to the Internet⁵³⁰. Given the digital divide, it must be ensured that online learning does not aggravate existing inequalities or replace student-teacher interaction.
304. In some cases, the feeding of students living in poverty depends on school feeding programs, which may be the only meal they consume during the day. It is alarming that when family income decreases considerably, due to reductions in the working day or unemployment, the food delivered to students may be the sustenance of the entire family nucleus.⁵³¹ In response to this, in some States, the daily distribution of food parcels has been arranged.
305. The IACHR expresses its concern about the increasing trend of child labor. It has been reported that, in Brazil, in the first semester of 2020, 78 thousand jobs generated were occupied by children under 17 years of age, which implies a 21% increase in child labor.⁵³² In turn, the closure of schools increased the risk of students in more vulnerable conditions dropping out of school and/or resorting to child labor⁵³³. Thus, in El Salvador almost four times more students dropped out of school between the end of 2019 and the beginning of 2020 than between 2018 and 2019; of these, 3.79% of girls who drop out do so because of "domestic work", compared to 0.78% of boys who drop out for this reason⁵³⁴. The IACHR

⁵³⁰ IACHR, Room for Coordination and Timely and Integrated Response to the COVID-19 Pandemic Crisis (SACROI COVID-19), Practical Guide No. 3 How to Promote Universal Internet Access during the COVID-19 Pandemic, March 26, 2021.

⁵³¹ IACHR, Room for Coordination and Timely and Integrated Response to the COVID-19 Pandemic Crisis (SACROI COVID-19), Practical Guide No. 2 [GuiaPractica02_Educacion_Es.pdf \(oas.org\)](#) p 7

⁵³² REDESCA. *IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights* (REDESCA) of the Inter-American Commission on Human Rights (IACHR), 2020, OEASER.L/VII. Doc. 28 para.229

⁵³³ IACHR, IACHR, Room for Coordination and Timely and Integrated Response to the COVID-19 Pandemic Crisis (SACROI COVID-19), Practical Guide No. 2 [GuiaPractica02_Educacion_Es.pdf \(oas.org\)](#) p. 8.

⁵³⁴ REDESCA. *IV Annual Report of the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights* (REDESCA) of the Inter-American Commission on Human Rights (IACHR), 2020, OEASER.L/VII. Doc. 28 para. 486

recalls the need to develop public policies to eradicate child labor, as well as the duty to regulate and supervise the activities and operations of companies⁵³⁵.

306. Finally, the Commission appreciates the measures adopted by the States. In particular, the IACHR welcomes the expansion in Argentina, in all its provinces, of free hotlines for children and adolescents who are victims of violence in solitary confinement. It also appreciates the recommendation issued by the Ministry of Women, Family and Human Rights of Brazil, which instructed municipalities to consider the guardianship councils as essential since they are bodies for the protection of children and adolescents, preventing the suspension of their activities during the pandemic. Likewise, the IACHR welcomes the virtual portal enabled by the Government of Mexico to inform in an accessible way to the language of the youngest about the COVID-19⁵³⁶.

H. LGBTI People

307. The pandemic has also created a context that, due to pre-existing conditions of violence, is conducive to intensified persecution against lesbian, gay, bisexual, trans and intersex (LGBTI) people⁵³⁷. Thus, some States have enacted measures that intentionally target LGBT people under the guise of public health, including proposed legislation to deny trans and gender-diverse people legal recognition. In addition, hate speech that explicitly or implicitly incites violence against LGBT people increased⁵³⁸. So too, surveillance and other digital technologies enacted to track COVID-19 carriers increase the risks of infringing on privacy and exacerbating stigma⁵³⁹.
308. Some of the provisions adopted in the States of the region in response to the pandemic pose risks to the rights of LGBTI persons or those perceived as such, and lead to acts of discrimination and violence based on prejudice. In this context, the Commission was informed of measures adopted by some States with the purpose of designating specific days for the movement of persons to contain the infections, differentiating between women and

⁵³⁵ IACHR. *Compendium on labor and trade union rights: inter-American standards* : approved by the Inter-American Commission on Human Rights on October 30, 2020 OEA/Ser.L/V/II pp.82-3.

⁵³⁶ Government of Mexico, [Portal of information and citizen participation, Coronavirus section for children](#).

⁵³⁷ IACHR, IACHR calls on States to guarantee rights of LGBTI persons in response to COVID-19 pandemic, April 20, 2020.

⁵³⁸ El Espectador, [Durante el confinamiento incrementaron homicidios y feminicidios contra personas LGBT en Colombia](#), 25 de febrero 2021, Hola News, [Comunidad LGBT de México exige fin de asesinatos, que siguen pese a pandemia](#), 17 de mayo 2021

⁵³⁹ IACHR, [In the framework of the International Day against Homophobia, Biphobia and Transphobia, the IACHR and various international experts draw attention to the suffering and resilience of LGBT people during the COVID-19 pandemic](#), May 14, 2020.

men, which is discriminatory against trans and gender-diverse persons, and can generate other acts of this nature⁵⁴⁰.

309. The Commission notes, for example, that Peru's Supreme Decree 057-2020-PCM extended the state of emergency and had established specific days for the movement of women and men⁵⁴¹. Although this decree, which was repealed on April 11, 2020, contained a clause prohibiting discrimination, it did not provide for respect for gender identity and/or expression in its content and, despite clarifications made by high authorities regarding that trans persons should not be discriminated against in this context, during its validity, acts occurred that are of concern to the IACHR.
310. Along these lines, the Commission noted with dismay that trans women detained by security forces in observance of these restrictions in Peru were physically and verbally abused by law enforcement officers, including being forced to repeat phrases that deny their self-perceived gender identity, such as "I want to be a man"⁵⁴². A similar situation took place in Honduras⁵⁴³. In a similar vein, the IACHR learned that, in Panama, a trans woman human rights defender was detained by the police while delivering bags of food to people living in poverty. The arrest took place on a day reserved for the movement of women, on the grounds that the identity card of the detainee reflected the male gender. In the end, the woman was taken to court and fined fifty dollars, despite having explained her gender identity and expression to the authorities⁵⁴⁴.
311. Likewise, in cases of allegations of acts of violence or discrimination against LGBTI persons, or that are perceived as such, the Commission reminds States of their duty to observe due diligence in the conduct of investigations and proceedings, both judicial and administrative⁵⁴⁵. In this regard, the IACHR welcomes the investigations conducted by the National Police of Peru that have resulted in sanctions against officers involved in some acts of discrimination against trans persons and urges the State to continue in this effort⁵⁴⁶. In addition, the IACHR

⁵⁴⁰ IACHR, [IACHR Calls on States to Guarantee the Rights of LGBTI Persons in Response to the COVID-19 Pandemic](#), April 20, 2020. IACHR, [IACHR Calls on the State of Panama to Guarantee the Human Rights of Trans and Gender Diverse Persons in the Context of Partial Mobility Restriction Measures during the COVID-19 Pandemic](#), February 4, 2021.

⁵⁴¹ Presidency of the Council of Ministers, [Supreme Decree N° 057-2020-PCM](#), April 2, 2020.

⁵⁴² La Voz, [Coronavirus and transphobia in Peru: trans women forced to shout "I want to be a man"](#), April 7, 2020

⁵⁴³ Agency Present [Trans activist arrested when she went out for food](#) April 20, 2020

⁵⁴⁴ Panama America, [Transsexual detained and fined for violating quarantine, left on women's day](#), April 1, 2020

⁵⁴⁵ IACHR, [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#), Para. 131 OAS/Ser.LV/II.rev.2 Doc. 36 12 November 2015. Para. 498 et seq.

⁵⁴⁶ Peru 21, [Police demand DNI from transgender people despite clarification by President Martin Vizcarra](#), April 4, 2020

notes that the measures of differentiated circulation were repealed in Peru, as they did not achieve their objective of social distancing. Likewise, the Commission welcomes the measure implemented in Argentina that during the quarantine allowed the displacement of women and LGBTI persons who have the purpose of denouncing an act of violence⁵⁴⁷.

312. On the other hand, the IACHR has received information from trans women and sex workers who continued to develop their activities in the context of the acute phase of the pandemic, because they do not have other sources of income⁵⁴⁸.
313. On the other hand, the Commission notes that LGBTI persons who have formed nuclear families often do not enjoy legal recognition that would guarantee control of their economic resources or access to social security benefits designed to contain the effects of the pandemic⁵⁴⁹. In light of the above, the IACHR calls on the States to guarantee safe shelter, access to food and medicine for LGBTI persons in street situations, particularly taking into account trans women who engage in sex work⁵⁵⁰.
314. With regard to access to health services, the Commission notes with particular concern reports of hospitals owned or operated by religious groups that have denied access to COVID-19 treatment to persons of diverse sexual orientation and gender identity and/or expression⁵⁵¹. On the other hand, the IACHR notes that, in some States of the region, gay and bisexual men faced restrictions to donate blood, which has an impact on the health system in general⁵⁵². The IACHR reiterates that respect for gender identity must prevail, even in the hospital setting, and therefore calls on States to adopt or strengthen their policies in this area and ensure continuity of services⁵⁵³.

⁵⁴⁷ Presents Agency, [Women and LGBT+ people who come out to report violence are exempted from quarantine](#), April 5, 2020.

⁵⁴⁸ La Jornada, [Gobierno de CDMX da apoyos económicos a trabajadoras sexuales](#), April 4, 2020, Agencia Presentes, [Abrió el primer refugio para mujeres trans de México y les cambia la vida en plena pandemia](#), May 6, 2020. The Commission received information that, with the suspension of lodging services as a contingency measure of the health emergency, some trans women in Mexico City have been evicted from the hotels where, in addition to living, they practiced sex work, which has left them in a street situation and, consequently, in a condition of serious vulnerability. However, the IACHR takes note of the actions it has taken for the attention and protection of populations in particular conditions of vulnerability, including economic support for sex workers and people in street situations.

⁵⁴⁹ IACHR, [Report on Trans and Gender Diverse Persons and their Economic, Social, Cultural and Environmental Rights](#), OEA/Ser.LVII. Doc. 239, 7 August 2020

⁵⁵⁰ IACHR, Resolution No. 1/200, [Pandemic and Human Rights in the Americas](#), April 10, 2020.

⁵⁵¹ IACHR, [IACHR Calls on States to Guarantee the Rights of LGBTI Persons in Response to the COVID-19 Pandemic](#), No. 081/20, April 20, 2020.

⁵⁵² NPR, [Letter: 20 Attorneys General Want Rules On Gay Men Blood Donors Eased](#), April 20, 2020.

⁵⁵³ IACHR, [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#), OAS/Ser.LVII.rev.2 Doc. 36 12 November 2015, para. 441.

I. People of African descent

315. The IACHR notes that in the context of the COVID-19 pandemic, racial disparities have deepened and become more visible, which has had a differential impact on people of African descent, who experience a high risk of infection and death from this disease due to different factors such as place of residence and physical environment, since people of African descent, due to the conditions of vulnerability to which they have been subjected.
316. The IACHR recalls that structural discrimination and historical racial segregation expose the Afro-descendant population and tribal communities to different gaps in opportunities for their own development, as well as to permanent obstacles in the progressiveness of their economic, social, cultural, and environmental rights. The Commission notes that, according to information from the World Bank and the Economic Commission for Latin America and the Caribbean (ECLAC), people of this ethnic-racial origin report low percentages of economic assets and formal employment, a situation that tends to expose them to situations of poverty in the countries of the region⁵⁵⁴.
317. In this context, the IACHR emphasizes that the measures of containment and mandatory social isolation may have a differentiated impact on the economic life of Afro-descendants, who have more difficulties in accessing public health services. In this regard, the IACHR in its Resolution No.1/2020, urged States to guarantee access to comprehensive public health services in a timely manner to Afro-descendants and tribal communities, incorporating an intercultural approach. On this issue, the Commission welcomes the emergency plans developed by States in the region, such as Brazil, Colombia, Argentina and the United States, aimed at supporting working people, mainly informal workers, so that they can comply with social isolation measures during the containment of the pandemic⁵⁵⁵.
318. Taking into account the impact of the poverty of this population, the Commission expresses concern about the increasing number of infections and deaths of African Americans due to

⁵⁵⁴ IACHR, Economic, Social, Cultural and Environmental Rights of People of African Descent Inter-American Standards for the Prevention, Combating and Eradication of Structural Racial Discrimination, OEA/Ser.L/V/II. Doc. 109, 16 March 2021. Para. 74

⁵⁵⁵ In particular, the Commission welcomes the various initiatives implemented by some States in the region, focused on the Afro-descendant population, for the treatment of COVID-19, especially the "Guide for the Care of Indigenous and Afro-Mexican Peoples and Communities"; the "Guidelines for the prevention, detection and management of COVID-19 cases for the ethnic population in Colombia" and the "Recommendations for the prevention of COVID-19 in the Afro-descendant population" issued by Costa Rica; Ministry of Health of Costa Rica, Recomendaciones para la prevención del COVID-19 en población afrodescendiente, April 13, 2020.

the COVID-19 pandemic in the United States⁵⁵⁶. The Commission takes note of available official information that evidences that in different places there is a differentiated impact with respect to this population group⁵⁵⁷.

319. On the other hand, the IACHR reiterates its observation that the geographic areas with a high concentration of Afro-descendants in the region coincide with areas of marginalization and poverty, housing shortages, and greater exposure to crime and violence. Such is the case of the Colombian Pacific region, where the correlation persists between high indicators of economic poverty and areas of settlement of Afro-descendant communities, where even in the context of the COVID-19 pandemic, there are cases of armed violence against people belonging to these communities⁵⁵⁸. As well as the situation of Afro-descendants living in the favelas in Brazil, their inhabitants are more exposed and exposed to the high

⁵⁵⁶ The IACHR notes that, in the United States, while COVID-19 has spread indiscriminately throughout the population, African Americans are more than twice as likely to die from COVID-19 as any other group according to research, which found that people of African descent died from the virus at a rate of 50.3 per 100,000 people, compared to 20.7 for whites, 22.9 for Latinos, and 22.7 for Asians. The Centers for Disease Control (CDC) has noted that African Americans accounted for 33% of people hospitalized for COVID-19 even though they represent only 13% of the U.S. population. In contrast, CDC found that white Americans made up 45% of hospitalizations while representing 76% of the U.S. population. In Chicago, as of April 12, 2020, 68% of COVID-19-related deaths were among African American persons, who represent only 30% of the city's population. In the state of Louisiana, 7 out of every 10 persons killed by the pandemic were African American. In addition, 62 deaths have been verified in Alabama, 53% of which were of African American ethnicity. Data from the Government of Minnesota indicate that the African-American population accounted for 9% of the total number of COVID-19 infections and 12% of hospitalizations, despite the fact that this group represents 7% of the total population. Similarly, authorities in Detroit, Michigan, the city with the most inhabitants of African descent in the country, have warned about the racial disparity in the impact of the COVID-19 pandemic on the Afro-descendant population; by April 15, 2020, 120 deaths of Afro-descendants due to the virus had been reported. IACHR, Economic, Social, Cultural and Environmental Rights of People of African Descent, Inter-American Standards for the Prevention, Combating and Eradication of Structural Racial Discrimination, OEA/Ser.L/V/II. Doc. 109, 16 March 2021, para. 87.

⁵⁵⁷ IACHR, Annual Report 2020, Chap IVA. Para. 381

⁵⁵⁸ The Commission notes that the COVID-19 pandemic has deepened the historical racial inequality in Colombia, which is reflected in the structural precariousness for the realization of the DESCA in the departments where the settlements of the Afro-Colombian communities are located. According to available information sources, the National Institute of Health has published the departments where most cases have been registered are Bogotá, Barranquilla, Antioquia, Cartagena, Valle del Cauca, Chocó, Atlántico and Nariño. Caracol Radio, 1,556 Afros and 251 foreigners have died from COVID-19 in Colombia, January 05, 2021. See also New York Times, How to Prevent the Coronavirus from Deepening Racial Inequality in Colombia, April 29, 2020.

demographic concentration, and more aggravated to the violent action of armed groups; making it even more difficult to implement social isolation measures⁵⁵⁹.

320. In addition, in States with a greater presence of Afro-descendants, the rates of police violence against this population are higher in comparison with people of other ethnic-racial origin⁵⁶⁰. For this reason, the Commission urges States to take effective measures to prevent institutional violence and excessive use of force based on ethno-racial origin and racial profiling patterns.
321. The IACHR calls on the States of the region to realize the rights of Afro-descendants and to prevent and combat racial discrimination in this context. In particular, the Commission urges the States to guarantee timely access to public health, through prevention, mitigation and treatment measures, in conditions of dignity, equality and non-discrimination for all Afro-descendants and tribal communities⁵⁶¹.

J. People with disabilities

322. In the context of the pandemic, the discrimination that persons with disabilities have historically faced in the full exercise of their rights intensified, requiring States to adopt the necessary measures to protect the life and integrity of persons with disabilities and to guarantee access to their rights on an equal basis with others.
323. Considering the effects of the pandemic, States should develop care protocols that anticipate possible situations of medical resource strain, in order to ensure that persons with disabilities have timely, appropriate and nondiscriminatory health care. In addition, in view

⁵⁵⁹ In the case of Brazil, the IACHR noted with concern the disproportionate impact of COVID-19 on people of African descent, particularly due to the high number of cases in geographic areas where this ethnic-racial population is concentrated, such as favelas and quilombola communities, especially those living in poverty and extreme poverty. According to available public sources, in the city of Rio de Janeiro, where about 1.5 million people live in favelas, overcrowded and unsanitary conditions would make it difficult to implement isolation measures to contain the pandemic; in the largest favela in Rio, Rocinha, of at least 100,000 people, 1 in 4 of the people tested would have been infected by June 2020. Additionally, according to data from civil society organizations, until February 2021, 4897 infections and 192 deaths would have been registered in quilombola communities. IACHR, Economic, Social, Cultural and Environmental Rights of People of African Descent, Inter-American Standards for the Prevention, Combating and Eradication of Structural Racial Discrimination, OEA/Ser.L/V/II. Doc. 109, 16 March 2021, para.86. NPR, COVID-19 Infection Rate In Rio's Favelas Far Exceeds Official Count, A New Study Says, June 25, 2020; Coordenação Nacional de Articulação das Comunidades Negras Rurais Quilombolas (CONAQ), Observatório da Covid-19 nos Quilombos, February 2, 2021.

⁵⁶⁰ See, inter alia, IACHR, Afro-descendants, police violence, and human rights in the United States, OEA/Ser.L/V/II. Doc. 156 26 November 2018

⁵⁶¹ IACHR, The IACHR and its REDESCA call on the States of the region to guarantee the rights of Afro-descendants and prevent racial discrimination in the context of the COVID-19 pandemic, April 28, 2020.

of the containment measures that respond to the nature of the pandemic, particular attention should also be given to the mental health of persons with psychosocial disabilities⁵⁶².

324. Based on the information documented through its various mechanisms, the Commission has observed that places of deprivation of liberty, whether prisons, psychiatric hospitals or other social assistance institutions that house persons with disabilities, are characterized by overcrowding, lack of adequate hygiene, negligent medical care and inadequate food⁵⁶³. In this regard, States must ensure that detention centers have the necessary conditions to prevent the transmission of COVID-19, and in case it is contracted, provide adequate care for its treatment⁵⁶⁴.
325. On the other hand, the IACHR is aware of the lack of simple language and communication aids that affect the accessibility of information related to the pandemic, which is detrimental to the adoption of essential prevention and self-care measures for persons with disabilities⁵⁶⁵. In this regard, the Commission considers that access to information is essential for these persons to be able to adopt prevention and treatment measures on an equal footing with other persons⁵⁶⁶. For this reason, States must provide accessible, timely and clear information on the disease in general, its evolution, prevention and treatment. For this purpose, communication strategies should be adopted that include, among other issues, sign language and accessible web pages. In this regard, the IACHR appreciates that many countries provide sign language services during press briefings on the pandemic. Particularly noteworthy in Central America is the creation of a mobile medical unit to guarantee this service during the pandemic; and in the Southern Cone, the creation of a free video call service for the hearing impaired.
326. The IACHR also expresses its concern regarding the persistence of structural discrimination factors related to access to education and the labor market, which has been aggravat-

⁵⁶² IACHR, In the context of the COVID-19 pandemic, the IACHR calls on States to guarantee the rights of persons with disabilities, April 8, 2020.

⁵⁶³ IACHR. Regional Hearing: Situation of the Human Rights of Persons with Disabilities in the Face of the COVID-19 Pandemic in the Americas, 177th Session, October 9, 2020.

⁵⁶⁴ IACHR, Resolution No. 1/200, Pandemic and Human Rights in the Americas, April 10, 2020.

⁵⁶⁵ IACHR. Regional Hearing: Human Rights Situation of Persons with Disabilities in the Face of the COVID-19 Pandemic in the Americas, 177th Session, October 9, 2020.

⁵⁶⁶ IACHR, Resolution No. 1/200, Pandemic and Human Rights in the Americas, April 10, 2020.

ed by the COVID-19 pandemic⁵⁶⁷. The Commission has also been informed about the situation of internally displaced persons with reduced mobility in Haiti⁵⁶⁸.

327. On the other hand, the IACHR takes note of a series of measures adopted. In this regard, the IACHR welcomes the actions taken by the State of Argentina, especially the inclusion of persons with disabilities as a group at risk, which involved specific protection policies, in addition to special permits for movement, measures to continue rehabilitation treatment, non-presential processing of certificates, and socioeconomic assistance programs. Likewise, according to the information provided by the State, policies have been put in place to guarantee access to information for persons with disabilities. In this context, the National Disability Agency opened various channels of access to information on COVID-19 and prepared various documents to address the rights of persons with disabilities in the context of the pandemic⁵⁶⁹. For its part, the State of Ecuador reported that CONADIS prepared the "Guide for the Prevention and Care of COVID-19 Contagion for Persons with Disabilities and Persons with Temporary Disabilities and their Families" and the "Guide for Inclusive Risk Management with a focus on persons with disabilities", in which it proposes, respectively, to provide information and prevention of the COVID-19 pandemic and the promotion of the participation of persons with disabilities in the development of public policies⁵⁷⁰. Likewise, the State of Guatemala reported on the measures implemented to counteract the effects of the pandemic through preventive actions and defined protocols to be followed in the event that patients present symptoms or are diagnosed with COVID-19⁵⁷¹. In the case of Peru, Legislative Decree No. 146 established provisions for the prevention and protection of persons with disabilities in the face of the health emergency caused by COVID-19⁵⁷².
328. The IACHR reiterates the importance of involving persons with disabilities in the processes related to their rights, which allows the visibility of this group and their particular needs. In this context, States should adopt measures that seek to involve persons with disabilities in the design, implementation, dissemination and monitoring of measures to contain and address the pandemic, considering the particular effects of this population group.

⁵⁶⁷ Correio Braziliense, [Deficientes encontram entraves para trabalho e estudo no Brasil](#), September 21, 2020. Jornal da USP, [Pessoas com diferentes tipos de deficiência têm menor remuneração e oportunidades no mercado de trabalho](#), October 19, 2020. Veja, [Brasil elimina mais de 23 mil empregos formais para deficientes em 2020](#), September 21, 2020.

⁵⁶⁸ Vantbeinfo, [Haiti/Coronavirus: The crisis of mobile people in a displaced persons camp](#), April 15, 2020

⁵⁶⁹ IACHR. Regional Hearing: [Situation of the Human Rights of Persons with Disabilities in the Face of the COVID-19 Pandemic in the Americas](#), 177th Session, October 9, 2020.

⁵⁷⁰ Inputs from the State of Ecuador for Chapter IV of the IACHR 2020 Annual Report, October 9, 2020, p. 16-18.

⁵⁷¹ IACHR. Regional Hearing: [Human Rights Situation of Persons with Disabilities in the Face of the COVID-19 Pandemic in the Americas](#), 177th Session, October 9, 2020.

⁵⁷² El Peruano, [Legislative Decree N° 146](#), April 22, 2020

Chapter 5

CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS AND RECOMMENDATIONS

5.1 Conclusions

329. The Inter-American System plays an important role in the development of standards and recommendations aimed at contributing to the transformation of the structural causes that provoke, deepen and encourage the violation of fundamental rights and situations of inequality. In this sense, with the intention of collaborating with the efforts of States, Human Rights Institutions and civil society organizations, the Commission developed this document containing guidelines and recommendations to guide State action in the context of the COVID-19 pandemic.
330. In the context of the pandemic, democratic institutions and the rule of law in some countries of the region have been progressively weakened by administrative and judicial decisions that undermine the independence of powers. At the same time, the patterns of repression and violence against human rights defenders and demonstrators in social protests have deepened; aggressions against journalists have also worsened, which represents an affront to freedom of expression.
331. In addition to the above, throughout the pandemic, the Commission, through its press releases, resolutions, reports, and other means of expression, has made evident its alert to the accentuation and deepening of conditions of structural inequalities and situations that violate the human rights of people in the region of the Americas. Thus, through its various monitoring mechanisms and instruments, dialogue with States and civil society, the Commission has followed up on the pandemic situation and has identified a series of challenges facing the region that must be urgently addressed: journalists and human rights defenders continue to be victims of attacks, harassment, murders and intimidation in various countries; persistent violence against women and girls; threats that endanger the rights and lives of people in the context of human mobility; the overcrowded conditions in which people deprived of their liberty live in the context of the health crisis. In addition, people in historically vulnerable situations such as the elderly, people with disabilities, Afro-descendants, LGBTI people, indigenous peoples, children and adolescents have been affected in a differentiated manner by the COVID-19 pandemic, in addition to the situation of people living in poverty who suffer from the lack of access to various rights such as education, work and health.
332. Understanding the new challenges facing our societies in this context, and formulating responses in accordance with the standards of the Inter-American System, requires the participation and commitment of all actors: international organizations, States and organized civil society. Therefore, to ensure the realization of the right to health, other ESCR and human rights as a whole, in the context of pandemic contexts, it is essential to effectively im-

plement the commitment to adopt measures, both domestically and through international cooperation, in accordance with the general rules of international and inter-American law.

333. With this report, the Commission develops its mandate to protect and promote human rights in the region by accompanying and guiding States in their duty to build societies that are more just and respectful of the rights enshrined in the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights, and the other instruments of the Inter-American Human Rights System adopted and ratified by the States. Therefore, the IACHR emphasizes the importance of the consolidation and universalization of human rights, a task that must be undertaken jointly with the Member States and civil society in order to achieve the broadest protection of the human rights of all persons.
334. With this report, the IACHR renews its commitment to promote technical cooperation mechanisms as tools to facilitate joint actions with the States, as well as to express its willingness to provide technical assistance for institutional strengthening to ensure the implementation of the human rights approach in the policy framework, access to economic funds to strengthen the protection of these rights, plans and strategies adopted to address the pandemic crisis based on inter-American standards governing the matter.
335. Along this path, the Commission will continue to work with all the institutions and individuals involved, always seeking to develop new initiatives and tools to address current and future challenges, collaborating with the common goal of broadening the horizon of respect and protection of the human rights of those who inhabit the region. In this way, with the full support of the actors of the system, the IACHR hopes to contribute to greater awareness and influence the global human rights agenda, as well as to continue monitoring the situation and progress of priority issues in the region, so that the challenges and challenges are transformed into actions that will soon find us sharing achievements and goals reached.

5.2 Recommendations

336. In exercise of the functions conferred upon it by Article 106 of the OAS Charter and in application of Article 41.b of the American Convention and Article 18.b of its Statute, the Inter-American Commission has the power to formulate recommendations to the governments of the member states to adopt measures in favor of human rights within the framework of their domestic laws and constitutional precepts, as well as appropriate provisions to promote due respect for those rights.
337. Prior to formulating these recommendations, the Commission considers it appropriate to reiterate the recommendations already issued in the framework of Resolutions 1/20, 4/20 and 1/21, as well as in the Practical Guides and other publications and pro-

nouncements issued by SACROI-COVID-19. Having specified the above, the IACHR recommends to the States:

1. Design and adopt all appropriate measures to protect the rights to life, health and personal integrity of persons in their jurisdictions in the face of the pandemic. These measures should include institutional strengthening actions, public policies, regulations, actions to promote a culture of human rights, actions to promote access to justice, and information systems, data and indicators. Likewise, such measures should be adopted in accordance with the best scientific evidence, Inter-American and international standards on the matter and the human rights approach, and should take into account the plans for social and economic recovery.
2. Implement appropriate actions so that, when adopting measures for attention, treatment and containment of the COVID-19 pandemic and its variants, differentiated approaches are applied that guarantee the rights of groups in situations of special vulnerability and mitigate the differentiated impacts that such measures generate in these groups.
3. Adopt the necessary measures to ensure that any restrictions imposed on human rights for the purpose of protecting health in the context of the COVID-19 pandemic comply with the requirements of international human rights law. In particular, these measures should ensure that the restrictions apply the principle of legality, are necessary and strictly proportionate to meet the legitimate aim of protecting health.
4. Design and adopt all appropriate measures to ensure that human rights defenders carry out their advocacy and information work in the context of the pandemic in safe conditions.
5. Refrain from persecuting or detaining human rights defenders for their vigilance regarding the actions of the State in the context of the pandemic and in the face of possible violations of fundamental rights, including not subjecting them to civil or criminal proceedings for their opinions, not detaining them based on the use of broad or ambiguous criminal definitions, and not exposing them to the risk of physical or virtual attacks.
6. Design, adopt and implement, in an effective and efficient manner, norms and mechanisms for accountability and access to justice in the event of possible human rights violations. The adoption and implementation of these standards and mechanisms should aim to ensure access to public information and eradicate the "culture of secrecy", and provide citizens with tools to effectively monitor the functioning of the State, public management, control of corruption, and abuses by private actors and the State to the detriment of human rights, in the context of pandemics.

7. Design and adopt institutional strengthening measures to improve the capacities of public officials, particularly justice operators, security forces and technical personnel of public defenders' offices, to apply Inter-American standards related to the context of the health crisis.
8. Design and adopt technical cooperation mechanisms with other States to facilitate joint actions, including broad and effective spaces for dialogue and channels for the exchange of best practices on successful strategies and public policies with a human rights approach, timely information, as well as challenges to address the COVID-19 pandemic, and strategies to overcome them.