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**THE IACHR'S COMPREHENSIVE RESPONSE TO THE COVID-19
PANDEMIC AND ITS INTERSECTIONAL IMPACTS ON HUMAN RIGHTS**

*Antonia Urrejola Noguera & Soledad Garcia Muñoz**

ABSTRACT

The region of the Americas is facing unprecedented humanitarian and social challenges as a consequence of the Covid-19 pandemic. As such, the regional institutions need to deliver rapid and effective responses to the region's inhabitants. In this way, the Inter-American Commission on Human Rights (hereinafter IACHR or the Commission) has aimed to deliver a timely answer so that States, the Civil Society, and stakeholders can assure individuals that the treatment of the pandemic incorporates a human rights approach from the Inter-American System's framework. The purpose of this work will be to give a brief takeaway on how the IACHR has responded to those challenges and how it has assessed the differentiated, intersectional, and gender-unequal impacts this health crisis has had on human rights, particularly on economic, social, cultural and environmental rights (hereinafter ESCER).

This paper will focus on the rights of people and groups who, because of the special state of vulnerability they are in, have been hit the hardest by the pandemic. It will discuss how the Commission – specially supported by the Office of the Special Rapporteur for Economic, Social, Cultural, and Environmental Rights (REDESCA) – has responded to the challenges and incidents brought on by the Covid-19 pandemic and how it has delivered recommendations to States regarding women, indigenous people, people living in poverty and extreme poverty, people of African descent, LGBTI people, older people, persons with disabilities, and people who are being deprived of liberty. Finally, the article will explore the future steps that need to

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be taken to increase the protection of human rights in other global crises.

I. INTRODUCTION: THE IACHR'S RESPONSE TO THE COVID-19 PANDEMIC

This section will provide an overview of the work that IACHR and REDESCA have done to respond to the challenges and incidents brought on by the Covid-19 pandemic. It will start by explaining the work of the SACROI-COVID, including the publication of Resolutions and Practical Guides, and then it will provide a summary of the pronouncements on the centrality of the right to health and other ESCER in the context of the pandemic.

1. Sacroi-Covid, Resolutions and Practical Guides

In order to give a comprehensive view of the IACHR's response to the humanitarian and social challenges that the Covid-19 pandemic has brought upon American societies, it is essential to mention the installation of SACROI-COVID, the Commission's Rapid and Integrated Response Coordination Unit, to the crisis caused by the pandemic. The SACROI's main objective is to strengthen the institutional capacities of the IACHR for the protection and defense of fundamental freedoms and human rights, particularly the right to health and other ESCER, which will be discussed further on. The implementation of the Unit was part of a strategy to monitor the way in which Covid-19 impacts the human rights of people and groups in vulnerable situations, placing a particular emphasis on both the comprehensive and crosscutting responses that are needed to combat these harmful effects as well as whether States are, in fact, implementing them.¹

The SACROI also works as a preventive mechanism that provides unified recommendations to States in order for them to align the measures needed to contain the spread of Covid-19 with inter-American human rights standards and promotes cooperation

¹ Inter-Am. Comm'n H.R. [hereinafter IACHR], *IACHR Implements Rapid and Integrated Response Coordination Unit for COVID-19 Pandemic Crisis Management* (Mar. 28, 2020), http://www.oas.org/en/iachr/media_center/PReleases/2020/063.asp.

mechanisms between relevant actors to strengthen the exchange of information on how to best manage the impact of the pandemic according to the aforementioned standards.² A crucial element in the functioning of the SACROI is the fact that its team is coordinated by the Executive Secretary of the IACHR and made up also by the heads of the Commission's Special Rapporteurships,³ REDESCA, and RELE (Office of the Special Rapporteur for Freedom of Expression, by its Spanish acronym), whose input is essential in contributing with an intersectional and comprehensive perspective, especially in what pertains to ESCER.

A vital part of the work the Commission has done in response to the pandemic, the specific issues that have become exacerbated by it, and the regional and worldwide events that have taken place in the fight against it has been the development and approval of Resolutions and Practical Guides containing specific recommendations to States and other relevant actors, including business entities. These systematize and encompass human rights standards that stakeholders should be aware of, guarantee, and protect. Since the beginning of the pandemic in the hemisphere, and up until April 2021, the IACHR, with the special support of REDESCA, has approved the following Resolutions: "Pandemic and Human Rights in the Americas, Human Rights of Persons with Covid-19" (Resolution 1/2020) and "Covid-19 Vaccines and Inter-American Human Rights Obligations" (Resolution 4/2020).

The first one, approved in April 2020, introduces a general framework of human rights standards and obligations and recommends member States to take all urgent measures that may be necessary to protect the rights to life, health, and personal safety of individuals within a jurisdiction. This Resolution was based on the best scientific evidence, in accordance with international health regulations, as well as the recommendations issued by the World and Pan-American Health Organizations. It also urges States to adopt an intersectional human rights approach in their strategies, policies, and measures to deal with the Covid-19 pandemic and its consequences. This first resolution includes specific sections on State obligations

² IACHR, *IACHR SACROI COVID-19 / Objectives* (Mar. 28, 2020), https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/sacroi_covid19/default.asp.

³ *Id.*

concerning ESCER, states of emergency and restrictions on fundamental freedoms, and the protection of groups in a particular state of vulnerability.⁴

The second one, approved in July 2020, provides guidelines and recommendations specific to the protection of the human rights of persons with Covid-19. This Resolution indicates that the reference to people with Covid-19 encompasses people “presumed to be infected by the virus, persons at a pre-symptomatic phase of the disease, those with (light, moderate, severe, or critical) symptoms, persons who are asymptomatic who undergo medical research testing, and those who die from the pandemic, as well as their family members and/or care-givers.”⁵ The document states that the main purpose of all health care systems that attend to persons with Covid-19 is to protect their lives and physical and mental health, optimize their wellbeing, ensure that they are not abandoned, and respect their dignity as human beings.⁶

Additionally, Resolution 4/2020 provides guidelines on protecting the right to prior, free, and informed consent of persons with Covid-19; the right to equality and non-discrimination; the rights connected to the involvement of private actors and enterprises in the health sector; the right of access to information; the rights to confidentiality, privacy, and those regarding the use of personal data; the right to access to justice; and other ESCER. It also presents recommendations to ensure that saving the lives of people with Covid-19 is a priority accorded in public policies, resource allocation, and cooperation activities. Furthermore, it establishes guidelines to protect the rights of health care workers and other caregivers looking after persons with Covid-19, and of the relatives of persons who have died of Covid-19, including their right to grieve and perform funeral rites in accordance with their own traditions and beliefs.

The latest Resolution relating to the work of SACROI-COVID, which was approved in April 2021 by the Commission, focuses on the obligations of State members regarding the vaccines against Covid-19. The document gives recommendations on the access to vaccines, health goods and services, pursuant to the principles of equal protection and non-discrimination; the prioritizing and distributing of

⁴ IACHR, *Pandemic and Human Rights in the Americas*, Res. 1/2020 (Apr. 10, 2020).

⁵ IACHR, *Human Rights of Persons with Covid-19*, Res. 4/2020 (July 27, 2020).

⁶ *Id.* at 4.

vaccines to persons with greater risk of infection and, in general, those who are at greater risk of being impacted by the pandemic; the active dissemination of adequate and sufficient information on the vaccines and the fight against disinformation; the right to free, prior, and informed consent; the access to information, transparency and the fight against corruption; the topic of business and human rights in what pertains to Covid-19 vaccines; and international cooperation.

Besides these Resolutions, the SACROI has published three Practical Guides that provide summaries of contexts and statistical information, of potentially infringed rights, and of the recommendations contained in the Resolutions. These Guides aim to provide systematized information on the standards for guaranteeing human rights during the Covid-19 pandemic – specifically the respect for the grieving, funeral rites, and memorials of those who died during the pandemic,⁷ access to the right to education for children and adolescents,⁸ and universal internet access.⁹

2. The Centrality of the Right to Health and other ESCER in the Context of the Covid-19 Pandemic

The context of the Covid-19 pandemic has both jeopardized the right to health and other ESCER, and brought to light the importance of their defense and guarantee by States and other relevant actors. In this context, both the IACHR and REDESCA have put special and necessary emphasis on the right to health and its impact in other human rights, particularly ESCER, not only in the aforementioned Resolutions, but also in their Annual Reports for 2020.

Since the beginning of the pandemic, with the first case in the region being recorded on January 21st, REDESCA has carried out its permanent monitoring work with a close look at the right to health, and –in compliance with its mandate regarding the observance of

⁷ IACHR, Practical Guides to Covid-19: 01 What are the standards for ensuring respect for the grieving, funeral rites, and memorials of those who died during the COVID-19 pandemic?, No. 254/20 (Oct. 15, 2020).

⁸ IACHR, Practical Guides to Covid-19: How to ensure access to the right to education for children and adolescents during the COVID-19 pandemic?, No. 301/20 (Dec. 16, 2020).

⁹ IACHR, Practical Guides to Covid-19: How to promote universal internet access during the COVID-19 pandemic?, No. 074/21 (Mar. 26, 2021).

human rights in the continent – has also provided assistance to States to promote and ensure that their responses to the pandemic were formulated and implemented with a comprehensive human rights and public health approach.¹⁰ Thus, the Office of the Special Rapporteur on ESCER has assumed “the right to health and its social determinants as the highest priority of the mandate, in in interrelation and interdependence with other human rights[,] taking into account its importance as a ‘fundamental and indispensable human right for the exercise of other human rights.’”¹¹

In its Annual Report, the Office has also endorsed the Committee of Economic, Social and Cultural Rights’ (hereinafter CESCR) declarations regarding the impact of the pandemic on ESCER, stating that “[un]like other universal crises, the current crisis has clearly and profoundly made visible the indivisibility and intimate relationship between all human rights: in this case, based on the centrality of the right to health, as the nucleus from which ‘responses must be based on the best scientific knowledge available to protect public health.’”¹²

It is important to note that this response has been strongly based on the fact that the health emergency of Covid-19 “has highlighted the structural weakness of most public health systems [and] exposed social inequalities to the extreme, revealing how the people and groups in the worst situations of vulnerability are those who suffer most virulence not only from the effects of the virus, but also from the deep economic and social crisis caused by the pandemic.”¹³ In this context, it is visible that other ESCER apart from the right to health have also been seriously affected by the pandemic. For instance, the IACHR and its REDESCA have observed that hunger, lack of access to drinking water or forced evictions have been increasingly and worryingly rising in the continent.¹⁴ With this in mind, the Commission and the Office of the Special Rapporteur have

¹⁰ Soledad García Muñoz (Special Rapporteur on Economic, Social, Cultural and Environmental Rights), *Rep. on Economic, Social, Cultural and Environmental Rights*, OAS/SER.L/V/V/II Doc. 28, ¶ 1143 (Mar. 30, 2021).

¹¹ *Id.* at ¶ 1144.

¹² *Id.* at ¶ 1145.

¹³ *Id.* at ¶ 1148.

¹⁴ *Id.* at ¶ 1149.

emphasized the centrality of all ESCER through their statements¹⁵ and approved documents, bringing up an essential discussion for responding to and combating the impacts of the Covid-19 pandemic.

II. THE INTERSECTIONAL AND DIFFERENTIATED IMPACTS OF THE COVID-19 PANDEMIC: OBSERVATIONS AND RECOMMENDATIONS FROM AN ESCER PERSPECTIVE

As mentioned before, the Covid-19 pandemic has shed a light on structural inequalities that, though existent previously, have now become exacerbated by it. This context and the lack of access to ESCER on a regular basis, has affected different groups in a particular and disproportionate way during the pandemic, placing them in a situation of heightened vulnerability. As such, the following chapter will focus on these intersectional and differentiated impacts of the pandemic these groups, presenting the main observations and recommendations the IACHR and REDESCA have issued from an ESCER perspective.

1. Women

Women in the Americas have been impacted by the pandemic in several intersectional ways. This section aims to provide a general overview of such impact, always taking into consideration that women's experiences cannot be considered a monolith and that the effects of the pandemic are increased when taking into account that women can naturally be a part of additional marginalized groups that will be discussed in the next sections, which deepens their risk to suffer

¹⁵ See, e.g., IACHR, *IACHR and OSRESCER Urge States to Guarantee Comprehensive Protection for Human Rights and Public Health during the COVID-19 Pandemic*, http://www.oas.org/en/iachr/media_center/PReleases/2020/060.asp; IACHR, *States in the Americas Must Take Urgent Action to Effectively Protect Mental Health and Ensure Universal Access to It in the Context of the COVID-19 Pandemic* (Oct. 2, 2020), http://www.oas.org/en/iachr/media_center/PReleases/2020/243.asp; IACHR, *IACHR, OSFRE, and OSRESCER Express Serious Concern Over Violations of the Right to Information in Nicaragua and the Impact of These on Access to Health During the COVID-19 Pandemic* (May 29, 2020), http://www.oas.org/en/iachr/media_center/PReleases/2020/119.asp.

human rights violations and placing them in an aggravated situation of vulnerability.

Regarding labor and union rights, the Commission and REDESCA have observed, on the one hand, a regional rise in general unemployment,¹⁶ which has led them to conclude that “the loss of income and reduction of economic activity is an additional factor to the rise in the inequality and poverty levels, especially affecting women,”¹⁷ particularly those who are heads of their households. In view of this situation, the IACHR has stressed “the need for a specific approach towards the 126 million female workers in the informal economy, as well as domestic workers, rural women and sex workers, and other groups disproportionately affected by the pandemic, such as migrant women, homeless women and trans women.”¹⁸

On the other hand, there has been a tendency to overload women in their care tasks, given that “the care of people who are sick or in need of special attention falls mainly on women, at the expense of their personal or work development.”¹⁹ The Office of the Special Rapporteur on ESCER has identified that the pandemic has also exposed and increased the serious situations of violence and discrimination that have historically affected women, an issue that is shared with LGBTI people and that will be discussed in the next section of this paper. This discrimination has prevented them from fully enjoying their human rights, particularly their right to health and other ESCER.

In 2020, the obstacles to the respect and guarantee to the sexual and reproductive rights of girls and women have grown, in part due to the various measures taken to contain and prevent the spread of Covid-19,²⁰ of which the IACHR has taken note. For instance, the Commission has observed:

¹⁶ REDESCA, Fourth Annual Report of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA) (Mar. 30, 2021), ¶ 1155.

¹⁷ IACHR, The IACHR calls on Member States to adopt a gender perspective in the response to the COVID-19 pandemic and to combat sexual and domestic violence in this context (Apr. 11, 2020), https://www.oas.org/en/iachr/media_center/PReleases/2020/074.asp.

¹⁸ *Id.*

¹⁹ IACHR, *supra* note 5, at 6.

²⁰ REDESCA, *supra* note 17, at ¶ 1159.

“budget cuts for healthcare policies with a gender perspective; the lack of staff and technological and other material resources following reallocation to areas that are more directly linked to the pandemic; the closing of clinics that specialize in sexual and reproductive healthcare; and shortages of contraceptives and medication that is specifically linked to the reproductive health of women and girls[; and] the temporary suspension of prenatal care programs and educational programs to prevent sexually transmitted infections, including HIV.”²¹

Through a Press Release issued by the IACHR, and adhered to by REDESCA,²² the Commission has stressed that States have an obligation to remove all barriers that prevent women from accessing the maternal and reproductive healthcare services they need, which include information and education concerning their sexual and reproductive health.²³ The Commission also emphasized that “a human rights approach requires that budget allocation and execution ensure service availability, continuity, accessibility, acceptability, and quality.”²⁴ In turn, REDESCA has manifested its concern that, during the pandemic, access to women’s reproductive health has been further limited, especially for women with urgent care needs due to pregnancy or gynecological diseases.²⁵

Regarding gender-based violence, which includes domestic and sexual violence, the IACHR has underlined on several occasions that the increase in gender-based violence during the pandemic requires “the provision of comprehensive healthcare for women survivors, including psychological assistance, emergency

²¹ IACHR, *The IACHR Urges States to Ensure Adequate Services to Preserve the Sexual and Reproductive Health of Women and Girls During the COVID-19 Pandemic* (Sept. 14, 2020), http://www.oas.org/en/iachr/media_center/PReleases/2020/217.asp.

²² REDESCA, *supra* note 17, at ¶ 1159.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

contraception, and voluntary termination of pregnancy, where applicable.”²⁶

In Resolution 1/2020, the Commission recommended the enhancement of services that provide a response to gender-based violence, particularly violence that occurs within families and sexual violence during confinement.²⁷ It also called for a reformulation of the “traditional response mechanisms by adopting alternative channels for communication and strengthening community networks to expand complaint mechanisms and protection orders during the period of confinement,”²⁸ as well as the development of protocols for care and the reinforcement of “the capacities of security officers and justice personnel involved in the investigation and punishment of acts of violence within the family.”²⁹

2. LGBTI People

Regarding containment measures to address the Covid-19 pandemic, the Commission has urged States to apply and intersectional approach and pay special attention to the needs and differentiated impact of those measures on the human rights of groups who have been historically excluded, like LGBTI people.³⁰

As a result of this general recommendation, there have been multiple occasions in which the IACHR and REDESCA have referred to the aggravated impact of the pandemic on LGBTI people. For example, the Report on Trans and Gender-Diverse Persons and their ESCER, published in August 2020, recognizes that “LGBTI persons have been particularly affected during the crisis caused by the pandemic as a result of pre-existing conditions of violence, exclusion, and want due to the invisibility of LGBTI persons and, particularly, of trans and gender-diverse persons when drafting policies to respond to

²⁶ IACHR, *supra* note 22; *see also* IACHR, *supra* note 18.

²⁷ IACHR, *supra* note 5, at 15.

²⁸ *See id.*

²⁹ *Id.*

³⁰ *Id.* at 6.

national and global emergencies, including plans for humanitarian assistance and economic recovery.”³¹

Both Offices have observed that, during the pandemic, incidents of violence and discrimination against LGBTI persons have continued and that some of the provisions adopted by States as a response to the pandemic have put the rights of trans and gender-diverse persons at risk, causing acts of prejudice-based discrimination and violence.³² For instance, upon learning that States had established measures that allowed certain days only for the movement of women outside of their homes and other days for men, the Commission and REDESCA declared those measures to be discriminatory against trans and gender-diverse persons and found that neither were protocols for their movement established but “nor were there guidelines for how security forces should act should a person’s identification documents not match their gender identity or expression.”³³

This vacuum had led to various “incidents of violence and discrimination perpetrated by security forces against trans women, whose identification documents did not correspond to their gender identities and expression.”³⁴ In view of this circumstance, the Commission has called on States to implement policies to sensitize security forces and authorities on issues of gender expression and identity.³⁵

The IACHR and REDESCA have identified an intensification of social exclusion and poverty affecting trans and gender-diverse persons, with implications like trans women and sex workers having to continue to work during the pandemic as “they did not have other sources of income in a context of social exclusion and high homelessness rates,”³⁶ finding themselves unable to pay rent for residences that are often also used as a workplace and being forced to migrate which has exposed them to heightened risks, like human

³¹ IACHR & REDESCA, Report on Trans and Gender-Diverse Persons and Their Economic, Social, Cultural, and Environmental Rights, OEA/Ser.L/V/II, ¶ 379 (Aug. 7, 2020).

³² *Id.* at ¶ 400.

³³ *Id.* at ¶ 401.

³⁴ *Id.* at ¶ 402.

³⁵ *Id.* at ¶ 403.

³⁶ *Id.* at ¶ 404.

trafficking.³⁷ The Offices have exhorted States to develop social programs with an intersectional human rights approach in order to guarantee the access to food and medication for LGBTI people living on the streets, specially trans women and sex workers.³⁸ In connection to this last point, Resolution 01/2020 urges States to ensure that the referred social assistance policies include access to safe housing and shelters, as well as the development of potential economic reactivation measures for LGTBI persons, especially trans people.³⁹

Regarding the right to health—essential in this context for the exercise of other ESCER and human rights—the Resolution recommends the adoption or strengthening of “health care protocols and complaint procedures for LGBTI persons, including children and adolescents, that take account of prejudice, discrimination and violence in their homes in the context of social distancing or quarantine ... of policies to ensure that gender identity is respected in hospitals, and that medical services continue to be provided to transgender people,”⁴⁰ and finally, the conduction of “campaigns to prevent and combat homophobia, transphobia and discrimination based on sexual orientation, ensuring that the right to gender identity is protected. Such campaigns should be geared particularly to government health care and security personnel who are responsible for health care and containment of the pandemic.”⁴¹

These standards have also been collected and systematized in Press Releases by the IACHR, calling on States to guarantee the rights of LGBTI people in response to the Covid-19 pandemic⁴² and calling attention to their suffering and resilience in this context.⁴³

³⁷ *Id.*

³⁸ *Id.* at ¶ 405.

³⁹ IACHR, *supra* note 5.

⁴⁰ *Id.* at ¶ 69–70.

⁴¹ *Id.* at ¶ 71.

⁴² Press Release, IACHR, The IACHR calls on States to guarantee the rights of LGBTI people in the response to the COVID-19 pandemic (Apr. 20, 2020), http://www.oas.org/en/iachr/media_center/PReleases/2020/081.asp.

⁴³ Press Release, IACHR, On the eve of the International Day against Homophobia, Biphobia and Transphobia, the IACHR and various international experts call attention to the suffering and resilience of LGBT people during the COVID-19 pandemic (May 14, 2020), http://www.oas.org/en/iachr/media_center/PReleases/2020/110.asp.

3. Indigenous Peoples

As REDESCA's Annual Report indicates, the pandemic—along with historical structural difficulties—have occasioned a worsening of the discrimination and lack of access to health and basic services for most of groups that were already in vulnerable situations. “The social situation and generalized contexts of precariousness, which are seriously increased by the lack of access to food, goods, services and health facilities, disproportionately affect people in situations of special vulnerability, as is the case of indigenous peoples whose survival is particularly exposed.”⁴⁴ In this sense, the historical discrimination suffered by indigenous peoples, and consequently, the situation of poverty they often find themselves in, translates into structural deficiencies in basic services, which—in the context of the pandemic—seriously affect their right to health, life and their cultural survival.⁴⁵

Moreover, the IACHR and REDESCA have stressed on the need to design specific responses for indigenous communities, particularly those who are in voluntary isolation or initial contact that ensure respect for their worldview and cultural diversity.⁴⁶ Additionally, the Commission has “warned States about the growing risks faced by indigenous peoples in the Americas, particularly concerning land-related and environmental disputes linked to extractive activities, which also directly affect these peoples’ rights to food, water, and health.”⁴⁷

Taking into account the special relationship these peoples have with their land and natural resources, a connection that is essential for their very existence, the IACHR has manifested its concern about the impact of the pandemic on them.⁴⁸ Many of the challenges and obstacles that have been identified during the pandemic regarding the

⁴⁴ REDESCA, *supra* note 11.

⁴⁵ *Id.*

⁴⁶ Press Release, IACHR, IACHRS Warns of the Specific Vulnerability of Indigenous Peoples to the COVID-19 Pandemic, Calls on States to Adopt Targeted, Culturally Appropriate Measures that Respect These Peoples’ Land (May 6, 2020), http://www.oas.org/en/iachr/media_center/PReleases/2020/103.asp.

⁴⁷ *Id.*

⁴⁸ *Id.*

right to health of indigenous peoples concern a lack of access to services as well as socioeconomic problems. An example of this is the fact that many of the health centers in the region are located far from rural areas, where the major portion of indigenous peoples live,⁴⁹ as well as “a lack of prevention and medical treatment protocols aimed at indigenous communities in countries around the Americas.”⁵⁰

Moreover, the Commission has manifested its concern “about the fact that most services on offer are not culturally appropriate, which leads to care that ignores the practices of traditional medicine and the linguistic and cultural diversity of indigenous peoples.”⁵¹ In this regard, the Commission has also talked about how the pandemic has “highlighted the importance of ensuring that indigenous peoples can exercise self-government and self-determination,”⁵² which is why it is essential for States to ensure that indigenous peoples “participate in the design and implementation of public policies through their representatives, leaders, and traditional authorities to address the high risk of physical and cultural extinction that they are currently facing.”⁵³

In a statement issued in cooperation with UN Human Rights, the IACHR has expressed alarm over the rates of “infections and deaths from Covid-19 among indigenous peoples of the Amazon and over the lack of access to reliable health-related information and the absence of hospital infrastructure and access to healthcare services that are appropriate to their needs during the crisis.”⁵⁴ There has also been concern over “the continuation of economic, extractive, and development-related activities in the area that make it hard for communities to distance or isolate themselves.”⁵⁵

The Commission has called on State authorities to promote and protect the rights of indigenous women, “who are at risk of being disproportionately impacted by the Covid-19 pandemic due to their

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Press Release, IACHR, Indigenous Peoples of the Amazon Are “At Serious Risk” from COVID-19, Warn UN Human Rights and IACHR (June 4, 2020), http://www.oas.org/en/iachr/media_center/PReleases/2020/126.asp.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

predominant role in the informal economy and as caregivers within the home.”⁵⁶ This protection must be carried out through the insurance that indigenous women can benefit equally from social protection measures, that the “overburdening of health systems does not result in an alarming increase in maternal mortality rates among indigenous women and adolescents, nor does it entail additional difficulties in accessing sexual and reproductive health services,”⁵⁷ and the prevention and response to escalating violence as a result of the confinement.

Along with issuing several Press Releases urging States for the protection and guarantee of indigenous communities’ human rights, especially the right to health and other ESCER,⁵⁸ the IACHR and REDESCA made specific recommendations about this topic. Some of these recommendations include: the provision of information about the pandemic in traditional languages; the unconditional respect of non-contact with indigenous groups who are in voluntary isolation or initial contact; the abstention of introducing legislation or carrying out extractive projects in the territories of indigenous peoples during the pandemic, given the impossibility of conducting prior informed and free consent processes; and the adoption of an intercultural and gender-based approach when protecting the right to health.⁵⁹

4. People of African Descent

The Covid-19 pandemic has affected historically discriminated groups in a special way, including people of African descent in the Americas, who already “faced enormous challenges regarding the right to health”⁶⁰ before the crisis brought on by the pandemic, and

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ See Press Release, IACHR, IACHR Urges States of Pan-Amazon Region and Gran Chaco to Adopt Urgent Measures to Address Critical Predicament of Indigenous Peoples Resulting from COVID-19 Pandemic (Aug. 17, 2020), http://www.oas.org/en/iachr/media_center/Preleases/2020/200.asp; see also Press Release, IACHR, IACHR Warns About Health Crisis in Cantagallo Urban Indigenous Community, in Peru (May 27, 2020), http://www.oas.org/en/iachr/media_center/Preleases/2020/120.asp.

⁵⁹ IACHR, *supra* note 5.

⁶⁰ REDESCA, *supra* note 11, at ¶ 1176.

“who currently see their access limited even more.”⁶¹ As an example of these circumstances, REDESCA has observed high numbers of deaths and infections among the Afro-descendant population in the region, almost doubling the rates compared to other ethnic-racial groups.⁶²

Before we delve further into the impact of the pandemic on this group and the recommendations issued, the context of historical and structural discrimination and poverty within the Afro-descendant population in America must be emphasized. The Commission and REDESCA have observed with concern that areas with a high concentration of Afro-descendant people in the region, “coincide with areas of marginalization and poverty, housing deficits, and greater exposure to crime and violence.”⁶³

According to statistics by the World Bank and the ECLAC, “people of African descent report low percentages in economic assets and formal jobs, a situation that tends to expose them to situations of poverty in the Americas. Both women and Afro-descendant rural workers are the populations that register the highest unemployment and job insecurity figures compared to the general population.”⁶⁴ Moreover, the IACHR has recalled that “historical racial segregation exposes the Afro-descendant population and tribal communities to various gaps in opportunities for their own development, as well as permanent obstacles to the progressiveness of their [ESCER].”⁶⁵

These circumstances have to be taken into account imperatively when analyzing the effects of the Covid-19 pandemic on people of African descent in the region, and the statements issued by the IACHR and REDESCA have effectively done so. Thus, the Commission and the Office of the Special Rapporteur have recalled “the need for emergency health policies and comprehensive protection that guarantee access to health services for all people and that are

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.* ¶ 1181.

⁶⁴ *Id.*

⁶⁵ Press Release, IACHR & REDESCA, IACHR and its Special Rapporteurship on ESCER calls on the States to guarantee the rights of Afro-descendant Persons and prevent racial discrimination in the context of the COVID-19 pandemic (Apr. 28, 2020), http://www.oas.org/en/iachr/media_center/PReleases/2020/092.asp.

sensitive to the differing needs of individuals, in order not to aggravate situations of structural discrimination, such as ethnic-racial origin.”⁶⁶

They have also highlighted that “the measures of containment and compulsory social isolation can represent a differentiated impact on the economic life of Afro-descendant people, who would have more difficulties in accessing public health services,”⁶⁷ as well as “the negative impact that may result from the increase in terminations of employment and the decrease in economic income per capita due to the institutional strategies adopted in the context of the pandemic, which could exacerbate and disproportionately impact the population groups in conditions of poverty and extreme poverty, such as homeless people or living in informal settlements.”⁶⁸

Considering all of this, among the recommendations issued by the Commission on Resolution 1/2020 are the prevention of excessive use of force based on ethnic or racial origin and racial profiling during states of emergency or curfews; the implementation of economic support measures, and further social assistance programs for people of African descent and tribal communities that live in poverty or in other vulnerable situations in the context of the pandemic; the insurance that records of people who are infected, hospitalized or who died during the pandemic include disaggregated data concerning ethnic or racial origin, gender, age and disability; and that Afro-descendants have timely access to public health services that use and intercultural approach in ensuring they receive clear and inclusive information.⁶⁹

Moreover, in the statement referred to previously, the IACHR and REDESCA have also urged states to include Afro-descendants “in all spaces and levels of decision-making on action plans, public policies and projects that are executed in the context of the Covid-19 pandemic. Likewise, to promote permanent communication channels with Afro-descendant civil society organizations to ensure their participation in the different stages of design, implementation, monitoring and evaluation of these plans.”⁷⁰ The Offices have also

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ IACHR, *supra* note 5, at ¶ 72–75.

⁷⁰ IACHR & REDESCA, *supra* note 66.

recommended that States “guarantee the fair exercise of the right to free, prior and informed consent and consultation for Afro-descendant tribal communities during the duration of the Covid-19 pandemic [and] establish universal basic income measures and temporary shelters for Afro-descendant persons and tribal communities in conditions of poverty and extreme poverty, especially people in the street situation, living on informal settlements and the rural communities, in the context of the Covid-19 pandemic.”⁷¹

5. People Living in Poverty

According to data gathered by REDESCA, the Covid-19 pandemic would have caused an increase in poverty levels in the region, with 22 million new people in a situation of poverty, which equates to 33.7% of the population, and 12.5% of the population in a state of extreme poverty.⁷² In view of this context, REDESCA has expressed its concern for “the serious specific impacts that it is generating in the Americas, and which pose an additional obstacle for a region with high rates of poverty and inequality, which will affect the guarantee of the ESCER.”⁷³ As a consequence of this structural situation of poverty and extreme poverty, “the right to health in the context of the current pandemic is seriously at risk in its four components [:] availability, accessibility, acceptability and quality, ... also due to the structural weakness of health systems that, at present, constitute the first line of defense against the virus.”⁷⁴

In attention to the indivisibility of human rights, in its Annual Report for 2020, REDESCA highlighted the special impact of Covid-19 and the confinement measures imposed in an attempt to avoid its spread, improve the mental health of people living in situations of

⁷¹ *Id.*

⁷² ECLAC, *Pandemic Prompts Rise in Poverty to Levels Unprecedented in Recent Decades and Sharply Affects Inequality and Employment*, ECON. COMM’N FOR AM. & CARIBBEAN (Mar. 4, 2021), <https://www.cepal.org/en/pressreleases/pandemic-prompts-rise-poverty-levels-unprecedented-recent-decades-and-sharply-affects>.

⁷³ SOLEDAD GARCÍA MUÑOZ, SPECIAL RAPPORTEUR FOR ECON., SOC., CULTURAL & ENV’T RTS. FOURTH ANNUAL REPORT OF THE SPECIAL RAPPORTEURSHIP ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS (REDESCA) OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS (IACHR), 2020 ¶ 1165 (2021).

⁷⁴ *Id.* ¶ 1166.

poverty, especially on those who live in overcrowded conditions who have had a sharp drop of income, and who need to reconcile the schooling of their children while working and taking care of domestic chores. This last case has had a special impact on women.⁷⁵ The Office of the Special Rapporteur has “widely monitored the effects on these basic determinants and their effects on the guarantee of the right to health, which present important and urgent challenges that are affecting groups in situations of poverty and vulnerability.”⁷⁶ The IACHR has also pointed out that the saturation of the region’s health systems due to the magnitude of the Covid-19 pandemic particularly concerns those living in poverty and without coverage in case they need medical care or hospitalization.⁷⁷

The IACHR, along with REDESCA, has expressed deep concern over “the severe negative impacts suffered by people in this situation in the process of attaining minimum levels of protection for their human rights, especially their economic, social, cultural, and environmental rights,”⁷⁸ as well as their regret “over the increasingly drastic conditions that these groups are currently being forced to endure to reach minimum levels of subsistence and stressed that this critical situation will become exponentially worse if states do not immediately implement clear policies and decisions to guarantee ESCER.”⁷⁹

Additionally, the Commission and the Office of the Special Rapporteur have noted that the spread of Covid-19 in the region “has not only caused a serious health emergency in which thousands of people have lost their lives and more than a million have suffered health problems, it has also triggered extreme economic and social consequences, the most noteworthy of which are the negative impacts it is having on access to decent employment, the reduction of inequality, and the fight against poverty and hunger.”⁸⁰ To both

⁷⁵ *Id.* ¶ 1166.

⁷⁶ *Id.* ¶ 1170.

⁷⁷ IACHR, *supra* note 5, at 4.

⁷⁸ Press Release, OAS, IACHR and OSRESCER Urge States to Provide Effective Protection for People Living in Poverty and Extreme Poverty in the Americas during the COVID-19 Pandemic (June 2, 2020), http://www.oas.org/en/iachr/media_center/PReleases/2020/124.asp.

⁷⁹ *Id.*

⁸⁰ *Id.*

Offices, these consequences are having a disproportionate impact on the most vulnerable social groups, like “migrants, female workers with precarious jobs, the homeless and indigenous peoples, among others.”⁸¹

The IACHR has also stressed that the Covid-19 pandemic has highlighted both the “existing asymmetries in access to health systems in the region, which are having a particularly marked impact on the poor” and the extreme difficulties faced by them, “particularly those who are living on the street or who do not have access to accommodation of sufficiently high quality to enable them to exercise and enjoy their rights to housing, a healthy environment, drinking water, and sanitation.”⁸²

Considering these worrying circumstances, the Commission and REDESCA have insisted that States ensure that public policies are urgently implemented with the specific aim of protecting ESCER of people living in poverty, extreme poverty, and those who are at risk of joining this group; include human rights impact assessments in their economic decisions and fiscal policies, making sure that they focus on securing the required financing in order to protect the ESCER of people living in poverty; implement urgent, concrete and transparent measures to comply with their obligation to cooperate in the safeguard of human rights; increase their efforts to protect the rights to work, food, and drinking water and strategies to access adequate social protection, including the possibility of a basic income, by prioritizing populations living in poverty and extreme poverty; among other recommendations.⁸³

6. Older Persons and Persons with Disabilities

In regard to the rights of older persons and the impact caused by the Covid-19 pandemic that they have had to face, the IACHR has expressed its concern “regarding the vulnerability of the 76 million

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

older people living in the region,"⁸⁴ which has alarmingly increased as a result of the pandemic, given that older people are more susceptible of becoming infected.⁸⁵ Along this line, the Commission has come to know about the high rates of infection, hospital admissions, and deaths of older people recorded since the beginning of the pandemic in the region, which is why it has urged States to "guarantee the right to physical and mental health and adopt the necessary measures to prevent contagion in all areas, particularly in long-term residences, hospitals, and places where people are deprived of their freedom. To this end, they should also prioritize Covid-19 testing for older people."⁸⁶

Another important concern of the IACHR regarding older people was their exposure to a greater degree of discrimination and stigmatization within health services, in view of the shortage of medical supplies and the constant worsening of the crisis;⁸⁷ this has led the Office to remind States that they must "guarantee their right to life, health, and personal integrity in order to avoid any form of discrimination on the base of age or ageism,"⁸⁸ as well as their obligation to guarantee the right of the elderly that have contracted Covid-19 "to give prior, full, free, and informed consent to the treatments and medications they are to receive."⁸⁹ Regarding the confinement measures adopted by some states to contain the spread of the virus, the Commission has stressed that "special attention should be given to older people with disabilities, chronic illnesses, and those who require medication and regular care or palliative care, which should be provided in a timely and appropriate manner,"⁹⁰ during isolation.

In connection with the differentiated economic impact of the pandemic on older people, the IACHR has urged States to mitigate it, by adopting special measures that facilitate access to their pensions,

⁸⁴ *IACHR Urges States to Guarantee the Rights of Older People During the COVID-19 Pandemic*, ORG. OF AM. STATES: IACHR MEDIA CTR. (Apr. 23, 2020), https://www.oas.org/en/iachr/media_center/PReleases/2020/088.asp.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

being this their main source of income, “including the possibility of advancing these or facilitating electronic access to them.”⁹¹ These plans would have to be “accompanied by secure payment strategies that protect individuals by avoiding overcrowding and contagion, with special hours of service or preferential treatment at payment points, assisted by police personnel trained in the proper treatment of older people and promoted through accessible communication campaigns.”⁹²

Some of the recommendations issued in Resolution 1/2020 include the prioritization of the inclusion of the elderly in programs to address the pandemic, “particularly access to Covid-19 testing, timely treatment, access to medication and necessary palliative care;”⁹³ the adoption of measures necessary “to prevent contagion of Covid-19 among older people in general and particularly among those in long-stay care homes, hospitals or prisons;”⁹⁴ the reinforcement of measures to monitor violence against older people in the context of the pandemic; and the consideration that must be given to the needs of the elderly when implementing contingency measures, like their necessity to connect with their families; among others.⁹⁵

On the other hand, the IACHR has also received information “on the disproportionate risks faced by people with disabilities during the Covid-19 pandemic. Specifically, those who have been institutionalized are more likely to catch Covid-19, in addition to risks that they already face such as torture and other cruel, inhuman, and degrading treatment, including medication and forced sterilization.”⁹⁶ The Commission has noted that the pandemic has caused an intensification of the discrimination faced historically by disabled people in the full exercise of their rights; this circumstance requires States to “adopt the necessary measures to protect these people’s life

⁹¹ *Id.*

⁹² *Id.*

⁹³ IACHR, Res. 1/2020, Pandemic and Human Rights in the Americas, ¶ 40 (Apr. 10, 2020).

⁹⁴ *Id.* at ¶ 41.

⁹⁵ *Id.* at ¶¶ 42–44.

⁹⁶ Press Release, IACHR, *The IACHR Calls on States to Adopt Measures to Guarantee People with Disabilities Full Legal Capacity from a Human Rights Approach* (Dec. 3, 2020), http://www.oas.org/en/iachr/media_center/PReleases/2020/289.asp.

and integrity and guarantee them access to their rights on an equal basis with all other people.”⁹⁷

Considering this pre-existing situation of vulnerability and discrimination, which causes poorer health and greater difficulty in accessing appropriate care to meet the specific needs of disabled persons, the IACHR urges States to adopt the physical configuration and capacity to healthcare facilities and services, as well as the development of care protocols “to ensure that people with disabilities have a timely, appropriate, nondiscriminatory access to healthcare,”⁹⁸ also paying special attention to the mental health of persons with psychosocial disabilities⁹⁹. It has also been emphasized that “people with disabilities who are deprived of their liberty – be it in prisons, psychiatric hospitals, or other social assistance institutions- are particularly at risk of catching Covid-19.”¹⁰⁰

The Commission has learned that often, these centers of the deprivation of liberty “generally entail overcrowding, lack of adequate hygiene, negligent medical care, and substandard nutrition,” which has led the organization to exhort States to ensure that conditions at these detention facilities prevent the transmission and spread of Covid-19, “providing adequate care to treat any infections that do occur.”¹⁰¹

7. Persons Deprived of Liberty

Finally, the Commission has expressed its concern “at the alarming conditions of incarceration in the region, which includes precarious health and hygiene conditions and extreme levels of overcrowding, that in some countries the overcrowding rate is greater than 300 percent.”¹⁰² This situation puts people deprived of their

⁹⁷ Press Release, IACHR, *The IACHR Calls on States to Provide Comprehensive Protection for the Lives of People with Disabilities During the COVID-19 Pandemic* (Apr. 8, 2020), http://www.oas.org/en/iachr/media_center/PReleases/2020/071.asp.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² Press Release, 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-*

liberty at a greater risk of contagion of Covid-19, especially for “those who make up vulnerable groups, such as the elderly, people living with diabetes, immunosuppressed patients, cancer patients, with autoimmune diseases, cardiac illnesses, and insufficiency kidney functions, among others.”¹⁰³

In this context, the Commission has reminded States that every person deprived of liberty under their jurisdictions, has the right to receive a humane treatment and respect for their inherent dignity and fundamental rights.¹⁰⁴ As it is the States who hold the special position of guarantor of these rights, they have an obligation to “carry out concrete and immediate actions to respect and promote the rights to life and security for those deprived of their liberty,”¹⁰⁵ particularly in the context of the Covid-19 pandemic. The IACHR has also urged States to face the situation of persons deprived of liberty in the region, by adopting urgent measures that guarantee the health and integrity of this group and their families. It has also stressed the need to “ensure adequate conditions of detention in centers of deprivation of liberty;”¹⁰⁶ an essential action in order to achieve this is the reduction of overcrowding in detention centers, as a measure to contain the spread of Covid-19.

In regard to the containment measures implemented at the centers of deprivation of liberty, the IACHR reminds States that the reasons for imposing such measures, restrictive by nature, have to be defined and reported, as well as their duration and the term for their revision. These preventive actions need to be applied in such a way that transparency and non-discrimination are ensured, making sure that “detainees have equal access to protection and mitigation measures, with special attention to the needs of people in vulnerable situations.”¹⁰⁷ The implementation of these measures “must be carried out diligently and adequately to prevent people in isolation from

19 Pandemic (Mar. 31, 2020), http://www.oas.org/en/iachr/media_center/PReleases/2020/066.asp.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

suffering ill-treatment or any type of stigmatization, marginalization or violence.”¹⁰⁸

Furthermore, the Commission has emphasized the necessity for detention centers to adhere to basic hygiene standards and access to biosecurity supplies and equipment, both for detainees and staff, besides “systematic medical examinations to identify the potential risk of contagion and suspected cases and to have at least isolation capacity, as well as the necessary elements for its control and the necessary prevention material.”¹⁰⁹

Resolution 1/2020 has specifically recommended that States, in addressing the overcrowding context of prisons, reassess cases of preventive detention, “in order to identify those whose status may be converted to that of an alternative to incarceration, prioritizing people with greater health risks of possible Covid-19 contagion, chiefly older persons and women who are pregnant or lactating;”¹¹⁰ adapt “the conditions of detention of people deprived of liberty, particularly concerning food, health, sanitation and quarantine measures to prevent Covid-19 contagion inside the prison,”¹¹¹ making sure that all prison units have medical care available; and finally, that they “establish protocols to ensure security and good order in prison units, in particular, to prevent acts of violence related to the pandemic,”¹¹² in concordance with inter-American standards in the matter.

III. CONCLUSIONS AND FUTURE STEPS

This article reviewed the response from the Inter-American Commission on Human Rights to the Covid-19 pandemic. From the beginning, the Commission has aimed for a timely and comprehensive response, coordinating all its mandates and mechanisms through a Unit created especially for this purpose: SACROI-COVID.

The response is comprehensive and considers all human rights in their indivisibility and interdependence, with a special focus on the

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ IACHR, Res. 1/2020, Pandemic and Human Rights in the Americas, ¶ 45 (Apr. 10, 2020).

¹¹¹ *Id.* at ¶ 47.

¹¹² *Id.* at ¶ 48.

effects on the right to health and economic, social, cultural, and environmental rights affected by the pandemic and the ensuing health crisis in the Americas. In this regard, the Commission has confirmed the importance of having created REDESCA in 2017 and has benefitted from the specialized leadership of its new mandate in the face of a pandemic that has generated an unprecedented economic, social and human rights crisis.

Likewise, the Commission's response has been characterized by its intersectionality, by focusing on the situations and rights of individuals and groups that are in situations of greater inequality or historical discrimination. This article shows how the Commission has been taking into special account the impact on the human rights of women, LGBTI people, indigenous people, people of African descent, people living in poverty, elderly people, people with disabilities and people deprived of liberty. Although we do not address it in this paper, the attention given by the IACHR to other groups especially affected by the pandemic, such as people in human mobility and human rights defenders, is also noteworthy.

The work of the Commission and its Special Rapporteurships is forever marked by the pandemic. This is manifested both in the monitoring mechanism, through which the human rights situation in all the countries of the region is monitored on a daily basis, in constant dialogue with the OAS member states, as well as with civil society, the academy and other relevant actors. The same occurs in relation to the case system, through which the IACHR performs jurisdictional functions as a gateway to the inter-American system of petitions on alleged human rights violations. The precautionary measures mechanism has also been impacted by the pandemic, with numerous requests that the IACHR receives in relation to, for example, people at special risk, such as persons deprived of liberty or indigenous peoples. Finally, the promotional and technical assistance works of the IACHR and REDESCA are strongly aimed at promoting the standards developed by SACROI-COVID and seeking their rapid implementation by the States.

One of the major concerns of the IACHR and REDESCA is centered today on the issue of vaccines against Covid-19, due to the inequality in access to them among the countries of the region. An inequality that is also manifested in the treatment that people with

Covid-19 receive and, in general, the groups most vulnerable to social and economic crises. Therefore, the role of the IACHR is crucial for people in all the Americas, the most unequal continent on the planet.

The pandemic complicates the horizon of human rights in a regional context where poverty grows exponentially, as well as human mobility based on structural causes. There are more and more social outbreaks and new authoritarianisms in several states of the region. Faced with an increasingly harsh reality for millions of people, the work of the Commission will continue to stand alongside the victims of human rights violations.

The pandemic, together with the climate crisis, puts humanity in a situation in which it is not possible to continue doing more of the same, but rather strongly demands care of people and the planet. This is what the IACHR will continue to do more firmly every day in the fulfillment of its inter-American mandate to promote and protect human rights throughout the hemisphere: to support and demand that the American states put the human rights of all people at the center of all of its decisions.