



Guide of Inclusive Reponses in a Local Context

According to the guidelines
of the Practical Guide
from the OAS



Defensoría de niñas,
niños y adolescentes.
PROVINCIA DE SANTA FE



DEFENSORÍA DEL PUEBLO
Provincia de Santa Fe

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«To deny people their human rights
is to challenge their very humanity.»

Nelson Mandela

The Ombudsman's Office of the Province of Santa Fe, as a decentralized body in charge of protecting and promoting the fundamental rights of Santa Fe citizens, has been working hard from the beginning of the mandatory and preventive social isolation established through the DNU no. 297/20, regarding the need to cope with this epidemiological situation and to mitigate the sanitary impact of COVID-19.

We are facing an exceptional context and as a result of that, the WHO has declared the existence of a pandemic due to COVID-19. This country has declared the sanitary emergency, thus several measures aimed at preventing massive contagion were ordered, among which the mandatory and preventive social isolation can be highlighted, which, with some modifications and permissions, has been extended since March 20th ⁽¹⁾.

Already in 1948 the General Assembly of the United Nations in the Preamble of the Universal Declaration of Human Rights stated that the recognition of the dignity and of the human rights of all members of the human family is the foundation of freedom, justice and peace in the world.

In 2015, all the member States of the UN passed the 17 goals as part of the 2030 Agenda for Sustainable Development, which established a plan to reach the Goals within 15 years. The Sustainable Development Goals (SDG) constitute a universal call for action to end poverty, to protect the planet, and to improve lifestyles and perspectives of people around the world⁽²⁾. Due to the pandemic caused by COVID-19, the UN states *«...it is taking lives, spreading human suffering and disrupting people's lives. It is much more than a sanitary crisis, it is attacking the core of societies...»*, the General Secretary of the UN has insisted on the need to count on tools that allow societies to «get better» through the construction of more equal,

(1) The DNU 459/2020 was extended the on going of the Decree no. 297/20 and extended the period of isolation until 24/05/2020, inclusive.

(2) For more information, consult the following link: <https://www.un.org/sustainabledevelopment/es/2015/09/la-asamblea-general-adopta-la-agenda-2030-para-el-desarrollo-sostenible/>

inclusive and sustainable economies and societies, which are more resilient on pandemics, climate change and many other current challenges, having established Good Health and Well-being (SDG3) as the Goal for April 2020⁽³⁾.

In this particular historical context, it is important to have in mind that for people to acknowledge their rights is a fundamental tool for their exercise later on, and thus, to claim to the competent bodies, their guarantee. In this sense, this guide has been elaborated as a practical instrument for the consultation of the recommendations and directives provided by the main international bodies within this pandemic framework.

For these purposes the *Practical Guide to Inclusive and Rights-based Responses to COVID-19 in the Americas*, published on April 7th 2020 by the Secretariat for Access to Rights and Equity (SARE) from the General Secretariat of the Organization of American States (GS/OAS) was taken as a reference and has as guide of orientation that:

«Health is a civil right necessary to guarantee the right to life, and safeguarding that right is essential to preserving public order. In the Americas, we have come together in the past to face threats that endangered the values we treasure as inalienable rights, such as democracy, security, human rights, and comprehensive development, and we have collectively committed to protecting the rights of all people, including the right to life and the right to health...».

Pointing out that:

«...The COVID-19 pandemic poses huge challenges for us at the national and regional levels, but it also provides a new opportunity to come together as a region to defend these values. It is especially an opportunity for us to reaffirm the basic principle that united us when the OAS was established and that is reflected in the American Declaration on the Rights and Duties of Man: that all people «are born free and equal, in dignity and in rights, and, being endowed by nature with reason and conscience, they should behave themselves fraternally.»

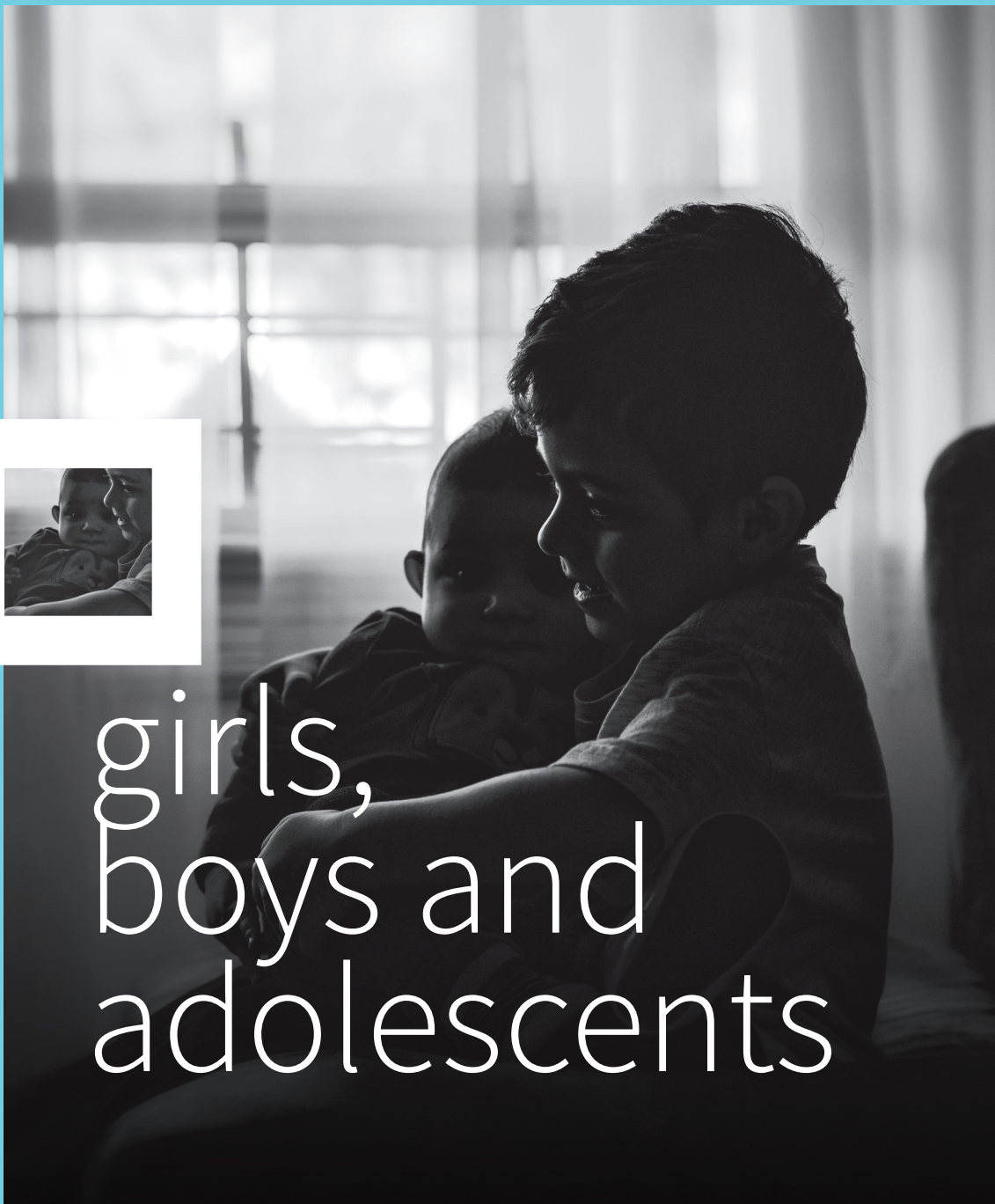
(3) For a more extensive development, this link can be consulted (available in English language until the writing of this guide): <https://www.un.org/sustainabledevelopment/goal-of-the-month/>

The OAS Practical Guide highlights the duty of the States to guarantee the right to health, mainly on those groups of people who

Have been discriminated against and the recognition, enjoyment or exercise of their rights have been denied or violated, based on nationality; age; sex; sexual orientation; gender identity and expression; language; religion; cultural identity; political opinions or opinions of any kind; social origin; socioeconomic status; educational level; migrant, refugee, repatriate, stateless or internally displaced status; disability; genetic characteristics; bio–psycho–social condition, or any other condition (Inter–American Convention against all Forms of Discrimination and Intolerance, OAS).

The Ombudsman’s Office of the Province of Santa Fe has therefore elaborated the following Guide in order to put at every Santa Fe citizen’s hand the instructions, recommendations and guidelines proposed by the international and national bodies on human rights, as well as the implementation and/or measures proposed by the executive bodies and other competent bodies in each case. The indications and recommendations that we reproduce here could be found on the websites of the national competent bodies consulted, highlighted in each chapter and, in the same way, regarding the measures taken by each national body in connection to the human rights of the vulnerable groups taken into account. It is worth mentioning that the actualizations of the recommendations and measures are permanent, due to the constant fluctuation of the circumstances that suppose a responsible approach to the prevention of COVID–19.

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girls,
boys and
adolescents



Rights of girls, boys and adolescents

In Argentina, half of the girls, boys and adolescents are poor.

Poverty means poor eating habits, or not eating at all; not having a place to live; being out of school; having a higher risk of being a victim of sexual harassment and of unplanned pregnancy.

The mandatory and preventive social isolation context due to COVID-19 makes them even more vulnerable. The educational, digital, nutritional and opportunity gaps get bigger because even today the effective implementation of the human rights of children and adolescents still depends on the place where they live and grow.

With or without a pandemic, we are still in debt with childhood.

Even though they represent a third of the population, children and adolescents do not have an important place in the governmental agendas. As legal subjects they are generally silent and invisible. However, this quarantine has highlighted the focus on the girls, boys and adolescents instead of on elderly people.

The Human Rights public bodies have the duty to work so as the Superior Interest of the Child is priority in the public policies. This should be always like that, but even more in emergency situations like the one we are facing today.

The System of Comprehensive Protection⁽¹⁾ —and fundamentally the articulations that do and define it— need to be stronger and renewed to make effective the exercise of the rights of children and adolescents and to prevent their infringements.

In this sense, the prioritizing axis for the actions regarding rights aimed at this population are the following:

(1) Established by the National Law of Integral Protection of the Rights of Girls, Boys and Adolescents no. 26.061 and the Provincial Law of Integral Promotion and Protection of the Rights of Girls, Boys and Adolescents no. 12.967.

1. Health

Girls, boys and adolescents —who are not part of the risk group in this sanitary emergency— face other damages that affect their integral health. On the one hand, they constitute themselves discursively and symbolically a «risk group» as they are potential contagion factors, enhancing then the narratives and media constructions that stigmatize and discriminate and sometimes manifest physical and verbal violence towards them. On the other hand, as they are not a priority in the health system, those who suffer from chronic pathologies or have manifested health problems during confinement —not linked with COVID-19— are at risk of not having the proper follow-up or initiation of their treatments.

Mental health of children and adolescents should be one of the main criteria taken into account when evaluating the implementation, suitability and continuity of the measures regarding the pandemic. Without any doubts, this is the more affected unseen population as their routines, school lives, spaces of recreation and sports, time with peers, autonomy out of their home have been affected. The certainty that an illness is spreading globally and the worldwide population is at home to collaborate with slowing down its propagation is an idea that affects them and —depending on each child and his/her family environment—, it can even be traumatic. The majority of them are spending the quarantine in small spaces, without any access to open air or even sunlight, in overcrowding conditions. They generally feel sadness because they are not seeing their friends or grandparents, preoccupation or fear of the health of their relatives, anguish or depression due to isolation. Thus, *as soon as staying at home measures are flexibilizing, girls, boys and adolescents should be the first legal subjects to access permissions for going out.*

In this sense, strategies to tackle consumption of substances should also be considered. The mental health teams should answer both the obligatory disabling situations due to isolation and as well as the new emergencies that can occur in this exceptional scenario. The use of ICTs and social networking is also —and can even get worse— a problematic issue.

Some strategies the State must take into consideration are also to accompany adults in charge of the education of girls, boys and adolescents, with campaigns in terms of right-promotion centered around the construction of healthy habits that respect their personal rhythms and times, sleeping and resting hours, recreational and activity times, time with and without connectivity, privacy and communication with their friends, time and quality of their food.

Access to safe drinkable water, safe water for personal hygiene and housing, food and clothes hygiene goods; such as soap, alcohol and bleach should be guaranteed in the settlements.

2. Food

Food is also a Human Right. Thus it is much more than merely covering the «need» for eating. This right is mainly violated during the economic crisis —which is worsened by this sanitary emergency. Although the production of food is one of the activities that have not been interrupted, the access and circulation of it have been actually affected, mainly because of the lowering of the purchase capacity families have⁽²⁾, but also due to the difficulties that arise for smaller producers and agricultural families for commuting from the source or production place (generally rural or periurban) to the consuming place (generally urban). As the social economy trade fairs are closed, not only the possibility of getting healthy food is at risk, but also the popular sectors income. The public policies that assume that food in its comprehensive and complex sense and from a human–rights viewpoint, should point at generating alternative channels of commercialization, strategies for institutions to buy goods aimed at the vulnerable population, and an enhancing of the continuity and growth of the production of healthy food for the local consumption and the proximity markets (as an strategy for social inclusion through family and urban gardens).

It has been established that schools should remain open to continue offering the dining service, thus expressing a decision thought for this acquired right not to be violated with the discontinuation of face–to–face classes. However, the adaptation to the system of food has not been equitable. We still have to work to guarantee each girl, boy or adolescent these meals. Therefore, giving families in more vulnerable social contexts food boxes expresses an answer to the emergency. *It is necessary to work for this access to be effective to all the targeted population and to start elaborating strategies of fresh food access to benefit the comprehensive health of girls, boys and adolescents.*

On the other hand, homemade food should be promoted over industrialized food, as it is not always an available cultural practice and we need to take into account that a sedentary lifestyle and malnutrition could affect the wellbeing of girls, boys and adolescents.

(2) According to UNICEF Argentina, since the isolation measures have been determined, 59% of the houses claimed that their labor income has been reduced. This means 3,6 millions of houses with 15 million people with less income.

3. Education

In times of virtual classrooms, the universal access to education is at risk. The approach means both a burden and pressure for those with tools and connectivity and represents the absence of suggestions for those who cannot access. There is an urgent need for change in the education strategy, as regards the pedagogical field, it should be centralized on what girls, boys and adolescents are living during the pandemic, reviewing other learnings and experiences that are taking place in this unique scenario.

The National Government campaign «Seguimos Educando» (We continue Educating) has been available since the first day face-to-face lessons were suspended. The educational offers on public TV channels are also available.

Nevertheless, teachers should feel backed up by the local educational policies. We should provide them with spaces aimed at listening and training to hold up education in a sanitary emergency context, as well as giving them digital resources and equipment. Moving from the whiteboard to the monitor and the centrality of the digital language should be correctly guided and sustained by the Provincial Ministry by setting platforms and campuses at their disposal, safeguarding the identity of girls, boys and adolescents. On their part, rural schools need to develop other strategies —due to lack of connectivity—, considering the circulation certificates for teachers for the handing in and reception of educational alternatives and short interchanges with students' relatives.

The Ombudsman's Offices role as a positioning role, *advisory opinion*, and as a consultant opinion can be seen in initiatives of this kind.

4. Violence

The main reasons for the appearance of situations that get to the specific bodies of childhood and adolescence are in the family sphere. The mandatory isolation exposes even more those girls, boys and adolescents in risk of being victims of gender, sexual, physical and psychological violence, to which we have to add the vulnerability to suffer from virtual harassment in times of hyper connectivity.

As the public bodies are closed to face-to-face assistance, the telephonic lines and social media are open for denunciations and guidance.

The articulation to specific areas related to gender, at a local, provincial and national level, plays a key role both, in order to work in a network as well as socializing all the possible forms of assistance.

We should also mention those specific areas for childhood, at the national level, an exclusive line has been opened for the girls, boys and adolescents to call in.

However, it is usual to find out that these channels of communication are collapsed, or are not accessible to the most affected part of the population and, thus, they are at risk of not getting an answer.

Therefore, the articulation with the Judicial Power is difficult and complex, both in the reception of denounces as well as in the times to establish measures that require an immediate intervention in order to preserve the integrity of women, girls and boys.

On the other side, an attitude of control and monitoring of the policy is needed, which, in this particular context, is in charge of controlling the infringement of the mandatory isolation. Preventing abuse of authority and institutional violence, especially exercised towards adolescents, should be part of the action agenda of the bodies connected to Human Rights.

5. Social security

Regarding the right to social security, it is the duty of the State to accompany those families with lesser incomes and more social vulnerability. The Universal Allowance per Child is a national policy centered on this right. We add the Family Income of Emergency, aimed at the same sector of the population. Precarious jobs, street selling, making money out of collecting cartons, odd jobs in the construction field and handcrafted fishing have been stopped, affecting families that make their living out of these activities. This affects, mainly, girls, boys and adolescents. In Argentina poverty is centered around childhood. According to UNICEF 2019, 50% of children live in a situation of poverty

The Ombudsman's Offices and specific bodies can contribute by giving people some help, guidance and information for the paperwork necessary to access these allowances. Many times, this has been affected by the lack of access to some data in the devices or to the internet in their homes, or by not having permission to go out to collect the assigned money. *They can also ask the Executive Power to liberate the data from the public web, generating and widening the WIFI connection that is free and public.* This would contribute not only to the carrying out of paperwork connected to ANSES, but also to shorten the digital distance for recreational and educational purposes of the ICTs.

6. Familiar and community cohabitation

As part of the monitoring of the Protection System, the tracking of the Exceptional Protection Measures, the conditions in which some girls, boys and adolescents are living, without any parental guidance in Residential Centers, should be sustained. Particularly in this specific context we need to know how they are, and how their rights should be taken care of, their rights to food and health. The survey can be conducted telephonically, allowing a contact and a generalized description. This gives us a primary source of information and, from there on, decisions to guarantee the quality of the care for girls, boys and adolescents that cohabit in institutions can be taken.

In this context, now more than ever, it is fundamental to ask for the fastening of legality controls of the measures of exceptional protection, as well as to generate modalities of alternative care and allowing girls, boys and adolescents to go out and commute to their amplified families homes or to go back to their families of origin, when this decision is adequate for their integrity.

7. Deprivation of freedom of movement

In the institutions and centers in the Juvenile Justice System where young people are deprived from their freedom of movement, the monitoring of the conditions in which they are is a priority in order to prevent injuries and violations to their mental health and their integrity. To enhance the communication with their families and beloved ones through video conferencing, to generate entertaining, recreational, sporting and open air ideas and cultural activities should be a strategy to accompany the youth at all times, but even more when they cannot contact their families. Likewise, to guarantee the right to education in contexts of confinement is also important.

Residential detention and the reduction of the number of young people in deprivation of their freedom of movement should be a prioritizing criteria for the Judicial Power.

Adult women deprived from their freedom, whose babies and small children are with them, should continue their sentence in residential detention and receive psychological guidance so the transitions —returning to prison— could be tackled by the competent teams.

8. Recreation, expression and participation

To exercise the cultural rights inside their homes involves adult people in charge of the care. Cultural sites, the tracking of artistic proposals, and literature selection need to generate proposals to accompany girls, boys and adolescents in isolation.

The development of the promotion of rights centered around the Superior Interest of the Child faces an exceptional opportunity to get to the families and institutions. With a diversity of communication strategies it is possible to make a contribution to the generation of cultural and symbolic significant changes, in benefit of the rights of childhood and adolescence to express themselves and to be heard.

For the first time in recent history, girls, boys and adolescents share so much time and space with their mothers, fathers or adults of reference. It is a duty of the specific bodies towards the infants and young to do —from this historical moment— a social construction that is possible to a culture less adult-centered.

9. Information

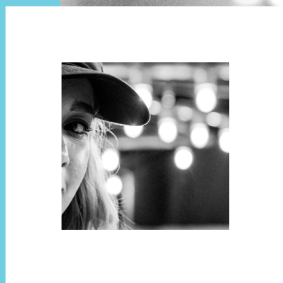
In the light of Information overload, public bodies should exercise their task based on the communication as a right and social service. They should highlight information from official sources, generate strategies to get to the population with the pertinent data, disseminate information with a view on rights and to generate contents and proposals to be at home with rights are actions for the Ombudsman's. Thus, they should also recommend the informative companies and communicational areas from the Governments to tackle news and contents in a respectful way towards the human rights of childhood and adolescence.

Phone lines, contact details of the bodies aimed at preventing violence, the hygiene and care norms, the identification of possible symptoms, what to do in the case of requiring medical assistance, how and why to use masks, these are messages that the State should assume with compromise to be effectively transmitted to the community. The audience, in this sense, is the owner of the rights issued.

IN ORDER TO ACCESS

tools and equipment provided by the Ombudsman's Office of the Girls, Boys and Adolescents of the Province of Santa Fe carried out in this context and from this approach, visit the news on its website and social media.

www.defensorianna.gob.ar



women
and gender
equality



Recommendations of national and international bodies on women and gender equality

«Poets, singers, painters, artists and narrators, especially science fiction ones, have imagined how one day in our lives would be in a world without inequality, with freedom, peace and respect for Mother Earth and all the beings that cohabitate it. But there are almost no texts—explicitly on human rights— about how our bodies, minds, loves, families, communities and societies would be if everyone’s human rights were respected. And maybe there are none because we have not learned to dream with human rights...»

The *Practical Guide to Inclusive and Rights-based Responses to COVID-19 in the Americas* created by the Organization of American States, present on its different chapters a normative and practical detail of the groups that are in a vulnerable situation (you can access to it in the following link: http://www.oas.org/es/sadye/publicaciones/GUIA_SPA.pdf). It has as a reference the principles established by the Inter-American Convention Against All Forms of Discrimination and Intolerance passed on core of the Organization of American States.

In relation to this topic, it states:

«In general terms, there is a global recognition of the importance of incorporating gender equality in responses to emergencies, disasters, and any other type of crisis. The Sendai Framework for Disaster Risk Reduction 2015–2030 clearly stipulates this consideration of gender equality in disaster risk reduction, emergency preparedness, and humanitarian aid actions. Effective implementation of the recommendations of health authorities around the world on the COVID-19 pandemic will be the key to the success of containing this crisis... and the participation and leadership of women is essential.»

Likewise, the Guide points out that apart from the risk of infection, women also cope with a disproportionate burden of unpaid work—including caring for families—as well as their increased vulnerability to the economic crisis and the fallouts derived from it. In times of crisis, women and girls may have a higher risk of suffering from infringed violence on the part of their partners and other forms of family violence as the result of increasing tensions at home. Also, they face higher risks of other forms of gender-based violence, including sexual exploitation and harassment. The principles of inequity and non-discrimination contained in different instruments of human rights cannot be suspended in times of pandemic, rather the opposite, they should continue being an essential part for all the governmental responses to COVID-19. These principles request differentiated responses for those groups which are especially vulnerable.

The secular subsistence of an unequal access to the levels of decision has never affected its obstinate generosity and their effort in difficult moments. Women are today in the first row fighting against COVID-19, they are precisely the ones who provide social care, assume voluntary work, take care of

the health of people with disabilities, whether it is in nursing homes, hospitals, shelters, or wherever it is necessary. According to a study by the Inter-American Development Bank (IDB), in Latin America and the Caribbean half of the doctors and more than 80% of the nursing staff are women, the highest percentage in the world, as these are considered feminine roles. Nevertheless, contrarily to this statistic, it can be observed that men tend to occupy the highest decision-making positions. According to the Guide in the OAS, in 2015, globally, only 27% of Ministries of Health were headed by women, and in our region, currently, only 8 Ministries of Health are led by women ministers.

Thus, due to the implications of the measures of isolation and distancing adopted by the majority of the countries following the recommendations of the World Health Organization (WHO), the incorporation of alternative measures for the prevention, care, and assistance aimed at victims of various manifestations of gender-based violence in domestic settings is required. This includes services adapted for women with disabilities (especially deaf and blind women) and shelters for women and their children who are at risk or homeless, as well as specific measures for women refugees and victims of trafficking. Reinforcing the arguments for which it seems necessary to fight to mitigate the damages that this pandemic provokes on women. The Convention against all Forms of Discrimination against Women (CEDAW, 1979) takes a very important role because, apart from defining explicitly discrimination against women, it establishes concrete measures to be carried on in the states to fight against violence towards women, both in the public and private spheres, from a transformative approach of reality that has as its main axis the substantive equality among women, that is to say, the adoption of concrete measures to get a real equality among males and females. Argentina, in the Law no. 23.179 ratified in the previously mentioned convention, as well as in Law no. 24.632 mentioned by the Convention of Belém do Pará to prevent, sanction and eradicate violence against women, giving both laws a constitutional status. Since 2006 the gender perspective has been integrated as a tool of analysis of the IACHR. In 2010, the General Assembly of the United Nations created a body in charge of accelerating the progress on gender equality and women empowerment, UN WOMEN. Besides, the Argentine Republic has ratified the Sustainable Development Goals 2015–2030, in which women have been assigned an essential role for all of them. Women equality and empowerment as a goal and as part of the solution, #5 aims at «gender equality and empowerment of all women and girls», as it has been thought to get these ends. <https://www.un.org/es/sections/issues-depth/gender-equality/index.html>

Likewise, it is important to mention the Commission on the Status of Women (CSW), main international intergovernmental body exclusively in charge of promotion of gender equality and women empowerment, that documents the reality women live around the world and is in charge of the elaboration of international rules.

All international, governmental and non-governmental bodies unanimously expressed that the parity in decision-making has resulted in a higher plurality when tackling problems and in lesser proposals to find solutions, so we are in a crucial moment in history to make this purpose real.

The participation of women, their leadership and scope of their perspectives show that there are no neutral policies regarding gender and thus that the perspective and necessities and specific interests of half of the population should have their own voice, which plays a key role in the management of this crisis. It is necessary for them to be present and be heard when taking decisions about the responses, both in the short- and long-term, regarding COVID-19 and its physical and economic autonomy.

Considerations regarding the recommendations of the state

It is suggested:

1. regarding the importance of the gender-based policies

- to guarantee uniformity in the judicial measures and of other expertise that are adopted by the provincial governments in order to apply comprehensive measures of protection for violence against women;
- to assign sufficient resources to respond to all the needs of women and girls and ensure that the response to COVID-19 do not reproduce or perpetuate harmful gender norms, discriminatory practices and inequities;
- to work on the general consciousness and on the legislative measures and others for the protection of women in this situation of isolation;

- to spread the rights of women for a life free of violence, in this sense, it is important to organize awareness campaigns for women to:

- promote their access to justice —many times limited by factors such as lack of information regarding their rights—,
- the instrumentation of the procedure for denouncing, breaking language barriers —especially in the case of indigenous women— and other structural difficulties.

It is also fundamental to promote spaces for emotional education for males (especially aggressors) in order to collaborate with all the measures aimed at the reduction of inequality and violence against women.

- to incorporate a gender perspective in the actions and programs referred to the promotion, protection and access of women to health, sexual and reproductive education, formal and non-formal education, work and cultural activities, either in the national, provincial, municipal, private or trade union spheres;
- to reinforce the working legislation and its procedures of protection towards wage equality, workplace and domestic violence in public and private spheres, in order to guarantee protection and equality of women in the context of the pandemic, thus efficient sanctions and the supply of comprehensive protection to domestic staff should be included;
- to boost coordinated actions between public institutions and women organizations in order to update the data regarding their situation and to launch adequate measures related to the needs to face the pandemic, safeguarding the opinions, interests, contributions and proposals to be incorporated in the responses given;
- to establish programs aimed at providing specialized and appropriate services related to the attention needed by those women victims of violence, through entities from the private and public sectors including shelters, counselling services for all family members when needed, and care and custody of girls, boys and adolescents affected by this topic. As well as to avoid institutional violence through the selection of qualified penitentiary staff, and by establishing that no masculine staff should be hired in the front row roles working with women deprived of their liberty in correctional institutions for women.

2. regarding the excessive burden women have on caring jobs and the fragility of paid domestic jobs

- to boost a social organization of the caring tasks that avoid the placing of the responsibility only on women, thus creating a collective responsibility, as the caring tasks are generally carried out by women, who, in general, have the responsibility to take care of all ill relatives, elderly people and girls and boys, due to the collapse of the sanitary system and school closures. We can take as an example the opening of neighborhood caring places or the volunteering to cope with these tasks;
- to guarantee and monitor the fulfillment of the current regulations in terms of the rights and obligations of the workers in private houses during quarantine, taking into account that mandatory isolation includes the absence of staff from private homes to their working spheres, and that their payment should be total and complete. The employment and the caring services have affected workers in general, and particularly informal workers and domestic staff. The capacity of women to get their means for living is highly affected by this pandemic. The experience has shown that the quarantines considerably reduce the economic and subsistence activities and that affect sectors that generate feminine work.

3. regarding the attention to the needs of health, food and shelter to guarantee their tutelage

- to consider the possible activations of systems of primary attention for home visits, in urban areas, through which a health professionals (doctor/nurse) accompanied by a social worker visit families that are in a situation of vulnerability to evaluate not only the health conditions of the members of the family, but also to verify home conditions and the availability of hygiene elements (soap, drinkable water, among others). These visits can also play a key role to identify cases of domestic violence (forewarned by other bodies);
- to promote free legal assistance for women for them to know the juridical resources that are at their disposal to exercise all their rights;

- to safeguard the continuity of essential services to respond to violence against women and girls, to develop new modalities to provide services in today's context and to raise the support to organizations specialized on women to provide services at the local and territorial levels;
- to promote special protection measures in situations of violence, harassment and ill-treatment, paying special attention to the fact that the recommendations of not leaving the places of residence may generate even worse situations of isolation and family violence;
- to reinforce protection measures for subgroups that are vulnerable because of many factors (not only gender) as the rural or indigenous communities, extreme poverty or street living, pregnant women, people with disabilities, elderly women, migrant, institutionalized and dissident;
- to take denounces carried out by victims of violence as valid and sufficient in order to take protection measures, no matter whether they were done by digital or electronic devices and presented to the judicial authority that corresponds, thus avoiding ratifications that victimize denouncers (measure suggested as a good practice to be carried on after the pandemic that was adopted by the Province of Santa Fe).

All these recommendations seem relevant because the capacity women have to get their means of living is highly affected by the current infectious pandemic. The experience has demonstrated that quarantines considerably reduce the economical and subsistence activities and affect sectors which are good generators of female employment. The physical and social distancing measures should, by no means, generate social isolation, deprivation of ambulatory freedom and restrictions of communications with third parts, these situations must be avoided.

Measures adopted in the Province of Santa Fe regarding the mandatory and preventive social isolation

The Procurement Particular Instruction of the Province no. 003 (Instrucción Particular de la Procuración de la Provincia no. 003), March 2020, contemplates the situation of gender-based violence victims that count on a precautionary measure sentenced by the Family Courts or Tribunals of the Province (Tribunales y/o Juzgados de Familia de la Provincia) (available at the beginning of the mandatory and preventive social isolation), responding that they should stay during all the time of the Judicial Power recess, without any need for renovation or extension, contemplating the fact that the current situation and the dispositions of the current normative at the national level (Decree of Need and Urgency no. 297/2020) could not, by any means, worsen the situation of the victims with legal protection.

On the other hand, on April 2nd 2020, the General Procurement sentenced the General Instruction no. 0003 that allowed the Victims of Domestic and Gender-Based Violence Assistance Offices to reception electronically (email, text message, messages services and/or social media) the denounces that victims of domestic and gender-based violence could make, especially those that consist on solicitudes on prohibition of approximation, giving effect and admitting them to the corresponding courts, not being a problem for their reception the impossibility of the denouncer to be present and not being necessary that the denouncers ratify their sayings for the measures to apply.

Then, on April 4th 2020, the General Attorney's Office of the Supreme Court of the Province (Procuración General de la Corte Suprema de la Provincia) launched the applicative newsletter related to Article no. 1 of the General Instruction no. 003/2020 for the non-face-to-face gender-based or domestic violence denounces on the Office for Assistance of Victims of Gender and Domestic Violence. This office contemplates the functioning of the new tools at disposal by the referred Instruction.

It will be verified that the denounce should have identity data (name, surname, ID number) and address of the victim—in this case, the denouncer's address—and also the identity data and address of the aggressor. On the contrary, the victim should provide them.

- 1 ■ The victim will be asked to send, if it is possible and having into account the circumstances, a copy of his/her ID.
- 2 ■ Measures such as the exclusion from home can be asked when the denounce comes from a local or provincial administrative body in protection of the rights of the victims or from a social organization recognized by the ongoing fight for the rights of victims of gender-based violence.

- 3 ■ Once the denounce is ready, a digital notification of the granting will be required, it will also provide the victim with the data and references that are at hand for orientation and guidance.
- 4 ■ Notification of the police authority to the aggressor, by the means at their disposal.

LINE 144

Free telephone line that provides advice and help to victims of gender-based violence, the app is available to be downloaded for free in smartphones, in Android and iPhone systems in the webpage of the ministry: <https://www.argentina.gob.ar/aplicaciones/linea-144-atencion-mujeres>
E-mail 144: linea144@mingeneros.gob.ar

GENDER AND EQUALITY SECRETARY FROM THE PROVINCE OF SANTA FE

Telephone number: 342 155310014 / San José 1701 / Telephone number: 342 458400 – 4589419

EMERGENCY CAMPAIGN ON GENDER-BASED VIOLENCE

As regards the campaign due to the gender-based violence situation, there is an app called «No estás sola» (You are not alone) that allows you to let other 5 contacts that also have the app know that you are at risk.

SHELTERS FOR WOMEN IN SITUATIONS OF VIOLENCE

Care teams, depending on the situation, derive you to a shelter.
As a security measure, no telephone numbers or addresses are included.

WOMEN AND DISSIDENTS DIRECTION OF THE CITY OF SANTA FE

Telephone number: **0800-777-5000** – for violent situations towards women, children or adolescents, dissidents and/or women living in the streets.

**ASSISTANCE CENTER FOR VICTIMS AND WITNESSES TO THE CRIME –
OMBUDSMAN’S OFFICE OF THE PROVINCE OF SANTA FE**

Telephone number: 342 6120124 / 341 3721283 callings or WhatsApp /

E-mail: cavsfe@defensoriasantafe.gob.ar

ROSARIO CITY FOR THE CENTER AND SOUTH OF THE PROVINCE:

Telephone number: 341 5624388 / 341 3721283 callings and/or WhatsApp /

E-mail: cavros@defensoriasantafe.gob.ar

INADI

0800-999-2345

LIFEGUARDS FOR THE RIGHT TO CHOOSE

If you are denied an abortion you can denounce it at the Red de Profesionales por el Derecho a decidir

(Network of Professionals for the Right to choose): **0800-222-3444** / www.redsaluddecidir.org

PUBLIC PROSECUTOR’S OFFICE

Web: www.mpa.santafe.gov.ar/denuncias

TO DENOUNCE:

911 or at the nearest police station. If you are in an emergency situation you can denounce it, this is not a violation of the mandatory and preventive social isolation.

TO ASK FOR PRECAUTIONARY MEASURES PROCEDURES:

Fiscalía de Violencia de Género (Gender-based violence Prosecutor’s Office)

Telephone number: 0800-777-2017 / 342 6130000

E-mail: fiscaliadedenunciassfe@justiciasantafe.gov.ar

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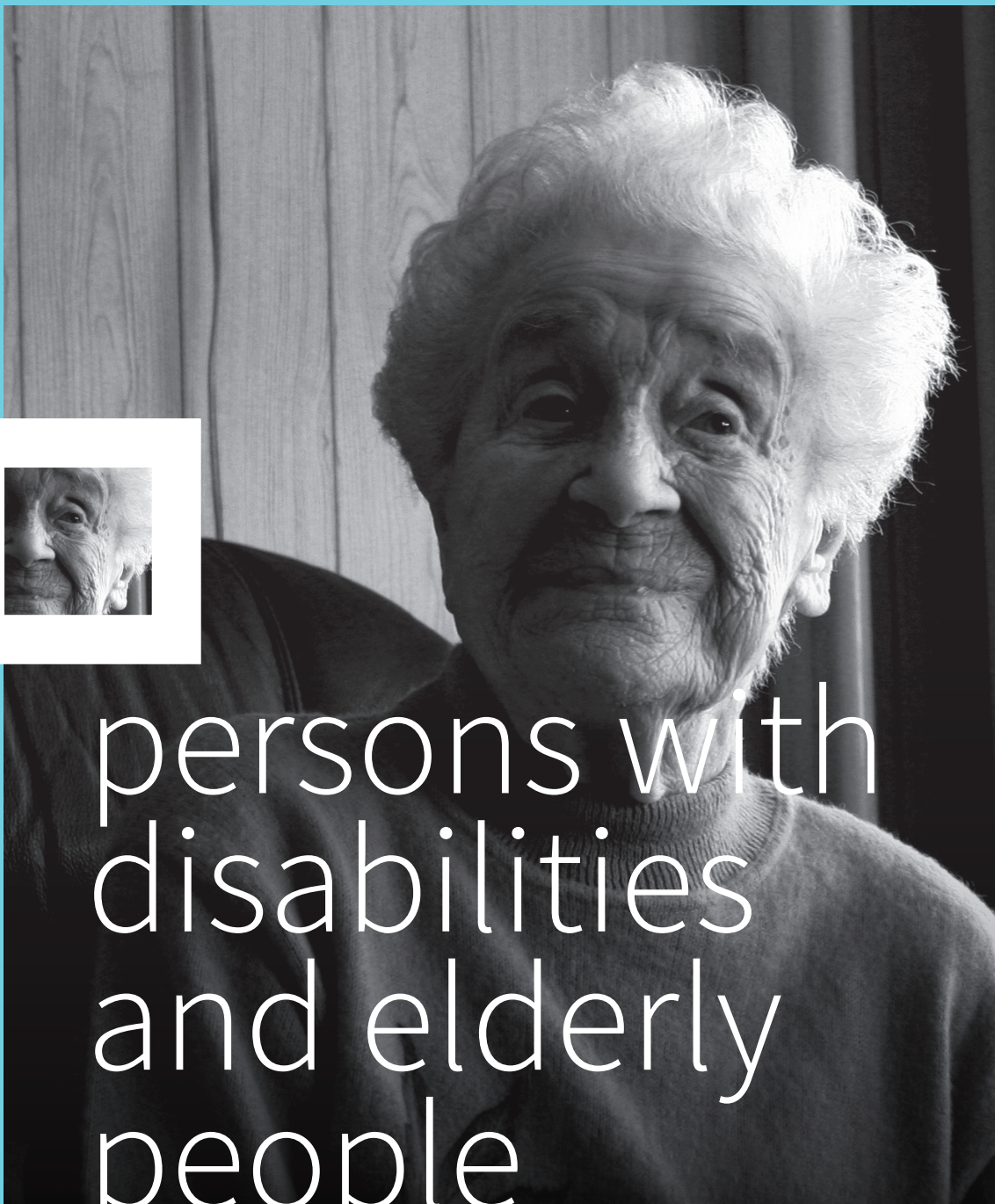
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persons with
disabilities
and elderly
people



Towards an inclusive response for persons with disabilities and the elderly people facing COVID-19 emergency

1. Persons with disabilities and the elderly's situation facing COVID-19 emergency

As it is clearly informed by the OAS in its guide, persons with disabilities tend to be neglected nowadays in this context caused by the COVID-19 pandemic, specially due to the absence of accessibility mechanisms that reduce daily barriers surrounding persons with disabilities and that are necessary to make the preventive measures needed to face the emergency efficient.

According to the 2010 census⁽¹⁾, 404.221 inhabitants with at least one disability lived in our province, which shows —as everything indicates that this proportion remains— that Santa Fe is not a stranger to the universal measure that implies that one out of seven people experience some disability.

Our country, and therefore our province, are no exception to that rule, consistently, this group of people face barriers when accessing to:

- 1 ■ *preventive measures* —because of the difficulty in accessing the information aimed at persons with disabilities—;
- 2 ■ *minimisation and risk control measures* —as quarantine has considerably limited supporting facilities, in many cases vital for persons with disabilities;
- 3 ■ *attention and health care measures* —as in the case of persons with disabilities catching COVID-19, on the one hand their access to the facilities might be more difficult because of communication, mobility difficulties, and on the other hand, their cases might be severe ones due to the preexistent pathologies that might affect them.

(1) <https://www.santafe.gov.ar/index.php/web/Estructura-de-Gobierno/Ministerios/Economia/Secretaria-de-Planificacion-y-Politica-Economica/Direccion-Provincial-del-Instituto-Provincial-de-Estadistica-y-Censos-de-la-Provincia-de-Santa-Fe/ESTADISTICAS/Censos/Poblacion/Censo-Nacional-de-Poblacion-y-Vivienda-2010/Estadisticas-por-Dpto.-y-Pcia/Poblacion/Discapacidad-segun-Censo-Nacional-de-Poblacion-2010.-Provincia-de-Santa-Fe>

2. Specific legal and programmatic framework on the subject, binding and responsive, to our country and our Province of Santa Fe

First of all we must highlight the fact that the Argentine Republic ratified the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD, 2006), by doing so, it joined our domestic law through the 26,378 Law, therefore giving it constitutional hierarchy through the 27,004 Law, consequently the protection of full and equal health with no discrimination related to disabilities remains fully in force.

On its behalf, our State has incorporated to our Inter-American Convention for the Elimination of All Forms of Discrimination Against Persons with Disabilities (CIADDIS-OAS) (by the 25,2820 Law) as well as the Program of Action for the Decade of the Americas for the Rights and Dignity of Persons with Disabilities (PAD-OAS, 2016–2026) and the 2030 Agenda, consequently, prevention, access and healthcare for persons with disabilities must be secured with no discrimination, according to what was mentioned in the OAS Guide.

Likewise, in our Republic we have National laws such as the 22,431 Law that introduces a system which aims at securing the medical attention, education and social security of persons with disabilities. This law must be necessarily complemented with the 24,901 Law that foresees comprehensive coverage of medical insurance required by persons with disabilities. Also, there are laws such as the 26,653 and the 26,858 Laws that guarantee the right to access information in different media, consequently, these laws should help bypass the previously mentioned barriers.

As regards to our sub-national state, it would be true to say that our Province of Santa Fe is a step further than the national norm, as the 13,853 Law (passed on January 2019) maintains the benefits that have been received from the previous national normative, 9325 Law, in relation to health access and social security, besides, it incorporates the ICRPD principles, which forces the provincial state to «secure and promote the full exercise of all human rights and individual liberties of persons with disabilities, with no discrimination» in its article 9. Whilst in its article 10 it is considered among persons with disabilities' rights «the timely access to the comprehensive health coverage with quality assurance and appropriate services according to their particular diagnosis, treatment and rehabilitation needs.»

3. Monitoring of the recommendations provided by the OAS

It is relevant to mention that as a result of this pandemic, rules have been developed, both at a national and provincial level, that address substantially persons with disabilities' rights. In this sense, the great number of decrees, circulars and directives related to the topic will be mentioned:

As regards the recommendations provided by the OAS in its guide, we can make the following considerations:

1 ■ *Within the framework of information and communication policies:*

- At a national level, the National Disability Agency has launched the video call service for deaf and hearing-impaired people so as to dispel uncertainty about risk factors, prevention methodologies and all the information related to the coronavirus pandemic COVID-19⁽²⁾.
- Likewise, a support service via Whatsapp (11-2478-4746) was inaugurated on the 24/04/20, it works from Monday to Friday from 8 to 6pm assisting exclusively persons with disabilities and their families throughout the country.
- As regards local assistance, the Province of Santa Fe already had the «Santa Fe Accessible Response» service, for people with sensory disabilities to be able to get information as regards various topics and news of the provincial state in the context of the COVID-19 pandemic. It works via Whatsapp with a direct line (342-4781130). Each person will be able to send queries and questions in different formats (audios or video) for it to be later answered in the same format⁽³⁾.

2 ■ *Within the framework of mitigation and contagion control policies:*

The Argentine Republic has carried out a variety of mitigation and contagion control policies, summarized in the list of Essential Rights and Services (Separata COVID-19)⁽⁴⁾, published on April 2020, among which we can highlight:

(2) <https://www.argentina.gob.ar/noticias/servicio-de-videollamada-para-personas-sordas-e-hipoacusicas>

(3) [https://www.santafe.gov.ar/index.php/web/content/view/full/218831/\(subtema\)/144551](https://www.santafe.gov.ar/index.php/web/content/view/full/218831/(subtema)/144551)

(4) https://www.argentina.gob.ar/sites/default/files/servicios_coronavirus_01042020.pdf

- Originally, on March 20th, 2020 the National Executive Power dictated through the Decree no. 279/2020 the mandatory and preventive social isolation that establishes that people had to remain in their places of residence. However, there are certain exceptions taken into account, among which stands out the one for «people who assist persons with disabilities». Subsequently, the Decrees no. 297/20 and 355/20 were dictated, which imposed the extension of the temporal effect.
- Likewise, by the Chief Cabinet Minister's administrative decision no. 490/20 on April 11th, 2020 there was an expansion on the number of activities that were able to exceptuate the isolation, allowing among others:
 - 1) the circulation of persons with disabilities and those who were in the group of persons affected by some disorders of the autistic spectrum, in order to make short trips near their places of residence, accompanied by a relative or partner.
 - 2) professional services at home aimed at persons with disabilities and those who were in the group of persons affected by some disorders of the autistic spectrum.
- On its behalf, the National Agency on Disability (Agencia Nacional de Discapacidad) imposed certain restrictions in Resolution no. 77/2020, stating that the circulation established by article no. 1 of the administrative decision no. 490/20 is only to be exercised in a radius of 500 meters from the place of residence and only if you are not part of the risk group and do not have COVID-19 symptoms. On the other hand, and in relation to the services mentioned in article no. 2, the only ones that are to be performed personally are those that are extremely necessary and of imperative need, that are not possible to be performed online and only as long as they are not population at risk or having COVID-19 symptoms.

It is necessary to clarify that the National Agency on Disability (Agencia Nacional de Discapacidad) had already determined by the Resolutions no. 60/2020 and 63/2020 the suspension of all ambulatory attention for persons with disabilities that were not necessary and of imperative need, such normative was later extended by Resolution no. 69/2020. Though this rule it was granted for all the recipients of the «Federal Health Program *Incluir Salud*» the services needed by persons with disabilities in the distance modality and that they could access to daycare, educational therapy, training, early education, basic education centers, outpatient rehabilitation facilities, clinics, early stimulation services in clinics and at home, personal tutoring and support teacher services, school integration, special schools and transport with all that it implies, respecting the suspension related to the epidemic and granting the mandatory and preventive social isolation measure of the persons that are not exempted by Decree no. 297/20.

Among other measures provided by the same agency, one that stands out is the automatic renovation of disability certificates that are about to expire.

- On its behalf, the Superintendence of Health Services, a body in control of the national medical insurances dictated the Resolutions no. 269/2020, 281/2020 and 282/2020 aimed at health insurance scheme agents and prepaid medicine companies implementing the use of video assistance or video consultation, these agents are also compelled to secure provisions of medications for chronic disease treatments, making sure that the delivery of them is not delayed in order to prevent recipients to crowd pharmacies, consequently, long-term use medication prescriptions will last as long as the isolation measures does.

The national executive power, through bodies such as the National Disability Agency and the National Superintendence of Health Services, has dictated several measures aimed at allowing persons with disabilities to continue having access to their rights, whether it is to the automatic renovation of the disability certificates or to medications prescriptions, as well as to the non-interruption of professional services at home that are of extreme necessity or the right for persons who suffer any disorder from the autistic spectrum, psychosocial or neurological disabilities —who require essential contact with the environment and the outside, furthermore, specific policies are established that allow their mobility and continuity of their services at the same time that contagion is prevented.

- On its behalf, the Province of Santa Fe joined the ordinance that established the «mandatory and preventive social isolation» through ordinance no. 270/2020, as well as to its extensions through provincial ordinances no. 304/2020 and 328/2020 and also dictated identical measures to those established by the national government:
 - as regards mental health care in the public sector, the Provincial Mental Health Direction (Dirección Provincial de Salud Mental) developed a protocol, or Innovative approach and recommendation on mental health during the coronavirus contingency»⁽⁵⁾ that establishes that the organization of three levels of the public subsector attention will be respected, and this includes; 1) a telephonic video assistant support plan, 2) face to face plan in crisis situations and 3) and a video and telephonic health daily tracking. The already mentioned protocol also reproduces several recommendations to call center agents and health teams for the attention of

(5) <https://www.santafe.gob.ar/index.php/web/content/download/257682/1357416/>

hospitalized people due to mental health issues, both in public and private establishments as well as for the contiguity of outpatient mental health services.

– on the other hand, on April 14th, 2020 the Ministry of Health of the Province also dictated Resolution no. 531 that establishes, within the framework of this declared sanitary emergency⁽⁶⁾, a trip protocol for people with physical, cognitive and psychosocial disabilities whose state might be aggravated by the isolation and confinement situation derived from the declaration of preventive social isolation, for them to be able to circulate in public places near their places of residence, accompanied by a relative over 18 who lives in the same house, for a period of not more than 30 minutes, twice a day, between 11 to 12 am and 5 and 6 pm, taking into account the necessary measures in order to prevent infection⁽⁷⁾.

3 ■ *Within the attention and healthcare measures framework:*

- In cities such as Rosario and Santa Fe the realization of additional cleaning raids has been ordered in places such checkpoints, squares, among others. On behalf of the local authorities (municipalities), these tasks were also copied in some townships⁽⁸⁾. Although they are not specifically aimed at persons with disabilities or the elderly, they obviously include them within the framework of citizens protected by such actions.
- On its behalf, national medical insurance PAMI established since the beginning of the isolation period that only family visitation was to be allowed in rehabilitation and mental health centers with hospitalization and facilities for persons with disabilities with accommodation. Likewise, it was ordered to restrict visitation from people who had been in areas of viral circulation and/or in contact with people who had traveled and/or had symptoms.
- Likewise, the government of the Province of Santa Fe established a Recommendation Protocol added to a hygiene, cleaning and prevention tutorial in order to prevent the spread of COVID–19 contagion in socio–medical centers, nursing houses, homes for old people with disabilities, senior citizens' homes and therapeutic communities, that is why people responsible for these establishments are compelled to complete sworn statements as regards people admitted to the establishments.

(6) <https://www.santafe.gob.ar/index.php/web/content/download/257782/1357758/>

(7) Among others, the rule includes disruptive behavioral changes, emotional problems such as persons affected by some disorders of the autistic spectrum, generalized development disorder, psychological disorder not otherwise specified, attention deficit hyperactivity syndrome and mental retardation (mild, moderate, severe or profound) with physical deterioration.

(8) Urban agglomeration of less than ten thousand inhabitants.

4. Recommendations and considerations as regards measures to take into account in order to prevent, contain and mitigate the impact of the COVID-19 pandemic for persons with disabilities

- Information about health and services must be provided by the State in a permanent and sustained way for persons with disabilities, at the same time and through the same channels as with the rest of society, even though it has to be in different formats. As we previously mentioned, there are reporting mechanisms in special formats adapted to hearing disabilities.
- As regards indications related to women with disabilities who are victims of gender-based violence, there are dispositions that guarantee the realization of online complaints, for example through the website of the Public Ministry of Accusation and /or through the CAV – Ombudsman’s Office (Ministerio Público de la Acusación y/o por intermedio del CAV – Defensoría del Pueblo). However, it would also be advisable the addition of other specific measures aimed at guaranteeing the accessibility to women with disabilities with hearing and/or sight impairment.
- Apart from that, the National State has established that the access to a legal abortion is an essential service that cannot be denied by state authorities, even in this mandatory and preventive social isolation context, this was also announced to the provinces in order to guarantee its fulfillment with no barriers.
- In our country, the non–forced hospitalization for persons with disabilities is considered to be the most widely used criterion to apply in all cases, according to the current paradigm. Thus, the institutionalization should be exceptional and for a limited period, mandated by a competent judge after a process carried out taking into account the participation of the person in restinged capacity and controlled by a judicial authority. These dispositions are reflected on Law no. 22.914 from the Code of Civil and Commercial Procedure of the Nation and current provincial norms.

5. Situation of the elderly people in the Province of Santa Fe facing the COVID-19 pandemic

As regards senior citizens, it must be highlighted that the Provinces of Santa Fe, Córdoba and Mendoza, represent the largest groups of this age range. According to data from the National Institute of Statistics and Census (INDEC) aimed at the Province of Santa Fe, by 2019 the 17% of the population, near 600,000 people, was going to be people over 60 years old.

Several countries agree on giving priority to protecting senior citizens from catching COVID-19, taking as a first measure social isolation in order to minimize or slow down its spread. However, this isolation situation shows that apart from being a vulnerable group and at risk because of the pandemic, isolation can also negatively affect their mental health.

Therefore, the monitoring and evaluation of these effects on mental health are essential in order to create social and community strategies so as to mitigate these effects. This is even more important when senior citizens live in nursing homes or retirement homes as in these cases it is more urgent to control elderly people's human rights.

6. Specific legal and programmatic framework on the subject, connected and responsive to our country and our Province of Santa Fe

Even though the elderly are an indisputable part of the normative universe of the international system of human rights, its specific regulation as a distinct group of society is contemplated by regional tools, as the Inter-American Convention on Protecting the Human Rights of Older Person, which aim is the promotion, protection, recognition and full enjoyment and exercise of all human rights and fundamental liberties of a senior citizen, in order to promote their inclusion, integration and participation in society. Among other rights, equally important, the Convention embodies health care based on informed consent and access to information (Art. 11) and long-term care (Art. 12). Article 29, on its behalf, established as regards risk and humanitarian situations the following:

«States Parties shall adopt all necessary specific measures to ensure the safety and rights of older persons in situations of risk... in accordance with the norms of international law, particularly international human rights law and international humanitarian law».

In 2015 the Argentine Republic ratified that Convention through the passing of the National Congress Law no. 27,360, therefore it is currently active in our domestic law.

There are few specific provincial rules issued after the addition to the Convention, as for example Catamarca's Law no. 5568 , and before that, the Law of Promotion and Protection of the Elderly in Santa Cruz no. 2669, the Law of Comprehensive Prevention and Protection Against the Abuse and Mistreatment of the Elderly in CABA no. 5420 , the Law of Wellbeing Protection and Prominence of the Elderly's Right of Jujuy no. 5530 .

As regards provincial regulation, even though the bill of Comprehensive Protection and Promotion of the elderly's rights, which was approved by Legislature, at the end did not go into effect by decision of the Executive Power, in its place it was created the Elderly Ombudsman (Defensor del Pueblo de la Tercera Edad). Likewise, there are several local ordinances that promote or protect the Elderly's Rights (Rosario) or creation the Elderly's Observatory (Santa Fe).

7. Supervision of recommendations

As the first entry, the province has 20 official residences, in which 383 senior citizens live, added to that, there are 50 private residences authorized by the Provincial Direction on the Elderly (Dirección Provincial de Adultos Mayores) which accommodate near to 1327 people⁽⁹⁾. In this context, on March 25th, 2020 the COVID-19 technical committee of the province put into effect a variety of specific recommendations⁽¹⁰⁾ for the prevention of coronavirus in nursing homes, based on the recommendation guidelines provided by the National Health Ministry. A few weeks later (April 25th, 2020) a new protocol⁽¹¹⁾ was issued —already mentioned in the part talking about persons with disabilities as it was

(9) *El Litoral* Newspaper, «the Province provided a new protocol with recommendations for nursing homes», Area Metropolitana, 25/04/20.

(10) [https://www.santafe.gob.ar/index.php/web/content/view/full/234557/\(subtema\)](https://www.santafe.gob.ar/index.php/web/content/view/full/234557/(subtema))

(11) <https://www.santafe.gob.ar/index.php/web/content/view/full/234420/>

issued at nursing and residential homes with persons with disabilities— that has basic technical recommendations for the care of these residents in the face of the danger of catching COVID–19, that consists of: general recommendations, specific recommendations for service staff, staff care measures, recommendations about patients care, psychological, psychiatric and emotional support and recommendations in the case of admission of new residents. Likewise, it is an obligation to formalize sworn statements of those responsible for the establishment and of those who are admitted to them.

On the other hand, also related to the elderly, the National Institute of Social Services for Retirees and Pensioners (INSSJyP) —and PAMI—, which is a medical insurance that provides coverage to a large number of old people, promoted the implementation of an exclusive free telephone line available for old people to ask questions about coronavirus and access to information as regard specific recommendations on health care.⁽¹²⁾ Likewise, the automatic renovation of medications, insulin and test strips was established up to April 30th, among other measures. The same body (INSSJyP), through Resolution no. 2020–913– created a Contingency Committee for the adoption of measures and actions related to the COVID–19 treatment. This committee was in charge of creating the necessary protocols to face the contingency. Within this framework the committee issued an Act approved by Resolution no. 2020–1014 INSSJyP by which safeguard provisions are adopted for both workers over 65 years old and affiliates, private and their own providers.

Likewise, by Resolution no. 2020–1015 a sanitary emergency was declared in order to guarantee —to members of the National Institute of Social Services for Retirees and Pensioners— the access to basic needs and services for the prevention, attention and affection of Coronavirus (COVID–19), including the acquisition of goods and services aimed at the training and communication for the prevention of the spread of the virus. Likewise, the implementation of measures aimed at lowering people circulation in agencies and LOU and to facilitate the realization of online procedures were contemplated, as in the case of people who want to affiliate themselves to PAMI, they will be able to initiate the procedures online from the website of the institute.⁽¹³⁾ It must be also mentioned that on April 19th, 2020 the Protocol for Residential Homes and Day Centers was published, there is a detailed COVID–19 control plan with detailed recommendations aimed at staff, people recently admitted to the residential homes and other circumstances.

(12) <https://www.pami.org.ar/saberesprevenir>

(13) <https://www.pami.org.ar/tramitesonline>

On its behalf, Santa Fe's health insurance, IAPOS (as already mentioned in the section talking about persons with disabilities), establishes an automatic renovation mechanism for the authorization of medications related to chronic diseases, oncological treatments and other medical conditions. Also, in order to prevent people from overcrowding pharmacies and health clinics in order to get prescriptions, the possibility of presenting an online prescription was established, which benefits particularly the elderly. However, the process is not excluded from inconveniences such as the communication between citizens and their own doctors.

As regards personal hygiene recommendations and environmental cleaning and disinfection, especially regarding handrails, ramps and stairs aimed at persons with disabilities, as well as the delivery of protection gloves, soap, antibacterial wipes, among others, a policy of food and cleaning kits delivery was implemented, as these people need them even more because they use their hands to mobilize themselves and interact with their surroundings. Likewise, the delivery of such elements was prioritized in vulnerable neighborhoods in large cities. Social and religious neighborhood organizations, the Argentine Army and even interpreters from the Quom native community took part in the shipping raids.

8. Recommendations as regards measures and considerations to take into account so as to prevent, contain and mitigate the impact of the COVID-19 pandemic among the elderly

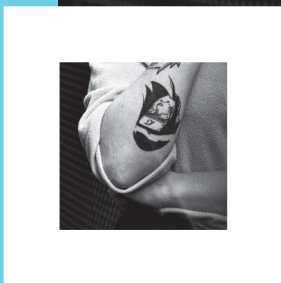
- It must be established the need for coordination and cooperation between the provincial state and municipalities and townships in order to carry out a systematic control of the fulfilment of the protocols issued in nursing homes and elderly residents during the pandemic.
- It is necessary that medical insurances guarantee telephonic assistance in extended schedules and that they communicate properly their telephone numbers and complaint channels by different means of communication of common use for the elderly.

- Importance must be put in searching for solutions to minimize the risk at which the elderly are exposed when going to the bank, in order to secure their economic safety, and to make it easy for them to collect their assets and incomes.
- It is necessary the state generates and sustains prices monitoring procedures of staple food and essential articles for the elderly, as in the middle of a pandemic they might suffer price increases that makes them inaccessible for a large number of old people.
- Social distancing measures must not produce a type of isolation that affects the physique health of the elderly. Communication can be encouraged through electronic devices for old people who live alone in their homes as well as for those who are institutionalized, so there should be campaigns that explain and teach how to use these devices, also, it should be urged that nursing homes facilitate the communication between their residents and their respective families.

The OAS Practical Guide to Inclusive and Rights-based Responses to COVID-19 in the Americas expresses that:

«It must be considered that older persons are not a homogeneous group and therefore, in addition to age, other vulnerabilities will coexist at different levels in the context of the pandemic: someone who has his or her basic needs satisfied (housing, food, health, education, income, affection, etc.), will not be affected in the same way as someone who does not and who will become part of an especially vulnerable subgroup within that group already at risk. The same is true of older persons who are institutionalized and/or have mental disorders, cognitive impairment, or dementia: another highly vulnerable group.»

As a conclusion, it is necessary that the state guarantees the elderly's human rights with a special emphasis in the midst of this pandemic as, according to statistics from European countries, and the USA, they are the most affected group, that is why we believe that emphasis should be put on the protection of their rights.



LGBTIQ+



Practical recommendation guide on the subject of the LGBTIQ+ within the COVID-19 context in the Province of Santa Fe

For LGBTIQ+ people (lesbians, gays, bisexuals, transgender people, intersex people and queer people) the social stigma and continuous prejudice as regards their gender identity mean a usually unbreakable barrier for them to access their rights, particularly the right to health. In that sense, and according to the few existent sources of information of several countries in the region, LGBTIQ+ people (and particularly transgender people) find difficulties as regards access to food, housing and basic services, as well as to education, work and social security. Affected also by axes of inequality they are exposed to particularly complex situations of discrimination.

In the case of homosexual men and transgender women, they are among the priority group as regards HIV due to its overrepresentation among people who live with the virus in percentage terms. The advance on this last category is slow but it is gaining importance in the administrative registers. The Eastern Republic of Uruguay is the only country in the region that carried out an intensive survey on transgender people and it identified almost 1000 people (approximately 0,03% of the population), this is called the Social Development Ministry's Survey on Transgender people cense of 2018. Having into account the interdependency and indivisibility of the right to health with other social rights, the situation ends up being most complex, some examples of intersectional situations particularly critical facing this pandemic are the following:

- transgender sex workers who —in a formal or informal context of work— have been left with no economic income;
- homosexual people and transgender people with VIH with no confirmation of their condition or with no access to antiretroviral;
- LGBTIQ+ migrant people who usually do not have the support of local people in their foster countries because of their own homophobic culture or face the risk of deportation because of their irregular status, which prevents them from accessing basic health services;

- old homosexual people with fewer social support networks than the rest of their generation;
- homosexual people and transgender persons deprived of liberty subjected to daily abuse;
- LGBTIQ+ persons with disabilities, as deaf people, with difficult access to information, or girls, boys, and adolescents who face violence from their parents and families as well as from their communities.

Taking the LGTBIQ+ population as a specific social sector allows the visualization and unmistakably recognition of a historic discrimination to which people from this group have been subjected, to which the additional effect of the COVID–19 pandemic is added, which has produced a raise in stigma, xenophobia and discrimination towards this social group. It is evident that within this context, a specific state intervention is necessary in order to guarantee an adequate protection of this social group’s needs.

From a Human Rights–based perspective, the questions aroused from this social isolation situation due to COVID–19 need a response based on the perspective of an emergency or contingency plan with transparency as regards information, that guarantees, as much as possible, social participation and that at the same time does not end up being a succession of cumulative measures that might be contradictory. From this point of view, even though quarantine is a response used among countries against the COVID–19 in order to control its spread, quarantine is only admissible if it is carried out without encouraging discrimination, as it affects the personal right to freedom and security —even though it responds to a public and social pressing need— and it should only last for a period of time, and be checked regularly, quarantine should also guarantee, in parallel, the protection of rights of people in situations of mandatory and preventive social isolation, and the fulfilment of their basic needs, such as proper housing, food, water and sanitation.

What legal obligations affect the State of Argentina as regards LGBTBIQ+ people's rights?

In this point it is important to highlight as governing instruments of the Argentine Republic the Universal Declaration of Human Rights and the Yogyakarta principles, related to the protection of LGBTBIQ+ people's rights, from which we can extract the following main recommendations:

- To protect people from homo/lesbo/trans/biphobia and violence and to prevent torture and cruel, inhuman and degrading ill-treatment. To promulgate laws against hate crimes that discourage violence against people based on their sexual orientation and to establish efficient systems to denounce acts of violence motivated by hate, particularly investigating who is responsible for these actions and bringing them to justice. To provide training to police officers and to supervise detention facilities.
- To guarantee people not to be arrested or imprisoned because of their sexual orientation or gender identity, and not to be submitted to degrading physical examination in order to determine their sexual orientation.
- To forbid discrimination based on sexual orientation and gender identity. To promulgate a legislation law that forbids discrimination based on sexual orientation and gender identity. To provide instruction and training in order to prevent discrimination and stigmatization of LGBTBIQ+ and intersex people.
- To safeguard freedom of expression, association and peaceful reunions of all LGBTBIQ+ people and to be sure that any restriction to these rights —even in the cases that the restrictions might have as a purpose to fulfill a legitimate aim and might be even reasonable and not extreme— is not based on sexual orientation or gender identity. To encourage a culture of equality and diversity that embraces the respect for LGBTBIQ+ people's rights.

Specific recommendations provided by the Ombudsman's Office

To pay attention to COVID-19 practical implications does not, in any way, suspend those State obligations, and as regards gender and dissents, the state strengthens its compromise with assisting gender-based violence situations that thousands of women, girls, transgender women, intersex people and other dissents suffer from, that is why stricter measures must be taken in order to minimize the impact that this new crisis have upon them.

The equality and nondiscrimination principles contained in different Human Rights tools cannot be suspended in pandemic times, on the contrary, they must continue to be an essential part of all the governmental responses to COVID-19. These principles demand differential responses for groups that find themselves especially vulnerable.

Taking all that into account, from the Ombudsman's Office of the Province of Santa Fe, it is considered important to make the following recommendations:

Recommendations for LGTBTIQ+ people

- 1) *To guarantee that LGTBTIQ+ people can access clear, timely and important information*, thus it is necessary:
 - to strengthen dissemination, communication and visualization measures for the information regarding assistance and protection services for people in situations of gender-based violence during this mandatory and preventive social isolation; likewise it is recommended to carry out specific campaigns, to publish telephone numbers and available resources for assistance;
 - to generate a clear message that highlights that the «Stay at home» slogan does not imply perpetuations or tolerance to gender-based violence. Gender-based violence is under no circumstance tolerable, thus protections and assistance alternatives are expected within the mandatory and preventive social isolation context;
 - to strengthen a message that ranks solidarity bonds between people in the community, putting emphasis on the idea that *social distancing is not solitude or indifference when facing gender-based violence*. Working with the identification of the message and empathy with the addressees plays a key role in achieving this aim. Some recommendations should avoid referring to people who suffer

from gender-based violence as «victims», also, they should not describe them excessively or use the term «suffering» while mentioning these situations. Thus, it is recommended to talk about «people in gender-based situations» and not about «people subjected to violence»;

- to use an accessible and simple language, as it is fundamental that messages are accessible in order to be efficient. It is suggested to use inclusive language and that audiovisual messages have subtitles. Also, it is important to include non-binary identities and dissents in the discourse related to this situation. Gender-based violence does not only affect women, it also affects other identities. Likewise, we recommend referring to «people in gender-based violence situations» or «women and LGTBIQ+ people in gender-based violence situations».

2) *To create timely remote support strategies to LGTBIQ+ people*, for this it is possible to:

- to set a telephone line in order to give advice and training to people regarding resources and services based on a defined and articulated protocol with public institutions and social organizations;
- to strengthen the direct attention services and devices for people in gender-based violence situations, that is, to guarantee the proper functioning of the attention teams within the context of isolation and the necessary resources, to increase the communication channels and psychological contention, to widen the lines of communication through the activation of a WhatsApp number, emails, and phone Apps or other alternatives of remote service. It is also suggested to establish these services as essential within the framework of this emergency;
- to reinforce the articulation and coordination mechanisms with provincial security forces. In order to do so, it is suggested to establish action protocols in order to guarantee rights and protection for people in gender-based violence situations, particularly to make sure that these procedures allow for the realization of denounces and allow people to receive immediate assistance;
- to strengthen articulation and coordination mechanisms with the judicial Power in each province in order to guarantee the access to justice in a specific quarantine context.

3) *To guarantee direct accompaniment for LGBTIQ people*, in a way that allows them:

- to guarantee the proper functioning of residential and nursing care homes, refugees and/or shelters, as essential services during quarantine, and to strengthen protection strategies for people in gender-based violence situations;
- to strengthen territorial organizations communitarian networks that work with gender violence situations. In contact with an imminent diminution of resources available it is fundamental to strengthen even more the provincial and municipal government articulation with the organization that assists vulnerable neighborhoods —and in a more direct way to people in gender-based violence situations;
- to strengthen social and economic assistance programs with more and better resources for people in gender-based violence situations. Within the isolation context, the levels of economic dependency end up being an inescapable obstacle for most of these people who need urgently social and economic support networks;
- to strengthen food security policies and to manage the access to subsidies for transgender people upon whom this crisis impacts in a different way, particularly in cases of extreme and urgent necessity. It must be taken into account the fact that this part of the population faces additional difficulties in order to have economic livelihood —added to the ones related to isolation;
- to strengthen the fast and effective access mechanisms to sexual and reproductive services, including the supply of contraceptive methods, hormonal emergency contraception and access to a legal abortion (ILE, according to the acronym in Spanish) and to therefore guarantee the divulgation of specific information about available resources and places during mandatory and preventive social isolation;
- to develop assistance and advice plans that contemplate the promotion of rights and consultation and attention to specific needs LGBTIQ+ population might have, within this context of isolation, specially focusing on the difficulty to access the health system;

- to guarantee adequate hygiene elements as well as a comprehensive attention for people under a hormone treatment, the extension of prescriptions and/or delivery of medications during the period of mandatory and preventive social isolation; guaranteeing therefore the access to hormones or correspondent treatment that might be carried out in the health centers closer to people's places of residence, conforming to the relevant requirements for this;
- to guarantee protection, advice and support in the face of violent situations exercised by security forces and prison staff that affect a great amount of people from the LGBTQ+ community, particularly transgender women, who as an effect of the systematic exclusions and the violation of their basic and inalienable rights, they generally face poverty, which restrict the survival strategies available for them and explain why they resort to informal economy, sex work or activities that are barely legal.

As a final reflection of this chapter, it is important to remember that once more the right to health constitutes one the fundamental human rights, which are those that exist previous to society and the State, as they correspond to the human person and to their human condition. It is a collective, public and social collective right, through which people have the right to protect their health, to access the adequate and truthful information: the freedom of choice and of an equitable and decent treatment.

This right involves not only *the guarantee to access basic health services* but also *its maintenance and regulation throughout time*, which according to a uniform case law it affects mainly the State, especially in specific assumptions of legal protection that involve vulnerable people such as children, the elderly, persons with disabilities, unshielded children, from the pregnancy until the end of their fundamental education period, and of the mother during the pregnancy and in the time of lactation (National Constitution, Inc. 23, Art. 75).

For more advice and orientation
in the Province of Santa Fe

LINE 144

Telephone number: free helpline to enable victims of gender-based violence to seek counselling and help.
144 App: the free app for smartphones is available to be downloaded in both, android and iPhone devices through the Ministry webpage: <https://www.argentina.gob.ar/aplicaciones/linea-144-atencion-mujeres>. E-mail address 144: linea144@mingeneros.gob.ar

ASSISTANCE CENTER FOR VICTIMS AND WITNESSES TO THE CRIME – OMBUDSMAN’S OFFICE OF THE PROVINCE OF SANTA FE

Telephone number: 342 6120124 – 342 5221935 for calls or WhatsApp /
E-mail: cavsfe@defensoriasantafe.gob.ar

INADI

Telephone number: 0342 456–3295 / **0800–999–2345**

PUBLIC PROSECUTOR’S OFFICE

Web: www.mpa.santafe.gov.ar/denuncias / E-mail: fiscaliadedenunciassfe@justiciasantafe.gov.ar

TO DENOUNCE:

Call **911** or go to the closest police station: if you are in an emergency situation you can make a denouncement, and that will not mean breaking the mandatory and preventive social isolation.

WOMEN AND DISSENTS DIRECTION OF THE CITY OF SANTA FE

Telephone number: **0800–777–5000** – For women, dissents, adolescents, and girls in situations of gender-based violence and women living in the streets.

SECRETARY OF EQUALITY AND GENDER OF THE PROVINCE OF SANTA FE

Telephone number: 342 155310014 / San José 1701 / Telephone number: 342 458400 – 4589419

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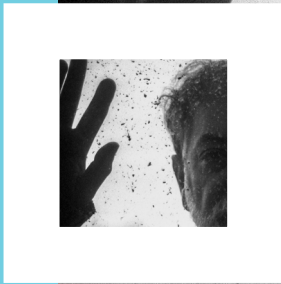
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persons
deprived of
liberty



Recommendations of
national and international
bodies for prisons and facilities
that accommodate persons
deprived of liberty

The «Practical Guide to inclusive right-based responses to COVID-19 in the Americas»⁽¹⁾, published on the 7 of April 2020 by the Secretariat for Access to Rights and Equity Department of Social Inclusion from the General Secretariat of the Organization of American States (GS/OAS) establishes that:

«Health is a right necessary to guarantee the right to life, and safeguarding that right is essential to preserving public order. In the Americas, we have come together in the past to face threats that endangered the values we treasure as inalienable rights, such as democracy, security, human rights, and comprehensive development, and we have collectively committed to protecting the rights of all people, including the right to life and the right to health. The COVID-19 pandemic poses huge challenges for us at the national and regional levels, but it also provides a new opportunity to come together as a region to defend these values. It is especially an opportunity for us to reaffirm the basic principle that united us when the OAS was established and that is reflected in the American Declaration on the Rights and Duties of Man: that all people «are born free and equal, in dignity and in rights, and, being endowed by nature with reason and conscience, they should behave themselves fraternally».

The OAS Practical Guide highlights the duty of the States to guarantee the right to health, mainly on those...

«groups of people who, based on nationality; age; sex; sexual orientation; gender identity and expression; language; religion; cultural identity; political opinions or opinions of any kind; social origin; socioeconomic status; educational level; migrant, refugee, repatriate, stateless or internally displaced status; disability; genetic characteristics; bio-psycho-social condition, or any other condition have been discriminated against and the recognition, enjoyment or exercise of their rights have been denied or violated». (Inter-American Convention against all Forms of Discrimination and Intolerance, OAS)

(1) You can access to the web with this link: http://www.oas.org/es/sadye/publicaciones/GUIA_SPA.pdf

Persons deprived of liberty are in a situation of greater vulnerability due to the spread of COVID–19 than the general population, given that they live in confined spaces with many other people for prolonged periods of time. Overcrowding promotes the spread of diseases, makes it difficult to access basic and health services in prisons, and constitutes a risk factor for the occurrence of calamities.

That said, countries have recommendation social distancing as a measure to prevent or lower the propagation of COVID–19, however, physical separation and self–isolation for persons deprived of liberty, taking into account the conditions in which they live, is almost impossible, as well as following hygiene and handwashing recommendations, so that is why it is recommended that government act urgently in order to protect the health and safety of those people.

At the same time the Guide highlights the fact that persons deprived of liberty

«...also face other risk factors in the face of COVID–19, as the fact that they encounter word health conditions and have a weakened immune system due to stress, malnutrition or prevalence or coexistence with other diseases such as tuberculosis or other viral blood diseases. Past experiences shown that prisons, and other centers or detention where people are too close to each other might act as a force of infection, amplification and propagation of infection diseases both, inside and outside the facilities, that is why, to take care of the health of those deprived of their liberty, is widely considered as a way of taking care of public health...».

Within the framework of these conditions the following recommendations are provided by the Guide to States related to the adoption of the measures that allow to reverse the effects of the overpopulation and overcrowding in order to protect persons deprived of liberty and part of a group with a higher risk of catching COVID–19, taking into account in all cases the respect for the prisoners' human rights, particularly their rights to health and justice. Ensuring that any restrictive measure adopted regarding persons deprived of liberty with the objective of preventing the spread of COVID–19 is legal, necessary and proportional, in accordance with human dignity, and temporary.

Likewise, it was recommended to promote coordination and collaboration between health and security sectors to ensure that prevention and treatment policies applied to people under state custody are adequate and in accordance with the public health strategy adopted to fight the pandemic.

Finally, the guide also recommends allowing national and international bodies responsible for inspecting prisons and other facilities in which the State keeps people under custody to continue with their duty and to keep having access to these places.

Likewise, on the 3rd of April this year, the *United Nations General Assembly* passed the Resolution no. 74/270 called «Global solidarity to fight the coronavirus disease 2019 (COVID-19)»⁽²⁾, through which multilateral renewed solidarity and cooperation among other important points, reaffirm its adhesion to the international cooperation and to the multilateralism and its firm support to the central role of the United Nations in the world response to the coronavirus disease of 2019.

The resolution highlights the need for human rights to be respected and points out that there is no place for any kind of discriminations, racism nor xenophobia in the response to the pandemic. This leads to renewing the UNGA's compromise with helping people and societies that are in special situations, specially the weakest and most vulnerable, and recognizes that many governments have offered their assistance and support to others with a spirit of solidarity and mutual support.

Likewise, in the core of the United Nations, the *High Commissioner for Human rights* issued a statement⁽³⁾ in which it was highlighted that «... all national efforts should try to attenuate the repercussion of the epidemic upon women and more vulnerable groups...», among which, without doubt, we find the group of persons deprived of liberty.

Subsequently, it issued the «Fundamental Directives for the Human Rights–based Perspective Incorporation in the COVID-19 Pandemic Attention»⁽⁴⁾, a series of general guidelines on elements of human rights that must be taken into account in the attention to the COVID-19 pandemic crisis and its consequences. Among them, it was established that the *duty of protection* relies on the States, highlighting vulnerable people and groups' situation, among which we can find the group of persons deprived of liberty.

(2) You can access the full document with the following link: <https://undocs.org/es/A/RES/74/270>

(3) You can find the full statement with the following link: <https://www.ohchr.org/SP/NewsEvents/Pages/COVID-19.aspx>

(4) You can find the directives published in the following links: <https://www.ohchr.org/SP/NewsEvents/Pages/COVID19Guidance.aspx>

The *United Nations Office on Drugs* has created a series of recommendations for the prevention and control of COVID–19 among persons deprived of liberty and those who work in prisons⁽⁵⁾, taking into account the fact that the virus has the potential to provoke outbreaks in prisons and other closed spaces due to the confinement condition in which people live in proximity for long periods of time.

That international body has highlighted that in prison without local circulation of the virus, the risk of introducing it might be associated with recently admitted people, prison staff, service providers and visitors who might be infected, so an emphasis on a constant control on the health of the staff is made, also on the setting up of measures for preventing the contagion among prison staff, the immediate isolation and testing in the cases of people from the staff who may have any symptom, among others.

The CIDH addressed particularly persons deprived of liberty through the «COVID–19 Guidance: Focus on Persons Deprived of their Liberty»⁽⁶⁾ in which it is established the need:

«...to analyze the situation of detention centers and places where persons are deprived of their liberty, including juvenile detention and rehabilitation centers, taking into consideration the specific context, the right to non–discrimination and equality in access to healthcare and health services, paying particular attention to persons deprived of liberty belonging to vulnerable or high–risk groups, such as the elderly, women, children, and persons with disabilities, amongst others...».

Pointing out that measures needed to prevent outbreaks of COVID–19 must be taken in places of detention, authorities need to ensure that all such measures respect human rights. The procedural guarantees protecting liberty of person may never be made subject to measures of derogation.

The document is of great importance in the sense that it highlights different aspects of the detention facilities within the pandemic framework, among which it can be highlighted: the need of promotion of human rights, the duty of the state to guarantee the prisoner access to health, the right to housing for those who are released, the obligation to provide prisoners with precise and detailed information about the virus and the preventive measures, fair measures in order to prevent outbreaks in this kind

(5) The recommendations can be checked in the following links: https://www.unodc.org/documents/ropan/2020/Prisiones_Covid19/Prison_Infographic_2_esp.pdf and https://www.unodc.org/documents/ropan/2020/Prisiones_Covid19/Prison_Infographic_1_esp.pdf

(6) You can find the full document in the following link: https://www.ohchr.org/Documents/Events/COVID-19/COVID-19-FocusonPersonsDeprivedofTheirLiberty_SP.pdf

of facilities, protection to the families of those persons deprived of liberty, and the rights of the staff that works in this kind of facilities.

Likewise, the (ICHR) created its Cooperation and Timely and Comprehensive Response Chamber to the crisis in relation to the COVID–19 pandemic (SACROI COVID–19)⁽⁷⁾ in order to strengthen the institutional capacities of the Commission in the protection and defense of the fundamental liberty and human rights in this context, specially the right to health and other ESC rights (DESCA); this will work with a crisis response team that will be coordinated by the Executive Secretary, and it will be made up of the Special Rapporteur and staff assigned by the Executive Secretary, this will support the preparation of a methodology, recollection and systematization of information according to what is necessary, and it will also support the articulation and formulation of proposals regarding the ICHR decision–making.

On the other hand, the *United Nations Subcommittee on Prevention of Torture* suspended its visit to several countries⁽⁸⁾, including the one to Argentina (which visit was programmed for this year) because of the situation triggered by the expansion of the virus (COVID–19) outbreak. Nevertheless, it assigns the national surveillance bodies, officially known as the National Preventive Mechanisms so, whenever possible, they continue with the preventive visits within the framework of the directives, including those of the last Subcommittee on the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment’s (SPT) advice⁽⁹⁾.

On the same subject, the *National Committee for the Prevention of Torture* had issued several recommendations within the framework of this pandemic⁽¹⁰⁾, among which the following can be highlighted:

- Measures to be adopted in detention establishment due to a sanitary emergency
- Recommendations for judicial bodies related to the respect of persons deprived of liberty human rights.

(7) More information available in the following link: http://www.oas.org/es/cidh/SACROI_COVID19/

(8) The statement is published in the following link: <https://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=25710&LangID=S>

(9) Recommendation issued as requested by the National Mechanism of Great Britain, you can find the full text in English in the following website: https://www.ohchr.org/Documents/HRBodies/OPCAT/NPM/2020.03.03-Advice_UK_NPM.pdf

(10) You can find the issued recommendations the following link: <https://cnpt.gob.ar/recomendaciones-del-cnpt/>

- Recommendations aimed at the framework of care and assistance to the elderly living in nursing homes and senior citizen homes facing COVID-19.
- SPT recommendations about the action of Police and security forces within the mandatory and preventing social isolation framework.
- Recommendations for the adoption of measures in order to guarantee the contact between persons deprived of liberty and the exterior world.

In a statement released on 31th of March of this year⁽¹¹⁾ the *American Commission on Human Rights (IACHR)* expressed its deep concern about the conditions on which the prison population of the region lives, which includes inadequate hygienic and sanitary condition and extreme levels of overcrowding, it also highlighted that in some countries the occupancy rate is higher than 300%, pointing out that:

«... Consistent with the provisions of the Principles and Good Practices on the Protection of Persons Deprived of Liberty in the Americas, the IACHR reminds States that every person deprived of liberty under their jurisdictions has the right to receive humane treatment, with unrestricted respect for their inherent dignity, their fundamental rights, especially life and security of person, well as access to the judicial guarantees essential to protect rights and freedoms. The States are in a special condition of guarantor of this population rights, which implies that they must respect their right to life and security of person, as well as ensure minimum conditions that are compatible with their dignity. Therefore, the States should carry out concrete and immediate actions to respect and promote the rights to life and security of persons deprived of liberty, in the context of the pandemic».

As regards out country, it acknowledged that the National Committee for the Prevention of Torture of Argentina has been monitoring the situation of persons deprived of liberty and greeted the recom-

(11) The statement is published in the following link: <http://www.oas.org/es/cidh/prensa/comunicados/2020/066.asp>

mendations of that organization published on the 20th March. Also, the Committee took notice of the Regional mechanism for the Prevention of Torture in the Province of Buenos Aires, which requested the implementation of measures such as house arrest for vulnerable groups and also the use of commutation of sentence by the Executive Power, among others.

Subsequently, the *Inter-American Commission on Human Rights* was issued through Resolution no. 01/2020⁽¹²⁾, adopted on the 10th of April this year, which is related to the pandemic caused by the COVID-19, and by which the states must adopt measures aimed at the contention and attention to the virus, which are centered around the respect for human rights. In that sense and with the support of Special Rapporteurs on Economic, Social, cultural and Environmental Rights and Freedom of Speech, the Commission adopts the quoted resolution, and established standards and recommendations for the states. Particularly and regarding Persons deprived of liberty, it recommended the implementation of measures in order to face the overcrowding in prisons and its effects, including the evaluation of efficient precautionary measures, alternatives to pretrial detention in those cases it might be appropriate according to what the current regulation foresees.

Likewise, the Commission suggested the consideration of adjusting detention conditions for persons deprived of liberty, particularly regarding food, health, hygiene and quarantine measures in order to prevent the contagion of COVID-19 within those walls, also granting that all units have medical attention.

Finally, it was also highlighted the need to establish protocols for the guarantee of safety and order in prisons, particularly in order to prevent acts of violence related to the pandemic and to respect the Inter-American standards on the subject. Likewise, it also highlighted the need for States to guarantee that all measures that limited contacts, communications, visitation, educational, recreational and sports activities to be adopted with special care and after a strict study.

(12) You can access the Resolution in the following link: <http://oas.org/es/cidh/decisiones/pdf/Resolucion-1-20-es.pdf>

Recommendations provided by the Ministry of Health of the Nation for the attention and care of people in a context of confinement and workers within the framework of the pandemic

These were issued by the Ministry of Health of the Nation on the 25th April this year with the intervention of the National Department on Mental Health and Addictions (Dirección Nacional de Salud Mental y Adicciones) and the Programme on Health in Confinement Contexts of the Management and Asistencial Services National Direction of the Ministry of Health of the Nation. (Programa de Salud en Contextos de Encierro de la Dirección Nacional de Gestión y Servicios Asistenciales del Ministerio de Salud de la Nación).

Its main goal is to protect and assist persons deprived of liberty, prison staff and visitors, and boys and girls that live in these confinement contexts within the sanitary emergency⁽¹³⁾. In this extremely comprehensive document, there are included aspects such as: *specific care measures for the workers' mental health, prisoners' mental health, prevention and measures regarding the risk of contagion for the prison staff (immediate isolation and communication with health authority).*

Recommendations provided by the National Public Defender's Office regarding persons deprived of liberty facing COVID-19

General Ombudsman's Office of Argentina through Resolution no. 285/2020⁽¹⁴⁾ issued certain recommendation to federal public defenders and the Criminal and Corrective in CABA, indicating in the first place to magistrates and officials in charge to pay special attention to the health of persons deprived from liberty in a pandemic situation.

(13) You can visit the complete text on Recommendations in: http://www.msal.gob.ar/images/stories/bes/graficos/0000001943cnt-COVID-19-%20Atencion_cuidado_salud_-personas_contexto_encierro_trabajadores.pdf

(14) Press Release published in the following link: <https://www.mpd.gov.ar/index.php/noticias-feed/4923-recomendaciones-respecto-de-las-personas-privadas-de-libertad-frente-al-covid-19>

Among the considerations from the quoted resolution, it was highlighted the need that in this current situation, the *Public Defense takes a proactive role in order to detect those who need medical attention, and to demand the adequate and acute measures needed by the situation before the administrative actors from the field of pre-trial detention and before the National Judicial Power that plays a role of rights' guarantor.*

In that sense, officials and/or judges in charge of controlling that prisoners' human rights are respected were recommended to pay special attention to those who could find themselves in risk groups facing the coronavirus pandemic. Using the same criteria, it was recommended that, in all contexts in which overcrowding or other restrictions to the rights of persons deprived of liberty might worsen their condition of confinement, procedures of habeas corpus should continue or initiate before competent judges.

Measures adopted by the Federal Penitentiary Service within the framework of the COVID-19 pandemic

The Argentine State, taking into consideration what is established in the national and international normative, has established, within the framework of the Federal Penitentiary Service, a series of measures aimed at protecting the life and health of persons deprived of liberty and their families as well as security staff. These measures established prevention and protection measures aimed at people imprisoned as well as prison staff that work in correctional facilities.

In that sense, it must be highlighted the passing of the «Protocol of detention, early diagnosis, preventive isolation and sanitary isolation due to COVID-19»⁽¹⁵⁾ («Protocolo de detección, diagnóstico precoz, aislamiento preventivo y aislamiento sanitario por coronavirus COVID-19»), from the Action Guide for the Prevention and control of COVID-19 within the Federal Penitentiary Service»⁽¹⁶⁾, and from the recently passed «Family and Social Tie Protocol through Video calls service»⁽¹⁷⁾ («Protocolo

(15) You can visit the Protocol in the following link: <http://www.spf.gob.ar/www/noticias/Medidas-en-prisiones-COVID-19/Protocolo-de-deteccion-diagnostico-precoz-aislamiento-preventivo-y-aislamiento-sanitario-por-coronavirus-COVID-19>

(16) You can read the COVID-19 Prevention and Control Action Guide of the Provincial Penitentiary Service in the following link: <https://www.fiscales.gob.ar/wp-content/uploads/2020/03/Anexo-582020.pdf.pdf>

(17) You can read the Protocol passed on the April 4th 2020 in the following link: http://www.spf.gob.ar/www/primera_persona/catcms/71/pub/1069/Protocolo-de-vinculacion-familiar-y-social-a-traves-del-sistema-de-videollamadas

de Vinculación Familiar y Social a través del Sistema de Videollamadas»). Likewise, the «Procedures guidelines aimed at the COVID-19 differential diagnosis by health professional from the Federal Penitentiary Service»⁽¹⁸⁾, and the «Protocol of communication for the epidemiological tracking and surveillance (COVID-19) for people who got released from federal prison establishments»⁽¹⁹⁾.

Another factor to take into account is the prison staff, regarding which measures have been determined in order to avoid contagion, and specially taking into consideration that they work in confinement contexts. Thus, fourteen (14) calendar days preventive leaves were granted, through the ME – 2020 – 17635911 – APN – DSG#SPF, aimed at prison staff that are part of risk groups according to the definition of the national health authority. That also shows the need:

«...To suggest a service jobs in working areas in order to avoid crowds of people in the work environment, have into consideration the staff that is in charge of underage people in whose educational activities are in a standstill, and allowing these people to work from home when their habitual or similar activities can be fulfilled remotely, thus they should establish the conditions in which each of these activities will be fulfilled, for example, through the use of the Electronic Document Management Systems (Sistema de Gestión Documental Electrónica)...».

Thus, there are three different groups:

- A. Prison staff must serve their duty (Security, Health and Work), they are authorized to circulate in public places carrying their institutional credentials.
- B. Those people from the prison staff who do not perform one of the essentials services mentioned before will have to perform their daily duties from home or remotely, using it, telephonic resources,

(18) You can read the guidelines in the following link: <http://www.spf.gob.ar/www/noticias/Medidas-en-prisiones-COVID-19/Pautas-de-procedimiento-destinadas-al-diagnostico-diferencial-del-COVID-19-por-parte-de-los-profesionales-de-la-salud-del-Servicio-Penitenciario-Federal1>

(19) You can find the Protocol in the following link: <http://www.spf.gob.ar/www/noticia/catcms/71/pub/1095/Protocolo-de-comunicacion-para-el-seguimiento-y-vigilancia-epidemiologica-COVID-19-para-egresados-de-establecimientos-penitenciarios-federales>

and other mechanisms, within the framework of contractual good faith, they should establish the work conditions with their employer (Director/Boss) (for example: Electronic Document Management System).

- C. All those people on their day off will inevitably have to stay in their places of residence with no exception and they should be ready to go back to work if needed.

Measures and recommendation of the Provincial Public Service of Criminal Defense (Servicio Público Provincial de Defensa Penal)

Since middle of March this year, the Provincial Public Service of Criminal Defense —SPPDP for its acronym in Spanish— has started to issue and organize the work Public Defenders within the framework of the pandemic, through several resolutions, in order to safeguard the human rights of these people. Thus, it provided an attention system, and incorporated technological tools aimed at helping them. On the 22nd of March, the SPPDP —for its acronym in Spanish— presented a Joint Corrective Habeas Corpus in favour of persons deprived of liberty who are accommodated in police facilities or in penal institutions of the Province of Santa Fe. This body manifests to have noted weaknesses in the guarantee of the right to health, it also pointed out the need to strengthen sanitary measures⁽²⁰⁾ in the detention facilities of the Province.

The criminal justice of the Province of Santa Fe granted the habeas corpus interposed by the SPPDP —by its acronym in Spanish— due to the findings that showed that security protocols and measures aimed at the prevention of the COVID–19 pandemic were not being performed satisfactorily in the detention facilities of the Province⁽²¹⁾. Thus, provincial justice entrusted the Ejective Power to deliver

(20) Information published in the Provincial Public Service Criminal Defense of the Province of Santa Fe (SPPDP)'s statement: <https://www.defensasantafe.gob.ar/prensa-comunicacion/noticia/coronavirus-covid19-el-sppdp-presento-un-habeas-corpus-colectivo-y-correctivo-en-favor-de-personas-privadas-de-su-libertad-561>

(21) You can find the news item published by the SPPDP in the following link: <https://www.defensasantafe.gob.ar/prensa-comunicacion/noticia/hicieron-lugar-al-habeas-corpus-interpuesto-por-el-sppdp-en-favor-de-las-personas-sometidas-a-encierro-en-las-dependencias-policiales-y-penales-de-la-provincia-562>

of cleaning and hygiene elements to prisoners of the penitentiary units of the Province; and at the same time, it ordered the strengthening of consignments of food aimed at persons deprived of liberty. As regards the health of the entire population, it ordered the check of the temperature of all prisoners and prison staff in order to detect suspicious cases and to prevent possible contagions. By Resolution no. 28/2020⁽²²⁾, the Public Defender adjusted the «Technical Defense Standards» (Estándares de Defensa Técnica) ruled by Resolutions no. 33/2013 and 55/2015 to our current pandemic situation, by issuing the use of telematic means in order to safeguard the contact with treated people. Likewise, it instructed Defensors to request, where applicable, house arrest, or any other minor measure that seems appropriate. By the 29/2020⁽²³⁾ Public Defenders were instructed to carry out the respective presentations in order to interpose the habeas corpus of prison exemption, its mitigation through home arrest, pointing out the fact that defenders must try to solve each one of these cases, having into account the urgency that pandemic is imposing upon the lives and health of prisoners.

Likewise, and according to the recommendations provided by the Human Rights' Bodies (such as the ones mentioned in this document), on March 26th, by Resolution no. 30/2020⁽²⁴⁾, the Ombudswoman instructed Public Defenders

«... to ask the General Director of the Penitentiary Service, with all necessary regulation, for the commutation of sentences in the cases in which prisoners have carried out one third of their o years or less sentence...»

but this works only if the sentences were not related to a) crimes committed by civil servants or public officials in the exercise of their duties, b) sexual abuses, c) offenses referred in the Article no. 80 of the Penal Code, unless it would be judicially declared the presence of mitigating exceptional circumstances.

(22) You can access it in the following link: <https://www.defensasantafe.gob.ar/resoluciones/2020/28/Resolucion-0028P-2020.pdf>

(23) You can access it in the following link: <https://www.defensasantafe.gob.ar/resoluciones/2020/29/Resolucion-0029P-2020.pdf>

(24) You can access the full text of the Resolution through the following link: <https://www.defensasantafe.gob.ar/prensa-comunicacion/noticia/hicieron-lugar-al-habeas-corpus-interpuesto-por-el-sppdp-en-favor-de-las-personas-sometidas-a-encierro-en-las-dependencias-policiales-y-penales-de-la-provincia-562>

Adopted measures by the Penitentiary service of the Province of Santa Fe within the framework of COVID-19 pandemic

In the Province of Santa Fe the *Penitentiary service* depending on the Ministry of Justice and Human rights has elaborated protocols that are under permanent revision, according to the new issued measures and dispositions, aimed at guaranteeing the early detection and diagnosis of possible cases of COVID-19 among correctional facilities. In order to do so, they have based themselves on the definition of the case, contact and measures to be followed in the Recommendations for the Health Team of the Ministry of Health of the Province of Santa Fe. The protocol contains the following guidelines and indications: General recommendations in order to avoid contagion, standard, sanitary and security staff precautions, food handling, personal and accommodation hygiene, visitation, management of suspicious cases, confirmation of coronavirus cases in prisoners. Isolation; relocations; visitation and contact with the outside.

Colophon

The present document gathers, objectively, recommendations and measures adopted by some bodies in charge of the guardianship, custody, trusteeship of persons deprived of liberty, as well as of the prison staff.

Argentina's Constitution establishes in its Art. 18 that

«... all prisons of the nation will be clean and healthy, for the security and not for the punishment of the prisoners in them, judges who authorize measures that under the pretext of precaution leads to the prisoners' mortification will be made responsible.»

The fulfillment of this, of International Treaties, and of national and international bodies on the protection of human rights' recommendations states that all national and provincial public bodies in charge of both, the defense and custody of persons deprived of liberty in confined correctional facilities should organize several mechanisms and measures aimed at the safeguarding of this part of the population, who due to conditions caused by their confinement are in a situation of vulnerability

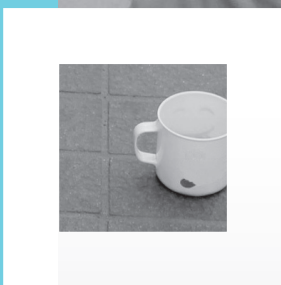
facing the declared COVID–19 pandemic, as there is a grave danger of contamination in confinement conditions and it is more difficult to establish physical distance between prisoners, so it is necessary to implement the requisite measures in order to safeguard their lives and health.

In both, the Practical Guide to inclusive right–based responses to COVID–19 in the Americas published by the OAS, and in the recommendations of the National Committee for the Prevention of Torture, as well as in the Resolution no. 01/2020 of the ICHR, there have been included specific provisions related to the population in confinement contexts reductions, whether it is through the evaluation of the grating of prison benefits or the providing of alternatives to imprisonment, as well as through the revision of cases of preventive detention in order to identify those that can be changed into alternative measures⁽²⁵⁾; likewise, this has been done by several national bodies.

The licensing criteria of penitentiary privileges as well as the application of alternative measures to pretrial detention are regulated by national and local ordinances. Within the framework of the pandemic, the Supreme Court of Justice of the Province of Buenos Aires, expedited in the case P. 133,682 —Q «Altuve, Carlos Arturo— prosecutor before the Criminal Cassation Court in the case no. 102,555 Remedy of Complaint (Joint Corrective Habeas Corpus) and its joint proceeding no. 102,558 (Joint Corrective Habeas Corpus) of the Criminal Cassation Court»⁽²⁶⁾; it is a decision–making one through which a series of guidelines have been issued, each one of them to be considered in depth.

(25) Vgr. Cap. VII, section 3 of the *Practical Guide to Inclusive and Rights–based Responses to COVID–19 in the Americas* published by the OAS; subsections 45 and 46 of the Resolution no. 01/2020 of the ICHR.

(26) You can find the complete ruling in the following link: [///C:/Users/Usuario/Desktop/Ver%20sentencia%20\(causa%20P-133682-Q\).pdf](#)



poverty
and extreme
poverty



Prevention, containment and mitigation of COVID-19 for persons living in poverty and extreme poverty

1. People living in poverty

«In 2018, there were 185 million people living in poverty in the Americas, representing approximately 30.1% of the population of the region, of which 66 million of them, approximately 10.7% of the population, lived in extreme poverty. Data published by the Economic Commission for Latin America and the Caribbean (ECLAC) indicated that by 2019 the poverty rate at the regional level would increase to 30.8% and extreme poverty to 11.5%».⁽¹⁾

In Argentina —according to the official data provided by the INDEC— in the second semester of 2019, the registers that correspond to the main urban centers indicate that the percentage of homes below the poverty line reaches the 25,9% and that in those homes live 35,5% of people. In this group a 5,7% of homes are below the line of indigence, in which an 8,0% of people live. For the 31 urban centers observed, 2.423.562 homes and thus 9.936.711 people are below the line of poverty and, within this group, 536.466 homes are below the line of indigence, which include 2.236.739 indigent people.

Regarding the condition of poverty according to age groups, more than the half —a 52,3%— are between 0 and 14 years old.

Besides, an increase of 0,9% in the group of people of 65 years old onwards can be observed related to the previous semester. The majority of the incidences of poverty were spotted in the Northwestern (NOA) and Northeastern (NEA); and the lesser in the Pampeana and Patagonian regions.

In the urban center corresponding to Gran Rosario, a 25,5% of homes below the line of poverty was registered, in which a 35% of the population live. Within this group 5,4% of homes were registered as being below the line of indigence, including 7,3% of people. These percentages represent 117.343 homes in which 460.890 live below the line of poverty and include 29.689 homes in which 95.961 people live below the line of indigence.

(1) *Practical Guide to Inclusive and Rights-based Responses to COVID-19 in the Americas*, OAS, p. 72.

http://www.oas.org/es/sadyp/publicaciones/GUIA_SPA.pdf

Regarding the urban center of Gran Santa Fe, 23% of homes were registered as being below the line of poverty, corresponding to a 34,4% of the population, within this group 4,2% of the homes are below the line of indigence, meaning a 7% of people. These percentages represent 44.586 homes below the line of poverty, in which 182.474 people live, including 37.328 homes, and thus 95.961 people below the line of indigence.

«The Rights Approach has contributed to conceptualize poverty as a multidimensional situation in which rights infringements and/or rights violations, such as work opportunities and conditions, deficit in access to education, deficit in access to cultural, recreational and sport goods, deficit in access to health, deficit in access to a proper housing and environment, deficit in access to nutritious food rations. It is understood that the definitions of “satisfying comforts” for each one of these dimensions is socially and subjectively variable. On the other hand, structural poverty implies that deficiencies tend to be constant in time, they include generations of poor families and they constitute layers of inequality. Deficiencies in the use of rights affect specifically the insertion in the social scope and undermine human dignity.

The human rights approach has placed the poverty issue under the scope of Government obligations and the legitimate authority of the right holder to demand for their fulfillment. For these reasons, policies oriented to the poverty issue for this perspective mainly imply: to fulfill obligations and not assistance or charity actions; acknowledging that the poor people are legitimate actors to demand changes in their situation; increase institutional responsibility mechanisms; guaranteeing participation and asking their views on decision-making; etc.».»⁽²⁾

As the OAS⁽³⁾ mentions, the vulnerable situation of people who live in poverty requires a special consideration and a differentiated response, aiming at exercising the rights and guarantees of the population and specially to satisfy the more urgent needs.

(2) *Social Policies and Human Rights at a Local Level. Evolution of the State improvement 2017* – Ombudman's Office of Santa Fe Province – UNR, p. 45. <https://www.defensoriasantafe.gob.ar/publicaciones/report-social-policies-and-human-rights-local-level>

(3) Practical Guide to Inclusive and Rights-based Responses to COVID-19 in the Americas. OAS.

2. Inter-American legal framework

As stated in the previously mentioned *Practical Guide to Inclusive and Rights-based Responses to COVID-19 in the Americas* in the Inter-American legal system there are several instruments that establish the duty of the States to guarantee the rights that are closely related to the improvement of poverty conditions. Some of the most important are: the American Declaration of the Rights and Duties of Man of 1948, which contains some rights closely connected to poverty; the American Convention on Human Rights of 1969, which points at the indivisibility of the of Economic, Social and Cultural Rights and the Civil and Political Rights; and the Additional Protocol in the area of Economic, Social and Cultural Rights, «Protocol of San Salvador» of 1988, that guarantees rights strictly related to poverty, such as the right to work, to health, to social security, to food, to education, to a healthy environment and to culture benefits.

In the Inter-American Democratic Charter the States undertake to implement the necessary actions to reduce poverty and eradicate extreme poverty, highlighting the link between poverty and democracy, and in the Social Charter of the Americas the States commit to combat poverty, reduce inequities, and promote social inclusion, as necessary actions to achieve integral development in the Hemisphere.

In addition to these instruments, both the IACHR and the Inter-American Court of Human Rights have developed standards and jurisprudence on persons in situations of poverty and extreme poverty and the exercise of fundamental human rights such as the right to health. In the framework of the Individual Petitions and Cases system, both the Commission and the Court have observed how poverty, marginalization and exclusion can lead to human rights violations, constitute aggravating circumstances or be a consequence of these violations.

The goal number 1 (SDG) in 2030 Agenda is to end poverty in all of its forms.

The 2030 Agenda for the Sustainable Development Goals passed in September 2015 by the General Assembly of the United Nations is an action plan that arises from the compromise of the member States of the UN⁽⁴⁾.

(4) In year 2000, the state members of the UN accorded to the Millennium Development Goals (MDG) 2015, once the period for these MDG finished, on September 25th 2015, the General Assembly of the UN established a new world agreement on climate change. The 193 State members around the world agreed on adopting the 2030 Agenda, a program impulsed by the UN as part of the UN Program for the Development, that tackles 17 Sustainable Development Goals (SDG), within which 169 goals to be reached are spotted.

3. Decisive importance of contemplating the situation of people living in poverty regarding the situation caused by COVID-19 from a right-based perspective

To contemplate from a right-based perspective the impact that the COVID-19 pandemic provokes on people living in poverty requires all the effort the State can make on contemplating, preserving and exercising the rights and guarantees of these people as their needs should be taken into account according to the conditions of each group, having in mind the need and importance of their participation in the evaluation of the situations and decision-making when directly involved.

The coronavirus (COVID-19) represents a threat to the population worldwide, without any distinction, but government actions in response to the pandemic must take into account the particular vulnerability of people living in poverty and indigence.

It must be taken into account how and to which extent the sanitary and preventive regulations issued by the State —especially those connected with isolation and hygiene— could be fulfilled, bearing in mind that it depends on the difficulties or impossibilities people may have living in the streets or in overcrowded places. These people may not have access to drinkable water or hygiene products (detergent, soap, bleach, etc.), among others.

People in charge should double the efforts to provide people living in poverty with the necessary conditions to preserve their health and prevent them from the threat COVID-19 presents. There should be necessary measures at hand in order to make isolation and sanitary attention of suspicious and confirmed cases of COVID-19 possible.

Besides, it must be taken into account the hard socioeconomic impact the isolation measures will have on people living in poverty and extreme poverty (generally dependent on an informal economy now totally paralyzed) and, as consequence, measures to cover —in the emergency— at least the essential needs of these groups at risk must be implemented.

4. Recommendations regarding the measures and considerations to take into account to prevent, contain and mitigate the impact of the pandemic of COVID-19 in poverty spheres

Taking as the starting point the recommendations provided by the UN in its *Practical Guide to Inclusive and Rights-based Responses to COVID-19 in the Americas*, the governments, having at hand and implementing the measures that correspond, should consider that:

- Government policies and actions to prevent and contain the COVID-19 pandemic must be «intersectional»; that is to say, to be oriented to address the multiple forms of discriminations that people living in poverty and extreme poverty experience, and their impact on access to fundamental human rights, such as the right to health.
- The access to food for all people must be guaranteed. Extreme precautions and measures regarding the supply and control of prices of consumer staples, such as food and hygiene products, in order to avoid speculation and taking advantage of the need that may difficult the provision of consumer staples to the underprivileged.
- It is essential that people living in poverty and extreme poverty are guaranteed free access to COVID-19 tests.
- Free medical care and treatment should also be given to persons who have contracted the virus. In order to do this, the corresponding infrastructure should be anticipated and provided.
- Close coordination and cooperation between the different levels of State —national, provincial and local— must be considered, especially in relation to rural areas in order to ensure that people living in the most isolated areas can receive medical attention on time.
- State efforts to increase the possibilities of social programs and benefits —according to the main needs that arise from this situation— should be boosted, these efforts being aimed at helping the more vulnerable and socioeconomically population affected directly due to the lack of income provoked by the social isolation.

- The particular needs, rights and guarantees of homeless people or people living in overcrowded spaces deserve special attention. It is essential to ensure that the isolation, prevention and caring measures reach these people, so that they can have access to water and basic hygiene elements.
- Awareness campaigns and measures should be carried out as they are necessary to spread effectively and quickly the relevant information about COVID–19, its prevention and treatment. Even though the socio economic situation may be difficult, the right to information and to sanitary attention should be guaranteed.
- Consideration should also be given to the implementation of psychosocial assistance programs aimed at providing tools and support to people living in vulnerable situations to overcome the most common psychological consequences of the pandemic, including mourning for the loss of relatives, anxiety, stress, and depression.
- Taking into account that in low–income households women perform most of the unpaid domestic work, including caring for dependents (children, sick people, older people, and persons with disabilities, among others), this health crisis highlights the pressing need for developing or extending national care systems and the incorporation of women into the labor market. This also plays a key role in strengthening the family’s income and increasing resilience to unexpected crises, such as pandemics, and the unexpected loss of employment of a family member. In the longer term, this is also fundamental to facilitating social and economic mobility.
- Besides, the educational needs of the underprivileged sectors must be met by intensifying the efforts to find modalities and devices that allow that in the difficulties of this social isolation and the suspension of classes, girls and boys living under poverty conditions continue connected with their teachers and their education.

Critical situations such as the global COVID–19 pandemic highlight the importance and unavoidable need for health systems and state social protection that give concrete and effective responses that aim at guaranteeing the fundamental rights of all people. There could not be fiscal goals nor economic needs that allow the violation of the right to live and to health —fundamental to all human rights— of all people. The final goal of every State should be the effective and comprehensive exercise of all the rights and guarantees of all people, for with absolute eradication of poverty, inequalities and discriminations are key.



indigenous
peoples



Indigenous peoples within the framework of the pandemic due to COVID-19

Introduction

There is not a unanimous definition of indigenous peoples in the law and international policies context. In the *United Nations Declaration on the Rights of Indigenous Peoples* there is no definition at all.

In this sense, in its articles no. 9 and 33 it is stated that *indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned, and to determine their own identity or membership.*

On their behalf, the Convention no. 169 of the International Labour Organisation (ILO) about Indigenous and Tribal Peoples in independent countries makes a distinction between the Tribal peoples and indigenous peoples, highlighting the importance on the indigenous identity consciousness⁽¹⁾.

Without prejudice on the absence of a universally acknowledged definition, there is a criteria that contributes to the definition of indigenous peoples, considering as the main criteria the *consciousness of the own indigenous peoples identity* that can be added, among others, to the following:

- historical continuity with the societies developed previous to the invasion and precolonial in their territories;
- singularity;
- non dominant character;
- determination to preserve, develop and transmit to future generations their ancestral territories and their ethnic identity according to their own cultural patterns, their social institutions and legal systems;
- a strong bond with the territory and the surrounding natural resources;

(1) The Convention no. 169 from the ILO has been approved in Argentina in 1992 through Law no. 24.071.

Access to the cited norm can be found in the following link: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/0-4999/470/norma.htm>.

- social, economic and political unique systems;
- individual and particular languages, culture or beliefs⁽²⁾.

According to a recent publication of the UN

«... There are more than 476 million indigenous peoples in the world... Indigenous peoples represent more than 6 per cent of the global population. Indigenous peoples, in particular, indigenous women and girls are often disproportionately affected by epidemics and other crises. Indigenous peoples are nearly three times as likely to be living in extreme poverty as their non-indigenous counterparts. They account for almost 19 per cent of the extreme poor, irrespective of the region and residence in rural or urban...»⁽³⁾.

Apart from the barriers caused by poverty and the socio-economic situation of these populations, the access to their fundamental basic rights (health, education, drinkable water, sanitation, among others) is almost insignificant.

According to CLACSO⁽⁴⁾ in Latin America there are more than 800 indigenous peoples that include approximately 45 million people. The majority, without considering the validity of existent international treaties, are still facing marginalization, displacement, racism and violation of collective rights, as the 30% of the population live in extreme poverty.

In this sense, the Inter-American Commission on Human Rights (IACHR) points out that according to the World Bank

«... 43% of all indigenous persons in Bolivia, Brazil, Ecuador, Guatemala, Mexico, and Peru live in moderate poverty, compared to 21% of non-indigenous persons in those countries. Further, the

(2) Source: Dossier published by the United Nations Office of the High Commissioner, «Indigenous Peoples and the United Nations Human Rights System» Fact Sheet no. 9/Rev. 2. Access in the following link: https://www.ohchr.org/documents/publications/fs9rev.2_sp.pdf

(3) Report from the UN on the «Indigenous Peoples & the COVID-19 Pandemic: Considerations». Access in the following link: https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2020/04/COVID_IP_considerations_Spanish.pdf

(4) Latin American Council of Social Sciences (CLACSO). Published by the Observatorio Social del Coronavirus (Social Observatory of Coronavirus). Access in the following link: <https://www.clacso.org/medidas-por-el-covid-19-y-pueblos-indigenas-en-america-latina/>

percentage of indigenous persons who live in extreme poverty in those countries is three times as high as it is among non-indigenous persons...»⁽⁵⁾.

The previous mentioned situations highlight the need to include indigenous peoples as «groups in especially vulnerable situations», as stated in the *Guide to Inclusive and Rights-based Responses to COVID-19 in the Americas*⁽⁶⁾, published on April 7th, 2020 by the Secretariat for Access to Rights and Equity (SARE) from the General Secretariat of the Organization of American States (GS/OAS)

«... indigenous peoples from the American continent recall in their historical memory the impacts of the epidemics since the beginnings of the Spanish and Portuguese invasions that caused the death of 90% of the population in the war, the living conditions they experienced and the smallpox virus, measles and other illnesses brought by the Europeans... nor the epidemics, nor the pressure exercised on the indigenous territories seized during the independent State-nations until nowadays...»⁽⁷⁾.

Within the framework of the pandemics, the indigenous peoples have adopted several measures, in exercise of their right to auto determination, such as the closure of their borders to avoid the access of persons who are not part of their communities (e.g. indigenous peoples from Macurawe and communities from the Meseta Purépecha —Mexico—, communities from the Consejo Regional Indígena del Cauca (CRIC), from the Confederación Indígena Tairona —both in Colombia—, caracoles zapatistas —Chiapas, Mexico—). Therefore, the Wampís and Asháninka (both from Perú), towns from the Chiquitanía (Bolivia), Rapa Nui (Isla de Pascua in Chile) are adopting these types of measures, in collaboration with the local governments and security forces. Different from these cases, the inhabitants of the Mapuche town (Chile), in their effort to block the incoming of people out of their communities, have been subject to police repression⁽⁸⁾.

(5) IACHR Press Release, published May 6th 2020: «IACHR 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» Access in the following link: <https://www.oas.org/es/cidh/prensa/comunicados/2020/103.asp>

(6) Access in the following link: http://www.oas.org/es/sadye/publicaciones/GUIA_SPA.pdf

(7) CLACSO, previously cited report <https://www.clacso.org/medidas-por-el-covid-19-y-pueblos-indigenas-en-america-latina/>

(8) CLACSO. Id. previous n°.

Likewise, many communities have started to adopt their own action protocols to face the pandemics, (e.g. the Organización Nacional Indígena de Colombia. ONIC), as working on the spreading of information related to the virus and about COVID–19 in their own languages.

According to the Guide to Inclusive and Rights–based Responses to COVID–19 in the Americas, it is necessary to take into account that

«... These groups find themselves in a situation of extreme health, demographic and territorial vulnerability. The transmission of diseases through contact is one of the most serious threats to survival since this population does not have immune defenses against relatively common diseases, and contagion can have tragic consequences. This is why this group requires particular attention in connection with the highly transmissible COVID–19...»⁽⁹⁾.

Legal framework: tutelage of indigenous peoples

«... The rights of indigenous peoples have, over the past three decades, become an important part of international law and policy, as a result of a movement driven by indigenous peoples, civil society, international bodies and States at the domestic, regional and international levels. The United Nations human rights system —its bodies, laws and policies— have been at the heart of these developments with bodies such as the United Nations Working Group on Indigenous Populations playing a ground–breaking role, which is continued by the Human Rights Council and its mechanisms, in cooperation with other key actors, including the United Nations Permanent Forum on Indigenous Issues. One of its main achievements was the General Assembly’s adoption in 2007 of the United Nations Declaration on the Rights of Indigenous Peoples, which, by 2010, was supported by the vast majority of United Nations Member States and opposed by none...»⁽¹⁰⁾.

(9) Access to the Guide in the following link: http://www.oas.org/es/sadye/publicaciones/GUIA_SPA.pdf

(10) UN Office of the High Commissioner for Human Rights (OHCHR), Fact Sheet no. 9, Rev. 2, Indigenous Peoples and the United Nations Human Rights System, August 2013, no. 9, Rev. 2, available at: <https://www.refworld.org/docid/5289d7ac4.html>

According to the OAS Practical Guide

«... The American Declaration on the Rights of Indigenous Peoples, consistent with ILO Convention 169 and the United Nations Declaration on the Rights of Indigenous Peoples, recognizes the right, both collective and individual, of indigenous peoples to enjoy the highest level of physical, mental and spiritual health...»⁽¹¹⁾.

Being particularly relevant their rights to maintain their own health systems and practices, to access without discrimination to all social and sanitary services.

Regarding this, it is important to highlight that, even though The United Nations Declaration stated on the Rights of Indigenous Peoples

«... is not a formally binding treaty, it contains rights and freedoms, such as self-determination and non-discrimination, set out in binding international human rights treaty law, of which some may be considered customary international law. It reflects a global consensus on indigenous peoples' rights...»⁽¹²⁾.

On their behalf, the Inter-American Court of Human Rights has developed the standards to the right to health of indigenous peoples related to the right to a dignified life, establishing the States' obligation to adopt the necessary measures to guarantee minimum life conditions compatible with human dignity.

In the Province of Santa Fe, Law no. 11078 regulates the collective and individual relationships of the indigenous communities, as it recognizes their own organization and their culture, and promotes their effective social insertion.

The cited norm defines as aboriginal community

«... to the group of people that recognize themselves as such, with self-identity, culture and organization, who have norms and values of their tradition, speak or have spoken a distinct language and have a historical past in common, either if they live centralized or dispersed in urban or rural areas...»

(11) Source: Practical guide previously http://www.oas.org/es/sadye/publicaciones/GUIA_SPA.pdf

(12) UN Office of the High Commissioner for Human Rights (OHCHR), Fact Sheet no. 9, Rev. 2, Indigenous Peoples and the United Nations Human Rights System, August 2013, no. 9, Rev. 2, available at: <https://www.refworld.org/docid/5289d7ac4.html>

and considering as aboriginal

«... every person who is part of an ethnic living in the provincial territory, either from pure or mestizo origin. Every person that, independently of their current residence, defines himself as such and is recognized by his family, the settlement or community he belongs to, in virtue of the mechanisms the community uses for his admission, will also be considered aboriginal...».

In order to regulate their cohabitation, the law establishes that these communities could apply their customary norms in all that is not contrary to the public order.

Therefore, it mentions that the State recognizes the existence of indigenous communities as mere civil associations to which legal identity would be assigned if required and if they comply with the legal current provisions. In this sense, according to Regulatory Decree no. 1175/09 (modified by Decree no. 2325/2012) from the Registro Especial de Comunidades Aborígenes de la Provincia Santa Fe (R.E.C.A.) —Special Registry of Indigenous People from the Province of Santa Fe (R.E.C.A.)—, establishing that the registration of the community in this registry would give them the legal identity of Public Law.

Finally, it is important to mention that the previously stated provincial law regulates the adjudication of territory as property of the indigenous peoples, which should be done when there is government-owned land available, free of charge, either in a community or individually, according to each group's or community's interests. Therefore establishing that

«... the transference of the ownership of the land should be done, in all cases, respecting the customs of the communities and the legal current provisions, facilitating the economic means for its effective occupation...».

and that

«... the communities that are given individual and/or communitarian titles by national or provincial decrees on deprived land, currently occupied by third parties in a proven way, would be given back to their owners, and the Executive power should use the powers of eminent when necessary...».

Specific measures regarding indigenous peoples in Argentina within the framework of the pandemics COVID-19

The vulnerable situation of these groups is clearly described in the report of the National Ministry of Health, which states that

«... there are in Argentina, approximately, more than 1750 indigenous communities that are part of 38 towns in the national territory. The historical conditions of inequality in which they live, the high poverty levels, the lack of access to basic services such as water and the limited and poor access to health services (not always contemplating their Cosmo visions), condition these groups and populations to situations of extreme vulnerability and expose them to a high risk of contagion, morbidity and mortality due to COVID-19...»⁽¹³⁾.

In this context Socio Sanitary Emergency Boards were created to face the problem regarding indigenous peoples. These have as object

«... to design —articulating and participating— the intervention strategies in the indigenous communities within the framework of the pandemic COVID-19, recognizing the representative institutions of the indigenous peoples, their authorities as legitimate representatives, in terms with their knowledge, representations, practices and culture...»⁽¹⁴⁾.

Likewise, it is foreseen that these Emergency Boards stimulate the constitution of interdisciplinary and intercultural working teams, formed by health workers, indigenous peoples' representatives, among others, highlighting that

«... in the planning of the interventions in the indigenous communities it is essential to take into account the health system agents that are members of these communities, for instance, doctors, ancestral medicine

(13) Source: National Ministry of Health. «COVID-19. Mesas de emergencia sociosanitarias interculturales para el abordaje en poblaciones y territorios indígenas. Recomendaciones». Report published June 6th 2020. Informe publicado el 26 de junio de 2020. Access in the following link: https://www.argentina.gob.ar/sites/default/files/mesas_de_emergencia_sociosanitarias_interculturales.pdf

(14) Id. previous n°.

workers, nurses and sanitary agents, in order to guarantee a quality attention and, thus, differentiated respecting the socio cultural particularities of the population...»⁽¹⁵⁾.

Likewise, and having into account the existence of linguistic barriers, a group of teachers and researchers from the Facultad de Humanidades y Ciencias de la Universidad Nacional del Litoral (UNL), worked together with indigenous communities' representatives elaborating communicational pieces, in Mocoví and Quom languages, in order to transmit and inform preventive norms on Coronavirus pandemic⁽¹⁶⁾.

Finally, it is worth mentioning the creation the program Programa de Asistencia Crítica y Directa para la Agricultura Familiar, Campesina e Indígena (Program for Critical and Direct Assistance for Family, Peasant and Indigenous Agriculture) in order to strengthen and assist producers enrolled in the Registro Nacional de la Agricultura Familiar (National Registry of Familiar Agriculture) (RENAF). This program counts on an initial amount of 30 million of Argentinian pesos for its implementation and impulses the grant of non-refundable contributions in a direct way to producers of this sector that, when soliciting it, are affected by productive risk situations as a consequence of climate, social or extreme changes.

Considerations and recommendations within the framework of the pandemic due to COVID-19

Dr. Cintia Carrió explains that the difficulty to empathize has not to do with the mere will

«... in order to be able to empathize with the other, to be able to place yourself in somebody else's shoes, it is necessary that you know this other. You should get to know them without judging them, accepting who they are, not tolerating, but accepting. To empathize with others implies knowing about their life, their fears, their desires, and their needs, independently of our own thoughts and opinions of their fears and desires. To be able to empathize with others it is necessary to try to see the way the others see and what the others face every day when they get up, like that, devoid of prejudice, devoid of our own judging...»⁽¹⁷⁾.

(15) Id. previous n°.

(16) For more information about the job from the Facultad de Humanidades y Ciencias, UNL, access in the following link: https://www.unl.edu.ar/noticias/news/view/los_pueblos_originarios_y_la_prevenici%C3%B3n_del_coronavirus#.XyBXZFX0nIU

(17) Id. previous n°.

The linguistic, cultural and digital barriers obstruct the implementation of the state policies, making it necessary to consider the use of indigenous languages as a transversal aspect to guarantee their effectiveness and apprehension.

There are only a few state education and health systems that count on the participation of the *bilingual teacher assistant* and *bilingual sanitary agent* (especially the second ones, as there is lack of hedging). These actors today have been transformed into key agents to face the pandemics, resulting in an essential need to develop concrete measures to strengthen the territorial presence of the school and health centres, capitalizing the knowledge of these workers, increasing their number and participation scopes and deepening their accompaniment.

Likewise, in line with the facts pointed out in some paragraphs above regarding the linguistic barriers, the construction of effective channels of communication turns out to be relevant to

«... strengthen the community and local radios to be used as spaces to spread knowledge and preventive health content, as well as the different state policies, as it has the widest communicational coverage in rural areas. Besides, local, community and indigenous radios have special relevance, as their communicators express themselves in terms of cultural codes and in some cases in indigenous languages, making communication more effective. A large part of these stations do not have their own budget and they go on air thanks to the hard voluntary work of their members, together with solidarity of the community to pay for the electricity, water, phone and maintenance bills. The continuity of the emissions is then conditioned...»⁽¹⁸⁾.

In Argentina, only some indigenous communities count on close sanitary centres and they generally do not count with enough instructed staff. Discrimination and racism (generally due to the ignorance regarding indigenous cultures), make many families to stay away from the public health centres, which in the current context, makes them extremely vulnerable.

(18) Summary from the National Report: «Efectos socioeconómicos y culturales de la pandemia COVID-19 y del aislamiento social, preventivo y obligatorio en los Pueblos Indígenas del país» Anexo XVII, Salta. June 2020. Access in the following link: http://hum.unsa.edu.ar/Informe_COVIDyPueblosIndigenas_AnexoSalta.pdf

«... In the cases of Chaco and las Yungas this is even worse due to the fact that they do not count on interpreters and translators in the attention centres who may act as communication links between the sanitary staff and the patients, making communication barriers even higher. In the lower lands, the lack of access to drinkable water —essential to human life— is a critical and chronic problem. Its shortage, together with unemployment, informality and territorial problems impede the access to resources from the mount and traditional subsistence activities; impede the development of a nutritious diet and the prevention of illnesses. It is worth mentioning that in these places endemic illnesses also exist such as dengue, chagas, tuberculosis and diabetes, and they, besides, represent a potential aggravation to the vulnerability of the populations in the extension of COVID-19...»⁽¹⁹⁾.

It is important to highlight the recommendations of the Inter-American Commission on Human Rights (IACHR), more even in this context of pandemics. In the context of the COVID-19 pandemic, the IACHR stresses that

«... indigenous peoples have the right to collectively and individually enjoy the best possible physical, mental, and spiritual health. Public policies need to be formulated and implemented to protect indigenous peoples' right to health. These include ensuring they have access to services and supplies (including tests to diagnose COVID-19); drafting and implementing prevention and contingency protocols that are both specialized and culturally appropriate and include designing training strategies targeting indigenous healthcare providers (such as carers and traditional healers) and providing them with any necessary protection equipment (masks, gloves, and disinfectant, among others); and culturally appropriate healthcare that respects these communities' worldviews. These public policies must integrate the fundamental principles of the human rights approach, including social participation, equality, and non-discrimination... The States... must promote intercultural systems and practices through medical and healthcare services provided within indigenous communities, among others by training indigenous technicians and indigenous healthcare professionals. Based on the right to self-determination, the IACHR stresses the obligation to include traditional representatives, leaders, and authorities in the design and implementation of any efforts to respond to the pandemic...»⁽²⁰⁾.

(19) Id. previous n°.

(20) Source: Press release OAS «Inter-American Commission on Human Rights (IACHR): Specific Vulnerability of Indigenous Peoples to the COVID-19 Pandemic, Calls on States to Adopt Targeted, Culturally Appropriate Measures that Respect These Peoples' Land. Access in the following link: <https://www.oas.org/es/cidh/prensa/comunicados/2020/103.asp>

The IACHR urges States

«... to suspend administrative procedures to grant permits for extractive projects and other plans to exploit or develop natural resources in or around indigenous territories, in order to ensure respect for indigenous peoples' cultural practices and their effective participation in all decisions likely to affect them directly...»⁽²¹⁾.

The IACHR stresses its concern about the special vulnerability of indigenous peoples in voluntary isolation and initial contact in the face of external pathogens like COVID–19. The Commission urges States to control the entry into ancestral lands of individuals linked to extractive industries (mining, oil and gas, hydroelectric plants, logging, agroindustry, and logistics, among others).

«... According to reports obtained by the IACHR, the amount of land that was illegally deforested in territories belonging to the Yanomami people in the Brazilian state of Roraima was up 3% in March, compared to the previous month. The Commission was also told that evangelical missionaries continued to conduct unauthorized visits to communities in voluntary isolation in the Vale do Javari, in the Brazilian state of Amazonas, which violates the legal dispositions and guidelines of Brazil's National Indian Foundation (FUNAI, by its Portuguese acronym)...»⁽²²⁾.

Likewise, in Resolution 1/2020 the Commission⁽²³⁾ adds the following recommendations to States particularly numbers 54–57:

- To provide information about the pandemic in their traditional language, and where possible, provide intercultural facilitators who can help them clearly understand the measures the State has taken and the effects of the pandemic.

(21) Id. previous n°.

(22) Id. previous n°.

(23) Resolution no. 1/2020 «Pandemic and human rights in the Americas» (Adopted by the IACHR on April 10, 2020) Access in the following link: <https://www.oas.org/es/cidh/decisiones/pdf/Resolucion-1-20-es.pdf>

- To respect unconditionally non-contact with indigenous peoples or groups who are in voluntary isolation, given the very severe impact that contagion with the virus could have on their livelihood and survival as a people.
- To take utmost measures to protect the human rights of indigenous peoples in the context of the COVID-19 pandemic, bearing in mind that these groups are entitled to receive health care that is culturally appropriate, and that takes into account traditional preventive care, healing practices, and traditional medicines.
- To refrain from introducing legislation and/or moving forward to carry out production and/or extractive projects in the territories of indigenous peoples during the period the pandemic may last, given the impossibility of conducting prior informed and free consent processes (due to the recommendation of the World Health Organization (WHO) that social distancing measures be adopted) provided for in ILO Convention 169 and other pertinent international and national instruments.

Finally, amplifying what was stated in Resolution 1/2020, the Commission adds the following requirements for the States⁽²⁴⁾:

- To guarantee the right to health of indigenous peoples in the context of the COVID-19 pandemic, with an approach that considers intercultural and gender-based perspectives and inter-generational solidarity; taking into consideration preventive care including traditional medicine and healing practices, paying special attention to groups that are particularly vulnerable to this pandemic, especially older adults and individuals with pre-existing conditions, in areas that are far from healthcare centres.
- Ensuring the participation of indigenous peoples to design and implement public policies aimed at preventing the spread of the virus and providing these communities with the relevant medical services.

(24) *Id.* number 20.

- Taking measures —including social policies— aimed at mitigating the socioeconomic effects that health-related action implemented to prevent the spread of the virus (and to provide healthcare services in the context of the COVID-19 pandemic) may have on the way of life and livelihoods of indigenous peoples, respecting the principles of equality and non-discrimination.

On their part the OAS, in its *Practical Guide to Inclusive and Rights-based Responses to COVID-19 in the Americas*⁽²⁵⁾, has formulated a series of recommendations to the States:

- To keep citizens and representative indigenous organizations informed of the extraordinary measures adopted by states and coordinate, in advance, with the local authorities those to be implemented within their indigenous lands and territories.
- To ensure that disaggregated sociocultural and epidemiological information on indigenous peoples is available. To achieve this, it is recommended that ethnicity variables be incorporated.
- The preventive and care measures adopted and implemented must be culturally and linguistically appropriate, must take into account the practices and customs of the indigenous peoples that live in national territories, and must guarantee the use of methodologies and tools that allow the transmission of information in native languages, relevant to their culture, in a clear and simple way, using the physical and/or technological means or supports available, that are most used and accessible to indigenous peoples, to disseminate the measures to be implemented.

The epidemiological situation provoked by COVID-19 not only represents a challenge for the sanitary systems around the world, but also challenges our humankind, heavily punishing the poorer and more vulnerable groups and provoking the aggravation of the existent inequalities. At the same time, the social, political and economic inequalities amplify the impact of the pandemic.

Thus, this crisis might be an opportunity to change the direction of the inequality, through the implementation of inclusive public policies for those vulnerable sectors.

(25) Practical Guide previously cited. http://www.oas.org/es/sadye/publicaciones/GUIA_SPA.pdf

As a summary, the Ombudsman's Office suggests that the public policies applied in this framework of epidemiological crisis should be taken into account these points:

- The need to understand and respect cultural diversity, and thus, the existence of different Cosmovisions and ways of tackling and understanding life, nutrition and health.
- The importance of working across the linguistic barriers existent in order to allow a precise communication about COVID-19, its contagion forms and mechanisms of prevention.
- The need to facilitate the sanitary systems to the indigenous communities creating a dialogue between the health professionals and the healers or shamans from the community, promoting team methodologies, interdisciplinary and intercultural work.
- Reinforcing the public policies that tend to guarantee the access to an adequate and healthy diet, understanding that this is a key factor for a good health and immune system, considering at the same time the cultures and nutritional habits of each community.
- Advisability of continuing with the MESI (Mesas de Emergencia Sociosanitarias Interculturales para el Abordaje en Poblaciones y Territorios Indígenas), emergency socio sanitary boards—conforming to the norms of the National Ministry of Health, taking into account the particularities of each indigenous community⁽²⁶⁾.
- The importance of the creation the of Instituto Provincial de Aborígenes Santafesinos (IPAS) (Law 11.078) with the political and indigenous peoples representatives and the functioning of the Council of community representatives contemplated in that norm, in order to receive the questions and problems posed, and also, to constitute the MESI in Santa Fe Province territory.

(26) More information on MESI and recommendations from the National Ministry of Health Access in the following link: <http://www.msal.gob.ar/images/stories/bes/graficos/0000002022cnt-covid19-mesas-emergencia-sociosanitarias-interculturales-abordaje-poblaciones-indigenas.pdf>

- Providing an educational system to the communities, without forgetting the importance of respecting the indigenous people's culture and their system of knowledge transmission.
- Accompanying communities, allowing, when desired, their participation in the productive market, in order to develop economic and environmental sustainability.
- Respecting the indigenous people's inhabited territories, avoiding especially the jobs that imply an invasion or occupation of their lands, and also, the extractive and excavation permissions.
- Reinforcing the epidemiological closures through quarantine protocols for the income and outcome to the territories of outside persons from the communities, especially those who come from community circulation of COVID-19. These actions must be necessarily coordinated and agreed with the local representatives of neighbourhoods and communities.
- The strategies of isolation, for suspicious or confirmed cases of COVID-19, must be defined jointly between the health team, the community and the directly affected persons.

Finally, and as highlighted in several sections of this Guide, the existence of the basic infrastructures, the access to drinkable water and to basic need nutrition products make easier the prevention of the contagion and the alleviation of the socioeconomic effects generated by the pandemic, being advisable, to give to these groups masks, alcohol gel and other elements for disinfection (bleach, detergent, cloths, etc.).

In consideration with the specificity of the topic tackled, for the elaboration this section the collaboration of professionals external from the Ombudsman's Office was required. In this sense, this Office thanks the participation and the valuable contributions of Dr. Marcelo Trucco and Lic. Liliana Nicola.

The protection of the indigenous peoples' rights. Contributions from the international law on human rights

BY **MARCELO TRUCCO**

From the second half of the twentieth century the world experienced a change of paradigm of huge transcendence. The human person found in that post-war world its legitimate, fair and postponed recognition in the international community. The States were not the center of the International Right any more, only focused on their interests and reciprocal relations. Thus, they definitely understood that the focus should be placed on the dignity of the person and the peoples. This recognition implied that the States accepted through international legal instruments a series of minimum consensus for the protection and guarantee of the fundamental rights and liberties. The process of «humanization» of the international community started, now centred on the human person and the peoples.

However, the equality ideal that inspired the first compromises are far away from practice. Throughout time, several groups of people and communities have to go through situations of special vulnerability, not having access to fundamental rights in conditions of equity and equality. Within these groups, without any doubt, the situation of indigenous peoples requires special attention, in order to definitely make their complaints and vindication of rights attended by the States.

The lack of economic resources,

«the lack of recognition of the fundamental aspects of their cultural identity, the lack of access to minimal development conditions (access to shelter, right to land ownership, access to education), the no granting of conditions that allow them to project a dignified life (health, drinkable water, hygiene), adding the deepening of stereotypes towards the indigenous communities, take them to practically experience vulnerability. The reality shows that in many countries of our region, thousands of people from indigenous communities daily suffer in first-hand prosecution, humiliation and discrimination, only by being part of these communities...»⁽²⁷⁾.

In the sphere of the universal system of human rights, several sanctioned instruments in the scope of the UN and organizations linked with them, contemplate specific norms looking for a wider protection

(27) Trucco, Marcelo: «La protección de los derechos de los pueblos indígenas en el sistema interamericano de derechos humanos». In: *Personas vulnerables*, Editorial Juris, Rosario, May 2016.

of the human rights of indigenous peoples. among the treaties on Human Rights we may find the International Covenant on Civil and Political Rights⁽²⁸⁾ in which it is recognized that

«... in those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language...».

Besides, the Convention on the Rights of the Child precisely states that a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language⁽²⁹⁾. However, in the Convention 169 from the ILO adopted in 1989 they started to mark a scenario of visibility regarding the respect and guarantee on the part of the States of the rights of indigenous peoples by «calling attention to the distinctive contributions of indigenous and tribal peoples to the cultural diversity and social and ecological harmony of humankind and to international cooperation and understanding»⁽³⁰⁾, assuming them the compromise of indigenous and tribal peoples to fully enjoy their human rights and fundamental freedoms, without any obstacle or discrimination. Of course, it is worth mentioning the impact that the adoption of the Declaration on the Rights of Indigenous Peoples generated on the General Assembly of the UN in 2007, as a universal instrument that gives a number of obligations on the part of the States to respect and guarantee the rights of indigenous peoples.

Nowadays, the international instruments do not doubt in recognizing the subjectivity to indigenous peoples in terms of owners of collective rights. The peoples are, in their collective dimension, the owners of the human right to development. Therefore, we could add that the Argentine doctrine and jurisprudence coincide in recognizing to the indigenous peoples and communities their own legal personality. This attribute is given especially since the recognition of the pre-existence of the indigenous peoples after the reform from 1994, which implies that the State is obliged to recognize the legal personality that in this sense assumes a declarative and non-constructive character.

(28) Adopted by the General Assembly Resolution 2200 A(XXI), December 1966. Art. 27.

(29) Art. 30 Convention, adopted by the General Assembly UN Resolution 44/25 November 20th 1989.

(30) Preamble Convention 169 ILO.

In the sphere of our region, the Inter–American system of human rights has contributed in the last years with specific norms in the areas of protection of the rights of the indigenous peoples. In this path it should be highlighted as a key moment the adoption in 2016 on the part of the General Assembly of the OAS of the Declaration on the Rights of Indigenous Peoples, one of the instruments of conventional basis which positively crystalizes

«... the recognition on the part of the States Concerned that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests, recognizing the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources, recognizing that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment...»⁽³¹⁾.

The concern of the Inter–American system to fight for the rights of the indigenous peoples was formed since the creation of the Inter–American Commission on Human Rights (IACHR) from the special section on indigenous peoples

«to pay special attention on indigenous peoples in America, many of whom are exposed to human rights violations because of their special vulnerability, and to strengthen, give impetus to and organize the Commission's activities in this regard»⁽³²⁾.

From those years, the functions of the rapporteur have notably been amplified. The elaboration of thematic reports about aspects regarding the human rights of indigenous peoples in the hemisphere⁽³³⁾, has permitted to give recommendations to the States members of the OAS on the adoption of measures that contribute to promote and guarantee the human rights of indigenous peoples.

(31) Preamble American Declaration on the Human Rights of Indigenous Peoples, passed by the General Assembly of the OAS, second plenary session, June 14th 2016 2888 (XLVI-O/16).

(32) Rapporteur on the Rights of Indigenous Peoples. Inter–American Commission on Human Rights Web page: <http://www.oas.org/es/cidh/indigenas/mandato/funciones.asp>

(33) As example: «Report on the situation of human rights of indigenous peoples in the Americas», OAS November 2000, document that systematized the main problems and challenges regarding the pending faced by indigenous peoples.

It cannot be triggered in this path of protection, the job more emphatically done during the last decade on the part of the IDH Court establishing precise standards of interpretation about how the States should extreme their respect and guarantee in favour of the protection of indigenous peoples. Thus, for instance, our maximum regional court on human rights has referred to the right of indigenous peoples on their lands and to enjoy their own cultural identity, as the essence of their more important rights. This identity includes several spheres: speaking their own language, professing their religion, practicing the customs of the community with their own idiosyncrasy and characteristics and even with the right to life itself, among others. At the same time, it has interpreted in a wider sense the right to live in a safe and healthy environment, relating it closely with the right of each community to develop in an atmosphere that allows the members of the community to live a dignified life enjoying the same minimal conditions that grant this right.

Thus, these recognitions and obligations assumed by the states in the international plane are short of efficiency if the countries do not take these compromises in the internal legislations, being able to actually put them into action on a daily basis, not only through laws but fundamentally through concrete public policies that guarantee the access to the health effectors, many times far from the location of the peoples and communities. Therefore, the access to education, especially in their intercultural character, assumes the right of the children from these communities to learn their own language. The access to justice, with the translation of the norms and procedures in the mother tongue of the communities, as well as the right to drinkable water, to live in a healthy environment, dignified living conditions, no discrimination and equality.

It cannot be hidden that in nowadays reality we are living due to the pandemics on COVID-19, indigenous peoples are exposed to a higher rights violation. The CIDH stated with concern that

«when adopting 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 differentiated impact of such measures on the human rights of groups that have historically been discriminated against or are particularly vulnerable, such as the elderly persons, persons deprived of liberty, women, indigenous peoples, persons in situations of human mobility, children and adolescents, LGBTI persons, afro-descendants persons and persons with disabilities, etc»⁽³⁴⁾.

(34) Resolution no. 1/2020 «Pandemic and Human Rights in the Americas» (adopted by the IACHR on April 10, 2020)

Access in the following link: <https://www.oas.org/es/cidh/decisiones/pdf/Resolucion-1-20-es.pdf>

Many times, these types of emergency situations deepen the social inequality gaps, an aspect that is clearly spotted in relation to indigenous peoples, to whom, access to health, information and non-discrimination can be threatened if the states do not adopt the measures under the heading of human rights, this means, by taking into account the particular situations of these groups, avoiding that the exception measures do not apply arbitrarily or discriminatorily aggravating the exercise of their fundamental rights.

All in all, in our country and specifically in our province, progress can be clearly seen during the last years in the implementation of legal and political public measures that aim at offering people from diverse indigenous communities' attention, support, and disposition to focus on the defence of their rights from the State bodies. Of course, the path is still halfway through and responsibility to carry out the compromise on international instruments is needed to be embodied in the current reality, so that thousands of people could finally achieve the unfairly postponed access to their rights.

The situation of indigenous peoples in the province of Santa Fe

BY LILIANA NICOLA

The situation of the indigenous peoples in the Province of Santa Fe is still very different regarding the diverse ethnics located in our territory. On the one hand, it can be observed that the Qom (Toba) community are the ones who present the greater difficulties regarding poverty and marginality. The Qom communities have, therefore, many difficulties to communicate with other social groups due to their minimum domain on the Spanish language and due to the almost exclusive communication in Qom language. To this problem we can add the fear of exposure to ill treatment on the part of some social groups from diverse ethnic origins, especially of European origin. Consequently, then, apart from the problems of communication and discrimination they are reticent to assist to the closest health centers.

Contrary, the other ethnics that live in the Province (Mocoit, Corundas, Mapuches, Diaguitas, etc.) do not show difficulties regarding the Spanish language and are more adapted to cohabitate with social groups that are not part of the culture of the indigenous peoples, even when they also face frequent discrimination acts.

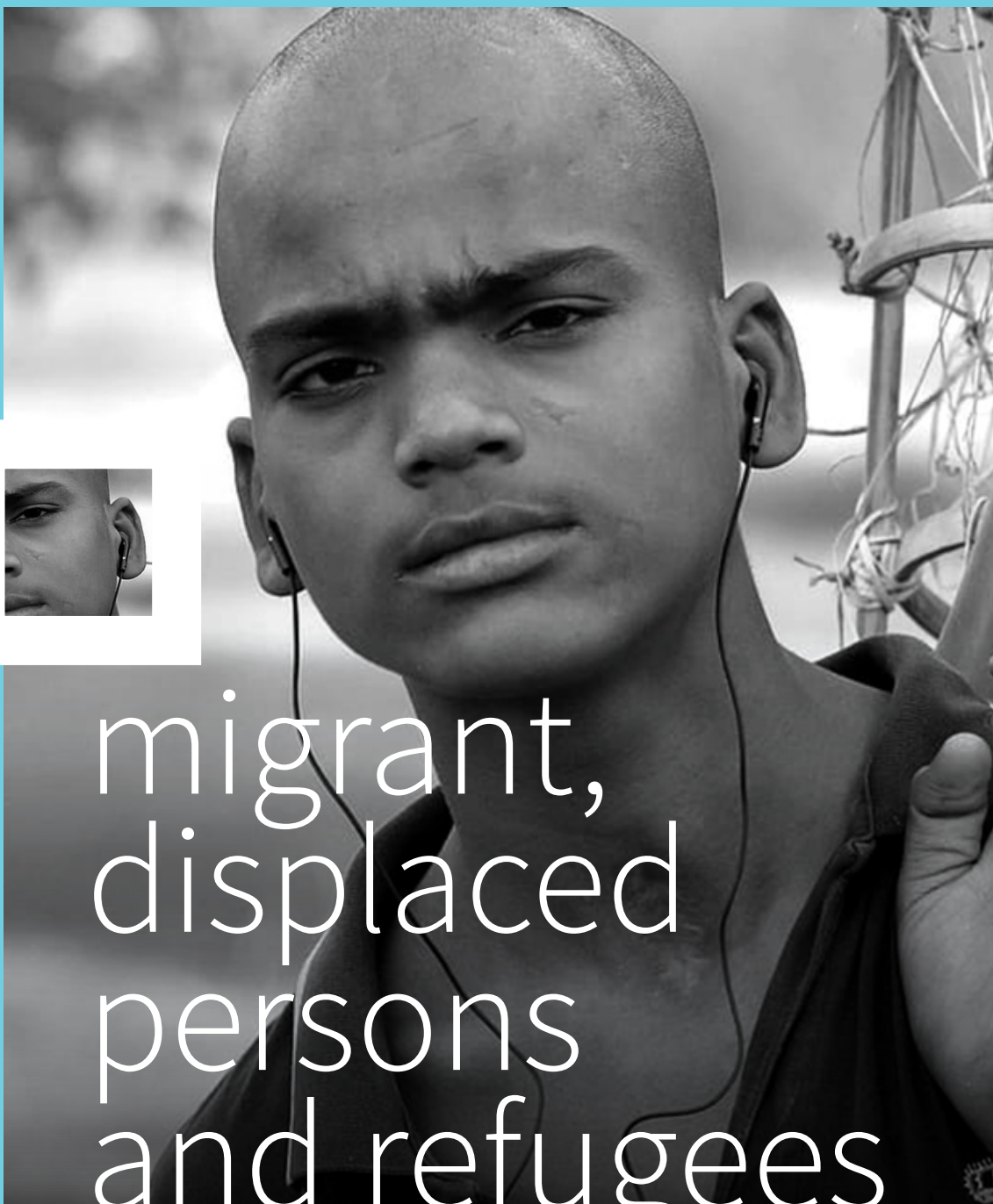
On the other side, the indigenous communities living in urban areas are limited regarding the use of their valuable ancestral medicine, as the urbanity does not allow them to get the medicinal plants and herbs from Mother Earth (Pachamama).

Recommendations

As previously exposed and in coincidence with the principles of the OAE that stated that «health is a public order right» there is a need for an intensification of a sanitary assistance for the indigenous peoples, an initiative that should be complemented by the development of intercultural bonds oriented to respect and reinforce the beliefs and the ancestral knowledge of these peoples. In this sense, and as objective, it would be useful to promote the training of the health workers in order to count on indigenous translators in the public hospitals close to the communities. This would have as a consequence that the indigenous culture would not be devalued by their lack of knowledge.

On the other hand, regarding the pandemics COVID-19 it should be guaranteed the provision of hygiene items and food to the indigenous populations.

Finally, it is advisable to make an intercultural work to redefine the concepts related to nutrition and health, recognizing the value of the natural over the commercial.



migrant,
displaced
persons
and refugees



The situation of migrant, displaced persons and refugees within the framework of the COVID-19 pandemic

Introduction

According to UNHCR's⁽¹⁾ definition:

«... Migrants, opposite to refugees, choose to move to a different country not because of a direct threat of persecution or death, but mainly to find a job, get a better education, a family reunification or other reasons, and to improve their life quality...».

Refugees, on their behalf,

«...are people who run from armed conflicts or persecution. By the end of 2015 there were 12.3 million in the world. Frequently, their situation is so dangerous and intolerable that they cross national borders seeking for security in neighbouring countries, therefore, they can be internationally recognized as “refugees”, with assistance from states, the UNHCR and other bodies...One of the main principles established within international law is that refugees should under no circumstance be expelled or send back to the situations in which their lives and freedom might be threatened. The protection of refugees has many angles, within which are included the protection against devolution to the dangers from which they have run away; the access to procedures of fair and efficient asylum; measures that guarantee that their human rights are respected, that they are allowed to live in dignified and safe conditions, while people help them find a long-term solution. States are responsible for this essential protection...»⁽²⁾.

According to reports carried out by the UN⁽³⁾, in 2019 the number of international migrants at a worldwide level was already estimated at 272 million, a number that represents a 3.5% of the total world population. 70 million of these are international migrants that are distributed like this: 58.6 million in North America and 11.7 million in Latin America and the Caribbean.

(1) Source: UNHCR, you can check it in the following link: <https://www.acnur.org/noticias/noticia-/2016/7/5b9008e74/refugiado-o-migrante-cual-es-el-termino-correcto.html>

(2) Source: UNHCR, id. previous number.

(3) Source: United Nations High Commissioner, <https://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=25904&LangID=S>

Likewise, the UNHCR informs that by the end of 2018 in America there were almost 8.1 million of Internally Displaced Persons, approximately 1.3 million of asylum seekers, more than 643 thousands of refugees (and in similar situations), and 23.900 refugees who were sent back to their places of origin.

The *Practical Guide to Inclusive and Rights-based Responses to COVID-19 in the Americas*⁽⁴⁾, published on April 7th, 2020 by the Secretariat for Access to Rights and Equity (SARE) from the General Secretariat of the Organization of American States (GS/OAS), has included a specific section on this group of the population, pointing out that

«... internally displaced persons, migrants, asylum seekers, returnees and deported people are in a specially vulnerable situation as a result of the direct and indirect effects that this pandemic might have upon them and their families. In many countries in the Americas, a large percentage of the population work and depend on informal work, work on the streets with no fixed income. Within this context, COVID-19 and its effects on the subject of access to health, job, housing and livelihoods is already having grave impacts on migrants, asylum seekers and refugees on several countries of the region. Likewise, measures of isolation, quarantine, physical and social isolation, restrictions on free citation, and closure of frontiers that are approved and adopted by states of the region in order to stop the spread of COVID-19 are affecting economy and livelihoods of many people, and this will be a decisive factor in the decision of migration in the future...».

Thus, barriers that these population groups usually face (linguistic, cultural, economic, the lack of access to clear and intelligible information, discrimination and xenophobia), are aggravated by difficulties in accessing health services and social security within this context of the pandemic.

According to reports of the UN, it is estimated that three quarters of refugees and migrants are in developing countries where health systems usually have limited capacity, what is added to the fear of these people

«... true or assumed, if these people are put in migratory detention and deported to their countries of origin, where they might face a high risk of contagion or have no strong health systems in order to know the amount of infected people and give sanitary assistance, according to international and Inter-American rules and standards...»⁽⁵⁾.

(4) You can access it in the following link: http://www.oas.org/es/sadye/publicaciones/GUIA_SPA.pdf

(5) Source: <https://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=25762&LangID=S>

So, within the framework of the COVID–19 pandemic, this group of people are in a situation of extreme vulnerability as they might find themselves deprived of their liberties in immigrant detention centers, confined in illegal settlements, or living in overcrowded urban areas with deficient sanitation services and inaccessible and overcrowded health services.

Another grave problem present within the framework of this pandemic crisis is related to the kind of work carried out by those part of this group of population, as these imply high risk of contracting COVID–19: doctors, nurses, scientists who are working in the developing of a vaccine, agricultural workers, delivery and message services staff, among other, are the job posts that migrants and refugees have.

Likewise, the grave economic slowdown caused by the pandemic due to isolation and social distancing policies, which has resulted in the indefinite closure of the hotel, catering, and commercial sectors, among others, has aggravated the vulnerability of migrants in different countries in the region.

Thus, isolation and social and physical distancing policies, restrictions on free circulation disposed by governments in order to respond to the pandemic have grave impacts on already fragile economic situations of large migrant families, which now face even more difficulties in order to access job opportunities, health, housing and means of living.

Legal framework: Human Rights of internally displaced persons, migrants, asylum seekers and refugees in the Inter–American System

According to the Practical Guide to Inclusive and Rights–based Responses to COVID–19 in the Americas, the Inter–American system of protection of the human rights of internally displaced persons, migrants, asylum seekers, refugees, people sent back to their countries of origin and deported people is made up of the «American Declaration on the Rights and Duties of Man» of 1948, the «American Convention on Human Rights» of 1969 and the «Additional Protocol to the American Convention on Human Rights» in the Area of Economic, Social and Cultural Rights «Protocol of San Salvador» of 1988.

In 1990 the UN General Assembly adopted the International «Convention on the Protection of the Rights of all Migrant Workers and Members of their Families». The main purpose of this is to give protection to migrant workers and their families, within the understanding that migrant workers constitute a sector especially vulnerable to exploitation and that might face severe risks if they are

victims of abuses similar to slavery or forced work⁽⁶⁾. The mentioned convention incorporated a Committee of Protection of rights in order to make sure that these dispositions were implemented.

In the 2030 Agenda, the issue on migrations is analysed from a sustainable development and human rights–based perspective. In this sense, the previous paradigm that forced migrants to regularize their situation was changed for one in which *the State should provide immigrants with the necessary access and possibilities needed to regularize their situation*.

The 2030 Agenda has set the goal to *facilitate orderly, safe and responsible migrations and mobility of people* (goal 10.7) and to *protect the labour rights and to promote a safe workplace environment with no risk for workers, including migrant workers, particularly migrant women and people with precarious jobs* (goal 8.8)

«Migration constitutes a key topic on the political agenda in Argentina. At the beginning of 2004 a change of legislation took place when the new Migration Law (Law no. 25.871) was published as regards this topic. This law establishes principles and guidelines on the current migration policy, among this, it is to fulfil international commitments undertaken by the Argentina Republic as regards human rights, mobility and integration of migrants into society. Migration Law is centred on the migrant person and its protection, taking into account their dimension as a person and therefore, subject of rights, and establishes migrations as a human right that has to be guaranteed by the State under the principles of equality and universality. Likewise, it embodies equality between nationals and foreigners' rights (national treatment) and establishes that access to health and education have to be guaranteed by the state, regardless of the migratory situation of the migrants, among other rights recognized»⁽⁷⁾.

In order to guarantee the already internally assumed commitments, The National Migration Office plays a key role as it is the most competent body in the Argentina Republic on the subject of migration.

The Sub regional body is made up of several institutional arrangements, the Specialized Forum on Migration of MERCOSUR (FEM) and Associated States is the online one that issues dispositions of binding nature.

(6) By April 20th 2018, the Convention had 51 States that were members, among which there were: Argentina, Bolivia, Chile, Colombia, Ecuador, El Salvador, Guatemala, Honduras, México, Nicaragua, Paraguay, Peru, Uruguay and Venezuela.

(7) In order to get more information you can check the following link: <https://www.argentina.gob.ar/interior/migraciones/compromisos-internacionales-n>

Within the inter regional level, there were given several consensus and forums for dialogue and cooperation such as the Special Committee on Migration (CAM) of the Organisation of American States (OAS), the Reunion of Migrations (Reunión de Migraciones) of the Community of Latin American and Caribbean States (CELAC) , and Ibero–American Network of Migration Authorities, which is aimed at being a cooperation tool between migratory bodies in order to share information and unify criteria, among other activities.

Within the international sphere, Argentina is part of the International Organization for Migration (IOM), it also participates in the Forum on Migration and Development (FGMD) and has joined the Global Compact for Safe, Orderly and Regular Migration, among other commitments⁽⁸⁾.

Finally, it is important to highlight that on December 7th 2019, the Inter–American Commission on Human Rights adopted the «Inter–American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons, and Victims of Human Trafficking» aimed at guiding the State members of the OAS on its duties on *respecting, protecting, promoting and granting human rights of all people regardless their nationality, migratory situation, included migrants, refugees, stateless persons and victims of human trafficking*. These principles must serve as a guideline to state authorities in the development of the legislations, rules and implementation of public policies and programs, as well as in the normative interpretation of judges.

This should be combined with the regulation related to refugees, stated by the «Convention relating to the Status of Refugees» of 1951, the «Protocol on the Status of Refugees and the Cartagena Declaration on Refugees» of 1984, the «International Right on Stateless persons (Derecho Internacional de los Apátridas)», which includes «The Convention relating to the Status of Stateless Persons» and the «Convention on the Reduction of Statelessness» and the «Guiding Principles on Internal Displacement».

Nevertheless, and in spite of having international rules on the tutelage that commit signatory states to guarantee the rights of these groups of people especially vulnerable, states' sovereignty is still being enforced in most cases.

In this sense, the Parliamentarian's Handbook (Manual para Parlamentarios) no. 24 published in 2015 is enlightening and it was elaborated in cooperation with the Inter–Parliamentary Union, an International Labour Organization the United Nations (the Office of the High Commissioner for Hu–

(8) Id. previous n°.

man Rights, under the name of «Migración, Derechos Humanos y Gobernanza»⁽⁹⁾ (Migrations, Human Rights and Governing). This document points out that

«... international law recognizes the right for everyone to leave a country, including their own, and to return to it. However, it does not contemplate the right to enter another country: “States still retain the prerogative to decide the admission and expulsion criteria of those who are not nationals or have an irregular status”. This prerogative is, however, subject to their obligations as regards human rights and any agreements that might have limited its sovereignty on this aspect, such as its participation in a regional mobility regime. In fact, the principle of state sovereignty and its application to international migration is reflected clearly in the fundamental tool of human rights that enshrines the protection of migrant workers and their families, specifically the International Convention on the Protection of the Rights of all Migrant Workers and Members of their families (ICRMW), approved by the UN General Assembly on December 18th, 1990...»⁽¹⁰⁾.

Situation in America

Our continent has been the place of destination of hundreds of migratory waves result of several causes, among which we can mention: political and socioeconomic factors, high levels of violence (committed by State and non-State actors), environmental crisis or catastrophes, the existence of illegal organisations aimed at extraction activities, mining or exploitation of natural resources, among others. According to the report published by the OAS,

«... some of the main migratory mixed movements and migration crisis of the region nowadays and in recent years are related to massive migrations of citizens from Venezuela; migration and what is known as caravans of people from countries of the Northern Triangle (El Salvador, Guatemala and Honduras) and historic migration, and also forced migrations in cases of people from Mexico to the USA; forced migrations of people from Nicaragua who mainly move towards Costa Rica; the serious situation of internal displacement

(9) Access to the cited publication in the following link: https://www.ohchr.org/Documents/Publications/MigrationHR_and_Governance_HR_PUB_15_3_SP.pdf

(10) Source: the cite is from the previously cited number. The underlined is from this writer.

and also international forced migration of people from Colombia who have to run away as a consequence of several forms of violence, some of the connection to the armed conflict, the well-known war against drugs, as well as the lack of security as regards property and natural resources; historical migrations of people from Haiti and Cuba; migrations of people from Peru and Bolivia mainly towards Argentina and Chile; added to the fact of intracontinental migration of people from Africa and Middle-East countries who cross several countries of South and Central America aimed at reaching the United States...»⁽¹¹⁾.

An article published in May by the UNDP⁽¹²⁾ points out the existing fraternity and solidarity between countries in Latin America as well as the opening of frontiers to those who decide to migrate, and also says that

«...the fabric of migrants per country is varied and so is the social acceptance of those groups. As an example, Chile has a great amount of migrants from Haiti, Peru and Colombia, while Costa Rica hosts mostly migrants from Nicaragua, and Colombia has received in the last years a great number of migrants from Venezuela. However, cases of discrimination and xenophobia have been increasing and the United Nations has decided to launch the Global Compact for Migration (Pacto Global de Migración) that has been signed by most countries of the region (it is worth mentioning that outside Latin America, the USA decided to decline it) in order to contribute to give a better position to migrants in their countries of destiny (for example, only 11 out of the 29 countries of the region of Latin America and the Caribbean have legal penalty regarding acts of discrimination)...».

The already mentioned problems related to rejection and discrimination are usually originated from the idea of migrants as a threat to labour stability, based on the discourse (it might or not be true) on migrants as people willing to take jobs with lower remuneration than those recorded or demanded by local people.

A recent document published by ECLAC, titled «Migration in Latin America and the Caribbean»⁽¹³⁾ points out that nowadays,

(11) Source: http://www.oas.org/es/sadyp/publicaciones/GUIA_SPA.pdf

(12) You can read the full article in the following link: <https://www.latinamerica.undp.org/content/rblac/es/home/blog/2020/la-situacion-de-los-migrantes-en-america-latina-en-el-contexto-d.html>

(13) You can find the complete document in the following link: https://www.cepal.org/mujer/reuniones/mesa38/oim_migraciones.pdf

«... population movements are frequently interregional and in some cases, migrants with proven ethnic roots in European and Asian countries that were traditionally migration countries, are returning back to them thanks to preferential agreements... Intraregional movements of people in Central America, conflicts in Haiti, internal movements in Colombia, economic collapse in Argentina, political and economic uncertainty in Venezuela, all these are factors that have influenced significantly the old migratory tendencies... Great number of Latin American and Caribbean migrants are moving to Europe, but it is possible that the expansion of it in 10 countries, which favours migrants of Eastern Europe and the difficulties to keep bilateral relationships in harmony in Europe, determine the change in this tendency... The demography of migrants is changing. The most obvious change relies on the participation of women in labour migration, in both, formal and informal contexts. Women had always migrated, but in the past their movements were more directly related to a family reunification or they depended on a man, however, nowadays, they move as primary migrants by their own rights. This tendency gave place to the phrase “feminization of migration”...».

Some of the problems originated from the growing numbers of migrant women are related to the fact that in some countries only natives have access to health, and this leaves women in a specially vulnerable situation as regards reproductive health and as many women work informal sectors, they are very frequently exposed to labour accidents.

In this sense, it is extremely important to highlight that limitations, restrictions and in some countries, the impossibility to a total access to a health system put Latin migrants in Latin America and the US in a situation of higher vulnerability to that of the native people. The way and mechanisms through which governments decide to respond to this global sanitary emergency will be crucial in order to guarantee a basic human right as it is the right to health, therefore, a minimum of wellbeing to these groups that also contribute to the development of the country they live in.

Situation in Argentina

According to the International Organization for Migration⁽¹⁴⁾, Argentina is the main receptor of migrants in South America. According to statistics of the Department of Economic and Social Affairs of the United Nations (UN DESA), in 2019 the percentage of the migrant population represented 5.1 percent of the total of the population, a number that, as a proportion of the total or residents, is among the highest in Latin America⁽¹⁵⁾.

Among those migrants who live in our country, the rates of informal and independent work are high.

From the beginning of March 2020, the national government started to work systematically in order to face the COVID-19 pandemic.

By Law no. 27,541 of Social Solidarity and Protest Reactivation within the framework of the Public Emergency (previous to the pandemic)⁽¹⁶⁾ a *sanitary emergency was declared in the national territory*. After that, in March, specific measures related to the pandemic were dictated through Decree no. 260/20 and 297/20, these are things to take into account:

- Decree no. 260/20: extends to (1) one year the public emergency in the sanitary field established by the Law no. 27,541, in virtue of the pandemic declared by the WHO in relation to the COVID-19. The Ministry of Health of the Nation is the competent authority implementing this rule.
- Decree 297/20: establishes, within the framework of the sanitary emergency extended by Decree no. 260/20, the *Mandatory, preventive social isolation* measure, in order to protect public health. This measure was applied at 00 hr of March 20th, 2020. In this decree there were established exceptions to the social isolation and prohibition to circulate for people affected by activities and services declared to be essential during the pandemic. Those exceptions were then extended by subsequent decrees.

(14) The IOM is an intergovernmental body founded in 1951 that is in charge of migrations. La OIM es una organización intergubernamental fundada en 1951 y que se ocupa de la problemática de las migraciones. This Geneva-based body has local offices in more than 100 countries. It is a body created by treaty by sovereign states and since 2016, it has been associated with the United Nations. <https://news.un.org/es/story/2016/09/1364531>

(15) Source: <http://argentina.iom.int/co/news/la-oim-lleva-alivio-migrantes-vulnerables-ante-la-covid-19-en-la-argentina-0>

(16) You can read the complete text on the Law in the following link: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/330000-334999/333564/norma.htm>

These measures were established in order to take care of the population, aimed at achieving several goals: *to flatten the curve of contagion, strengthen the health system, delay the eventual peaks of contagion and its lethality*. These measures were widely accepted by the population.

As regards the groups of people present in this document, by Resolution no. 567/20 of the Ministry of Health of the Nation it was established the prohibition to enter the country for thirty days (30) for those foreigners that are not residents that might have been in «infected areas» within the fourteen (14) previous days to their arrival. In this sense, by Decree no. 274/20 it was established the *prohibition to enter the country for those foreigners that are not residents of the national territory* through ports, airports, international crossings, border centers and any other entry point.

On the other hand, through DNU no. 297/20⁽¹⁷⁾, and aimed at protecting public health, it was established *for all people who inhabit the country or find themselves in it temporarily, the measure of «Mandatory and preventive social isolation»*⁽¹⁸⁾; frontiers of the country were closed and flights and international land transport was suspended.

In the preamble to the quoted decree, it is mentioned that

«... “States have the prerogative to regulate temporarily the control of migratory movements along their frontiers, which include the faculty to restrict the admission to the national territory when it is determined that that represents a relevant threat or risk for public health or security”. That COVID–19 causes respiratory diseases, knowing that the main route of contagion is from person to person, and it happens easily, therefore, it is of extreme need to reinforce the measures in order to restrict the possibilities of virus circulation. That, likewise, sustained transmission of COVID–19 and its propagation at a global level put countries with their back against the wall, related to this, the “World Health Organisation (WHO) suggested States to participate, commit and activate protection, contention and prevention measures in order to contain the propagation of the already declared pandemic”. That in this sense, within the framework of what was expressed by the World Health Organisation (WHO), “particular attention has been put in order to analyse the migratory flow of admission into the national territory from January 2020 until today”. That, from the result of this analysis, it can be seen “a high

(17) You can check the quoted rule in the following link: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/335000-339999/335894/norma.htm>

(18) It is important to highlight that the quoted rule established the A.S.P.O. for all the population in Argentina, not only for these groups of people.

numbers of Argentinian nationals and residents who come from countries considered as ‘affected areas’ by the COVID–19 pandemic, these people are in transit to the territory of the Argentina Republic, there, they represent possible cases of transmission of COVID–19”. That the COVID–19 pandemic continues its escalation and cruelty, there is community transmission of the virus, there, “weighting the admission flow of Argentine nationals and residents” analysis this as well as the way of transmission of the virus, “it is considered necessary to implement measures that are additional to those already adopted”, these should be reasonable, temporary and proportioned in relation to the risk situation that is contemplated, in order to safeguard the health of both residents and nationals who want to be admitted into the country and people who are already in the country, and their families, “minimizing the admission to the national territory of possible cases of potential contagion, through several access points, for the shortest possible period of time, in order to adequate the sufficient security measures for their readmission...” it is necessary “to amplify the effects of the prohibition of admission into the national territory through ‘ports, airports, international crossings’, and any other access point disposed by Decree no. 274/20 to all residents in the country who are abroad and to Argentinian people living abroad, based on the present measures...”»⁽¹⁹⁾.

As regards migrants who were in the national territory⁽²⁰⁾ on March 2020, it was established that:

- the expiration date of temporary, transitory or precarious residence certificates in the country will be extended during the Mandatory and Preventive Social Isolation (ASPO).
- The Digital Certificate of Precarious Residence was created, aimed at citizens of the Mercosur and associated States. This certificate can be processed online, it is sent via e–mail and can be downloaded digitally.

The virtual certificate has the same validity as the one carried out in person; this modality is in effect for both, RaDEx procedures already requested and completed ones as well as for new applications in the future. The collecting of the certificate allows its holder to a) remain and stay in the national territory; b) work; c) study.

(19) The Decree no. 297/20 can be checked in the following link: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/335000-339999/335894/norma.htm>. What is highlighted belongs to the authors of this document.

(20) You can check and read about the complete rule in the following link: <https://www.argentina.gob.ar/interior/migraciones/covid-19-radicaciones>

Likewise, specific forecasts have been established to respond to cases of precarious residence, which renovation is automatic (with no need of paperwork) in virtue of what is stated by Disposition 1714/2020 of the National Migration Office⁽²¹⁾.

In April a gradual and safe frontier reopening program was initiated. This reopening is aimed at gradually allowing the return of Argentine people that are stranded abroad through the use of specific protocols and safe corridors. In this sense, just a few border crossings were authorized⁽²²⁾.

Likewise, the Argentine Chancellery started to work on suitable measures aimed at the fulfilment of the basic needs of Argentine people and residents in the country until they can return to their countries. In this sense, collaborative work is being carried out with different regions of the world⁽²³⁾ in order to articulate the protection measures aimed at people and their basic needs, and at the same time to implement procedures aimed at people returning to their countries taking into account the sanitary situation in the country.

This Ombudsman's Office participated actively in the repatriation of people who have been stranded in different countries, in both cases of Argentine abroad as well as that of people from other countries stranded in this country who requested to return to their countries of origin. In this sense, through the *Red de Migrantes y Trata* de FIO (Network on Migrants and Human) a group of repatriation was created so that each country designated their own representatives (for example, Argentina designated 3 members, being this Office one of them). This group is in charge of building contacts and arrangements with chancelleries and consulates in several countries in order to help people who have been stranded, and to give them accommodation, food and the necessary solution until they manage to be repatriated. In this sense, arrangements have been made with other countries such as the USA, Spain, Portugal, Mexico, Peru, Brazil, Uruguay, Chile, Bolivia, Colombia, Ecuador, Honduras, Panama, Dominican Republic, among others.

(21) To get more information on measures and their reach, you can check the following link: <https://www.argentina.gob.ar/interior/migraciones/comision-nacional-para-los-refugiados/preguntas-frecuentes>

(22) You can access to updated information on authorized border crossings in the following link: <https://www.argentina.gob.ar/interior/migraciones/alcances-del-cierre-de-fronteras>

(23) You can check several links that have been authorized in order for people stranded in other places of the world to start the necessary paperwork: <https://www.argentina.gob.ar/argentinosenelmundo/coronavirus>

Accompaniment and insertion assistance for the access and exercise of the rights is of vital importance for sectors in situations of vulnerability, especially in times of pandemic.

In this sense, the intervention of the Center of Assistance to the Victim and Witness of a Crime (Centro de Asistencia a la Víctima y al Testigo de Delito) of this Ombudsman's Office has to be highlighted regarding how they acted before the situation of extreme vulnerability of groups of migrants who inhabit Rosario and Great Rosario, who when they were about to start the precarious residence paperwork had to handle the payments of the correspondent fee (approximately \$4,500 Argentine pesos). As they were not able to handle the payment of that fee, the Centre of Assistance carried out individual interviews with those affected and then produced reports on socio economy in order to request the exemption of the fee required by the National Migration Office.

Speaking of the right to health in times of a pandemic is a challenge, according to the «Protocol of San Salvador»:

Everyone shall have the right to health, understood to mean the enjoyment of the highest level of physical, mental and social well-being. In order to ensure the exercise of the right to health, the States Parties agree to recognize health as a public good and, particularly, to adopt the following measures to ensure that right: primary health care, that is, essential health care made available to all individuals and families in the community; extension of the benefits of health services to all individuals subject to the State's jurisdiction; Universal immunization against the principal infectious diseases; prevention and treatment of endemic, occupational and other diseases; education of the population on the prevention and treatment of health problems, and satisfaction of the health needs of the highest risk groups and of those whose poverty makes them the most vulnerable.

At the end of 2019, the book *Progresos y Desafíos de los Derechos en la Provincia de Santa Fe*⁽²⁴⁾ (Achievements and Challenges on Rights of the Province of Santa Fe) was published by the Ombudsman's Office, this book is an evaluation of the states on the progress of the developments of rights within the period between 2010–2019, this work was carried out within the framework of a convention between the ombudsman and UNR (National University of Rosario), which embodiment was in charge of a team of technicians and investigators of that university.

(24) You can access the publication in the following link: <https://www.defensoriasantafe.gob.ar/publicaciones/progresos-y-desafios-de-los-derechos-en-la-provincia-de-santa-fe>

The object of analysis of the mentioned work is the evaluation of economic, social and cultural rights within the framework of the provisions by the Additional Protocol to the American Convention on Human Rights of San Salvador, Sustainable Development Goals (ODS), contemplated in the 2030 Agenda, and the Convention of Belém do Pará.

Human rights are

«... rights inherent to every human being, regardless their nationality, places of residence, sex, national or ethnic origin, colour, religion, language or any other condition; we all have the same human rights, with no discrimination. These rights are interrelated, interdependent and indivisible...»⁽²⁵⁾.

These are the rights of all people in society regarding their own governments. *Progressiveness* is one of the main characteristics of human rights, contemplated on the preamble of the Universal Declaration of Human Rights, and established through norms in the article 26 of the Pact of San José, Costa Rica. States must work in order to progressively achieve the developments of these rights, keeping an eye on the fact that this implies equality, and neither regressiveness nor discrimination.

One of the developed topics on the publication quoted is the Right to Health, according to which, in Argentina this right

«... presents characteristics of progress that are underpinned in a wide legal framework where the State is considered the main guarantor. Legislation addresses topics as mental health, the comprehensive protection of boys, girls and adolescents, disability, sexual and reproductive health, protection to personal information, consent to accept or decline treatments, etc. Guarantee of access and coverage for the population to the right to health is a feature of the system that is characterized by counting on: “a universal, equal and free of discrimination access for the population of Santa Fe to the existence of a network of attention in the territory based mainly on primary health care and legal institutions on protection and shelter”...».

(25) Definition according to the High Commissioner of the United Nation. Source: <https://www.ohchr.org/sp/issues/pages/whatarehumanrights.aspx>

Added to that, as regard the regulatory framework that

«... The promulgation of the specific legislation in a national and provincial level is a solid judicial base for the regulation and implementation of health policies and it promotes the “access to the rights with substantive progress on the subjects of protection to vulnerable and disadvantaged groups”. In relation to the normative frameworks in the Province of Santa Fe, it is still pending the sanction of a law that regulates the rights to health as a whole. In June 2019 there was a draft law on health that already has preliminary approval of the Chamber of Deputies since November 2018. The main goal of this law revolves around guaranteeing the rights to health respecting the principles of gratuity, completeness, equality, accessibility and participation...»⁽²⁶⁾.

It is important to highlight two characteristic features of the Argentinian system: 1) public service offers services to which *all inhabitants have the right to access, regardless their nationality* and the fact that they might or might not have other kind of insurance and 2) the existence of the National Institute of Social Services for Retirees and Pensioners (INSSJP) also known as the Comprehensive Medical Attention Program (PAMI), in charge of the State, aimed at providing services to retired people, pensioners and their family groups (United Nations Development Programme, 2011)⁽²⁷⁾.

In this country the supply of health services was encouraged by community aspect expressed in hospitals, dispensaries and neighbourhood organizations as well as in a public and private hygiene and sanitary-based offering (between 1880–1943), and in the absence of direct definitions from the National State, as Health, opposite to Education, is not among political demands, nor in the National Constitution as responsibility among several jurisdictions, this creates a weak and ambiguous framework that came together through the XX century in the conformation of an heterogeneous system⁽²⁸⁾.

(26) You can read the complete publication *Progresos y desafíos de los Derechos en la Provincia de Santa Fe* in the following link: <https://www.defensoriasantafe.gob.ar/publicaciones/progresos-y-desafios-de-los-derechos-en-la-provincia-de-santa-fe>

(27) In order to get more information on the Sanitary System of Argentine, you can check the piece of work elaborated by this Ombudsman's Office, titled *Desafíos del COVID-19 para los sistemas de salud*, which is available in the following link: <https://www.defensoriasantafe.gob.ar/publicaciones/desafios-del-covid-19-para-los-sistemas-de-salud> (Spanish version); and <https://www.defensoriasantafe.gob.ar/publicaciones/challenges-covid-19-brings-health-systems> (English version).

(28) Source: the same as in the previous number.

As a result of a complex evolution, the Health system in Argentina is divided in 3 sub sectors: *public, social security and private*, and it is characterized by its high level of fragmentation and disintegration as a result of a complex evolution.

The public subsector is divided in three government jurisdictions —*national, provincial and municipal*—, and it is regulated by rules issued in each jurisdiction and it includes hospitals, health centers and dispensaries, etc.

Having into a coconut this reality, it is essential that the *universality of the right to health* is guaranteed fully when the *management of public health compromises governmental levels and those work in coordination and collaboration through a network system*.

In Argentina state policies have been implemented in order to revert the effects of the economic crisis derived from the pandemic upon the most vulnerable sectors of society, an example of this is the *Ingreso Familiar de Emergencia* (IFE) (Emergency Family Income) and the *Asignación Universal por Hijo* (Universal allocation by Son).

The Emergency Family Income is a non-contributory benefit of exceptional nature created to compensate for the loss or decrease of income of people affected by the declared emergency by the coronavirus pandemic, the amount is that of 10,000 Argentine pesos and it was first paid in April 2020 (by this time it was announced that it will also be paid in the June). Only one member per family group can access to this benefit, and migrants who do not have two years of legal residence are excluded from this group. In this sense, people who request the Emergency Family Income must fulfil the following requirements:

- To be native from Argentina or naturalized and resident with legal residence in the country for 2 or more years.
- To be between the ages of 18 and 65.
- No one in their family should have revenues from:
 - Working in a subordinate relationship in the private or public sector.
 - From being a single tax payers of category «C» or superior and self-employed persons.
 - Having an unemployment benefit.
 - Retirement pensions, or retirements of contributory or non-contributory nature, whether they are national, provincial, municipal or from the autonomous city of Buenos Aires.

- Social programs, complementary salary, *Hacemos Futuro* (We create Future), *Potenciar Trabajo* (Enhance Work) or any other national social programme, except for income from the Universal Assignment per Child or *PROGRESAR* (PROGRESS).

Some final recommendations and reflections

In the words of the WHO:

«... COVID-19 is an infectious disease caused by the coronavirus that has been recently discovered. Both, this new virus as well as the disease it causes were unknown before the outbreak in Wuhan (China) in December 2019...»⁽²⁹⁾.

Even though there are some solutions from western or traditional medicine or homemade remedies that might manage to alleviate COVID-19 mild symptoms, so far, there is no medicine that has proved to be able to prevent or cure this disease.

In the face of this situation, it is essential to consider the impact of this COVID-19 pandemic upon migrants *from a human rights-based perspective*, which implies that the State make the necessary efforts in order to *contemplate, preserve and ensure rights and guarantees of these people: needs must be addressed according to the particularities of each group*, having into account the needs and importance of their participation in the evaluation of the situation and in the making of decisions and measures that involve them directly.

An emphasis must be put on the fact that the illness caused by COVID-19 threatens the entire world population, without distinction, but state actions should contemplate particularly the cases of people in a vulnerable situation, among which migrants might be included.

Efforts must be doubled in order to provide the necessary conditions in order for migrants in a situation of vulnerability to take care of their health and prevent the threat that COVID-19 means; so

(29) <https://www.who.int/es/emergencies/diseases/novel-coronavirus-2019/advice-for-public/q-a-coronaviruses#:~:text=La%20COVID%2D19%20es,en%20diciembre%20de%202019>

it is recommended to provide the necessary measures in order to facilitate the isolation and adequate sanitary assistance in confirmed and suspected cases.

The hard socio economic impact social isolation measures have and will have upon migrants (a great number of them depend on a gravely affect informal economy) should be also taken into account and as a consequence, it would be convenient to provide the necessary measures in order to cover —in this emergency— at least the essential needs of these groups of people.

It is appropriate to share what was manifested⁽³⁰⁾ by the UN Secretary General as regards «... *the COVID-19 crisis in an opportunity to reconsider human mobility...*» proposing to have into account certain points States should grasp:

- 1 ■ «... exclusive is expensive and inclusion profitable. A socioeconomic-based response and inclusive public health will help beat the virus, restart our economy and move towards the goals Sustainable development Goals...»
- 2 ■ «... we must defend human dignity in the face of the pandemic, and... apply traveling restrictions and border controls with full respect for human rights and international principles of preposition of refugees...»
- 3 ■ «... no one will be safe until everyone is safe. The diagnosis, treatments and vaccines must be accessible to everyone...»
- 4 ■ «... No country can fight the pandemic nor manage migration by its own...»
- 5 ■ It is of great importance to understand the need to put into functioning a *human rights-based migrations strategy* that allows these groups of people to be beneficiaries of the measures related to policies and migration coordination, as well as to be included in health, education, housing, work and social security programmes.

(30) You can access the complete note on the following link: <https://www.un.org/es/coronavirus/articles/efectos-covid-19-en-refugiados-desplazados-migrantes>

As regards the fundamental rights of these groups of people, several bodies agree upon the fact that it is fundamental to guarantee the following points:

- «... that people who require international protection might be able to access the territory of the country in which the look for protection, and to guarantee the right to seek and be given asylum...»⁽³¹⁾.
- Every person has the right to return to their countries of origin, without prejudice to the sanitary measures that must be adopted within the framework of the pandemic.
- The integration and inclusion of migrants and refugees in the programs and actions implemented or to be implemented by the states in order to prevent and fight the virus.
- The inclusion of these groups of people, as far as possible, within social and economic programs to be implemented by the states within the framework of the pandemic.
- Protection of the situation of migrants or asylum seekers, it must not be allowed that health services or other social services exchange or share information on the migratory situation with migratory authorities.

Likewise, as it is stated in the Practical Guide written by the OAS, it is of extreme need to work in the prevention of xenophobia discourses and practises,

«... particularly those that are aimed at associating COVID-19 with migrants, foreigners or people from the certain countries... responses must be focused around the preservation of life, regardless countries of origin or, migratory situation or stateless situations, and in the effective guarantee of human rights rules and standards...».

(31) *Guide to Inclusive and Rights-based Responses to COVID-19 in the Americas*, published by the Organization of American States (GS/OAS) available in the following link: http://www.oas.org/es/sadye/publicaciones/GUIA_SPA.pdf

