



# FOCUS

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**Prodh**  
CENTRO DE DERECHOS HUMANOS  
MOCTEZUMA PRO JUÁREZ A.C.



## HUMAN RIGHTS

A GUIDE IN THE  
MIDDLE OF  
THE PANDEMIC

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Since being founded by the Jesuits in 1988, the MIGUEL AGUSTÍN PRO JUÁREZ HUMAN RIGHTS CENTER (Center Prodh) has worked to defend, promote and increase respect for human rights in Mexico, with a focus on social groups that find themselves in situations of vulnerability such as indigenous populations, women, migrants and victims of social repression.

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**IN THE FACE OF THE COVID-19 PANDEMIC, GOVERNMENTS, COMMUNITIES,** and individuals are seeking guidance on the best ways to respond to this immense challenge. The human rights framework offers a relevant guide. The guidelines of various international bodies and the actions of civil society organizations attest to this.

Both the United Nations and the Inter-American Human Rights System have generated calls and guidelines for the emergency. Their statements share an extensive use of international human rights law to remind us that there are obligations and standards that cannot be ignored even during a crisis. They also clearly reflect the human rights approach, recognizing that these crises have a differentiated impact on the basis of gender, race, socio-economic status, age, nationality, etc.

In Mexico, proposals to apply the human rights approach and to defend the most vulnerable people have abounded, supported by international bodies.

From the beginning, civil society organizations called for actions to reduce the risks faced by the migrant population, such as the cessation of detention for migratory reasons, the release of persons detained in migrant detention centers, access to medical services, the simplification of regularization procedures and refugee petitions, among others.<sup>1</sup> We also called for the reduction of the prison population during this period, including the release of persons detained for non-serious crimes or crimes that do not involve violence (in accordance with the National Criminal Punishment Law), and the release of older adults, pregnant women, and persons with HIV and other health conditions that present higher risks.<sup>2</sup> Moreover, we warned of the dangers of emergency measures that involve risks to human rights, pointing to cases of states that were implementing some of the most severe rights restrictions.<sup>3</sup>

From Center Prodh, we also undertook various actions to defend the rights of people directly affected by the pandemic, humanizing the issue by creating awareness about the concrete people whose cases challenge us to show solidarity in the face of a crisis that does not affect everyone equally, in one of the most unequal countries in the region.<sup>4</sup>

In short, in the face of the pandemic, human rights are a useful tool. Beyond standards and treaties, it is the struggle for their implementation that can contribute to making the very essence of human rights a reality in the face of an immense challenge that generates profound fears and reminds us of our common fragility and that, while we all share equal dignity, we must take special care of those who are in the most disadvantaged sectors. In other words, it reminds us that we become more human when we care for those who still live in the most inhumane conditions.



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1. WOLA, "Letter to the Government of Mexico: It is imperative to protect the rights of migrants during the Covid-19 pandemic," April 15, 2020. Available in Spanish at: <https://bit.ly/2DIPNpk>

2. CENTER PRODH, "Persons deprived of liberty in the face of Covid-19," April 20, 2020. Available in Spanish at: <https://bit.ly/3j3tVoC>

3. CENTER PRODH AND RADIO IBERO 90.9, "Human rights in the face of emergency measures. Human rights in the face of Covid-19." Available in Spanish at: <https://bit.ly/2CATHjz>.

4. CENTER PRODH, "Three portraits of the defense of human rights in the time of Covid-19", May 26, 2020. Available in Spanish at: <https://bit.ly/2OoxZ5e>



# *The Response of Human Rights Bodies* to the Challenges imposed by Covid-19

It would be difficult to give a brief account of the statements made in recent months by international bodies and specialized human rights mechanisms; however, it is important to highlight the efforts they have made to identify a path for States' responses to Covid-19 in accordance with international human rights standards.

**THE GUIDELINES ISSUED BY BOTH** the Universal and Inter-American systems focus on three main issues: first, that state obligations to respect, guarantee, and promote human rights cannot be ignored even in a crisis, so all restrictions issued in these contexts must be in line with international obliga-

tions; second, that responses must have a human rights focus, considering a differentiated impact on the basis of gender, race, socioeconomic status, age, nationality, etc.; and finally, that responses will be more appropriate if they are promoted with a comprehensive, supportive, and multilateral vision.

Within the United Nations (UN), since March 6, the UN High Commissioner for Human Rights has urged States to maintain a “holistic approach” to the pandemic and to carry out their actions “in strict accordance with human rights standards,” adopting special measures for the most exposed and vulnerable communities.<sup>1</sup>

In a similar vein, proposals have been made by the UN treaty bodies and independent experts. A group of more than 15 rapporteurs and other specialists reminded States that they “should not abuse emergency measures to suppress human rights.”<sup>2</sup> Similarly, members of 10 bodies created by international treaties called for the fight against Covid-19 to be structured on the basis of the “human rights approach” and for strategies to be inclusive and to take special care of those in particularly vulnerable situations.<sup>3</sup>

Given the large number of recommendations issued within the UN system, the Office of the United Nations High Commissioner for Human Rights in Mexico (OHCHR-Mexico) has done the essential job of organizing, synthesizing, translating, and disseminating the main statements of the UN High Commissioner, treaty bodies, and special procedures on the subject, building a dynamic archive of “Essential Guidelines for incorporating a Human Rights Perspective in the Response to the Covid-19 Pandemic.”<sup>4</sup>

These guidelines are especially relevant to studying the impacts of the pandemic and identify

seven central challenges to human rights: 1) State of emergency, state of exception, or other similar figures involving the suspension or restriction of rights, which in some places were adopted to address Covid-19; 2) the administration of justice in the context of confinement; 3) the effects on those who are at special risk, such as health personnel, people with disabilities, migrants, minorities, older adults, children, persons deprived of their liberty, indigenous peoples, among others; 4) the prevention of discrimination against infected persons or health personnel; 5) the situation of human rights defenders who document and denounce the effects of the pandemic; 6) the right to information on the evolution of the pandemic; and 7) access to social rights, primarily the right to health.<sup>5</sup>

The OHCHR-Mexico regularly updates the guidelines with the documents issued by the UN system on each of the aforementioned issues<sup>6</sup> and even issued a series of specific guidelines for Mexico that analyze the various emergency decrees issued by some states in light of international standards.<sup>7</sup>

In addition to the work of the UN-OHCHR, it is worth highlighting the position of the International Labor Organization (ILO), given that labor rights are also at stake in the pandemic and, therefore, it is necessary to question not only the responsibilities of the States but also those of private actors. The ILO expressed its concern about the possible loss of 25 million jobs worldwide, combined with the increase in working poverty and underemployment.<sup>8</sup> The ILO Monitor also published a guide on “Covid-19 and the world of work,”<sup>9</sup> which analyzes the main impacts of the pandemic on labor rights.

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1. OHCHR, “Coronavirus: Human rights need to be front and centre in response, says Bachelet,” March 6, 2020. Available at: <https://bit.ly/2DhdaGu>

2. OHCHR, “Covid-19: States should not abuse emergency measures to suppress human rights—UN experts”, March 16, 2020. Available at: <https://bit.ly/3zID9PS>

3. OHCHR, “UN Human Rights Treaty Bodies call for human rights approach in fighting Covid-19.” March 24, 2020. <https://bit.ly/3gWE17z> A compilation of statements by human rights treaty bodies in the context of Covid-19 from March to June 2020 is available at: <https://bit.ly/3zM3TPt>

4. OHCHR, “Essential Guidelines for incorporating a Human Rights Perspective in the Response to the Covid-19 Pandemic” (Updated: April 27, 2020). Available in Spanish at: <https://bit.ly/3boC6bW> At Center Prodh, during the pandemic, we organized several online activities to contribute to the dissemination of the guidelines. For example, we organized virtual talks between the OHCHR-Mexico and human rights defenders from all over Mexico.

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5. The latest version of the Guidelines is available in Spanish at: <https://bit.ly/2ERhhd0>

6. In addition to the guidelines on its website, it has a section on materials and tools to disseminate these guidelines. Available in Spanish at: <https://bit.ly/31LiCLf>

7. OHCHR-MÉXICO. “Human Rights Guidelines for Emergency Measures during the Covid-19 Pandemic in Mexico.” April 29, 2020. Available in Spanish at: <https://bit.ly/3jEmDHD>

8. ILO, “Almost 25 million jobs could be lost worldwide as a result of Covid-19, says ILO,” March 18, 2020. Available at: <https://bit.ly/2YU5rW>

9. ILO, “ILO Monitor: Covid-19 and the world of work. Fifth edition,” June 30, 2020. Available at: <https://bit.ly/34OvwtY>

On our continent, since March 20, the Inter-American Commission on Human Rights (IACHR) urged the American States to “guarantee comprehensive protection for human rights and public health during the Covid-19 pandemic.”<sup>10</sup> In addition, the Commission created a Rapid and Integrated Response Coordination Unit for the Covid-19 pandemic (SACROI, by its Spanish acronym), which closely monitors the human rights situation in the context of the pandemic. The SACROI has sought to generate preventive mechanisms by monitoring and systematizing information on the current state of the region and the measures adopted, as well as to generate institutional responses in the area of protection that optimize and mainstream the mechanisms available to the IACHR.<sup>11</sup>

In this context, on April 10, the IACHR adopted Resolution 1/2020, “Pandemic and Human Rights in the Americas,”<sup>12</sup> in which it refers—in broad agreement with the OHCHR—to the main impacts on: 1) social rights, especially the right to health; 2) states

of exception; 3) groups in a situation of special vulnerability; and 4) international cooperation.

The aforementioned resolution also urges member states to: a) adopt immediately, urgently, and with due diligence, all appropriate measures to protect the rights to life, health, and personal integrity of persons in their jurisdictions from the risk posed by the present pandemic, taking into account the best scientific evidence; b) adopt immediately and intersectionally the human rights approach in all State actions aimed at addressing the pandemic and its consequences, including any plans for social and economic recovery that are formulated; and c) guide their actions in accordance with the highest standards and in conformity with the principles of international human rights law.<sup>13</sup>

Similarly, on April 9, the Inter-American Court of Human Rights (I/A Court HR) issued the statement “Covid-19 and Human Rights: The Problems and Challenges must be addressed from a Human Rights Perspective and with Respect for International Obligations,” urging States to implement all their efforts and strategies within a framework of the Rule of Law, with full respect for Inter-American instruments for the protection of human rights and in accordance with the Court’s jurisprudence.<sup>14</sup> In particular, the I/A

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10. IACHR, “IACHR and OSRESCER Urge States to Guarantee Comprehensive Protection for Human Rights and Public Health during the Covid-19 Pandemic”, March 20, 2020. Available at: <https://bit.ly/3hPsoTM>

11. The SACROI home page is available at: <https://bit.ly/31OkMcZ>

12. IACHR, “Pandemic and Human Rights in the Americas”. Resolution 1/2020. April 10, 2020. Available at: <https://bit.ly/3bgcWMs>

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13. *Ídem*.



Court HR specifically mentions that, given that the challenges are extraordinary, they must be addressed through dialogue and international, regional, joint, supportive, and transparent cooperation among all States, and that multilateral bodies of all kinds must help enable States to seek solutions to the present and future problems and challenges caused by the pandemic, under a human rights approach.

It is worth noting that all international bodies have sought to adapt their actions to the context of the pandemic and to make their analyses accessible by digital means, organizing specialized forums and discussions<sup>15</sup> and even seeking to adjust their ordinary mechanisms, such as treaty bodies' evaluation meetings<sup>16</sup> or public

hearings with civil society<sup>17</sup>. In this way, international bodies sought, at a time of crisis where physical distancing is an urgent measure, to avoid the paralysis of the protection mechanisms available in the various systems. In the Americas, there is an additional challenge for these mechanisms to be truly inclusive due to the disparity in the digital infrastructure installed in the various regions of the member countries. Still, these steps undoubtedly demonstrate the decision of these bodies to reach out to those who observe the impact of the pandemic on human rights in the region and the world.

In sum, international bodies have done important work, using international human rights law and recognizing the differentiated and vulnerable situation of various sectors of the population, to urge governments to adopt a human rights perspective in their strategies and actions in response to the pandemic and the crises that will result from it. 🦋

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14. INTER-AMERICAN COURT OF HUMAN RIGHTS (I/A COURT H.R.). "Statement of the Inter-American Court of Human Rights 1/2020. Covid-19 and Human Rights: The Problems and Challenges must be addressed from a Human Rights Perspective and with Respect for International Obligations." April 9, 2020. Available at: <https://bit.ly/2QHVMh9>

15. The IACHR organized a series of virtual seminars on various human rights subjects in the context of the pandemic available in Spanish at: <https://bit.ly/3hNOXqx>, the I/A Court H.R. also conducted a series of similar conferences available in Spanish at: <https://bit.ly/2DnftYO>

16. For example, the Committee on Enforced Disappearances held its 18<sup>th</sup> Session online on May 4, 2020, even though it was originally scheduled for April. The beginning of the session is available at: <https://bit.ly/3jMHDft>

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17. A Period of Sessions of the IACHR took place virtually in July 2020. This was announced by the IACHR in a press release in May. IACHR. "IACHR Announces 176th Period of Sessions in Online Format and Is Receiving Applications for Working Meetings." May 1, 2020. <https://bit.ly/3bhNmGQ>

Photo: Alexis Aubin | ONU México





Photo: CNN

## *Monitoring Restrictive Measures in response to Covid-19*

Since the beginning of the pandemic, international bodies—from both the Inter-American System and the Universal (UN) Human Rights System—and human rights organizations in Mexico have reminded governments that human rights establish clear limits to States' actions and incorporate criteria so that, when different rights are at stake, the decision is made that restricts them to a lesser extent.<sup>1</sup>

**THUS, STATE STRATEGIES TO ADDRESS** the pandemic and to provide for the health of all must respect certain limits. The human rights framework is clear in establishing that the measures adopted “should be proportional to the anticipated risk, be necessary, and applied in a non-discriminatory manner”<sup>2</sup> and

that “all restrictions or suspensions are based on the best scientific evidence and that prior to adoption and during implementation, consideration be given to the particular effects they may have on the most vulnerable groups, in order to ensure that the impact is not disproportionate, and take such affirmative measures as may be necessary” in addition to suitable means of control.<sup>3</sup>

1. OHCHR, “Essential Guidelines for incorporating a Human Rights Perspective in the Response to the Covid-19 Pandemic” (Updated: April 27, 2020). Available in Spanish at: <https://bit.ly/32NikOu>; IACHR. “Pandemic and Human Rights in the Americas”. Resolution 1/2020. April 10, 2020. Available at: <https://bit.ly/3jD7B4C>; CENTER PRODH, “Human rights in the face of Covid-19.” March 30, 2020. Available in Spanish at: <https://bit.ly/3jv67JG>

2. OHCHR, “Essential Guidelines for incorporating a Human Rights Perspective in the Response to the Covid-19 Pandemic” (Updated: April 27, 2020). Original in Spanish, translation our own. Available in Spanish at: <https://bit.ly/31KthWC>



There is no doubt that Covid-19 has made it necessary to take extraordinary measures aimed at protecting the right to health, as well as appealing to the co-responsibility of citizens to ensure that the negative effects of the pandemic are minimized. However, some state and municipal governments have issued decrees, agreements, and reforms –or have de facto implemented measures– that, far from respecting rights and addressing the situation adequately, raise concerns about risks to human rights.

Beyond the debate on whether local authorities have jurisdiction to implement Covid-19 measures or whether this falls to the federal government, the substantive analysis of these measures is even more important, as it allows us to determine whether they are in line with the human rights framework or, on the contrary, harm it and create an environment conducive to the commission of rights violations.

Some of the local legal instruments establish the obligatory nature of measures such as isolation or the use of face masks in public, punishing non-compliance (for example, in Jalisco and Coahuila); mandate health screenings (for example, in Coahuila); or specify spaces for obligatory isolation (as in Michoacán). In the most serious case, the Congress of Querétaro reformed the Penal Code to modify existing criminal offenses and create new crimes to punish non-compliance with health measures, which violates the State's obligation to use criminal law as a last resort.

The problem with these types of measures is that they may not be the most appropriate to achieve the desired goal of protecting people's health, they may not be proportionate, and they may lead to arbitrariness in their implementation. Furthermore, they do not establish controls for their application nor do they contemplate differentiated measures for groups in a situation of vulnerability –such as homeless people, migrants, or indigenous people– who are usually the most affected by these measures.

In addition, there is a lack of clarity in the regulations, which results in such broad discretion that

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3. **IACHR**, *Pandemic and Human Rights in the Americas*. Resolution 1/2020, paras. 27-28. April 10, 2020. Available at: <https://bit.ly/3jBc6gd>

it encourages arbitrariness. This leads to violations and excesses. Regulations that are ambiguous or that intend to set an example of an iron fisted approach are catalysts for arbitrariness and abuse. That is why we insist that measures must be adjusted to the legal standards in this area and include controls, accountability, and access to information.

We cannot forget that the authorities in charge of implementing many of these measures have been constantly involved in cases of human rights violations due to the abuse of force, arbitrary detentions, and torture –such as the actions of security forces in the states of Coahuila<sup>4</sup> and Jalisco<sup>5</sup>. This was denounced by organizations that defend human rights in those states<sup>6</sup>. As a result, concern is growing and reminds us of other pending structural issues in Mexico: the adequate regulation of the use of force (currently being challenged before Mexico's Supreme Court), schemes of external controls and accountability, as ordered by the Inter-American Court of Human Rights in the Atenco case, and the proper investigation of those responsible for committing abuses, among others.

Unfortunately, the concern expressed since the first decrees has become a reality, as we have been able to witness how security forces incurred in human rights violations in states such as Michoacán, Baja California, Jalisco, Oaxaca, and Puebla. In particular, we think of Giovanni López Ramírez, who died in the custody of the municipal police of Ixtlahuacán, Jalisco, and whose detention, according to information released by his family, was due to not wearing a face mask. Today, his case reflects the fact that people's lives and dignity continue to be at risk when inappropriate, disproportionate, and discriminatory measures are prioritized.

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4. As exemplified by the case of Mónica Esparza: <https://bit.ly/2QMdzng> (in Spanish) and as referred to by local civil society organizations such as the Fray Juan de Larios Human Rights Center or the Ibero Torreón university human rights program.

5. As pointed out by CEPAD: “Report on the Situation of Human Rights in Jalisco 2018.” April 4, 2019. Available in Spanish at: <https://bit.ly/2QGvgt4>

6. Jalisco, *Comunicado* from CEPAD: <https://bit.ly/3gQfwtc>; (in Spanish); “Coahuila, An Infringement of Human Rights, Decree issued for the Prevention of Covid-19: Fray Juan de Larios”: <https://bit.ly/34SG2QQ>

That is why we will continue to insist that, in times of crisis, human rights are the route that allows for appropriate measures to be taken and evaluated. Thus, even when it is necessary to limit certain rights in order to protect the physical integrity, health, and life of people, this will best be accomplished by seeking to restrict rights to the least extent possible and avoiding measures that focus on a punitive approach, in order to close the door to arbitrariness, abuse, and human rights violations.

These days also offer an opportunity to imagine and build the scenario to which we aspire when

the measures begin to be lifted. The experience we have lived through should be a reminder of how human rights can and should guide the actions of authorities in complex situations and how no end, however legitimate it may be, is exempt from complying with certain controls. In the end, it is people's dignity that is at stake, whether it is threatened by a virus or by the actions of the authorities.

The aspiration must be to have access to information, appropriate measures, and accountability, to consider historical inequalities, and to act accordingly. In other words, we must bet on human rights. 🦋



Photo: FILAC



Photo: Mario Marlo



Photo: Cuartoscuro



Illustration: Eduardo Mirafuentes

## *Three Portraits of the Defense* of Human Rights in Times of Covid-19

The pandemic we are experiencing has impacted the human rights of many, but has had a particularly harsh impact on people who were already in a situation of special vulnerability, such as women, indigenous people, and, especially, migrants and people deprived of their liberty.

**FACED WITH THIS UNEXPECTED NEW REALITY**, and as has happened in other crises, victims' collectives, families, and civil society organizations have undertaken various initiatives to try to counteract the impacts of the pandemic.

We share here three cases that we accompany, not to focus on international human rights standards or to comment on the legal aspects of

the cases, but to shed light on some of the largely unseen impacts of the pandemic on these populations. We do so with the conviction that humanizing these consequences is vital to the empathy and solidarity that we all should share.

In order not to expose the people whose cases we present to potential negative consequences, we will give them fictitious names.

## ONE

**OLGA IS A LATIN AMERICAN** woman deprived of her liberty in one of Mexico City's prisons. When she settled in our country, she was the victim of serious violations of her human rights: arbitrary detention, sexual torture, and a baseless criminal trial against her that resulted in a conviction for a crime she did not commit.

Olga has now spent more than six years in prison dealing with the consequences of torture and fighting for her freedom; she is in the process of presenting the last legal remedy she has left to reverse the injustice against her, represented by Center Prodh.

Olga became pregnant at the end of last year, which, in the context of the current health emergency, increased the risk of complications for her health and for that of her daughter.

Seeking to ensure that the arrival of her baby would be in the safest conditions possible, we requested that the prison authorities schedule Olga's delivery and develop a plan for her health-care that, considering the severity of the pandemic, would include her transfer to an appropriate hospital with specialized care, as well as a plan for monitoring her during the postpartum period and her safety in a place with better hygienic conditions until the confinement measures were lifted.

In response, the authorities brought Olga to be assessed in specialized hospitals prior to the birth.

Although an investigation is still underway into alleged neglect and discrimination by the medical staff who attended her during the birth, Olga and her baby are doing well. The strength and dignity she has shown over the past six years are keeping her on her feet, in the hope that her health and that of her baby will be strengthened.

## Two

**ALFONSO HAS BEEN DEPRIVED OF HIS FREEDOM** for more than ten years. Due to the application of judicial criteria that violate human rights (that have been discredited during his time in prison), Alfonso was convicted for a crime he did not commit.

While in prison, Alfonso developed a chronic-degenerative disease that has caused his health progressively to deteriorate. Knowing that this

makes him especially vulnerable to Covid-19, as confirmed by the statistics on deaths of people with this condition and as accepted by the health authorities themselves, Alfonso faced the onset of the pandemic with great concern.

Looking for options to guarantee Alfonso's health, Center Prodh filed a constitutional challenge seeking for authorities to adopt specific measures for him, and that an alternative to prison be allowed for the enforcement of his sentence.

Thus far, the federal justice system has ordered that Alfonso's health be guaranteed through specific actions –such as access to masks, sanitizing gel, and gloves– beyond the general measures that the prison authorities claim to have implemented for the entire prison population, understanding that these are not sufficient for his case. The constitutional challenge is still in progress.

Alfonso hopes that the legal actions undertaken will help him and other prisoners who suffer from chronic diseases to access basic prevention and health services to protect their lives. In the case of Alfonso, this is also necessary so that he can continue fighting for justice, as he has done over the last decade.

## THREE

**HENRY AND ROSA ARE PEOPLE FROM** Central America who were forced to migrate due to the violence in their country. They managed to enter Mexico in one of the caravans that crossed the border in 2019 and are currently in a humanitarian shelter.

After the caravans –and largely thanks to them– they were able to obtain a humanitarian permit to stay in Mexico, which allowed them to live in the country with a certain degree of tranquility, although with many material needs. However, that peace of mind ended: during the pandemic, they received notification that their permit was no longer valid and that they would be expelled from Mexico.

For Henry and Rosa, as for thousands of migrants, deportation in this context would not only expose them to the violence that forced them to flee their home, but also to the risk of Covid-19.

Seeking prompt protection from the threat of expulsion, Espacio Migrante and Center Prodh filed a constitutional challenge seeking the possibility for Henry and Rosa not to be returned to their coun-

tries in this context and for them not to be deprived of their freedom either.

Fortunately, the expulsion order was declared without effect and Henry and Rosa will be able to remain in Mexico with a provisional migratory status while the constitutional challenge is resolved.

Henry and Rosa know that their fate is uncertain. They continue to wonder about the outcome of their legal challenge and are living with the fear that, at this difficult time, the Mexican authorities may decide not to protect them.

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These three brief portraits depict the distress that the pandemic has generated among the

most vulnerable people in our society and how it reflects existing inequalities. These three stories also show how adversity is faced by those people with resilience and dignity. Furthermore, they are three examples of how human rights organizations are trying to respond to the demands of the present moment.

The United Nations (UN) Secretary General himself and the UN High Commissioner for Human Rights have called for grounding the social and governmental response to the pandemic in human rights, highlighting the centrality of people and their rights. In the face of Covid-19, people like Olga, Alfonso, Henry, Rosa, and so many others are fighting to make human rights a reality. 🦋



Illustration: Eduardo Mirafuentes



Foto: Chiapas Paralelo

# *A Presidential Agreement* that Deepens Militarization

On May 11, 2020, in the context of the Covid-19 pandemic, an agreement was published in the Official Gazette of the Federation (DOF, by its Spanish acronym) that provides for the Armed Forces to carry out public security tasks.

**SIGNED BY THE PRESIDENT**, the Secretary of National Defense, the Secretary of the Navy, and the Secretary of Security and Citizen Protection<sup>1</sup>, the agreement establishes the way in which the President will use the Armed Forces –Army, Navy,

and Air Force, according to the Constitution– to carry out public security tasks until the year 2024.

The Armed Forces have been authorized to carry out twelve of the 44 tasks that the National Guard Act confers on the National Guard. Among these are some that are excessively broad, such as crime prevention, and others that the Army and Navy

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1. Available at: <https://bit.ly/2EQGG6u>

have already been carrying out without a legal framework, such as detaining people.

The agreement was based on the fifth transitory article of the decree that reformed the Constitution and created the National Guard. Through this transitory article, the President was empowered to use the Armed Forces for public security tasks, with such use subject to five conditions: it was to be extraordinary, regulated, supervised, subordinated, and complementary. This transitory article sought to establish that now, the domestic deployment of the Armed Forces throughout the country would no longer be a routine procedure, as it had been under previous governments.

The five aforementioned conditions have a precise meaning and scope: these are the considerations contained in the judgment of the Inter-American Court of Human Rights (I/A Court H.R.) in the Case of Alvarado Espinoza and others v. Mexico, in which the Court established that:

182. [A]s a general rule, [...] the maintenance of internal public order and citizen security must be primarily reserved for the civilian police forces. However, when they exceptionally intervene in security tasks, the participation of the armed forces must be:

a) *Extraordinary*, so that any intervention is justified and exceptional, temporary and restricted to what is strictly necessary in the circumstances of the case;

b) *Subordinated and complementary* to the work of the civilian forces, without being extended to the powers of the institutions responsible for the administration of justice or the judicial or ministerial police;

c) *Regulated*, through legal mechanisms and protocols on the use of force, under the principles of exceptionality, proportionality and absolute necessity and in accordance with the respective training in the field, and

d) *Supervised*, by competent, independent, and technically capable civilian bodies.<sup>2</sup>

These conditions were echoed by the plenary of Mexico's Supreme Court (SCJN, by its Spanish acro-

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2. <https://bit.ly/3hND5EM> English translation our own.

nym) when it ruled on Constitutional Challenge 6/2018, striking down the polemic Internal Security Law.

In comparing the Constitution, the Inter-American Court ruling, and the SCJN's ruling with the content of the presidential agreement, it is clear that the agreement does not comply with the required conditions. Although these conditions are cited in the title of the agreement, they are not developed in its five articles and two transitory articles. Therefore, the content of the agreement cannot be understood as complying with the Constitutional reform.

In fact, the military intervention foreseen in the agreement is not extraordinary, since it is foreseen for the entire country and without distinction between crimes or situations. It does not provide for adequate regulation, since in addition to the fact that the agreement is brief, some of the rules that would be applicable to this deployment –such as the National Law on the Use of Force– are currently being challenged before the SCJN. This is not a supervised intervention, since supervision is entrusted to the internal military control bodies, which have repeatedly shown bias, without creating additional external controls. It is not subordinated, since the military will have to coordinate with –but not be “subordinate” to– the civilian authorities. And it is not complementary, since the Armed Forces –and not the civilian forces– will continue to be central actors in public security policies.

The concern generated by the presidential agreement is therefore justified. The creation of the National Guard had already caused great concern, since it meant continuing to bet on a militarized security model<sup>3</sup>. The May 2020 presidential agreement deepens that model and leaves no room for doubt: the National Guard will not be fully in charge of public security before 2024; meanwhile, it will be the Armed Forces –Army, Navy, and Air Force– that will take over, without any institutional measures having been taken to prevent the human rights violations that have accompanied militarization in the past, and despite empirical

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3. CENTER PRODH. “National Guard: The Agenda Ahead,” May 27, 2019. Available in Spanish at: <https://bit.ly/3gQtonV>

evidence that this military deployment may result in increased violence.

Since this is an agreement that is incompatible with the Constitution and international human rights treaties—based on the interpretation of these by the I/A Court H.R.—it is to be expected that the SCJN will analyze its content. Unfortunately, the National Human Rights Commission (CNDH, by its Spanish acronym) failed to exercise its powers to challenge it, even though it could legally attempt to do so<sup>4</sup>. It is possible, however, that constitutional disputes by other actors will prosper, although this means of control limits the possibilities of raising substantive arguments about human rights violations since it focuses on aspects related to the invasion of powers between branches of government.

This agreement, which deepens the intervention of the military in public security tasks, represents an unfortunate reversal by this government of its campaign promises. The Armed Forces have

been given many tasks during this administration, including not only public security but also the construction of strategic infrastructure. In return, they have given very little in the area of human rights: they hesitate or fail to participate in acts of recognition of international responsibility in cases litigated before the Inter-American Human Rights System; they lobby against relevant human rights foreign policy initiatives, such as the recognition of the jurisdiction of the UN Committee on Enforced Disappearances (CED) to receive individual complaints; they do not contribute to justice in emblematic cases, such as Tlatlaya; and they have not modified their traditional refusal to recognize their involvement in serious human rights violations during the “Dirty War” period, for example by making related archives accessible.

In the face of the renewed prominence of the Armed Forces, there is no room for ambivalence. As we have said before, continuing to militarize security will not reduce persistent violence and will generate risks for human rights.<sup>5</sup> 🦋

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4. CENTER PRODH, “Can the CNDH challenge the presidential agreement that assigns the armed forces to public security tasks?” June 15, 2020. Available in Spanish at: <https://bit.ly/2Gkmivh>

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5. CENTER PRODH, “Militarization, again,” in *El Universal*, May 14, 2020. Available in Spanish at: <https://bit.ly/3bomJ35>



Photo: La Crónica de Hoy, Puebla





Photo: EFE

## *Indigenous People in the face of Covid-19:* Structural Discrimination and the Rights of Indigenous People

The situation of indigenous peoples in the face of Covid-19 illustrates how the effects of the pandemic exacerbate structural inequality and discrimination against the most vulnerable sectors and also reminds us how rights are interdependent.

**IN JUNE 2020, ALMOST THREE MONTHS AFTER** the start of the quarantine in Mexico, the School of Medicine of the National Autonomous University of Mexico (UNAM, by its Spanish acronym) published a study revealing that the Covid-19 fatality rate in Mexico's indigenous population was much higher than in the rest of the country, with the rate reaching 18.8% compared to 11.9% nationally.

The study is very illustrative. For the authors, this difference in rates is related to a situation of social marginalization, low wages, and inadequate access to health services for this sector of the population, and reveals “the enormous vulnerability of indigenous communities, both in the cities and in their places of origin.”

The structural violation of the rights of the indigenous population reflected in the pandemic is aggravated by the lack of culturally and linguistically accessible information, which results in a lack

of knowledge of symptoms, forms of propagation, and possible treatment among this sector.

According to the United Nations (UN), the pandemic has taken an especially severe toll on the elderly indigenous population (who preserve community memory) and indigenous women, since their role as food providers exposes them even more, as well as indigenous people with disabilities.

In May, the new UN Special Rapporteur on the rights of indigenous peoples, José Francisco Calí Tzay, warned that the impacts on indigenous communities are not confined to health issues, but also include, for example, the effects of states of emergency, which increase marginalization and sometimes lead to the militarization of their territories<sup>1</sup>.

1. OHCHR. “Covid-19 is devastating indigenous communities worldwide, and it's not only about health”—UN expert warns.” May 18, 2020. <https://bit.ly/34Rt4CY>

The Inter-American Commission on Human Rights (IACHR), in a press release, warned about the growing risks faced by indigenous peoples in the region, especially with regard to territorial and environmental conflicts associated with extractive activities, which, in turn, directly affect the rights to food, water, and health.<sup>2</sup>

In the words of Special Rapporteur Calí Tzay, in the context of the emergency,

In some countries, consultations with indigenous peoples and also environmental impact assessments are being abruptly suspended in order to force through megaprojects relating to agribusiness, mining, dams and infrastructure.

Indigenous peoples who lose their lands and livelihoods are pushed further into poverty, higher rates of malnutrition, lack of access to clean water and sanitation, as well as exclusion from medical services, which in turn renders them particularly vulnerable to the disease.<sup>3</sup>

Hunger and poverty in the Americas, which are already being deepened by the effects of the pandemic, will also have a particular impact on indigenous peoples. According to a report recently published by the International Labour Organization (ILO):

In addition to living in precarious conditions, the vast majority of indigenous women and men in the region work in informal conditions in the sectors most affected by the crisis, which translates into the loss of livelihoods.<sup>4</sup>

Nonetheless, as has happened throughout history, indigenous peoples and communities

have used their organizational and traditional knowledge to confront the pandemic. Traditional medicine, isolation of territories, and the use of community patrols are the tools that people use for self-protection.

In the face of this, both the UN<sup>5</sup> and the IACHR<sup>5</sup> have recommended that States take specific measures to confront the pandemic. These include: to consider in emergency response and care plans the worldview of indigenous peoples in relation to health and its relationship to other rights, such as the rights to self-determination, development, culture, land, language, and a healthy environment; to do this by guaranteeing their right to be consulted and to participate in decisions that affect them; to ensure that timely, accessible, and accurate information is made available to indigenous peoples living in their ancestral territories and in urban contexts; to establish support plans to address the socio-economic impacts of Covid-19, including threats to traditional livelihoods, security, and food sovereignty; and to ensure the protection of indigenous territory and the health of indigenous peoples by considering a moratorium on mining, logging, and oil extraction activities, industrial agriculture, and any religious proselytism.

Special Rapporteur Calí Tzay made an urgent call that must not be ignored:

The rights to development, self-determination and lands, territories and resources must be ensured in order for indigenous peoples to manage these times of crisis and to advance the worldwide goals of sustained development and environmental protection.

The pandemic is teaching us that we need to change: we need to value the collective over the individual and build inclusive societies that respect and protect everyone. It is not only about protecting our health.<sup>7</sup> 🦋

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2. IACHR. "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." May 6, 2020. <https://bit.ly/2YRaaZz>

3. OHCHR. "'Covid-19 is devastating indigenous communities worldwide, and it's not only about health'-UN expert warns." May 18, 2020. <https://bit.ly/34Rt4CY>

4. ILO. "ILO: 55 million indigenous people in Latin America and the Caribbean affected by high vulnerability to the Covid-19 crisis." June 3, 2020. Available in Spanish at: <https://bit.ly/34TfYVL> English translation our own.

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5. OHCHR. *Human Rights at the Heart of the Response. Topics in Focus: Covid-19 and Indigenous Peoples' Rights.* June 29, 2020. <https://bit.ly/3lDtaUx>

6. IACHR. Resolution 1/2020. "Pandemic and Human Rights in the Americas." April 10, 2020. <https://bit.ly/2YUytFw>

7. OHCHR. "'Covid-19 is devastating indigenous communities worldwide, and it's not only about health'-UN expert warns." May 18, 2020. <https://bit.ly/34Rt4CY>

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(in Spanish)

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