JOURNAL OF PUBLIC GOVERNANCE AND POLICY: LATIN AMERICAN REVIEW

JOURNAL OF PUBLIC GOVERNANCE AND POLICY: LATIN AMERICAN REVIEW (ISSN: 2448-7066) is published biannual (January-June and July-December) by the Universidad de Guadalajara, through of the Instituto de Investigación en Políticas Públicas y Gobierno [Institute of Research in Public Policies and Government] of the Centro Universitario de Ciencias Económico Administrativas –CUCEA–. This is a Year 6, No. 9, December 2020. Address: Av. Periférico Norte # 799. Zip Code: 45100, Zapopan, Jalisco, México. Phone: 37703412. Web site and emails: http://iippg.cucea. udg.mx; journal.iipp@gmail.com; iippg@cucea.udg.mx. Managing Director: LUIS FERNANDO AGUILAR VILLANUEVA. Reservations Exclusive Use Rights Reserved: 04-2015-120712050900-102. It awarded by the National Institute of Right to Author. Legality of Title is pending; Legality of Content is pending, both from the Qualifying Committee for Publications and Illustrated Magazines of the Ministry of Interior. EDITORS printed by Trauco Editorial, Camino Real a Colima #285-56 St. This number was printed in December 2020, with a press run of 200 copies. The opinions expressed by the authors do not reflect the position of Managing Director of the publication. Total or partial reproduction of content and images of publication without prior permission from the Universidad de Guadalajara is prohibited.

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ISSN: 2448-7066

Printed in Mexico
Impreso en México

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PREVENTION PUBLIC POLICIES AS RESPONSE TO THE SARS-COV-2 PANDEMIC IN MEXICO. A PERSPECTIVE FROM THE HUMAN RIGHTS TO HEALTH AND THE FREDOM OF MOVEMENT

Arturo Miguel Chípuli Castillo*
Karina Nohemí Martínez Meza**

ABSTRACT: The objective of this article is to identify the most important elements of the adoption of public policies of prevention and risk as a response to the pandemic caused by SARS-CoV-2 in Mexico, seen from the human right to health and the freedom of movement of people, considering that, in the absence of effective pharmaceutical measures, the reduction of human mobility is a key element for addressing this health contingency in which government actions can very often be arbitrary, disproportionate or can even violate human rights. This research uses the documentary method and approaches to human rights and public policies.

Keywords: Public policies on prevention; human rights, health, free movement of persons.

INTRODUCTION

The year 2020 has been marked by an extremely exceptional situation derived from the rapid propagation of the SARS-CoV-2 virus (COVID-19 or Coronavirus) which began in the community of Wuhan, China by the end of 2019. In March, 2020, the quick expansion of this disease caused the World

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Health Organization to declare a world sanitary emergency as a result of the COVID-19 pandemic.

COVID-19 is a new disease, different from others caused by coronavirus. This virus spreads rapidly, which is why outbreaks grew with an exponential rythm. Currently, there are no therapies, treatments or vaccines that allow its prevention or treatment, although national governments, the WHO and its partners are working on their development (Actualization of the strategy against Covid-19, 2020, p. 1).

In order to contain communal transmission, the World Health Organization presented several preventive considerations, such as measures of physical distancing among the population and restriction of non-essential domestic and international flights, which implies the possibility that countries adopt several public health and social measures in response to COVID-19, like restrictions imposed on the mobility of people, closing shopping centers and schools, and restrictions on international travel.

On the one hand, these actions suppose the adoption and implementation of public policies that guarantee such measures and, on the other hand, the restriction of some human rights, which is why the present research aims to identify which are the most important elements of the public policies for prevention and risk as a response to the pandemic caused by SARS-CoV-2 in Mexico, all seen from the perspective of the human rights to health and the freedom of movement.

This study applies the documentary method and the approaches of human rights and public policies. In the following sections, the concepts of public health, prevention and promotion will be reviewed, as well as the health policies of prevention within the context of the pandemic caused by SARS-CoV-2 in Mexico and their correlation with the human right to health and the freedom of movement.

1. PUBLIC HEALTH, PREVENTION AND PROMOTION AS CONCEPTS

According to the constitution of the World Health Organization (WHO) of 1998, health is defined as "a state of complete physical, mental and social well-being, and not just the absence of disease or illness". Likewise, it is considered as "a means to reach an end, as a resource that allows people to carry an individual, social and economically productive life… a resource for everyday life (including) social and personal resources, as well as physical aptitudes" (Glossary of Health Promotion, 1998, p. 10).

Health, understood as a fundamental human right, includes the guarantee that all people can enjoy it. Additionally, it implies the recognition of some pre-requisites such as: a) peace; b) adequate economic and nutritional resources; b) access to a decent dwelling; and c) a stable ecosystem and a sustainable use of resources. The aforementioned manifests the close relation that exists between the social and economic conditions, the physical surroundings, individual lifestyles and health. "An integral vision of health supposes that every system and structure that governs social and economic conditions, as well as the physical surroundings, must consider the implications and the impact of their activities in health and the individual and collective well-being" (1998, p. 10).

Public health is a social and political concept that is destined to extend and improve the quality of life of populations through the promotion and prevention of diseases and other forms of health intervention. In the international instruments and organizations, the analyses of the determinants of health, and of the methods to solve the problems of public health, are all underlined. In the same way, "the recognition of the need to deploy resources and carry out reasonable investments in policies, programs and services that create, maintain and protect health, supporting healthy lifestyles and creating environments that foster health" is emphasized (1998, p. 12).

The prevention of sickness as an element of public health and action of the health sector, "encompasses the measures destined not just to prevent the appearance of a disease, such as reducing the risk factors (characteristics that increase the probability of an illness or injury), but also to stop its advancement and to mitigate its consequences once it has settled" (1998, p. 13). Prevention can be classified in three levels. The primary is addressed to avoid the initial appearance of a disease or illness through the control of the responsible factors, aside from diminishing the incidence of the disease. The secondary and tertiary have the purpose of stopping or slowing down the disease that is already present and its effects as well, through early detection and adequate treatment for reducing the relapse cases and the settling of chronicity (1998, p. 13).

For its part, the promotion of health is considered as the process that allows people to increase the control over their health for improving it. For its compliance, the Ottawa Letter of 1986 identifies three different strategies:

1. The advocacy of health (regulations) with the purpose of creating the aforementioned essential health conditions;
2. To facilitate that every person can develop their total health potential (guarantee mechanisms); and

3. To intercede for health among the different interests found within society (policy creation).

The aforementioned comes from 5 pressing actions which are: the establishing of a healthy public policy; the creation of environments that support health; the strengthening of communal actions for health; the development of personal activities; and the reorientation of health services (1998).

2. HEALTH AND PUBLIC POLICY

Public policy is related to the transformations of the public sphere through the intervention of the State, with its relation with the market and the way in which it has configured governmental action. Public Policy is related to the capability of a government for intervening rationally in the solution of public problems (Laswell, 1951). Likewise, it focuses on the handling of information for the generation of evidence that gives a basis to the articulation of knowledge and practice; of reality; the design and implementation of policies. It seeks to explain the "how, why and what for do governments adopt certain measures and act or do not act" (Heidenheimer et al, 1990; Parsons, 2007, p. 31). To that effect, it uses an interdisciplinary approach with the purpose of contributing to the democratization of society.

Health, from a public policy approach, is held as an explicit concern that is part of the political agenda of governments, as well as part of the resources, investments and accountability destined to optimize the impact in terms of promotion. It is through health policies that "governments define the performance priorities and parameters in response to health needs. Health policy usually is enacted through legislation or other normative forms that define the regulation and incentives that allow the benefit of health services and programs, as well as their access" (Glossary of Health Promotion, 1998, p. 21).

3. HEALTH PREVENTION PUBLIC POLICIES WITHIN THE CONTEXT OF THE PANDEMIC

Prevention public policies in matters of health become relevant when it comes to diseases, situations or agents that could put a population on risk or danger, such as the case of COVID-19 and the implementation of basic measures by international organizations such as the WHO, that adopt actions to break the

chains of transmission, to slow down the transmission of the virus and prevent the related deaths, which are shown below:

1. The detection, the isolation, the tests and the treatment of all cases;
2. The tracking and the quarantine of contacts;
3. The encouragement of physical distancing of at least one meter apart, combined with a frequent hand hygiene and the proper habits when coughing and sneezing (Considerations for the quarantine of the contacts of COVID-19 cases, 2020, p. 1).

By quarantine we understand "the restriction of activities and/or the separation from other people that are not sick, but are suspicious of being, in such a way that the possible spread of the infection or contamination based on it". A quarantine can be applied under two circumstances: 1) towards travelers coming from zones of communal transmission, and 2) towards contacts of known cases. It is important to point out that, although these temporary orientations are destined to the national authorities responsible for the local or national regulations, the Member States (in conformity with the Charter of the United Nations Letter and the principles of international law) have the sovereign right to legislate and apply laws in compliance with their health policies, even when these laws restrict the movement of people, although they still must be adequate and proportionate (Considerations for the quarantine of the contacts of COVID-19 cases, 2020).

The world strategic objectives for controlling the pandemic are:

1. To promote and mobilize the responsible participation of all the sectors and communities of government and civil society for guaranteeing the prevention measures and the hand hygiene, respiratory, isolation (quarantine) and physical distancing protocols;
2. To control sporadic cases;
3. To develop vaccines and safe, trustworthy and efficient therapies with access to the whole world;
4. To guarantee access to health services, as well as assuring the safety of front line workers and vulnerable populations;
5. To contain communal transmission through adequate and proportionate restrictions of displacement, mainly for non-essential domestic and international travel (Actualization of the strategy against COVID-19, 2020, p. 5).

In relation to the last strategic objective, one could point out that there is a possibility that countries adopt several public health and social measures in response to COVID-19, such as restrictions on the freedom of movement, the closing of shopping malls and schools, and restrictions on international travel, which implies that governments implement several policies for guaranteeing their compliance and the restriction of human rights such as the freedom of movement.

4. HUMAN RIGHTS APPROACH: HEALTH AND THE FREEDOM OF MOVEMENT OF PEOPLE

The Human Rights Approach represents a contribution of substantial character for the content of public policies that emphasizes the State's obligations, establishing these as content guidelines, in such a way that public policies are seen as means for satisfying rights, and not only as mechanisms for solving problems and unsatisfied demands (Salazar, 2014). This approach "contributes to strengthen the capabilities of the rights holders (as well as their legal and regulatory rights) to elevate their claims, as well as those of the holders of duties to fulfill along with their obligations".[1]

To incorporate a human rights perspective into public policies it is necessary to keep several elements present: a) The International Human Rights Standard and b) The Transversal Elements. The International Standards stem from the standpoint that the International Right to Human Rights (IRHR) represents a conceptual framework that is accepted by the international community and that may offer a coherent system of principles and rules that contributes to define with greater precision the obligations of States before human rights.

The human rights approach takes universality, equality and non-discrimination as a model from which preferential actions addressed towards vulnerable groups or excluded from society stem from. Some of these principles are: a) the real materialization of the rights; b) the special attention towards marginalized or vulnerable groups; c) the interdependence and wholesomeness of every right; d) the active participation of the right holders; and e) the accountability of the duties holders.[2]

On the other hand, the Transversal Elements (gender, multicultural, age diversity, independent life and the right to a healthy environment) allude to another series of basic principles that, whoever makes the decisions, must

1 Manual for cross-cutting of the human rights approach with equality, https://www.corteidh.or.cr/tablas/28829.pdf, p. 17..

2 https://www.corteidh.or.cr/tablas/28829.pdf

observe in the whole design, formulation, implementation and evaluation of state programs, policies and actions. The Transversal Elements have the objective of getting the equality in the access to resources and benefits by means of planification, (re)organization, improvements and evaluation of political processes.[3]

Based on the aforementioned, health, seen from a human rights perspective, implies the obligation of States for guaranteeing the means and mechanisms aimed towards its satisfaction. Which is why, we now analyze the human right to health from this approach.

4.1 RIGHT TO HEATLH

As it has been pointed out, in the preamble of its Constitution, the World Health Organization defines Health as a state of total physical, mental and social wellbeing and not only as the absence of diseases or illnesses. Combined to which, it is established that "it represents a basic condition to achieve peace and security, and depends of the most extended cooperation of people and States" (OMS, 2006, p. 1). In this sense, health represents one of the most important human rights inasmuch its adequate protection and guarantee depend on the realization of human beings, of their life projects, their freedom and of the whole group of elements that configure human activity.

Based on the aforementioned, and since health is a "fundamental and indispensable right for the exercise of all other human rights" (CDESC, 2000, Paragraph 1), its inclusion in fundamental regulations of national and supranational character has been a shared tendency in the most relevant sources of international law of human rights. The IRHR is integrated by institutions and bodies of diverse nature that find their sources (*corpus iuris*) within a diversity of systems which operate simultaneously in plenty of occasions. According to O'Donnell (2012, p. 55), the typology of international instruments stems from three large categories: a) the great declarations of 1948; b) the great universal and regional treaties; and c) other instruments on human rights. In practice, these sources interconnect and operate as a whole, hence that, in order to observe with greater clarity the obligations of States in matters of human rights, it is important to realize a cross-cutting reading of the expressed obligations in the different sources that comprise both the Universal System of Human Rights (USHR) and the regional systems.

Now, we carry out a brief glimpse of the development of the right to health in two of the international systems to which Mexico belongs: the Universal System of Human Rights (USHR) and the Interamerican System of Human Rights (ISHR).

3 Idem

In the USHR, the starting point is Article 25 of the Universal Declaration of Human Rights, which states that all people have an adequate lifestyle that guarantees health. For its part, the International Pact of Economic, Social and Cultural Rights (article 12) picks up, in an exhaustive manner, the right to health, from which it recognizes a group of measures that must be adopted by States, in order to guarantee its full effectiveness.

Aside from the aforementioned, the right to health is addressed by several conventions of the Universal System of Human Rights, this is due to their close relation with the exercise of other human rights. In this regard, and just to quote some of them, the human right in question is provided by the International Convention on the Elimination of all Forms of Racial Discrimination (article 5, section e, subsection iv), the Convention on the Elimination of all Forms of Discrimination against Women (articles 11 and 12), and the Convention on the Rights of the Child (article 24).

Likewise, it is provided within the Alma Ata Declaration of 1978: the recognition of health as a state of complete physical, mental and social well-being and as fundamental human right that demands the intervention of many other social and economic sectors in order to achieve its effective guarantee, through the formulation and implementation of policies, strategies and national action plans (Alma Ata Declaration, 1978, pp. 1-2).

It still should be pointed out that the IRHR is formed by sources of diverse nature and with an obligatory nature of different degrees (regulations of *hard* and *soft law*), which is why it must be referred that the development of the right to health has been supported largely by what is stipulated by the reports and general observations carried out within the framework of the bodies of treaties. Particularly, the Committee of Economic, Social and Cultural Rights (Comité de Derechos Económicos, Sociales y Culturales, DESC) have set in motion a progressive development of the characteristics, components and obligations that the right to health entails through its general observations. On this regard, it is noteworthy that, in their general observation number 14 (2000), the Committee pointed out that the right to health should not be understood only as the right to being healthy, but as one that also takes other freedoms and rights into account, as well as a wide group of benefits, goods, services and necessary conditions in order to reach the highest possible level of health (CDESC, 2000). In this regard, the Committee understands the right to health, defined in section 1 of article 12, as an inclusive right that not only covers the timely and appropriate health attention, but also the main determinant factors of health, as well as the access to clean drinking water and adequate health conditions, the adequate supply of healthy food, an adequate nutrition, an adequate dwelling, healthy conditions at work and the surrounding environment, as well as access

to education and information on matters related to health, including sexual and reproductive health (CDESC, 2000, paragraphs 8, 9 and 11).

Combined with the aforementioned, the present general observation is quite important since it anoints the existence of "essential elements". These represent obligations that compel governmental action at the time of designing the application of rights and that are fundamental for their fulfillment (Serrano and Vázquez, 2013, pp. 83-84). Following the above observation, these elements are: Availability, Accessibility and Quality.

Availability means that "…each State should count with a sufficient number of public health establishments, goods and services and centers, as well as programs" (CDESC, 2000, párr. 12). For its part, accessibility is related with said establishments, goods and services being accessible in terms of non-discrimination, within geographic and physical reach, affordability and access to their information. Acceptability, on the other hand, constitutes an element focused on the respect of a certain culture and the specific particularities of the recipients of said services. Finally, the quality constitutes an obligation of acceptability from a scientific and technical perspective (2000, párr. 12).

On the other hand, and in what the Interamerican Human Rights concerns, some regulations that refer to the right to health are: the American Declaration of Rights and Duties of Man (article XI), and the Additional Protocol to the American Convention on Human Rights in relation to Economic, Social and Cultural Rights (Protocol of San Salvador), which is greatly important, since it points out, in its article 10, the right of every person to enjoy the right to health, as well as the duties addressed to States in matters of health.

As it is clear, the right to health is not expressed in the American Convention on Human Rights, since its coverage alludes to the aforementioned Protocol. In spite of this, the Interamerican Court on Human Rights, through its precedents, has carried out a development of the standards and duties that States are committed to comply in matters of health. In this sense, the Court has fulfilled its job of interpreting and expansion of the content through the relation that this rights keeps with other rights, such as the right to life, the right to personal integrity, human dignity and human equality.

Based on all of the above, the jurisprudence of the Interamerican Court establishes general principles attached to the right to health that are related directly with economic, social and cultural rights. Thus, the interdependence, the indivisibility and the progressiveness of social rights have been exposed in the cases of Acevedo Buendía and others ("Unemployed and Retired Workers of the Government Accountability Office") *vs* Peru; Gonzales Lluy and others *vs* Ecuador; and Cuscul Pivaral and others *vs* Guatemala (CoIDH, 2020, pp. 6-11). Likewise, for the Interamerican Court, the right to health is systematized

from two large aspects: the right to health as an independent right within the framework of article 26 of the American Convention on Human Rights, and through the particular developments on the right to health carried out by the Court (2020, p. 13). On this regard, the case of Poblete Vilches and others *vs* Chile is particularly interesting. In it, it is argued that health is a fundamental and indispensable human right for the adequate exercise of all other human rights, which is translated as the highest possible enjoyment of health that allows them to live with dignity and which entails the general duty of guaranteeing access for people working in essential health services, guaranteeing quality and efficient medical benefits, as well as driving the improvement of the health conditions of the population (CoIDH, 2018, paragraphs 118-120).

Also, it must be mentioned that the right to health is developed by the Court through its interrelation with other rights inscribed within the text of the American Convention on Human Rights, in large part due to the fact that the right to health, as an independent right, recognized in article 10 of the Protocol of San Salvador, has not yet been configured in the precedent in a compelling form, hence that there is still a long way for the Court to have a precedence that strengthens the stately duties in matters of health, in a direct form. However, it is imperative to acknowledge the importance and transcendence of their work through the progressive inclusion in matters of social rights as fundamental elements for the validity of civil and political rights.

4.2 THE RIGHT TO THE FREEDOM OF MOVEMENT

For its part, the freedom of movement is a fundamental freedom that, as Rodrigo Uprimny and Luz María Sánchez (2014, p. 533) point out, keeps an obvious importance in every democracy, since it is associated with the exercise of freedom itself and the autonomy of people. In a similar sense, the Committee of Human Rights of the United Nations underlines its guarantee as an indispensable condition for the free development of every person and whose protection, of course, is associated with the effectiveness of other human rights. Hence, the main sources of International Right to Human Rights, as well as the fundamental laws of each state, consecrate said freedom.

Within the framework of several regulations that form the IRHR, there is an important recognition to this freedom. So, within the USHR, article 13 of the Universal Declaration of Human Rights, and article 12 of the International Pact of Civil and Political Rights, not only underscores the recognition of the right being studied, but also the need to establish legitimate limits for its restriction. Likewise, in the realm of the Interamerican System, the American Convention on Human Rights contemplates this human right within its article 22, where the characteristics and duties of States before them become even more explicit.

As it can be seen, even though the freedom of movement apparently is a right with simple characteristics, the interpretation of the aptitudes of both systems shows decidedly complex character that has an impact in the exercise of freedom of movement in the international, regional and national realm. Likewise, it has a diversity of components that consecrate it as an autonomous right that implies the existence of concrete state obligations, which are related to the legal state of people, the compliance of certain requisites of administrative nature and, generally, to the patterns that national and international regulations refer to for enabling the freedom of movement on the one hand, and the residency of people in specific territories on the other. For the present study, we will only refer to the right to the freedom of movement in the strictest sense, i.e.: that which refers to the possibility that people move freely within a certain national territory.

The General Observation No. 27 of the Committee on Human Rights (1999) has pointed out that the freedom of movement is an indispensable condition for the free development of a person, and that it involves the possibility that everyone that finds themselves legally inside a certain territory of a State can move freely within it. Also, this right is related with the whole territory of a state, including all the parts of the federal States, without the person's circulation or permanence in a certain place depending of any particular objective or motive by the person in question (CDH, 1999, paragraphs 1, 4, 5 and 6).

On this regard, and as Uprimny and Sánchez observe (2014, p. 535), said component does not constitute an established universal guarantee for every person, but only for those that are legally inside the State in question, which entails to the determination, on the one hand, that every national enjoys this right; and, on the other hand, that States have the power of deciding who are admitted into their territory, implying that, once accepted within the territory, that is, once they acquire the character of "legal", they automatically enjoy said right.

Added to the aforementioned, and quite close to the international regulations mentioned above, there are certain restrictions to the freedom of movement that have been recognized as legitimate by several bodies of human rights. In this sense, once a person is legally inside the territory of a State, it is obligated to strictly comply with certain conditions if in need of limiting said right (Uprimny and Sánchez, 2014, p. 536). In this regard, it is noteworthy to quote the third paragraph of article 22 of the American Convention of Human Rights that points out that: "The exercise of the aforementioned rights cannot be restricted but in virtue of a law, in the indispensable way in which a democratic society, in order to prevent penal infractions or in order to protect

national security, public safety or order, public moral or health, or the rights and freedoms of others".

Likewise, the Interamerican Court in the case of Ricardo Canese *vs* Paraguay (CoIDH, 2004, paragraphs 117 and 124), analyzed the conditions so that the restrictions to these freedoms are legitimate, specifying that it is necessary that said restrictions are expressly set by law, and destined to prevent penal infractions or to protect national security, public safety and order, public moral or health or the rights and freedoms of others, to the indispensable degree within a democratic society.

As it can be seen, the Interamerican Court analyzes conditions so that the restrictions imposed on the right to the freedom of movement are legitimate, specifying that they must not only pursue the authorized purposes by the American Convention (protection of National Security, public order, public health or moral, or the rights and freedoms of third parties), but must also be necessary in a democratic society for reaching such purposes (Uprimny and Sánchez, 2014, p. 536).

4.3 HUMAN RIGHTS IN THE CONTEXT OF THE PANDEMIC

Now, having settled the main elements of the right to health and freedom of movement, we will focus on referring those related to the situation of the world health emergency that befell in 2020.

As it was pointed out earlier, 2020 has been characterized by a particularly problematic context mainly because of the easy infection and the quick spread of the COVID-19 virus, which consequently brought the declaration of a world health emergency by the WHO, from which stemmed several heterogenous and extraordinary actions implemented by governments all over the world.

Because of the aforementioned, and every time that the pandemic has represented a threat for health and life, but also for all the group of human rights, on April 10 of the same year, the Interamerican Commission of Human Rights adopted Resolution No. 1/2020 "Pandemic and Human Rights in the Americas". In said resolution, the Commission emphasized the need to adopt strategies for preventing, handling and containing the virus from a human rights standpoint. This is because the quick spread of the virus pushed governments to adopt extraordinary actions within the framework of the declaration of states of exception and emergency, which served as justifications for excessive, abusive and arbitrary interventions.

Of course, the main topic of the pandemic has been health, hence that in the document in discussion there are considerations and recommendations addressed to the States involved with the aim of reducing the risk of a human

rights infringement. By the same token, the Commission warns that, within the context of the pandemic, there is a high potential of gravely affecting the right to health, directly or indirectly, increasing the risk of infection of people and of the health personnel, affecting social organization and health systems in a negative way, saturating health care in general. By virtue of the aforementioned, States have the reinforced obligation of respecting and guaranteeing human rights, encouraging applied research, innovation and dissemination of new scientific technologies directly applied to the fight against the spread of the pathogen and, quite specially, the discovery of new treatment alternatives. Remember, as well, that health is a public good that must be protected and one that occupies an inclusive character, hence the need to observe the inherent obligations to health services, social groups and professional categories that are particularly vulnerable, in the construction of actions that face the pandemic (CIDH, 2020, pp. 5-6).

Added to the aforementioned, within this world context of alarm, the responses os States have been heterogenous, with degrees of attention that have justified unusual measures and quite often controversial. Mainly in regions with wide gaps of inequality, poverty, corruption, violence and impunity, the challenge of facing adequate measures supposes a greater challenges (Chípuli, 2020). Among the most common strategies used in this context we can mention the ones related to the limitation of human mobility, which are encompassed within what the WHO has denominated "non-pharmaceutical interventions", and which may consist of isolations, quarantines, forbidding agglomerations in public spaces and, in extreme cases, communal quarantines or health belts.

While it is true that the WHO, as an international health authority, has recognized, within its International Health Regulations, the viability of the application of said measures, particularly before situations where there are no medications able to effectively defeat the disease, the implementation of blind measures upon the human rights that can turn a public health situation into a human rights crisis. That is why these measures are destined to limit the freedom of movement must be strictly necessary, proportionate and looking for a legitimate end, thus avoiding radical restrictions as much as possible (such as the use of unnecessary force, inhumane treatments, among others). Likewise, the access to basic goods must be guaranteed, such as food, medicine, water and electricity (Chípuli, 2020).

5. THE MEXICAN CASE STUDY

In Mexico, the right to health is recognized through article 4, paragraph four, of the Political Constitution of the Mexican United States, in which it is established that "every person has the right to the protection of their health", which is why the State has the obligation of guaranteeing and establishing the necessary mechanisms for every person to enjoy a state of total physical, mental and social wellbeing for their development.

The aforementioned legal statues also establish that, in the cases of an invasion, a serious disturbance of public peace, or of any other type that places society in great danger or conflict, only the President, with the prior approval of the Mexican Parliament, in the whole country or in certain areas, could restrict or suspend the exercise of rights or guarantees that could become an obstacle for facing the situation quickly and easily; but these measures must be applied for a limited time only, by means of general preventions and without the restriction or suspension contracts to specific people (Constitution Article 29, first paragraph).

Likewise, Article 73, fraction XVI, Bases 2nd and 3rd of the Magna Carta, establish that the Ministry of Health will have the obligation of immediately dictating the indispensable preventive measures, in case of epidemics of serious character or in danger of an invasion of exotic diseases into the country, unless they are later sanctioned by the President of the Republic. It also points out that the health authority will be executive and its dispositions will be obeyed by the administrative authorities of the country. Therefore, it is up to the Ministry of Health to elaborate and implement public policies, programs or campaigns for the control or eradication of those contagious diseases that may constitute a real problem or potential for health in coordination with the governments of federative entities.

As it has already been settled, the right to the protection of health is picked up in several international treaties ratified by Mexico, among which the Universal Declaration of Human Rights, the American Convention on Human Rights and the International Pact of Economic, Social and Cultural Rights stand out. Thus, within the context of the SARS-CoV-2 pandemic, Mexico had to adopt a series of recommendations for its control, which were submitted by the World Health Organization, as well as publishing an accord that establishes the preventive measures that must be implemented for the mitigation and control of the health risks that COVID-19 implies (decree published on March 24, 2020 in the *Official Journal of the Federation*).

These preventive measures are implemented as communal interventions defined in the "National Conference of Healthy Distancing", which has the

objective of social distancing for mitigating the virus transmission among the population. Some of these measures are described below:

a) Avoid the attendance to work centers, public spaces and other crowded places, particularly adults of 65 years and older and other vulnerable groups;
b) Temporary suspension of activities in all levels of school until April 17, 2020 (a date that wasn't neither conclusive nor definitive), according to what was established by the Ministry of Public Education;
c) Temporary suspension of all activities of the public, social and private sector that involve the physical concentration, transit or urban displacements; and
d) Compliance of the measures of healthy distancing and basic protocols of hygiene, as well as avoiding contact with other people during the first 15 days after the symptoms have begun.

During the following months after its publication, these preventive measures were extended by equal measure, in terms of opening and reactivation of activities, as evidence of which are the following decrees published in the *Official Journal of the Federation* (JOF):

a) Agreement by which extraordinary actions are established for taking care of the health emergency generated by the SARS-CoV-2 virus published in March 31, 2020, ordering in its First Article, fraction I, the immediate suspension, from March 30 to April 30, 2020.
b) Agreement from April 21, 2020 by which the same is modified by which the extraordinary actions are established for taking care of the health emergency generated by the SARS-CoV-2 virus published in March 31, 2020, ordering in its third article the suspension of extraordinary action on May 18, 2020, in those municipalities of the national territory that represent to that date a low or non-existent transmission of the SARS-CoV-2 virus.
c) Agreement by which a strategy is established for the reopening of the social, educational and economic activities, as well as a system of regional traffic lights for evaluating week by week the epidemiological risk related with the reopening of activities in each federative entity, on May 14, 2020 in the JOF that establishes the date for reopening in 3 stages: 1. Opening of municipalities that do not present COVID on May 18, 2020; 2. Preparation of protocols from May 18 to 31, 2020; and 3. Opening of social, educational and economical activities on June 01, 2020.

It is until the publication of the decree published by the JOF dated May 14, 2020, that a strategy is established for the opening of social, educational and economic activities, as well as a system of regional traffic lights for evaluating the epidemiological risk related with the reopening of each federative entity on a week by week basis. The epidemiological traffic lights is a monitoring system that regulates the use of public spaces by using colors to guide the population through different levels of risk and increments or decreases of the local epidemic activity, as well as the health safety regulations (implemented by the federal, state or local authorities and by the citizens) that are appropriate for the reopening of work and educational activities. These traffic lights are composed by four colors: red, orange, yellow and green:

a) The color red only allows essential economic activities and the possibility that people can go out and walk around their dwellings during daytime;
b) The color orange allows, aside from the essential activities, that businesses of non-essential activities work with 30% of their personnel for its functioning, always considering the maximum measures of safety for people with large risks of presenting a serious case of COVID-19, likewise, allows the opening of open public spaces with a reduced capacity.
c) The color yellow allows all work activities, taking care of people with great risk of presenting a serious case of COVID-19. The open public space is opened in a regular form and closed public spaces can be opened with a reduced capacity.
d) The color green allows all activities in parks, shopping malls and open public spaces; recreational, commercial and religious activities (cinemas, theaters, museums and cultural events), including schools and educational activities. In this color all extraordinary actions are suspended (COVID-19 Traffic Light, https://coronavirus.gob.mx/semaforo/).

For their part, on a sub-national level, several decrees were published that limited the free circulation of people, such is the case of the federal entity of Puebla that implemented the temporal measure "No Circulation Today" ("Hoy No Circula"), for reducing the mobility of people, through the restriction of circulation or vehicle transit among the population within the Territory of the State of Puebla, as well as the restriction of maximum number of passengers per vehicle, reducing it to 3 people (Decree published in May 8, 2020 by the *Official Newspaper of the State of Puebla*).

In contrast with what the Ministry of Government pointed out, since it mentions that the health emergency does not represent the establishment of

a state of exception and suspension of guarantees. That is why the authorities that apply measures that restrict rights before the pandemic must be sure that they have explicit capabilities for doing so and that the measures are proportionate for avoiding a fall into acts of authority abuse, that violate the rights of people or that have a disproportionate effect on excluded groups of historically discriminated. Governors, as health authorities, have the faculty for dictating health measures in the context of their competences. However, some actions that they have adopted, besides from overtaking this context, can represent risks for the protection and guarantee of human rights. Among these actions it is noteworthy to mention: closing of borders, roads and highways, curfews, checkpoints and other measures that restrict the freedom of movement (Observations on violations of human rights during the health contingency because of COVID-19, 2020, p.4).

CONCLUSIONS

Health, from a public policy perspective, is conceived as a basic human right that comprehends the guarantee that all people can enjoy it, which is why governments hold it as an explicit concern that is part of their political agenda, as well as part of the resources, investments and accountability destined to optimize its impact in terms of promotion. In spite that there are health policy directives at an international level, States have the sovereign right to legislate and apply laws in compliance of their health policies, even when these laws restrict some rights, but in a manner that is adequate, proportionate and strictly necessary seeking a legitimate end and avoiding, as much as possible, radical restrictions. All of the aforementioned is based on the absolute respect of the dignity, the human rights and the fundamental freedoms of people.

In the case of Mexico, there is an interest by the government in the implementation of the directives, recommendations, actions and pronounced measures by the international organisms to which they belong, that is how, for example, there are preventive measures that should be implemented for the mitigation and control of the health risks implied by COVID-19, which were published in March, 2020.

However, there is no clarity in relation to the implementation of the preventive measures related to the temporary suspension of the activities of the public, social and private sectors activities that involve the concentration of people, transit or people displacement, since many changes can be observed in diverse decrees, mainly with opening dates and strategies. There is ambiguity in the policy for imposing the social distancing policy at the time of the pandemic.

From a human rights perspective, health as well as the freedom of movement are constituted by multiple components (or sub-rights) that are translated into a map of very diverse duties that must be complied by the States that have signed and ratified treaties and conventions where contents have been found. The compliance of said obligations is related to a foundation of a substantive character for the public policies, which aside from fulfilling a series of international standards, must cross-cut elements such as the principle of equality, the gender perspective, the mechanisms of enforceability, the participation, among others, in order to consolidate as instruments that close the gap between law and reality. The relevance of implementing a human rights approach also has a fundamental importance in exceptional contexts, such as a pandemic situation, where States observe a high degree of discretion for the implementation of unusual and heterogenous measures, that can even violate human rights in plenty of cases. Mainly in regions with wide gaps of inequality, poverty, corruption, violence and impunity, the challenge of responding through adequate measures represents an even greater challenge (Chípuli, 2020).

As it has been shown, among the most common used strategies within this context are those related with the limitation of human movement, which are encompassed within what the WHO has called "non-pharmaceutical interventions", which consist of isolation, quarantines, prohibition of gatherings in public spaces and, in extreme cases, communal quarantines or quarantine lines.

While it is true that, as an international health authority, the WHO, has recognized the viability of the application of such measures in its International Health Regulations, particularly in situations in which there are no medicines that can effectively defeat the disease, it also recognizes that the implementation of measures that turn a blind eye to human rights can turn a public health situation into a human rights crisis.

Ultimately, the Mexican case is unique, every time is not encompassed in the declaration of a state of emergency or exception, but whose omissions opened the door for subnational governments to establish measures of questionable legality, endangering human rights through the legal unfulfillment, of disproportionate actions and without a human rights approach, which questions the legitimacy of certain actions.

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