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Social Determinants of Health in Priority Attention Groups during the COVID-19 Pandemic in Ecuador

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SOCIAL DETERMINANTS OF HEALTH IN PRIORITY ATTENTION GROUPS DURING THE COVID-19 PANDEMIC IN ECUADOR

DETERMINANTES SOCIALES DE LA SALUD EN GRUPOS DE ATENCIÓN PRIORITARIA DURANTE LA PANDEMIA DE COVID-19 EN ECUADOR

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ABSTRACT

The objective of this paper is to highlight the importance of the social conditions of vulnerable individuals and groups in priority attention situations, in their access to health care. To achieve this end, a jurisprudential methodology is used based on the constitutional rulings issued by the Constitutional Court of Ecuador during the COVID-19 pandemic. These rulings were dictated to safeguard and guarantee the rights of this population in vulnerable situations, under the control of the constitutionality of the Executive Decrees that declared a state of emergency in Ecuadorian territory due to the health emergency. The analysis made it possible to explore how the socioeconomic conditions of homeless persons, people living in poverty; indigenous peoples, communities, and nationalities; people in a situation of human mobility; and persons deprived of liberty, affected the guarantee of their right to health during the pandemic in Ecuador.

KEY WORDS

Social conditions, priority attention, health care, COVID-19 pandemic, Ecuador.

RESUMEN

El presente trabajo tiene como objetivo resaltar la importancia de las condiciones sociales de las personas y grupos vulnerables en situaciones de atención prioritaria, en su acceso a la atención en salud. Para alcanzar este fin, se utiliza una metodología de corte jurisprudencial basada en los dictámenes constitucionales emitidos por la Corte Constitucional del Ecuador durante la pandemia de COVID-19. Estos dictámenes se emitieron para salvaguardar y garantizar los derechos de esta población en situación de vulnerabilidad, bajo el control de constitucionalidad de los Decretos Ejecutivos que declararon estado de excepción en el territorio ecuatoriano por la emergencia sanitaria. El análisis permitió explorar cómo las condiciones socioeconómicas de las personas en situación de calle, de pobreza; de los pueblos, comunidades y nacionalidades indígenas; de las personas en situación de movilidad humana; y, de las personas privadas de libertad, incidieron en la garantía de su derecho a la salud durante la pandemia en Ecuador.

PALABRAS CLAVE

Condiciones sociales, atención prioritaria, salud, pandemia de COVID-19, Ecuador.

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SUMMARY

1. Introduction

According to the World Health Organization (WHO), social determinants of health (SDH) are defined as "the non-medical factors that influence health outcomes. They are the conditions in which people are born, grow, work, live, and age, and the wider set of forces and systems shaping the conditions of daily life"[2]. These conditions have important outcomes on health inequalities within a population, showing evident differences in access to appropriate health care in each country. In fact, these social determinants may have a more important influence on health than factors that are limited to the functioning of the human organism. For example, some studies indicate that SDH are responsible for about 30% to 55% of health outcomes[3].

In the crisis generated by the COVID-19 pandemic, SDH had ethical implications on health, which deserve to be analyzed under the approach of bioethics. This is because little attention has been given to reconsidering ethical evaluations centered on socioeconomic factors. The COVID-19 pandemic amplified and made more visible the results of the injustices emerging from these factors. Therefore, to address social inequities as one of the main causes of the disparity in access to health care during the pandemic crisis, some disciplines, not directly linked to the health sector, had an important influence on population health indicators, particularly on vulnerable or priority groups in a society, with policies and interventions that addressed this disparity from a scope that went beyond the individualistic medical ethics paradigm[4], as the society's critical guardian of health[5].

[2] World Health Organization, «Social determinants of health», World Health Organization, last accessed on November 01, 2022, https://www.who.int/health-topics/social-determinants-of-health#tab=tab_1
[3] World Health Organization, «Social determinants of health».
[4] Luca Valera & Rodrigo López Barreda, «Bioethics and COVID-19: Considering the Social Determinants of Health», *Frontiers in Medicine* 9, nº 824791 (2022): 1, DOI: 10.3389/fmed.2022.824791
[5] Larry R. Churchill, Nancy M. P. King & Gail E. Henderson, «The Future of Bioethics: It Shouldn't Take a Pandemic», *Hastings Center Report* 50, nº 3 (2020): 54, DOI: 10.1002/hast.1133

In this respect, George L. Engel has established the need of a "biopsychosocial model", by stating that

> "[…] [t]he existing biomedical model does not suffice. To provide a basis for understanding the determinants of disease and arriving at rational treatments and patterns of health care, a medical model must also take into account the patient, the social context in which he leaves, and the complementary system devised by society[6]".

Health is influenced by factors in five domains: genetics, social circumstances, environmental exposures, behavioral patterns, and health care[7]. In particular, social factors such as overcrowded housing, lower socioeconomic status or being considered as lower priority in the "lifeboat lottery" because of preexisting biological conditions, tended to create an increased risk for people to get infected with the virus during the pandemic. Consequently, these people were often attended by hospitals with a small number of resources, and many got into the health system later, if at all[8], and had greater exposure to health-compromising conditions.

The prioritization in medical care, based on the biological conditions of patients, could sometimes infringe the right to health of persons or groups in a situation of vulnerability due to their social condition. The Constitution of Ecuador recognizes in its article 35 the rights of persons and groups of priority attention[9]. During the pandemic, the Constitutional Court of Ecuador carried out a formal and material control of constitutionality over the declaration of states of exception, through Executive Decrees enacted by the President of the Republic, and the consequent measures established therein, with a view of protecting and safeguarding the right to health of vulnerable groups, taking as the main axis their social condition.

Therefore, this paper aims to determine the importance of SDH in the medical treatment of persons or groups subject to a structural discrimination, during the COVID-19 pandemic in Ecuador. To accomplish this purpose, I have selected a series of constitutional rulings from the jurisprudence of the Constitutional Court of Ecuador that protect the rights of elderly persons,

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[6] George L. Engel, «The need for a new medical model: a challenge for biomedicine», *Science* 196, nº 4286 (1977): 129-136, DOI: 10.1126/science.847460

[7] Steven A. Schroeder, «We Can Do Better — Improving the Health of the American People», *The New England Journal of Medicine* 357, (2007): 1221, www.nejm.org

[8] Churchill, King & Henderson, « The Future of Bioethics: It Shouldn't Take a Pandemic », 55.

[9] "*Art. 35.- The elderly, children and adolescents, pregnant women, persons with disabilities, persons deprived of liberty and those suffering from catastrophic or highly complex diseases, shall receive priority and specialized care in the public and private spheres. The same priority attention will be given to persons at risk, victims of domestic and sexual violence, child abuse, natural or anthropogenic disasters. The State will provide special protection to persons in a condition of double vulnerability* (unofficial translation)".

persons deprived of liberty, persons with disabilities, women, children, adolescents, migrants, asylum seekers, refugees, stateless persons, internally displaced persons, indigenous communities, homeless persons, self-employed vendors, and other groups in vulnerable situations[10]. This jurisprudential basis will contribute to support the position adopted in this article, that recognizes the social condition of people as a determining factor for prioritization in health care, particularly in events of great magnitude such as the COVID-19 pandemic, in conjunction with genetic, biological, environmental, and behavioral conditions.

2. SDH on groups of priority attention during the COVID-19 pandemic

2.1. Homeless persons and people living in poverty

The coronavirus disease pandemic has had a disproportionate impact on people living in precarious situations of poverty, marginalization, stigmatization, and discrimination. In particular, homeless individuals experienced an increased risk of SARS-CoV-2 virus infection, primarily because they lacked a safe place to reside and protect themselves. The impossibility of having a place to shelter often prevented these individuals from being able to follow public health guidelines issued by health authorities, such as isolation, physical distancing, or quarantine[11]. However, even with access to shelters, homeless people were exposed to significant risks of contagion, given that these places were an environment conducive to contracting the COVID-19 disease, as they shared spaces with large numbers of transient clients, which resulted in overcrowding, inadequate ventilation and the impossibility of implementing social distancing measures.

Providers of shelter to homeless people are not formally part of the health care system, yet they serve many people in vulnerable situations, with high levels of morbidity and susceptibility of contracting infectious diseases easier[12]. In Ecuador, the number of homeless people is not limited only to those who live in mendicity, but also those who suffer from psychiatric illnesses, alcoholism, or addiction to narcotic and psychotropic substances, as causes that have led to the loss of their homes. Likewise, to be considered are those people who, despite having a formal home, transit the streets daily in search of subsistence income or engage in informal trade

[10] Constitutional Court of Ecuador. Opinion No. 3-20-EE/20 of June 29, 2020, p. 31. par. 149.
[11] Melissa Perri, Naheed Dosani & Stephen W. Hwang, «COVID-19 and people experiencing homelessness: challenges and mitigation strategies», *CMAJ* 192, nº 26 (2020): 716, DOI: 10.1503/cmaj.200834
[12] Cheryl S. Leung, Minnie M. Ho, Alex Kiss, Adi V. Gundlapalli & Stephen W. Hwang, «Homelessness and the Response to Emerging Infectious Disease Outbreaks: Lessons from SARS», *Journal of Urban Health: Bulletin of the New York Academy of Medicine* 85, nº 3 (2008): 409, DOI: 10.1007/s11524-008-9270-2

activities[13]. According to a report from Ecuador's National Emergency Operations Committee, one of the measures adopted for public calamity throughout the national territory, due to the serious increase in the infection of COVID-19, was the activation of temporary housing and infrastructures to attend the health emergency[14].

The state of emergency issued by Executive Decree No. 1017 of March 16, 2020, ordered the suspension of the right to freedom of transit to maintain the mandatory community quarantine in the health alert areas determined by the national health authority. This, in order to prevent mass contagion in Ecuadorian territory and, thereby, protect the right to health established in Article 32 of the Constitution, whose guarantee is a primary duty of the State. In the constitutional opinion regarding this Executive Decree, the Constitutional Court specified that it is necessary to take into consideration people in homeless situations, within the framework of the suspension of the right to freedom of transit. In particular, the Court specified the duty of the State to adopt, under the appropriate health controls, the necessary measures to protect this vulnerable group, due to the actions adopted on the basis of the state of emergency[15].

On the other hand, the Court considered it necessary to address concerns related to the social and political context of Ecuador, such as structural inequality, which were considered to issue the constitutional opinion of Executive Decree No. 1291 of April 21, 2021, regarding the state of emergency due to public calamity in 16 provinces of the country. In this sense, the Court established that

> "The COVID-19 pandemic affects all aspects of life and is felt by everyone. However, in societies such as Ecuador's, which are marked by structural inequality, the generic measures adopted to mitigate the level of contagion of the disease affect different social groups on different degrees. The view and feeling of those who request, formulate, and control the state of exception is not the same as that of people in situations of vulnerability[16]".

Furthermore, in its considerations, the Court emphasized that isolation could result in a severe restrictive measure for people living in poverty and who live daily in informality or in the streets, due to the considerable risk of affecting their rights to physical integrity and even to life. Therefore, considering the context of a latent structural inequality, measures to address health

[13] Primicias, «Habitantes de calle, una realidad aparte en la emergencia sanitaria», *Primicias*, March 21, 2020.
[14] Comité de Operaciones de Emergencia Nacional, «Informe de Situación COVID-19 Ecuador». Report No. 070. February 12, 2021, p.2.
[15] Constitutional Court of Ecuador. Opinion No. 1-20-EE/20 of March 19, 2020, par. 46-52.
[16] Constitutional Court of Ecuador. Opinion No. 2-21-EE/21 of April 28, 2021, p. 16. par. 86 (unofficial translation).

crises, such as isolation, must take into consideration people in a situation of mendicity in society. Thus, community confinement and social distancing measures cannot be applied rigidly to this group of people. Consequently, health policies to prevent contagion which, in turn, restrict or suspend certain rights, such as freedom of transit, must be implemented together with other measures to meet their basic and urgent survival needs, translated into forms of compensation, availability of shelters and social assistance[17].

2.2. Indigenous communities

"We urge Member States and the international community to include the specific needs and priorities of indigenous peoples in addressing the global outbreak of COVID 19". This was a statement made by the Chair of the United Nations Permanent Forum on Indigenous Issues, Anne Nuorgam. This appeal to the international community highlights the potential threat that a pandemic, such as the one caused by COVID-19, poses to the health of indigenous peoples, communities, and nationalities around the world, as they experience "a high degree of socio-economic marginalization and are at disproportionate risk in public health emergencies, becoming even more vulnerable during this global pandemic"[18].

These communities normally live in a context with poor health care, greater probability of contagion of diseases, lack of access to basic health and sanitation services, with health centers -if available nearby- without sufficient equipment or the number of medical personnel needed[19]. In addition, there are difficulties in the coordination between health authorities, zonal districts, and health centers, as well as vulnerabilities related to limited sanitation conditions[20]. These circumstances translate into social determinants of health, which require providing special health care to this priority care group, because they can face stigma and discrimination. In addition, the way of life and some traditions of indigenous populations can constitute an impediment to follow the sanitary protocols issued by the health authorities, in order to prevent the massive spread of the virus. This, given that, occasionally, these communities tend to hold large gatherings among

[17] Constitutional Court of Ecuador. Opinion No. 2-21-EE/21 of April 28, 2021, p. 16. par. 87-88.
[18] United Nations, «COVID-19 and Indigenous peoples», Department of Economic and Social Affairs Indigenous Peoples, last accessed on November 5, 2022, https://www.un.org/development/desa/indigenouspeoples/covid-19.html
[19] United Nations, «COVID-19 and Indigenous peoples».
[20] Ivette Rossana Vallejo & Kati Álvarez, «La pandemia del Coronavirus en la Amazonía ecuatoriana: vulnerabilidades y olvido del Estado», *Cadernos de Campo (São Paulo, online)* 29, nº 1 (2020): 102, DOI: 10.11606/issn.2316-9133.v29i1p94-110

their members on the occasion of special events and ceremonies, and because they usually live in multi-generational housing[21].

In the Ecuadorian Amazon, for example, the mortality rate of the Kichwa communities due to the COVID-19 pandemic was not considerably high, despite the fact that the contagion was widespread during the months of April to June 2020, given that few sanitary measures were adopted in most of these communities to prevent the spread of the virus. The factors that could justify the low increase in the mortality rate in the Kichwa population, despite the fact that contagion was almost universal, are the following: the considerable percentage of young people in these communities, the low prevalence of obesity among their members, the fact of being physically active and living constantly outdoors, among others[22].

Yet, this population attributes its recovery to the virus, particularly to the use of medicinal plants, such as *jingibre*, *chuchuwasa* and *ajuspangaand*, and to a lesser extent other 33 medicinal species, including *oyosiwi*, *toña* and *ajo del monte*[23]. Similarly, some medicinal plants from the Amazon, such as guayusa, contain properties that strengthen the immune system. This is how, according to the information gathered from interviews conducted by the Confederation of Indigenous Nationalities of the Ecuadorian Amazon (CONFENIAE), the use of medicinal plants, based on their knowledge of herbalism and anti-febrifuge plants, was common and widespread among the Amazonian peoples, and traditional medicine was the most significant and effective defense strategy to combat the infection caused by the SARS-CoV-2 virus in the communities studied by CONFENIAE[24].

Now, despite the fact that indigenous communities, in most cases, used their own methods to deal with the COVID-19 pandemic, the obligation to guarantee the right to health corresponds to the Ecuadorian State. Unfortunately, in recent years, public health in Ecuador has been weakened by budget cuts, causing low investment in hospital infrastructure, technological development, medical equipment, and medicines. This dismantling of public health also has

[21] United Nations, «COVID-19 and Indigenous peoples».
[22] Anders Siréna et at., «Resiliencia contra la pandemia de covid-19 en comunidades indígenas kichwa en la Amazonía ecuatoriana», *Revista Latinoamericana de Politicas y Accion Publica* 7, nº 2 (2020): 104-105, DOI: 10.17141/mundosplurales.2.2020.4738
[23] Vallejo & Álvarez, «La pandemia del Coronavirus en la Amazonía ecuatoriana: vulnerabilidades y olvido del Estado», 108.
[24] CONFENIAE, «Monitoreo Covid-19», Confederación de Nacionalidades Indígenas de la Amazonía Ecuatoriana, last accessed on November 7, 2022, https://confeniae.net/covid19

repercussions in medical centers close to indigenous communities, generally devoid of the basic supplies for primary health care, and even less for treating patients during a pandemic crisis. Similarly, the intercultural health criteria adopted by the Ecuadorian Ministry of Health during the pandemic was not adequately applied[25].

In response to these serious state omissions, from the perspective of the Amazonian communities, the Ecuadorian State, together with the Ministry of Health, did not implement sufficient efforts to detect and treat the virus. According to statements by the Confederation of Indigenous Nationalities of Ecuador (CONAIE), CONFENIAE, as well as by the leaders of indigenous peoples and nationalities, the central and sectional governments failed to guarantee their basic right to health, stating that no plans for provincial emergencies were implemented in coordination with the indigenous communities of the Amazon[26]. Thus, in the face of the State's inaction, during the pandemic, virus detection supplies were delivered to the Ministry of Public Health, as well as medical accessories to health sub-centers in the Amazon region, with donations from NGOs such as Amazon Frontlines, Alianza Ceibo, Land is Life. In addition, CONAIE and CONFENIAE developed educational and communicative material, as well as internal COVID-19 prevention protocols, endorsed by the World Health Organization. Moreover, these indigenous organizations set up roadblocks to prevent third parties from entering the communities and encouraged the exchange of products within the community[27].

This situation has attracted the attention of international organizations such as the Inter-American Commission on Human Rights, the Inter-American Court of Human Rights, the World Health Organization and the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights[28]. At the national level, the Constitutional Court of Ecuador, in Opinion No. 2-20-EE/20 of May 22, 2020, regarding the state of emergency issued by the Executive Decree No. 1052 of May 15, 2020, which renewed the state of emergency, ruled on the measures that the State is required to adopt in relation to indigenous peoples as holders of collective rights, which must be respected and guaranteed with special emphasis during the pandemic. In addition, it

[25] Vallejo & Álvarez, 105-106.
[26] Vallejo & Álvarez, 106.
[27] Vallejo & Álvarez, 107.
[28] Vallejo & Álvarez, 107.

established the duty of indigenous peoples and nationalities to respect the legitimate norms issued by the competent health authorities to face the pandemic crisis[29].

Among the actions that the Ecuadorian State must take in the context of a health crisis, according to the Court, are: the diffusion of measures to prevent the massive spread of the virus, in the different languages of indigenous nationalities; the availability of medical care and funeral services, if required; the adoption of culturally appropriate measures to prevent the spread of the virus in the territories where indigenous communities live. Other measures to be taken by the State are: the creation of spaces and channels of dialogue, so that representatives of indigenous peoples and communities can express their particular needs before the National Risk and Emergency Management Service, as well as the coordination between State regulations and the protocols and guidelines adopted by these peoples in the context of the pandemic, "in the exercise of their right to develop their own forms of coexistence and social organization". In addition, the State has the obligation to produce and divulge information regarding the number of infected, deceased and recovered indigenous persons, as well as to establish specific measures aimed to guarantee the rights to life and health of indigenous peoples in isolation[30].

2.3. People in a situation of human mobility

In transit migrants, refugees, or asylum seekers, particularly those living in temporary accommodations like camps and shelters, are another group of priority attention during a health crisis such as the COVID-19 pandemic, especially in the context of underdeveloped or developing countries. This is due to the fact that, in these spaces, these people may find themselves in situations of overcrowding and unhygienic conditions that prevent the implementation of sanitary measures aimed to prevent the spread of diseases, such as physical distancing. Likewise, the limited social inclusion policy for these people may make them more vulnerable to the socioeconomic hardships they generally experience, turning it difficult for them to access health services. Thus, SARS-CoV-2 virus infection is associated with sociodemographic and migration variables, that can determine access to sanitation, healthcare, and other health-related services of people in situations of human mobility[31].

[29] Constitutional Court of Ecuador. Opinion No. 2-20-EE/20 of May 22, 2020, p. 10, par. 36.
[30] Constitutional Court of Ecuador. Opinion No. 2-20-EE/20 of May 22, 2020, p. 10, par. 36.
[31] Ietza Bojorquez-Chapela et at., «The impact of the COVID-19 pandemic among migrants in shelters in Tijuana, Baja California, Mexico», *BMJ Global Health* 7, (2022): 1-2, DOI: 10.1136/bmjgh-2021-007202

In Latin America, particularly in Ecuador, Colombia and Peru, the reactions of the nationals of these countries regarding the massive displacement of Venezuelan migrants during the COVID-19 pandemic turned into an increase in xenophobia, discrimination, stigmatization of people on the move, and the creation of more restrictive immigration policies, like border closures or the implementation of border militarization efforts to restraint migratory flows. Similarly, there was evidence of an increase in the social exclusion of Venezuelan immigrants and refugees from social and economic assistance programs[32]. In particular, international organizations, such as the International Organization for Migration (IOM), have highlighted the condition of double vulnerability in which migrant Venezuelan women find themselves during the pandemic, by pointing out their limited access to equipment for protection against the spread of the virus, their tendency to live in overcrowded conditions, their reduced possibility of access to reproductive health, as well as their enormous risk and possibility of exposure to situations of gender violence and sexual exploitation[33].

Venezuelan migrants and refugees in the Latin American region constitute a group that was already living in precarious conditions prior to the COVID-19 pandemic. These socioeconomic conditions as well as the pre-existing feeble social protection mechanisms and deep inequalities[34], made this group especially vulnerable as the pandemic spread throughout the region, particularly due to the difficulties associated with the regularization of their migratory status[35], which, in many cases, influenced their possibility to access emergency health services to treat the virus. In Ecuador, despite the lack of a guarantee to the right to social security, people can turn to the public health system administered under the central government. In general, the problem regarding the right to health in this country does not lie primarily in access to health care, but rather in the quality and adaptability of the health service, especially in the context of the COVID-19 pandemic[36].

According to the statistical data obtained from the report "Being a migrant in Ecuador in times of COVID-19", 4 out of 10 people from Venezuela surveyed trust that the Ecuadorian health services will provide them with the necessary care in case of contracting the virus, a 27 %

[32] International Organization for Migration (IOM), 2022. *The Impacts of COVID-19 on Migration and Migrants from a Gender Perspective*. IOM, Geneva, p. 99- 100.
[33] International Organization for Migration (IOM), p. 95-96.
[34] International Organization for Migration (IOM), p. 99.
[35] International Organization for Migration (IOM), p. 98.
[36] L. Pérez Martínez, et at., (2021). Viviendo al límite: Ser inmigrante en Ecuador en tiempos de COVID-19. Quito: Colectivo de Geografía Crítica de Ecuador, Red Clamor y GIZ. Published in Quito, March 2021, p. 25.

responded that they would not receive good care and 29% chose not to answer the survey. In addition, around 85% of the migrants surveyed stated that they did not experience denial of public health care, requirements that they could not meet, or discriminatory situations by the medical or administrative staff of the health centers. Only a small percentage (9%), which should also be considered, expressed that, mainly because of their nationality, they were denied access to the health service. These experiences of the interviewed migrants reaffirm the free public access to health in Ecuador, with certain obstacles, despite the fact that close to 87% of the migrant population is not affiliated to the Ecuadorian Institute of Social Security and that 90% do not have private health insurance[37].

In the Constitutional Opinion No. 2-20-EE/20 of May 22, 2020, regarding the state of emergency issued by Executive Decree No. 1052 of May 15, 2020, the Constitutional Court recommended that the Ecuadorian State refrain from adopting rigorous immigration control procedures, which may lead to an increase in the spread of COVID-19[38]. This, because the Constitution in its article 40 recognizes a series of specific rights for people in a situation of human mobility as a group of priority attention. In addition, the Court emphasized the government's obligation to adopt specific measures aimed at preventing contagion and ensuring the access of this group to health services in the context of the COVID-19 pandemic, "without fear of being deported due to their immigration status"[39].

2.4. Persons deprived of liberty

The Inter-American Commission on Human Rights, through a series of mechanisms, among which is the Resolution No. 01/20 on the Pandemic and Human Rights in the Americas, has referred to the condition of vulnerability faced by persons deprived of liberty in the context of the COVID-19 pandemic. In this sense, it is the obligation of the States to adopt urgent measures that respond in a prompt manner to the problems that commonly characterize penitentiary centers, which could worsen the provision of health care services, especially during a health emergency. The special vulnerability of this group of people during the pandemic is attributable to structural deficiencies in prisons, mainly due to the high levels of overcrowding and the lack of adequately

[37] L. Pérez Martínez, et at., p. 25- 26.
[38] Constitutional Court of Ecuador. Opinion No. 2-20-EE/20 of May 22, 2020, p. 11, par.40.
[39] Constitutional Court of Ecuador. Opinion No. 2-20-EE/20 of May 22, 2020, p. 16, par.10.

spaced spaces, as well as to deficiencies in the implementation of measures to prevent and respond to the spread of the virus with detection tests and the essential protective and hygienic products[40].

The increasing levels of overcrowding in prisons constitute one of the main threats to the rights to health, life and personal integrity of persons deprived of their liberty, given the advance of the COVID-19 pandemic, due to the higher risk of contagion of infectious diseases. In addition, prison spaces characterized by overcrowding do not allow the adoption of basic measures for the prevention of the virus infection, as required by health authorities, such as physical distancing from other people. On the other hand, another factor that should also be highlighted as contributing to the spread of the virus in prisons and that would explain the underreporting of infections and deaths due to COVID is the low number of tests for detection of the virus. Therefore, these factors place persons deprived of liberty, especially elderly people, or those with chronic or autoimmune diseases, in a particularly vulnerable situation[41].

In this context, many countries in the Latin American region have mainly implemented two strategies to protect this group in their populations, whose condition of deprivation of liberty constitutes a social determinant in the promotion and guarantee of their right to health. One measure is aimed at applying alternative punitive measures to the custodial sentence and another to commute the sentence through amnesties and pardons for the convicted. It is worth specifying that these measures would not be directed at the entire prison population, but rather those people convicted of minor and non-violent crimes and who would be in a situation of special risk, such as the elderly, pregnant women or with minor children, and those who have chronic or autoimmune diseases that could aggravate their medical condition if they contract the COVID-19 virus[42].

Article 35 of the Constitution of Ecuador recognizes that persons deprived of their liberty have the right to priority attention, and article 51 numeral 4 recognizes their right to have the necessary human and material resources to guarantee their integral health in prisons. The confinement of this population increases their risk of contagion and potentially violates their rights to health and life[43]. On this point, the Constitutional Court has established that "these spaces... if

[40] Resolution No. 1/2020. «PANDEMIA Y DERECHOS HUMANOS EN LAS AMÉRICAS». Adopted by the IACHR on April 10, 2020.
[41] Inter-American Commission on Human Rights (IACHR), «Frente a la pandemia del COVID-19, la CIDH manifiesta preocupación por la situación especial de riesgo que enfrentan las personas privadas de libertad en la región», *Comunicado de Prensa*, 09 de septiembre de 2020.
[42] IACHR, «Frente a la pandemia del COVID-19, la CIDH manifiesta preocupación por la situación especial de riesgo que enfrentan las personas privadas de libertad en la región».
[43] Constitutional Court of Ecuador. Opinion No. 2-20-EE/20 of May 22, 2020, p.13, par. 47.

they do not have the appropriate measures, they can become places of rapid spread of the pandemic, with the consequences that this entails"[44]. In line with what was stated above, in opinion No. 2-20-EE/20 of May 22, 2020, the Court ratified the necessary measures to be adopted by state authorities, within their constitutional and legal powers and duties, to address the situation of this especially vulnerable group to the COVID-19 pandemic. In this sense,

> "The Court urges judges, courts, prosecutors, the President of the Republic, the National Assembly, as appropriate according to their powers and constitutional and legal duties, to take the above considerations when deciding, in accordance with law, on pardons, amnesties, precautionary measures and alternative sentences to deprivation of liberty, pre-release and probation.
>
> These authorities will take into account when making these decisions, particularly the elderly, those who suffer from catastrophic and respiratory illnesses, pregnant women, adolescents, and preventively deprived of liberty, as long as they are people with convictions for crimes that are not serious, do not generate risks or potential harm to victims of gender violence, or do not cause social commotion[45]".

On the other hand, regarding the guarantee and protection of the right to physical integrity of persons deprived of liberty, the Court, in Judgment No. 752-20-EP/21, reminded the centers of deprivation of liberty and provisional detention on their duty to protect the physical integrity of inmates by providing adequate prison conditions, with greater emphasis during health emergencies such as the COVID-19 pandemic and its variants[46]. Similarly, the Court emphasized the duty of the judicial authorities, when ruling on *habeas corpus* proceedings in cases in which the violation of the right to physical integrity is alleged, to: (i) examine and take into consideration the health status of the plaintiff, (ii) require diagnostic tests to verify the person's contagion with the COVID-19 virus or its variants; and, (iii) order the adoption of prompt, necessary and effective measures by prisons which follow the biosafety protocols, taking into account the context of the plaintiff[47].

Regarding the protection of the right to health of persons deprived of liberty, the Court has taken into high consideration the social condition of this group, establishing the obligation of state authorities to guarantee

> "[…] that health establishments, goods and services are available and within the reach of persons deprived of their liberty in the different centers of deprivation of liberty that make up the social rehabilitation system at the national level, guaranteeing adequate medical treatment that includes,

[44] Constitutional Court of Ecuador. Follow-up phase No. 1-20-EE/20. Case No. 1-20-EE of April 16, 2020, par. 16.
[45] Constitutional Court of Ecuador. Opinion No. 2-20-EE/20 of May 22, 2020, p. 13, par. 48-49 (unofficial translation).
[46] Constitutional Court of Ecuador. Judgement No. 752-20-EP/21, December 21, 2021, p. 21, par. 80.
[47] Constitutional Court of Ecuador. Judgement No. 752-20-EP/21, December 21, 2021, p. 21, par. 81.

> among other things, trained medical personnel, medicines and hospital equipment scientifically approved and in good condition, drinking water as well as adequate sanitary conditions[48]".

According to the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas issued by the Inter-American Commission on Human Rights, these goods and services that must be available to persons deprived of liberty include

> "[…] proper medical, psychiatric and dental care; the permanent availability of suitable and impartial medical personnel; access to free and appropriate treatment and medicines; the implementation of health education and promotion programs, immunization, prevention and treatment of infectious, endemic and other diseases; and special measures to meet the particular health needs of persons deprived of liberty belonging to vulnerable or high-risk groups[49]".

Finally, the Constitutional Court emphasized that prisons must be able to provide these health services, as well as other medical facilities, "in comparable and equivalent conditions to those enjoyed by patients in the outside community"[50]. It added that, when required by the medical condition of the person deprived of liberty, prison authorities must carry out a periodic and complete supervision of the patient's medical record, in order to prevent the aggravation of his/her illness or, when possible, to cure it. And, in the context of the COVID-19 pandemic, the Court established the urgent need for prisons to have the possibility of carrying out clinical diagnoses, evaluations and timely follow-up, to adopt the biosafety protocols ordered by health authorities and, if necessary, to provide adequate health care to persons deprived of liberty.

3. Conclusion

A global public health crisis, such as the pandemic caused by the SARS-CoV-2 virus, has raised the need to reconsider the factors that determine health outcomes. While, in principle, a person's genetic or biological conditions are one of the main axes to be considered by health care providers, especially when a prompt and agile response is required to treat or even save the patient, the COVID-19 pandemic has revealed the importance of considering social conditions when prioritizing health care. This is because these social conditions to be considered are generally characteristic of groups that in themselves live in a situation of vulnerability, which makes it

[48] Constitutional Court of Ecuador. Judgement No. 209-15-JH/19, November 12, 2012, par. 37 (unofficial translation).
[49] Inter-American Commission on Human Rights (IACHR). «Principles and best practices on the protection of persons deprived of liberty in the Americas». Approved by the Commission during its 131st regular period of sessions, held from March 3-14, 2008. Principle X.
[50] Constitutional Court of Ecuador. Judgement No. 752-20-EP/21, December 21, 2021, p. 21, par. 88.

necessary to give them priority attention, especially when their rights to health, physical integrity and life are compromised and subject to potential violation. Consequently, it is the duty of the State and health authorities to grant such priority health care to individuals and groups whose social or economic factors, such as income level, migratory status, working conditions, housing, culture, race, gender, among others, could, in principle, have a negative impact on the health care they are entitled to access. In this sense, reducing health inequalities by addressing the social determinants of health, involves providing everyone the same opportunities to be healthy, no matter who they are or where they live. Hence, this could be achieved by reinforcing the evidence base to inform decision-making when providing healthcare, and by engaging beyond the health sector.

References

- → Anders Siréna et at., «Resiliencia contra la pandemia de covid-19 en comunidades indígenas kichwa en la Amazonía ecuatoriana», *Revista Latinoamericana de Políticas y Acción Publica* 7, nº 2 (2020): 104-105, DOI: 10.17141/mundosplurales.2.2020.4738
- → Cheryl S. Leung, Minnie M. Ho, Alex Kiss, Adi V. Gundlapalli & Stephen W. Hwang, «Homelessness and the Response to Emerging Infectious Disease Outbreaks: Lessons from SARS», *Journal of Urban Health: Bulletin of the New York Academy of Medicine* 85, nº 3 (2008): 409, DOI: 10.1007/s11524-008-9270-2
- → George L. Engel, «The need for a new medical model: a challenge for biomedicine», *Science* 196, nº 4286 (1977): 129-136, DOI: 10.1126/science.847460
- → Ietza Bojorquez-Chapela et at., «The impact of the COVID-19 pandemic among migrants in shelters in Tijuana, Baja California, Mexico», *BMJ Global Health* 7, (2022): 1-2, DOI: 10.1136/bmjgh-2021-007202
- → Inter-American Commission on Human Rights (IACHR), «Frente a la pandemia del COVID-19, la CIDH manifiesta preocupación por la situación especial de riesgo que enfrentan las personas privadas de libertad en la región», *Comunicado de Prensa,* 09 de septiembre de 2020.
- → Inter-American Commission on Human Rights (IACHR). «Principles and best practices on the protection of persons deprived of liberty in the Americas». Approved by the Commission during its 131st regular period of sessions, held from March 3-14, 2008. Principle X.
- → International Organization for Migration (IOM), 2022. *The Impacts of COVID-19 on Migration and Migrants from a Gender Perspective*. IOM, Geneva, p. 99- 100.
- → Ivette Rossana Vallejo & Kati Álvarez, «La pandemia del Coronavirus en la Amazonía ecuatoriana: vulnerabilidades y olvido del Estado», *Cadernos de Campo (São Paulo, online)* 29, nº 1 (2020): 102, DOI: 10.11606/issn.2316-9133.v29i1p94-110
- → L. Pérez Martínez, et at., (2021). Viviendo al límite: Ser inmigrante en Ecuador en tiempos de COVID-19. Quito: Colectivo de Geografía Crítica de Ecuador, Red Clamor y GIZ. Published in Quito, March 2021, p. 25.

→ Larry R. Churchill, Nancy M. P. King & Gail E. Henderson, «The Future of Bioethics: It Shouldn't Take a Pandemic», *Hastings Center Report* 50, nº 3 (2020): 54, DOI: 10.1002/hast.1133

→ Luca Valera & Rodrigo López Barreda, «Bioethics and COVID-19: Considering the Social Determinants of Health», *Frontiers in Medicine* 9, nº 824791 (2022): 1, DOI: 10.3389/fmed.2022.824791

→ Melissa Perri, Naheed Dosani & Stephen W. Hwang, «COVID-19 and people experiencing homelessness: challenges and mitigation strategies», *CMAJ* 192, nº 26 (2020): 716, DOI: 10.1503/cmaj.200834

→ Resolution No. 1/2020. «PANDEMIA Y DERECHOS HUMANOS EN LAS AMÉRICAS». Adopted by the IACHR on April 10, 2020.

→ Steven A. Schroeder, «We Can Do Better — Improving the Health of the American People», *The New England Journal of Medicine* 357, (2007): 1221.