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HUMAN RIGHTS AND COVID-19: REFLECTIONS ON CORPORATE CAPTURE

DIREITOS HUMANOS E COVID-19:
REFLEXÕES SOBRE A CAPTURA CORPORATIVA

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1. INTRODUCTION

The World Health Organization (WHO), on the 11th of March of the current year, has officially declared a new disease as a pandemic, the COVID 19, caused by a type of coronavirus called Sars-Cov-2.

Since then, we have seen a high daily increase of new cases in different countries of the world, and we have endure the implementation of isolation and social distancing measures, and in some cases even lockdowns, means which have become common, and the most succeeded and available today as a way of fighting the spread of the virus, lowering its death rate. The disease has a high contagion and hospitalization rate, which has been leading to the collapse of healthcare systems around the world.

The connected and interdependent world has given us ways of propagating the virus on a speed never seen before¹, and showed that the geopolitical frontiers are exclusively fictional, and do not contribute for the resolution of the situation, which by being global, it also requires a global solution².

However, in the context of this pandemic, be it on a country with adequate responses or not, it has left uncovered the deep inequality that the neoliberal capitalist society suffers with, and the vulnerable populations end up being victimized twice as much in this situation.

¹ HARVEY, David. Política anticapitalista en tiempos de coronavirus. In: AGAMBEM, Giorgio *et al.* **Sopa de Wuhan**: pensamiento contemporáneo en tiempos de pandemias. Multiple cities: Aspo, 2020. p. 83

² BUTLER, Judith. El capitalismo tiene sus límites. In: AGAMBEM, Giorgio *et al.* **Sopa de Wuhan**: pensamiento contemporáneo en tiempos de pandemias. Multiple cities: Aspo, 2020. p. 59.

The objective of this text is to bring light to some of the questions that must be looked into with caution in a time of COVID, highlighting some of the frailties that the global capitalism system has, and which are accentuated in this context, making it evident that the capture of public social policies by the argument of justifying the interest of corporations are likely to make the fighting against that multidimensional problem an even more infringing practice of the human rights, especially the rights of vulnerable groups.

2. A PANDEMIC IN TIMES OF NEOLIBERAL GLOBALIZATION.

As of the day of writing this document, COVID-19 made 5.082,661 victims, of which 329,294 were fatal, and the count keeps changing every minute³. That unprecedented scenario in modern days has been causing the collapse of health care systems around the world, and so that the majority of countries adopted safety measure to reduce the spread of the virus that is causing the disease. Meanwhile, scientists fight against time to create a vaccine or at least discover a treatment which might help to control the amount of severe cases and deaths.

However, what we have experienced so far shows how the system as a whole, and governments, who are supposed to be the first to act, were unprepared for this pandemic. We have seen inconsistent responses from world leaders of different political spectrums. And many of those responses caused substantial damage to the fight against the disease. This is the case of what is happening in Italy, United States, and also Brazil, who is reaching daily new records, those governments seen to be unable of doing the minimum to control the on going chaos.

Clearly, delayed or wrong measures often are guided by politics, as the non adoption of social distancing or lockdown measures, by which governments allegedly try to protect businesses, creating a false dichotomy between economy X health of the population.

Nevertheless, it is necessary to understand that this kind of response, and all the weakness that came into light, is shown as a systematic problem, not isolated or that inflicts only one country or another. There is a hegemonic neoliberal capitalist production model in the world which explains the great majority of those weaknesses.

During the last 20 years, we have been observing a recrudescence of economical discourses of fiscal austerity, which aims at lowering the public expenses in order to lower taxes and mainly provide subsidies for businesses⁴. Especially in America and Europe, that type of policy was responsible for weakening public health systems. And even those that had once been considered of quality, now are seen as inefficient against a health crises as the one caused by COVID.

This is also what Boaventura de Sousa Santos believes⁵, he says that in truth, there are no times of crises *versus* a time of normality, but that the neoliberalism, implemented since the 1980s and which has gained strength through the decades, created a scenario of "permanent crisis". Henceforth, crises became the cause for anomalous situations, as the ongoing crisis⁶.

³ WORLDOMETERS. **COVID-19 Visualizer**. 2020. Available at: <https://www.covidvisualizer.com/>. Accessed May 20, 2020.

⁴ HARVEY, David. Política anticapitalista en tiempos de coronavirus. In: AGAMBEM, Giorgio *et al.* **Sopa de Wuhan**: pensamiento contemporáneo en tiempos de pandemias. Multiple Cities: Aspo, 2020. p. 87.

⁵ SANTOS, Boaventura de Sousa. **A cruel pedagogia do vírus**. Coimbra: Edições Almedina, 2020. p. 5.

⁶ SANTOS, Boaventura de Sousa. **A cruel pedagogia do vírus**. Coimbra: Edições Almedina, 2020. p. 5.

It is possible to argue that it is impossible to keep a health system having in mind moments of extreme crises. However, it would be important to consider, in this particular case, the pharmaceutical system of production. More and more, States privatize research and development of vaccines, medicine, and various treatments, and major transnational pharmaceuticals rule the priorities of what must be produced or not. The investment on health then ends up being hostage of the business logic, rather than of the public interest.

The "Big Pharma" clearly aims at having the highest income possible, and that means that investing in prevention is not on the list of priorities. For years, scientist warned about the types of coronaviruses that could mutate and infect humans; however, there was no interest of those corporations which rule the sector to act toward prevention⁷. They work toward the cure since in moments of despair it represents the highest profit⁸.

Governments also act in a similar way. Guided by the austerity logic, and outsourcing and privatizing investment in protection of the most basic rights, it does not have "left over" money, on the list of strategic actions, to finance prevention policies, even because this type of investment, in general, only shows results in times of crises as this one, or in the medium/long term, which is not interesting for a government that seek visible and fast results that might guarantee their reelection or their staying in the political world. For the most part, occidental health systems do not aim at preventing diseases, but to treat them⁹.

This is, for example, the case of the United States, one of the countries with the worst response and worst numbers of COVID-19. Since the beginning of his term, President Donald Trump has systematically cut funds for the CDC (*Center for Disease Control*) and even ended the working group on pandemics that worked at the *National Security Council*¹⁰, besides hindering any kind of discussions on a public health system, which has been gaining strength in recent years.

The same happened in Brazil, which is another country in a critical state, and whose details we will discuss later.

The scope outlined so far is repeated in all stages of fighting the pandemic, that is: the lack of investment in prevention; austerity policies that take resources away from public health systems; the corporate logic which is subjected to the production of medicines; vaccines and even equipment, such as personal protective equipment and ventilators; all this made the scenario much worse than expected, and has shown us that the current system is not prepared to deal with situations like this, which have very serious consequences for the society.

⁷ HARVEY, David. Política anticapitalista en tiempos de coronavirus. In: AGAMBEM, Giorgio *et al.* **Sopa de Wuhan: pensamiento contemporáneo en tiempos de pandemias**. Multiple cities: Aspo, 2020. p. 87.

⁸ PRAGMATISMO, Redação. **Laboratório diz ter descoberto "cura" do coronavírus e ações saltam 240%**: farmacêutica passa a ter mais de u\$ 1,3 bilhão em valor de mercado após dizer ter encontrado a possível "cura" para o coronavírus. Farmacêutica passa a ter mais de U\$ 1,3 bilhão em valor de mercado após dizer ter encontrado a possível "cura" para o coronavírus. 2020. Available at: <https://www.pragmatismopolitico.com.br/2020/05/laboratorio-possivel-cura-coronavirus.html>. Accessed May 14, 2020.

⁹ HARVEY, David. Política anticapitalista en tiempos de coronavirus. In: AGAMBEM, Giorgio *et al.* **Sopa de Wuhan: pensamiento contemporáneo en tiempos de pandemias**. Multiple cities: Aspo, 2020. p. 88.

¹⁰ HARVEY, David. Política anticapitalista en tiempos de coronavirus. In: AGAMBEM, Giorgio *et al.* **Sopa de Wuhan: pensamiento contemporáneo en tiempos de pandemias**. Multiple cities: Aspo, 2020. p. 87/88.

However, the capitalist exploitation is so strong that even in a scenario of complete desolation, capital finds the means to impose itself and profit from the "global suffering"¹¹, as we point out the case of pharmaceutical companies that announce "cures" to increase their market value, and also the case of the financial system that has been receiving huge financial support under the justification of raising the economy, as occurred in Brazil.

This exploitation is exacerbated by the mismatch and conflict between countries of the world, which dispute access to equipment and a future vaccine, and instead of acting together to solve a problem that is global, they foment animosities that weaken the figure of the State and favor the action of companies. This comes together with the increase of xenophobic and ultra-nationalist discourses, which ignores the fact already mentioned that borders are merely fictitious and there are no territorial barriers to the virus, especially in a globalized world with full circulation of people.

For that reason, it is necessary to think about the hegemonic system and what are its patterns of action that favor the rise of devastating crises as the current one. It is not about "politicizing the pandemic", but of understanding that its consequences rely entirely on the political actuation of governments and international organizations, besides the need to think about the corporate logic that aims at profiting over the devastation, so that the damage, mostly against already vulnerable populations, can be mitigated.

After all, the virus does not discriminate, but the consequences of the pandemic will undoubtedly affect in a more harmful way those who are already structurally victimized and have their rights systematically violated¹².

3. THE PANDEMIC AND THE LATIN AMERICAN CONTEXT

The scenario discussed above is strongly reproduced in Latin America. After all, the region is the most unequal in the world¹³, and systematically faces the exploitation of capital through the actions of transnational corporations whose headquarters are mostly from developed countries.

COVID-19 has been spreading more and more throughout the region, exposing all the gaps and weaknesses of our "public health and social protection"¹⁴ systems, as the Organization of American States emphasized in its guide document for facing the pandemic. Although the responses have been very varied and the results obtained also vary, we can say that, without a doubt, the consequences of the crisis will deeply affect Latin America.

This is also the understanding of the Inter-American Commission on Human Rights, which as the fundamental organ of the Regional Protection System, detected that just as populations of all countries, to a greater or lesser degree, were cruelly exposed to enormous "social gaps," with large numbers of people in extreme poverty – without access to basic health, drinking water, sanitation,

¹¹ BUTLER, Judith. El capitalismo tiene sus límites. In: AGAMBEM, Giorgio *et al.* **Sopa de Wuhan: pensamiento contemporáneo en tiempos de pandemias**. Multiple cities: Aspo, 2020. p. 60.

¹² SANTOS, Boaventura de Sousa. **A cruel pedagogia do vírus**. Coimbra: Edições Almedina, 2020. p. 15.

¹³ COMISIÓN INTERAMERICANA DE DERECHOS HUMANOS. **Resolución 1/2020: Pandemia y derechos humanos en las Américas**. Washington: CIDH, 2020. p. 3.

¹⁴ SECRETARÍA GENERAL DE LA ORGANIZACIÓN DE LOS ESTADOS AMERICANOS. **Guía Práctica de Respuestas Inclusivas y con Enfoque de Derechos ante el COVID-19 en las Américas**. Washington: SG/OEA, 2020. p. 10.

adequate food and housing¹⁵. In addition, there is a high degree of informality in the labour market, which makes income precarious and, in the current situation, often non-existent, making these gaps worse.

Without even taking in consideration groups that already have a vulnerable condition, such as those suffering discrimination by race, ethnicity, age, religion, cultural identity, sexual orientation, gender identity and expression, migratory condition or disability¹⁶. The organizations of the Inter-American System¹⁷ raise in their documents the need for government actions to focus on these groups, which, as already mentioned, end up being double victimized¹⁸.

For example, the increase in domestic violence in the region can already be observed with isolation policies, and women have been facing double and triple journeys; since, structurally, the obligation of care falls on them¹⁹. In addition, there is a context of widespread violence against other groups, and we are seeing an increase in cases of forced displacement from various indigenous communities, migrants in irregular working conditions, and refugees²⁰. The aforementioned increase in nationalist and xenophobic discourse further worsens the situation of these people.

Thus, attention is drawn to the need for countries to address the situation by implementing intersectional policies, which should address all the complexities in different dimensions that the Latin American people experience²¹.

The unpreparedness of the region to deal with the virus also brought the discussion about the importance of a system of protection of "DESCA" – Economic, Social, Cultural and Environmental Rights²² – and among them the right to health. Even if the doctrine presents as characteristics of Human Rights its indivisibility and interdependence, what is perceived, as defended in several other HOMA texts, is that Civil and Political Rights receive a much more effective protection, since they represent the interests of the dominant Western liberal thought. On the other hand, DESCAs have the need to invest money to make them effective, which, through austerity policies, makes them less of a priority.

This situation is in line with the global panorama narrated above, since the hegemony of neoliberal economic policy ends up hindering exactly the implementation of these rights, which would be fundamental to diminish the inequalities and vulnerabilities that normally exist, as well as to mitigate the damages to the society in the current context.

¹⁵ COMISIÓN INTERAMERICANA DE DERECHOS HUMANOS. **Resolución 1/2020: Pandemia y derechos humanos en las Américas**. Washington: CIDH, 2020. p. 3.

¹⁶ SECRETERÍA GENERAL DE LA ORGANIZACIÓN DE LOS ESTADOS AMERICANOS. **Guía Práctica de Respuestas Inclusivas y con Enfoque de Derechos ante el COVID-19 en las Américas**. Washington: SG/OEA, 2020. p. 9.

¹⁷ OEA, CIDH e Corte Interamericana.

¹⁸ SANTOS, Boaventura de Sousa. **A cruel pedagogia do vírus**. Coimbra: Edições Almedina, 2020. p. 15-21.

¹⁹ COMISIÓN INTERAMERICANA DE DERECHOS HUMANOS. **Resolución 1/2020: Pandemia y derechos humanos en las Américas**. Washington: CIDH, 2020. p. 7.

²⁰ COMISIÓN INTERAMERICANA DE DERECHOS HUMANOS. **Resolución 1/2020: Pandemia y derechos humanos en las Américas**. Washington: CIDH, 2020. p. 7.

²¹ SECRETERÍA GENERAL DE LA ORGANIZACIÓN DE LOS ESTADOS AMERICANOS. **Guía Práctica de Respuestas Inclusivas y con Enfoque de Derechos ante el COVID-19 en las Américas**. Washington: SG/OEA, 2020. p. 9.

²² COMISIÓN INTERAMERICANA DE DERECHOS HUMANOS. **Resolución 1/2020: Pandemia y derechos humanos en las Américas**. Washington: CIDH, 2020. p. 5.

Although they are foreseen in a very abstract way in the American Convention, in its article 26²³, the DESCAs are better developed in the Additional Protocol to the American Convention on Human Rights in Economic, Social and Cultural Rights - Protocol of San Salvador. Furthermore, the jurisprudence of the Inter-American System has increasingly made clear the importance of DESCAs for the true implementation of human rights in the region, and that countries cannot evade their responsibility in relation to these rights, being, for example, the right to health fully recognized by the international Corpus Juris of human rights²⁴.

Actions to address the pandemic should then have a special focus on DESCAs, emphasizing the need for states to take political and economic measures that comply with two international obligations in relation to these rights, be they individual or collective measures within an international organization or multilateral funding institutions²⁵.

The Inter-American Commission, in its document, also emphasized the reinforced obligation that States have, at this time, to encourage research and innovation, in addition to the dissemination of scientific knowledge, and to respect and guarantee human rights in relation to business activities²⁶.

As previously mentioned, the region has been presenting mixed responses to the situation, but unfortunately the scenario marked by exploitation of capital in general, and by the weakening of the State structure that is capable of protecting and more incisively enforcing human rights has shown us that Latin America will suffer the consequences of the pandemic for a long time to come.

4. THE SITUATION IN BRAZIL - DIFFICULTIES IN FACING THE PANDEMIC IN OUR COUNTRY

Although it was our wish to be able to say that the situation in Brazil is out of step with the panorama outlined for Latin America, unfortunately we have to acknowledge that we are the country with one of the worst responses in the region, moving towards being one of the centers of the disease in the world.

Statistically, it could even be predictable that Brazil had more absolute cases of contamination and deaths due to the fact that its population is also the largest, but the relative Brazilian rates indicate that our response has been extremely inefficient. The probable causes consist of a previous scenario of instability and investment cuts in public health, as well as political disputes and the total lack of rationality of our leader, who refuses to listen to scientific recommendations and insists on creating a dichotomy between *economy x health* that aims only to benefit business.

²³ "The States Parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires."

²⁴ COMISIÓN INTERAMERICANA DE DERECHOS HUMANOS. **Resolución 1/2020: Pandemia y derechos humanos en las Américas**. Washington: CIDH, 2020. p. 5.

²⁵ COMISIÓN INTERAMERICANA DE DERECHOS HUMANOS. **Resolución 1/2020: Pandemia y derechos humanos en las Américas**. Washington: CIDH, 2020. p. 5.

²⁶ COMISIÓN INTERAMERICANA DE DERECHOS HUMANOS. **Resolución 1/2020: Pandemia y derechos humanos en las Américas**. Washington: CIDH, 2020. p. 5.

Since the beginning of the pandemic, President Jair Bolsonaro has systematically minimized the situation, saying phrases like "it's just a little flu"²⁷, and raising the motto that despite the immense number of deaths we have witnessed, the economy cannot stop, and people must keep working.

In the absence of a clear Federal policy to combat the disease, it was up to the state and municipal governments to decree measures of isolation and lockdown, analyzing their specific situations. However, the effectiveness of these policies were threatened by the lack of dialogue and support from the Executive branch, which even maintained the stance of attacking and blaming governors for the "failure of the economy". In addition, the incentives for the population to continue working and leaving home were kept, which has caused the state rules to be breached, which has brought us to a record daily death toll, with nearly 1,000 people dying each day.

Furthermore, there is the crises of the Ministry of Health, which had its second minister in two months, and is already heading for a third. The crisis motivated by the president's insistence on not listening to science and making his personal opinion and that of a small group of supporters rule over the final decisions.

In terms of investment, the Brazilian government has flagrantly failed to meet its obligations, having cut research funds in the midst of the pandemic. Moreover, there has been no specific policy of directing resources to public hospitals, which has left different regions of the country at the mercy of their limited budgets. There is no clarity about extra resources being sent to states and cities.

Despite the ongoing chaos, it must be understood that in recent years there has been a systematic policy of reducing investment and even withdrawing resources from many areas that today could help mitigate the effects of COVID-19.

Jair Bolsonaro's government was elected with the proposal of improving the economy, but the results that we see, even before the pandemic crisis, do not point out such improvements. In 2019, we had a lower growth than the previous year, with a higher inflation. The unemployment rate had a slight decrease, with an increase in informality²⁸.

Since 2015, after going through 3 different governments, the goal has been to balance government accounts for an economic recovery. Temer's government initiated a series of reforms, which included the approval of the Labor Reform and the approval of the PEC of the "Expense Ceiling". The current government continued the reforms, approving the Pension Reform as the main one, in addition to cutting its budget by 31 billion Reais in areas such as education, protection, human rights and housing in 2019²⁹.

These reforms promised an increase in foreign investment, which never occurred. The level of investment in 2019 was below 2014, and also in 2019 we witnessed the largest outflow of dollars and capital flight from the country in 23 years³⁰.

²⁷ UOL. 'Gripezinha': leia a íntegra do pronunciamento de Bolsonaro sobre covid-19. 2020. Available at: 'Gripezinha': leia a íntegra do pronunciamento de Bolsonaro sobre covid-19... - Veja mais em <https://noticias.uol.com.br/politica/ultimas-noticias/2020/03/24/leia-o-pronunciamento-do-presidente-jair-bolsonaro-na-integra.htm?cmpid=copiaecola>. Accessed May 14, 2020.

²⁸ INESC – INSTITUTO DE ESTUDOS SOCIOECONÔMICOS. **O Brasil com baixa imunidade**: Brasília: Inesc, 2020. p. 32.

²⁹ INESC – INSTITUTO DE ESTUDOS SOCIOECONÔMICOS. **O Brasil com baixa imunidade**: Brasília: Inesc, 2020. p. 34-36.

³⁰ INESC – INSTITUTO DE ESTUDOS SOCIOECONÔMICOS. **O Brasil com baixa imunidade**: Brasília: Inesc, 2020. p. 33.

All these policies follow the neoliberal primer to the letter, but they have not obtained results capable of improving even the rates, much less the life of Brazilians. There is no prospect, nor was there before the pandemic, of recovery for the year 2020.

Specifically in relation to health, in 2019, health spendings remained the same as in 2018, showing an actual increase of only 0.2%. Such stagnation was already predicted in function of the EC 95/2016, the one of Expenses Ceiling. However, it is important to emphasize that since 2014 the health budget has been suffering a decrease, with a slight increase in 2018, and has remained stagnated since then³¹.

However, the demands of the health system are not stagnated, on the contrary, each day they increase due to the increase in the population itself, and due to extraordinary situations such as the pandemic, which demands from our system what it cannot give. Moreover, even before the cuts, SUS – Brazilian public health system – budget was already concerned about not even covering the demands of the time.

Along with the data presented, it is important to note that the economic policies of austerity, together with the antiscience behavior, unmanageability, contempt for human rights, and lack of preparation of the current federal government have left us completely defenceless against a pandemic of this magnitude.

Of course, in a scenario like this, the problems we already had became even greater, and more than ever we have to stand up for human rights, and especially for the vulnerable populations, so that they are minimally affected, and that the consequences of this global crisis affect communities in a less overwhelming way, if at all possible, and do not expand the inequality that is already so abysmal in our country.

5. CONCLUSION

It is not yet possible to analyze the consequences of the pandemic in the world. However, in view of the panorama outlined in the text, it can be preliminarily concluded that its damages have been maximized by a system that prioritizes business logic over Human Rights. This capture of the State ends up influencing and affecting public policies, which makes countries less able to provide their citizens with the implementation of their rights, especially in the current context.

Therefore, it is extremely necessary to guarantee a perspective that take in consideration the Human Rights in the construction of regulatory frameworks of business activity, as Homa systematically defendes in its works.

Such understanding is in dispute in the guidelines of the legally binding instrument for transnational corporations and other business enterprises which is being negotiated within the UN Human Rights Council; but it is already present in Resolution No. 5 of the National Human Rights Council (CNDH), approved in March/2020, which emphasized that no trade or investment agreement can override nationally and internationally consolidated human rights.

³¹ INESC – INSTITUTO DE ESTUDOS SOCIOECONÔMICOS. **O Brasil com baixa imunidade**: Brasília: Inesc, 2020. p. 50-52.

After all, if this dominant logic is not reversed, and a new bias in the normative instruments is adopted, the world is certain to repeat the same mistakes and suffer the same consequences, always harming the people and especially the most vulnerable communities.

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