
**COVID-19 AND HUMAN RIGHTS: A FEW FRAMEWORKS BETWEEN
HISTORICITY AND THE RESOLUTION No. 01/2020 OF THE INTER-
AMERICAN COMMISSION ON HUMAN RIGHTS**

***COVID-19 E DIREITOS HUMANOS: ALGUNS PARÂMETROS ENTRE
A HISTORICIDADE E A RESOLUÇÃO Nº 01/2020 DA COMISSÃO
INTERAMERICANA DOS DIREITOS HUMANOS***

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ABSTRACT

Objective: This paper seeks to encourage reflection on human rights in times of the coronavirus pandemic – COVID-19, based on the theoretical exploration of the recurring commonplace of the human rights “crisis”. For that, we will use the element of historicity of human rights explored in the critical thinking of Claude Lefort regarding the rescue of democracy as a prerequisite to reexamine the contemporary paradigm of human rights theory and praxis.

Methodology: This is mainly a documentary research, using the deductive method in the analysis of Resolution No. 01/2020 of the Inter-American Commission on Human Rights, published amidst the pandemic scenario, in addition to doctrinal texts of a legal nature. The theoretical-dogmatic methodology is therefore adopted, based on contemporary human rights debates.

Results: The coronavirus pandemic – COVID-19 has imposed new tensions, confrontations, and attitudes in the individual, social and institutional fields, and, from them, new social formats that demonstrate the absence of the state and citizens’ rights.



In these aspects, the critical theory of human rights, especially Claude Lefort's thought, goes a long way to highlight the institutional stances in the spaces of power and the appointment of a movement to rescue democracy.

Contributions: It highlights issues that the coronavirus pandemic – COVID-19 has imposed, not eliminating this reality nor denying it, in order to promote it as a favorable moment to reverberate this discussion.

Keywords: crisis; democracy; human rights; pandemic; vulnerable peoples.

RESUMO

Objetivo: Busca-se fomentar a reflexão dos direitos humanos em tempos de pandemia coronavírus -COVID-19, a partir da exploração teórica do recorrente lugar-comum da “crise” dos direitos humanos. Para tanto, utilizamos o elemento da historicidade dos direitos humanos explorado na corrente crítica de Claude Lefort, no aspecto do resgate da democracia como pressuposto para repensar o paradigma contemporâneo da teoria e da práxis dos direitos humanos.

Metodologia: Trata-se de pesquisa documental, utilizando-se o método dedutivo na análise da Resolução nº 01/2020 da Comissão Interamericana dos Direitos Humanos, publicada no cenário da pandemia, além de textos doutrinários, de natureza jurídica. Adota-se a metodologia teórico-dogmática, com base nos debates dos direitos humanos na contemporaneidade.

Resultados: A teoria crítica dos direitos humanos, especialmente do pensamento de Claude Lefort muito contribui para evidenciar as posturas institucionais nos espaços de poder e indicação para um movimento de resgate da democracia real nas ações estatais e da sociedade civil.

Contribuições: Evidenciam-se questões que a pandemia coronavírus - COVID-19 impôs, não eliminando esta realidade, tampouco a negando, de modo a promovê-la como momento propício para reverberar o debate.

Palavras-chave: Crise; Democracia; direitos humanos; Pandemia; vulneráveis.

1 INTRODUCTION

The delimitation of a theme situated in a specific context, in time and space, is inherent to scientific production, whether in the form of narrative, content analysis, or



of discourse. However, in the context of the coronavirus pandemic (Sars-Cov-2), which causes the disease called (COVID-19), the limits and possibilities of the analytical reach open us to coexistence with an unusual, unknown, and exceptional phenomenon. Due to an abrupt interruption of the life experience with whom we have been previously familiarized, the pandemic context leads us to a new panorama of significant local and international impacts and, above all, continuous in the individual's transformation and collective fields. Living in a pandemic and projecting post-pandemic perspectives reveal themselves as a process of existential (de)construction, as a beginning experience and characterized by uncertainties.

We have been witnessing the persistent illness and the massive number of deaths of people from different countries, the change in regular, daily structures, which move institutions to plan and execute actions of immediate and urgent nature, the modification of family realities, and the exposure of systems fated by social inequality. The scenario is, above all, so frightening and pessimistic that we can transpose our reality to what we were used to experiencing in an imaginary perspective when watching horror movies. The individual reaction permeates a set of sensations and emotions, very close to those expressed by the art that evidences terror, as fear and chaos are experienced as real. In a way, the pandemic context (re)places us before a terribly difficult and genuine horizon, which imposes a reflection that involves our minimal structures, such as the protection of human rights, specifically, regarding the scope of such rights, characterized today as limited and contrary to universality.

To explore this theme, there are two perspectives that we must consider: the effects of the pandemic over the individual's field, of the subject's subjectivity considered in itself and its consequences at a more open field, such as the collective and the public, in which society and institutions are protagonists. We understand that the consequences felt from the individual point of view also appear expanded in the social sphere, notably in-group behaviors and for institutional and governmental decision-making, which influence the new bases of the theme (CAMPILONGO, 2000, p. 105). These perspectives are essential to recognize how the dialectical phenomenon meets the democratic society and how it influences the mobility of the



democratic State, in which both responses will necessarily institute new social formats (LEFORT, 1991, p. 79). The research is justified by the need to discuss and reaffirm human rights in times of pandemic, which expands vulnerabilities and deficiencies of its *modus operandi*, factors that we must face immediately.

In this sense, the human rights debate is presented in this article from the theoretical exploration of the recurring commonplace of the human rights “crisis”, which historically influences its transformation and structure, as well as contributions on the understanding and applicability of human rights through the use of the historicity concept based on the critique developed by Claude Lefort. As a parameter, we will highlight the movement of the Inter-American Human Rights System (IAHRS) with the publication of Resolution No. 01/2020 by the Inter–American Commission on Human Rights, highlighting the concern with the pandemic scenario and human rights in the Americas, with special emphasis on the Brazilian case. The research is primarily documental, using the deductive method to analyze the aforementioned Resolution and the theoretical-dogmatic methodology based on the contemporary human rights debate.

2 HUMAN RIGHTS CRISIS?

Historicity, as a characteristic of human rights, deserves further exploration. To recognize it as an essential object of analysis allows us to reach remote times, dialoguing and confronting today's needs and those of yesterday and, still, to rescue the historical importance and fundamental *modus operandi* of the struggle for rights, represented mainly by social movements. The exercise of thinking about human rights as historical conquests warns us that we cannot forget or neglect to reiterate this meaning, even though the constancy of time alters such perception. In this sense, it is amplified the reflection on the transformation of human rights, which has expanded its material dimensions over time, including new needs and approaches by and for every citizen. From this structure, we realize human rights consist of a civilizing construction



(BOAVENTURA SOUSA SANTOS, 2003, p. 145-189), which crosses our dimensions as social subjects and gives importance to a promoting and protective action by the State.

The debate involving the historicity of human rights revisits scenarios and themes constructed by social struggles, such as individual and social rights, the normative movement, the scope of rights, and the alleged objective of the universality of human rights, which leads us to diagnose that the absences highlighted in the past still remain among us. In this historical journey, we realize that the present day imposes new confrontations, mainly, the notable normative distance from social daily life (LEFORT, 1972, p. 148). Time and memory appear here as thematic bases showing that civil society has not overcome human rights' absence and reach. We experience the recurring social denouncement of human rights violations and the oppression of human dignity among us and the distancing from Law's capacity as reasoning which regulates and disposes of rights. As we bring the international and national legal structures of human rights closer to social spaces in Brazil, we note the absence of the State, especially in protecting the group of vulnerable people, who historically are on the margins of society, where spaces, rights, and daily actions have been relegated from them (LEFORT, 2011, p. 65).

Thus, in temporal aspects, it is worth remembering that before the scenario of the coronavirus pandemic – COVID-19 many problems involving the protection of human rights had already marked the agenda of protests, demands, social complaints, and the struggle for equal rights by the Brazilian population, fields which necessarily intersect with the transformative movement of public action and commitment to the state and international duties and obligations. We also highlight the cross-sectional movement of promoting human rights in judicial decisions, which recover the effectiveness of the rights provided by law, as the phenomenon of *judicialization* of rights. Such scenarios were apprehended as events naturalized in time and space, in which the organization of academic–scientific thinking and *praxis* emphasized, repeatedly, in response to the questions posed, the notion of human rights “crisis” (LEFORT, 1999, p. 87).



In the face of a normative perspective, in different historical and social contexts, human rights were allocated, produced, and reproduced in documents and declarations, composing themselves as records and sources, of which we have historically disposed as the major ones in the normative perspective of human rights: the *Bill of Rights*, from 1689, in England; the 1776 Declaration of Independence of the United States of America; the 1789 and 1793 Declarations of the Rights of Man and of the Citizen, in France; the 1918 Russian Declaration of Rights of the working and exploited people; the UN Universal Declaration of Human Rights of 1948; and the 1993 UN World Declaration of Human Rights. In addition to symbolism and social branding, such documents represented, in each era, the changing of times. A paradigm that had proposed new expectations for living in society based on the choices defined in there, marked by the regulation of rights and the distribution of its scope to social groups, representing the documentary sphere in demarcation of what it had announced (EBERHARD, 2004, p. 168). In the documents referred, the political-ideological justification of human rights is required. We consider ideology as a polysemic term, from the development of a classic view¹ to a critical view², as a set of ideas formulated by society that can, at all times, put itself in defense of a rhetorical–argumentative process. Thus, from the historical human rights documents, it is possible to extract the ideological presentation as the rationale for change, always accompanied by a

¹ In this sense: The classic view of ideology originated with the modern French philosopher Destutt de Tracy. Tracy was an enthusiast of the ideas promoted by the Enlightenment and believed that the French Revolution was the best way to bring about the necessary changes in French society so that the country could, in fact, to prosper. He was a staunch anti-monarchist and also considered a materialist thinker. For materialism, only concrete and material facts should conduct any understanding of the world, valuing science and rejecting metaphysics and religion or any other type of abstraction or idealism.

² German philosopher and sociologist Karl Marx, considered the founder of scientific socialism and creator of the dialectical-historical materialist method of social analysis, was the one who gave a critical look at ideology. From the critical view of Marx, the word came to designate something negative. Marxist historical materialism did not see the possibility of separating the production of ideas from historical and material reality, arguing that ideas arise in a certain context and for a certain reason. Contemporary French Marxist philosopher Louis Althusser improved the critical view of ideology in the 20th century, starting from the Marxist overview. For Althusser, ideology operates through a *lacunae discourse*. It is an apparently real, valid discourse, not entirely incorrect, but which leaves gaps. Those gaps left by the ideological discourse result in loopholes for the false legitimation of what is not legitimate. The *lacunar discourse* affirms real things, and, with that, it seems real but leaves loopholes where unreal things fit in, appearing to be true, but, in reality, false. CHAUI, 1983, p. 44.



significant event – revolution, war, catastrophes, armed conflicts – motivated by a set of ideas and demands crystallized in social practices and discourses. This approach, linking the historical context with the promulgation of declarations of rights, characterizes a mechanism of institutional arrangements ruling the transformation of human rights over time (namely when) and in societies (namely how) to consolidate themselves as such.

This discussion is essential to think and confront contemporary concerns, as the study of human rights' historicity goes beyond the diagnosis of origins, concepts, and historical context. It leads us and positions us critically in the face of today's problems, mainly in an attempt to deconstruct ideas or typecast notions, thoughtless and often used by us, as is the case with the notion of "human rights crisis".

The failure to achieve rights for all, the oppressions and violations in the face of society and, mostly, for the group of vulnerable people, excesses in the use of power, social, economic, and cultural asymmetries, and the general sentiment created in the face of the deficient scenario were often justified and explained as – crisis – without considering that such crisis crosses eras, and has always existed alongside the theme of human rights (LEFORT, 2011, p. 168). We got used to – the crisis – as a commonplace and as a rhetorical and legal resource to move us away from reflection and action in taking on the fundamental problems involving the violation of rights. The use of the linguistic resource "crisis", which comes before the debate about human rights, proving itself to be permanent, helps to hide critical characteristics and institutional behaviors far from pertaining to democracy. Hence, it is vital to highlight and discuss the meaning we are giving to the notion of human rights crisis, which appears as an obstacle and in contrast to the mechanisms legally and philosophically wished for. It also favors, to a certain extent, the fragility of democracy that creeps between privileges and narcissistic desires, between authoritarianism and naturalized violence. At this moment, it is necessary to critically admit the direction of the problems posed, reverberating their reasons and weaknesses.



The post-democratic character of this State refers to the end of fundamental rights and guarantees that occurs *pari passu* to the impoverishment of subjectivity. We could even say the State and the Subject deserve each other if we were not faced with a profound transformation on the State's meaning and the Subject's own condition. The paradoxical continuity of the crisis, replicating and self-reproductive, putting democracy to balance itself in an abyss, justifies all exceptional governmental and judicial measures, coups d'état, and, finally, the government of the very people demoted to consumers. (TIBURI, 2017, p. 1)

In this sense, we ask for the reflective and sophisticated debate to recognize and overcome the idea of crisis as a commonplace in order to acquire the basis for a real confrontation of the issues regarding human rights, reducing filters and rhetoric, starting with the reflective study of critical human rights theory. When we were abruptly surprised by the coronavirus pandemic – COVID-19, we found out that it gives light and intensity to the previous causal indicators, such as excluding capitalism and the photographs of social inequalities, in addition to expanding the problems of access to rights, with (yet) the need to recognize the other as a subject of rights. Additionally, this is a moment that highlights a major catastrophic event for humanity, contributing to the changing movement of the ideological aspects for the provision of human rights' content (LEFORT, 2011, p. 67). For this reason, this moment calls us to pay attention to the paradox of how we will respond to the prominent place of the human rights crisis widened by the pandemic. First of all, we must consider the human rights crisis as an element that characterizes this theme in different times and contexts. Thus, it is considered that the attempts to qualify human rights will occur based on the premise that gives it cause and not consequence. This means that a context does not impose the crisis; it only modifies and expands the existing one, being inherent to the perspectives of universality and historicity of human rights, determined as unfinished and continuous. As a common element of the contributions sustained in this analysis, it remains to be noted that the attacks of all orders are directed at the State, characterized as oppressive and contrary to human rights, especially in atypical scenarios.



3 HUMAN RIGHTS IN PANDEMIC TIMES: THE MOVEMENT OF INTERNATIONAL ORGANIZATIONS

The coronavirus pandemic – COVID-19 scenario frames the violation of human rights in Brazil and Latin America as more complex and severe, denouncing the cruel sides of capitalism and our regional distance to the culture of human rights. The debate takes urgency and necessity, as presuppositions of State actions, and puts us again as a social body, in a position of vigilance to the person's legality and dignity, above all, watchful to the emergence of a state of legal exception. The concern is how the State will act exceptionally, in particular with the treatment of human rights, when it already showed a tendency towards the movement of weakening and denial of rights, passing, to a certain extent, by the fragility of institutions and the legal and social structures conquered for everyone.

The analysis goes through the clarity that social inequalities of all orders are supported by the capitalist system, characterized as neoliberalism, in the context of globalization, which is reproduced by consumption, based on the accumulation of capital by a specific group. In this context, there is a recognition of the great distance or even opposition between capitalism and human rights, given that the failure to achieve rights for all appears as a feeding mechanism for that structure. The capitalist logic needs social inequality to maintain itself, being its systemic, structural, and founding base (LEFORT, 1999, p. 271). Therefore, in the theoretical and thinking fields, the perspective must consider the depth and complexity of the theme, especially for reducing social asymmetries. This implies that it is no longer just an economic model, but a cultural proposal positioned itself as natural and normalizes social subjects' behaviors and actions, therefore, of a much broader, more complex, and profound structure for a process of alteration. With the coronavirus pandemic – COVID-19, such questions become more evident, mainly when we reflect: who are the people behind COVID-19 inequality? Who is profiting? Who are the primary victims of this context? In this respect, one must consider the socio-economic disadvantage and of fields of possibilities for the countries of the Global South, notably a Brazil demarcated



by deep inequalities and incapacitated in safeguarding the protection of citizens' life, health, physical integrity, and security. Issues related to gender, class, and race are aggravated by a scenario of corruption and impunity that permeates the reality of the Americas and imposes a state political movement and urgent sanitary measures.

On the other hand, in the strategic field of human rights, we use the voice and concern shown by the regional structure for the defense and promotion of human rights, the Inter-American Human Rights System (IAHRS), specifically the Inter-American Court and the Inter-American Commission. The Inter-American System reverberates and highlights the worsening of structural problems involving human rights with the pandemic in the Americas. We consider both agencies as instruments that work for the transformation, promotion, and defense of human rights' culture in the international and regional contexts, chiefly when called upon to investigate, analyze and judge human rights violations. In the pandemic context, the IAHRS assumes the role of demarcation and surveillance and sheds light on problems already known, emphasizing the international commitments and obligations assumed by the States. The inter-American system's use ratifies its attribution as an instrument of assertion and stimulus for alternating an exclusionary and unequal reality with strengthening and recognizing the normative, recommendatory, and mandatory acts assumed by the State in international cooperation.

The Inter-American Commission issued Resolution No. 1/2020³, which highlights its distress over the pandemic situation and human rights in the Americas. Also, the Inter-American Court issued a Declaration (Covid and Human Rights) describing the main problems and challenges for the States, pointing up to the States' international obligations from the perspective of human rights. The IAHR Commission Resolution appears more developed than the IAHR Court Declaration, covering a total of eighty-five recommendations, with regard to minimum standards of attitudes, state priorities, and the exaction of rights. Both documents signaled the concern with the defense of human rights and democracy in the pandemic scenario from a more open

³ Available at: <https://www.oas.org/en/iachr/decisions/pdf/Resolution-1-20-en.pdf>. Visited on December, 17, 2020.



and not only sanitary approach, which is imposed by measures of access to health and infection prevention, protecting the right to health, life, and physical integrity.

On this subject, the main points highlighted by the IAHR Commission with Resolution No. 01/2020 are delineated: first, we highlight there is a notable concern with the use of state powers, in an exceptional circumstance, in the context of the coronavirus pandemic – COVID-19, that leads it to take measures, such as legislating, promoting public policies, restricting, redefining rights and priorities in the name of the exception or of the state of emergency. This restores the public movement, and when it does not agree with the human rights position, we can steer to a more elongated and deficient situation. The demarcation directs that public actions occur immediately and urgently, per the International Health Regulations (IHR) and with recommendations from WHO and PAHO to protect the fundamental rights and guarantees of citizens. This happens from the sharing, by the local and global spheres, of information and protocols seriously analyzed to outline alternatives on how to respond in an exceptional context. Consequently, the limits of state actions have been necessarily limited to institutional adaptations and modifications based on the sieve of proportionality, unique temporality, and exclusively to meet and fulfill the objectives that promote public health measures. Therefore, any public movements to restrict, redefine, or prioritizing rights and guarantees are only justified by the strict fulfillment of public health objectives⁴.

In a second aspect, the Resolution mentioned above emphasizes the concern in alerting States to give priority to the group of vulnerable people, especially women, blacks, indigenous peoples, children, migrants, and the LGBTIQ+ community, economically disadvantaged and who appear, historically, with stigmas and as focuses of oppression, violence, and discrimination, being the most affected by the COVID-19 pandemic, given the vulnerability that characterizes them. It is a scenario that aggravates the situation of the vulnerable, daily crossed by social, economic, and cultural inequalities, a structure that must necessarily be guided by the intersectionality

⁴ In accordance with the following general principles and obligations (3). Available at: <https://www.oas.org/en/iachr/decisions/pdf/Resolution-1-20-en.pdf>. Visited on December, 17, 2020.



bias between race, gender, and class. In this sense, the social gap reflects intensely, imposing urgent, coordinated and prioritized state action by public policies aimed at the vulnerable: (...) “the formulation of public policies cannot distinguish different interests from those indicated by law, given the principles of public interest, purpose and impersonality” (CHRISPINO, 2016, p. 109) for the discriminated and marginalized social sectors:

Intersectionality is a conceptualization of the problem that seeks to capture the structural and dynamic consequences of the interaction between two or more spheres of subordination. (CRENSHAW, 2002, p. 177) Intersectionality arises, therefore, from the need to build an analytical tool suitable for research involving gender and race, as well as other categories that interact and create what Kimberlé Crenshaw defines as a network of disempowerment. To better understand intersectionality, it is imperative to understand the context in which it has emerged. (KYRILLOS, G. M., 2020, p. 77)

The guidance of Resolution No. 01/2020 directs the priorities of the public movement, in an exceptional context, to address vulnerabilities in an inclusive, non-discriminatory work of protection and tutelage, considering that only with this focus is it possible to contain the social impact that is announced.

Moreover, the IAHR Commission points to the path of multilateralism as a framework for strengthening human rights and respect for the rule of law and international cooperation, as structures that historically downplay the arbitrary use of state power. By this prospect, exceptional measures of human rights restrictions must necessarily materialize by law, in a reasonable manner, being strictly necessary, time-limited, and under scientific standards of exceptionality, in the name of public health. In addition to the international human rights conventions, such directives guide and limit state action, removing any attempts to consider the state of emergency a presupposition for a “blank check” in the suspension/underplaying of fundamental rights and guarantees.

On the other hand, at the global level, the United Nations – UN appears as the pronouncer of international actors' voice in the role of the Human Rights Council, which responds with concern to the mitigation, by the States, of the effects of measures to



restrict human rights. It also indicates the distress with the state of exception's moment and the attack on democracy, based mainly on the Millennium Development Goals (MDGs) and the 2030 Agenda as measures already announced and worthy of implementation efforts by the States. In an analysis of the UN reports on Brazil, we have verified, especially, the denouncement of human rights' violation and austerity policies, that have been on the offensive by the standpoint of civil and political rights (freedom of the press, repression of physical space and attack on human rights defenders). It is a model of dialogue to approach violations of social and collective rights in Brazil.

On the other hand, to verify how the Brazilian response to international stimuli occurs, above all, based upon the responsibility with international obligations assumed in a cooperative plan, is an urgent and decisive measure in this context. Immediately we are faced with the recurrent issue of internalization and prompt implementation of international (normative, recommendatory, and decision-making) acts in the Brazilian system, chiefly the integration of the international system with the internal system, which still is seen as an embarrassment between us (PIOVESAN, 2017, p.77). This reflection, once linked to the decisions of the IAHR Court issued to Brazil, makes clear the recurrence of not fully complying with the obligations imposed by the IAHR Court's jurisdiction⁵, as well as with other guidelines of international organizations from the UN international agencies, under the grounds of the exercise of governmental sovereignty. It must be recognized that sovereignty has long acquired a non-absolute condition in international relations (MORGENTHAU, 2003, p. 88). It is noted that the current Brazilian behavior, in contrast with other countries and multilateralism, involves a width of analyses from the interdisciplinary field of historical, sociological, political, and international relations factors, essential (VICENT, 1986, p. 146) to draw in-depth reflections on the positions adopted. In this sense, only with the use of an

⁵ In Brazil, the implementation of decisions from the Inter-American Court of Human Rights is mandatory, in the same way as the national Judiciary branch of power's decisions. This obligation emerges not only from the ratification of the American Convention but also from the country's recognition of the contentious jurisdiction of the Court in the country. COELHO, 2008, p. 155.



interdisciplinary approach and the analytical look's improvement it is possible to delimit justifications for the institutional and governmental components of the pandemic action.

There are two aspects to this issue. We note that the denial or partial compliance with the decisions and guidelines of the IASHR and global for human rights compromises its strengthening as a system and as an instrument, since there is a space for questions about the role of multilateralism and international jurisdiction⁶. Conversely, it is up to the State to promote a positive and contributing movement out of its internal and institutional framework for the defense of the Democratic State of Law and the commitment to human rights in meeting regional and global positions, also including civil society's active space in demanding a coherent positioning of state institutions with the normativeness, for an inclusive, non-discriminatory and non-violent culture of human rights. Therefore, considering that such arguments were already rampaging as legal and political difficulties in the Brazilian scenario before the coronavirus pandemic – COVID-19, it is necessary to reverberate this discussion so that the institutional responses follow the urgency required at the moment.

4 SOME REFLECTIONS FOR HUMAN RIGHTS

The pandemic routine presents us with multiple absences, specifically, of resources, structures, comprehensions, and orientations, in the individual and social fields, about how to face a challenge that imposes itself among us. Obviously, that of the many sensitive subjects transverse by the pandemic, we necessarily have to respond in both fields, as an individual, in the subjectivity complex, and as a society,

⁶We reiterate that the inexistence of an organ/committee/commission within the system for such enforcement leaves this attribution to the State's responsibility. This calls for a state contribution to consolidate international jurisdiction since the system chooses not to engage in practices that interfere with States' autonomy and sovereignty. This means the absence of this body does not compromise arbitrariness in the fulfillment of decisions. In more detailing, see: LEIDENS; VIDAL, 2019, p. 91-105.



in a broader and shared level. Human rights include the individual, collective and institutional introspection of action, awareness, behavior, public denouncement, and, above all, the confrontation of issues that include recognizing the ownership and demand for rights for all and all. The scenario that imposed border closures, the interruption of daily life and the intercommunication between local and global restructures the perspectives of Brazil's social problems, exposing, between us and on an empirical level, the distance from the universality of human rights. There is room for the leading role of the denialist movement about the complexity and gravity of the situation, insofar as it works against the agenda for human rights standardization, as it goes through realities that involve the exclusion of minority groups (separating who is, who is not) and endorses the growing enforcement of institutional authoritarianism. Health as a matter of social and environmental justice, through evident racial and gender inequality, reverberates the disproportionate impacts observed in Brazil. In this situation, the question that arises is: How can we recover reflection and action based on the logic of human rights in an approximate way to the guidelines of the IAHRs?

We understand that, in addition to the sanitary conjuncture and of restrictions, we have to recognize the impasses of the neoliberal logic of conflict of interests and exploitation over one social class by another and its effects for the Democratic State of Law, and, from there, work at the perspective of rescuing democracy as a possibility, in the sense of contributing, improving and bringing human rights closer to the new social format. This perspective's side effect brings to debate the recurring commonplace of absences, belonging, collective sense, understanding the problem, of information, and, above all, of social protection, repositioning democracy as a place of struggle and legitimate conflict⁷. Democracy moves towards the recognition and creation of real rights and new rights and imposes itself as necessary and urgent, the *locus* of social and political struggles, above all, of place where government actors cannot take hold of power (LEFORT, 1999, p. 278). To consider that catastrophic

⁷ Boaventura de Sousa Santos has underlined a new model of participatory democracy derived from social movements as a strategy to oppose the trivialization of citizenship and social exclusion through non-capitalist modes of production. For a further read about the topic, see: SOUSA SANTOS, 2002.



events have always displaced, historically, subject and subjectivity is to recognize a process of structural change, carrying with it a new *modus operandi* to be implemented in society, indispensably based on democracy. Thus, the deprivation presented for the right to health includes the more open field of human rights, and we point to it as the only possibility for discourse and *praxis*.

The IAHRs reinforces and contributes significantly to the movement for the effective accomplishment of the promotion and defense of democracy and human rights through the enactment of cooperative and advisory international acts and following international obligations assumed by the State. From the theoretical point of view, the denunciation of human rights violations and the treatment relegated by *praxis*, mainly with the criticism of the permanent use of the – human rights crisis – as a contemporary product, communicates the need for a debate that involves interdisciplinary components and is linked to the theoretical bases of human rights, which goes through the previous question, the epistemology of human rights⁸, already stressed out by critical theory. It includes considering experiences in Latin America⁹, structured in contexts of profound social disparities, in which poverty and extreme poverty consist of a problem inherent to all states in the region and associated with identity and correlated issues.

In this way, to incite the discussion from fragile and recurring points, such as the universality of rights, which opens the discussion of the role of the declaration of rights as a substrate for the historical field of creation, for the fight for equality and the conquest of rights – in the demands of social subjects – (TRINDADE, 2016, p. 66), allows for a contribution towards qualifying the debate, rather than a search for a direct

⁸ Comparatively, it is worth questioning the reasons why all production before the institutionalization of social sciences in Western Europe and North America (which could be considered as unsystematic, narrative, discursive, engaged, etc.) is understood as “theory”, while production originating not only from Brazil but from all the countries that have already been called way behind, underdeveloped, Third World, periphery, South, is just “thought” (...) We can ask succinctly: why thought and not a theory? Brazilian elites have always considered their intellectual products to be more or less inferior to those developed in Europe and the United States, as a result of a broader perception of the peripheral character of their country. It was then a peripheral production because it was understood as peripheral, being it the result of a society inferior in relation to the centers of power and of knowledge whose paths it should reproduce, insofar as they would be behind in relation to them. SILVA; VEIGA, 2017, p. 150.



answer to the problem. We need to reestablish concepts not considered, the naturalized practices, the limited accessibility, and the prevailing privileges in order to examine the local and the global, and, in both reverse orders, issues shared in new scenarios of coexistence with the coronavirus pandemic – COVID-19.

6 CLOSING REMARKS

We sought to instigate a reflection on human rights in a specific and expansive context, the coronavirus pandemic – COVID-19, based on the concern about the state tutelage movement and priority decision-making for access to rights in the face of the constant reality of the violation of human rights. The coronavirus pandemic – COVID-19 has imposed new tensions, confrontations, and attitudes in the individual, social and institutional fields, and, from them, new social formats that demonstrate the absence of the state and citizens' rights. In these aspects, the critical theory of human rights, especially Claude Lefort's thought, goes a long way to highlight the institutional stances in the spaces of power and the appointment of a movement to rescue democracy. Also, the IAHRs in issuing international acts, in this case Resolution No. 01/2020 of the Inter-American Commission, by drawing attention to the concern with the pandemic scenario and human rights in the Americas, given the exceptional nature of the moment and its influence on decision-making, reverberates practices and measures from the perspective of human rights in a context in which the exception of the period cannot overturn the minimum conquests of citizens.

The approach has shown topics of difficulty and sought to foster reflection based on questioning how we should think about these issues now, in a scenario of continuous transformation and difficult social reach for the culture of human rights. For last, new investigative and interdependent panoramas expand the issue: the theoretical development of human rights based on the Latin American reality; the use of interdisciplinary fields as apparatus to support state actions; the confronting of social inequalities in Brazil, based on intersectionality and vulnerabilities; the rescue of



democracy as a space of conflict; and the struggle for the existence of rights are themes that need to be improved through legal reflection and by international organizations as transportation of cultural structures recognized in a reciprocal way by communicative action in public spaces for effective social interactions, arbitrated by the system in the public spheres from the inclusive, non-violent and, above all, democratic logic.

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