

**Joint declaration on access to justice in the context of the COVID-19 pandemic**

The Inter-American Commission on Human Rights (IACHR) and the United Nations Special Rapporteur on the Independence of Judges and Lawyers, Diego García-Sayán call on the States of the region, as part of the measures and initiatives adopted to contain the COVID-19 pandemic, to guarantee the widest access to justice as a fundamental means of protecting and promoting human rights and fundamental freedoms.

The Commission and the UN Special Rapporteur stress the importance of access to justice for the protection of human rights and as an essential pillar of the rule of law. In the context of the pandemic, in several countries in the region the judiciary has adopted various measures aimed at reducing the spread of COVID-19, which has had a major impact on its functioning, and consequently on access to justice.

The measures adopted include the suspension of judicial and prosecutorial activities, the suspension of terms and the statute of limitation in extraordinary cases, with some exceptions considered to be urgent. Remote working, the use of digital platforms and the holding of hearings by videoconference, among others, have become widely used at the regional level.

With regard to the suspension of judicial and prosecutorial activity, both the IACHR and the UN Special Rapporteur have pointed out that judicial procedures that guarantee the full exercise of rights and freedoms, including habeas corpus and amparo actions aimed at verifying the response of national authorities to the COVID-19 pandemic, should never be suspended or delayed. These safeguards must be exercised within the framework and principles of due process of law. In particular, the suspension of judicial activity must be analysed under a strict scrutiny test as the judiciary is a fundamental pillar for the protection and promotion of human rights. Such restrictions must comply with the principle of legality and proportionality, be the least restrictive measures and be necessary in a democratic society for the achievement of common goals. Similarly, States must ensure the functioning of independent and impartial courts and guarantee effective compliance with judicial decisions issued by judicial bodies. Other branches of power must refrain from criminalising, harassing or prosecuting judges for decisions adopted in good faith in the exercise of their judicial functions.

On the other hand, the IACHR and the UN Special Rapporteur observe that the use of technological means in the provision of justice services has sometimes had a negative impact on access to justice for some sectors of the population as a result of the existing digital gap, since the use of these means presupposes access to electronic means and technological knowledge in order to access justice services. Furthermore, there is a lack of coverage in various parts of the States' territory. The IACHR and the UN Special Rapporteur call on States to guarantee access to an affordable and pluralistic Internet for everybody within their territory, and in particular for individuals and groups in vulnerable situations, and urge them to take positive measures to reduce the digital gap. They also points out that, until the digital gap is eliminated, on-site access to justice services must be guaranteed, accompanied by appropriate measures to protect the health and integrity of justice operators, judicial personnel and users.

Furthermore, it is important to emphasise that the use of technological means for the provision of justice services cannot undermine due process rights of the parties and participants in the virtual hearings, especially the right of defence in criminal matters, to legal assistance, to adversarial proceedings, and the right to be tried without delay; the confidentiality and security of the information transmitted using this type of mechanism being guaranteed at all times. Finally, in the context of the declaration of states of emergency, which has led in many countries of the region to the suspension of certain rights and fundamental freedoms, the functioning of independent justice systems, both at the individual and institutional level, is a fundamental component for the control of the legality of the decisions implemented by the different state powers.

In this respect, the selection and appointment processes of senior justice authorities carried out during the pandemic must comply with the principles of publicity and transparency, and candidates must be selected on the basis of their independence, knowledge and experience. An adequate appointment and selection process is an essential element that contributes to the independence of justice operators.

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