

# THE GUARANTEE OF INDIVIDUAL AND COLLECTIVE RIGHTS TO LIFE AND HEALTH AS A RESULT OF COVID-19

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## ABSTRACT

*The present investigation analyzes the actuality of the problems that affect the areas related to the Ecuadorian health system that do not seem to be in form or conjunctural but on the contrary profound and with scope yet to be determined, but what is certain is that they have incidence in the rights to health and life of Ecuadorians, violating the right to health and life, whose objective of the research is to contribute to the protection of these rights through a diagnostic study on the current situation of the health system of Ecuador and the detection of critical knots on the violation of the right to health and life of its users; based on the regulatory framework of the health system, its regulations, structure, policies and scope within the lines of research of qualitative-quantitative modality when describing the current situation in relation to the health system, medicines, medical services, as well as the analysis and interpretation of these, and as a result the design of legal alternatives within the framework of the Law on information and price indices and the violation of consumer rights.*

**Keywords:** violating the right to health and life, health system.

## INTRODUCTION

The World Health Organization (WHO) states that "health is a state of complete physical, mental and social well-being and not only the absence of affections or diseases" (Ombudsman's Office Colombia, 2017). The enjoyment of the highest attainable standard of health care is one of the fundamental rights of every human being, regardless of race, religion, political ideology or economic or social status.

Therefore, the right to health involves activities that prevent, promote and protect and involve a holistic approach that includes the physical and social environment, as well as this right implies an action of conservation and restoration by the State, society

The Committee on Economic, Social and Cultural Rights states that the right to health contains four fundamental elements that are related:

- AVAILABILITY, there must be a sufficient number of public health facilities and services, as well as comprehensive health programs. Coordination between establishments in the system is relevant to cover the basic needs of the population in an integrated manner.
- ACCESSIBILITY, emergency health facilities and services must be accessible to all. At this point we can say that there should be no discrimination. And to be able to have physical, economic accessibility and access to information, thus providing a health system based on human rights.
- ACCEPTABILITY, health facilities and services must respect medical ethics and culturally appropriate criteria. The patient must be informed about his diagnosis and treatment, and respect his will.
- QUALITY, you must have an adequate, suitable and necessary infrastructure to be able to meet basic needs, this includes having tools and having qualified personnel to be able to act in medical emergencies.



The right to health, addressed from a constitutional point of view according to art. 32 of our Constitution, states that health is considered a right and is linked to other rights, such as water, food, education, work, social security, healthy environment and other rights that sustain good living, and details that the State will guarantee this right: through the implementation of economic policies, social, cultural, educational and environmental, with the aim that people enjoy the right to health in a permanent, timely manner, and without exclusion or discrimination. (Acosta, 2020)

The aforementioned article also distinguishes the types of scope of the right to health: "comprehensive health care, sexual health, and reproductive health" (Constitution of Ecuador, 2008), and establishes that health services will be developed under the "principles of equity, universality, solidarity, interculturality, quality, efficiency, effectiveness, precaution, and bioethics, including gender and generational approach" (Constitution of Ecuador, 2008).

The global crisis due to the covid-19 virus has highlighted the serious failure of health systems and Ecuador is no exception. Mexico found that there can be a constitution and an infra-constitutional normative text, which in its text guarantees rights and may even have a state structure that regulates health services, but this does not guarantee that in this type of health emergency the necessary measures can be taken to protect the right to health of the population. or a state structure that actually works to provide optimal health conditions. (Institute of Constitutional Studies Queretaro, 2021)

#### **Right of access to medicines**

In art. 362 of the Ecuadorian Constitution, establishes that public health services must be universal and free also include procedures for diagnosis, treatment, and the provision of medicines, and in art. 363.7 Develops the scope of the right of access to medicines, stating that it is the responsibility of the State to guarantee the availability of and access to quality, safe and effective medicines, including regulation of their marketing, and the promotion of national production, and the importance of the use of generic medicines, emphasizing that in access to medicines the interests of public health will prevail over commercial and economic interests.

Therefore, the Organic Law of Health in Art. 9 states that the State must guarantee the population access and availability of quality medicines at low cost, emphasizing the importance of generic medicines, guaranteeing free treatment in cases of HIV, AIDS, hepatitis, dengue, tuberculosis, malaria, among others. (Organic Health Law, 2015)

The Organic Law of Health regulates in the same way the establishments authorized for the sale of medicines, in its Art.154 in the same way emphasizes the obligation to guarantee by the state the access and availability of medicines prioritizing the interests of public health over economic and commercial ones.

In conclusion, the effect of the horizontality of the right is to make legal connections that allow linking the guarantee of the right to health and access to medicines is fulfilled in its entirety, and even more so in cases of emergency where human life is involved, but it is painful to know that no matter how much normative text is developed, In cases of emergency, private establishments do not provide care without the patient or his relatives establishing financial guarantees to ensure their payment, when the aforementioned normative text is clear and emphasizes that in cases of emergency care will be free. (Acosta, 2020)

#### **The right to life in relation to medical services, medicines and costs**

Among all the human rights that are recognized in the Ecuadorian Constitution, the right to life is considered one of the most important of man, on which the rest of the rights depend, because without it, the others would be meaningless; That is why it is stated that the right to life is a sine qua non for the existence of other rights. Undoubtedly, the most important task of all is to secure the right to life for every person on earth. In the famous Siete Partidas that Alfonso X the Wise left us, it is said that: "whoever deprives me of life, deprives me of my other rights" (Galiano, 2019)

When it comes to the right to life, it is impossible not to mention that it is first and foremost a right inherent in personality or very personal as it is called. Roger Vide (1985) states that the right to life will be subordinated to rights inherent in personality or fundamental rights, depending on the legal context in which protection occurs, or in the context of private law will constitute the rights of



individuals, and in the field of public law, in particular constitutional law, It shall be referred to as fundamental rights. (Peña, 2021)

The right to life is a human quality that enables the individual to exercise other basic rights. Given its importance, it is an absolute right that cannot be suspended in any way, even in exceptional cases, and must be protected by law. No one shall be arbitrarily deprived of his life. This right includes not only aspects related to ensuring the life cycle (growth, reproduction and death), but also the fact that the needs of food, water, employment, health, housing and others are met.

The State is in charge of administering the resources of the people, therefore it should guarantee solid public health institutions with the capacity to offer efficient, effective and adequate medical services for every human being who needs it, for which it is necessary to provide them with the necessary logistics to guarantee quality medical and hospital care to those infected, as well as complete protection in terms of occupational hygiene for professionals who are on the front line of confronting the virus so that they can carry out their daily work without risk or with the least possible for their contagion and survival.

#### **The right to humane treatment in relation to medical services, medicines and costs**

The right to humane treatment is another of the human rights protected by international law: Article 5 of the American Convention on Human Rights and Article 7 of the International Covenant on Civil and Political Rights provide for the content of this right.

One of the main rights related to the right to life is the right to humane treatment and according to the American Convention on Human Rights, the right to integrity consists of three aspects:

- Physical, mentions the conservation of the anatomical structure of the human body, each of its bodily or physiological functions of its organs.
- MORAL, refers to the ability and autonomy that a person possesses to maintain, change or develop their own personal values.
- PSYCHIC, is linked to the total preservation and without impairment of the psyche of every human being; that is, of their mental functions.

According to the American Convention on Human Rights, personal integrity implies a set of conditions that will allow a person to lead a full life, which is why it is related to the protection of human dignity and other fundamental rights such as: personal freedom, life or health. In this regard, it should be noted that all States that are parties to the American Convention on Human Rights have the obligation to respect and guarantee the right of every person to integrity, which includes the certainty of human, psychological and emotional well-being, and to punish conduct contrary to human integrity, as well as human rights provided for in international instruments. (Moreno, 2021)

The Ecuadorian State has the duty to ensure that, in any public or private health establishment, the patient's right to receive dignified, humane and professional treatment is preserved, as well as in Art. 66 states:

"The right to personal integrity is recognized and guaranteed to people, which includes: physical, mental, moral and sexual integrity, A life free of violence in the public and private sphere. The State shall adopt the necessary measures to prevent, eliminate, and punish all forms of violence, especially that exercised against women, children, and adolescents, older persons, persons with disabilities, and against any person in a situation of disadvantage or vulnerability" (Constitution of Ecuador, 2008) Therefore, the authorities must have greater empathy and be aware that exposing personal information of patients who have tested positive for COVID-19 could threaten their integrity, since those who suffer from it may be threatened, victims of aggression or discrimination in any of its areas.

Likewise, in the report of the Ombudsman's Office, which expresses concern about the complaints registered by the institution during the pandemic. Among others, it has been evidenced by the National Human Rights Institution that there is a shortage of medicines, limited number of vaccines, problems in obtaining medical attention and constant non-compliance with sentences on access to medicines. Nearly 60% of the petitions received during these 12 months of pandemic refer to violations of the right to health of the inhabitants of Ecuador.



In addition, it indicates that a setback has been confirmed in the national table of basic medicines - CNMB covered by resolutions issued by the Ministry of Public Health (MSP); as well as the lack of classification of diseases in the categories of catastrophic, highly complex and infrequent, which makes it difficult for patients to access retirement due to disability or disability.

It is worth mentioning that the right to health is closely related to the right to life; In this regard, the Constitutional Court of Ecuador, in judgment No. 679-18-JP/20, has been emphatic in stating that the State has the obligation to safeguard this fundamental right through appropriate public policies that guarantee, inter alia, the availability of and access to quality, safe and effective medicines. It is essential to understand the shortage of pentavalent vaccine, used to combat diphtheria, tetanus, pertussis, hepatitis B and haemophilus influenza, in children under one year of age; the IPV vaccine provided against polio for children under one year of age; the OPV vaccine that is needed to prevent polio in children under five; and, the DPT vaccine that is necessary to prevent diphtheria, pertussis and tetanus in children under five years of age. The omission of this inoculation process constitutes a violation of the essential and priority human right, contained in objective 3 - Health and Well-being of the Sustainable Development Goals (SDGs) and in article No. 24 of the Convention on the Rights of the Child, which establishes the right of children and adolescents to enjoy the highest attainable standard of health, including vaccination.

So it is summarized that health, in addition to being a right, is a public service of mandatory provision by the State, which must guarantee it, constantly. Article 32 of our Constitution prescribes universality, quality, efficiency, effectiveness, gender and generational approach, as principles governing the provision of health.

## **MATERIALS AND METHODS**

The research methodology developed is the theoretical descriptive analysis and qualitative modality, since basic information has been extracted when describing the current situation of the health system, medicines and medical services, applying an electronic survey, as well as analysis and interpretation.

On the other hand, a descriptive and inductive-qualitative analysis was made that allowed the analysis of theoretical and empirical evidence using methods and techniques of information and data collection, with the qualitative and quantitative guidance it was sought to recognize characteristics of the fact to be investigated.

### **Types of Research**

**Bibliographic Research.** - Information was taken from different bibliographic sources, such as: books, magazines, brochures, scientific articles among others necessary to structure the theoretical framework of the research.

**Descriptive research.** - It was used to analyze the current situation of vulnerable groups, in order to describe and analyze how speculation on the prices of medicines and medical services affects people's right to health and life during the pandemic.

### **Research Methods**

**Inductive - Deductive Method.** - It was used during the diagnostic stage, with the purpose of identifying the causes and effects of the violation of the rights to health and life in the users of the health system of Ecuadorians.

**Analytical Method - Synthetic.** - This method was used to divide information on the violation of the rights to health and life in users of the health system in Ecuador.

**Historical-logical method.** - This method was applied to collect historical data on the evolution and development of the health system in Ecuador and the way in which the violation of the rights to health and life of users has occurred.

### **Techniques and instruments**

**The survey.** - The survey guide was applied as an instrument to the selected sample - lawyers in free professional practice of the city of Ambato registered as company 15, which are part of the study that allowed the collection of information from the process of review of the legal treatment given in Ecuador.



## RESULTS

The management of the health sector needs a conceptual rethinking and a structural redesign so that the state fulfills its constitutional duty (not any gift) to guarantee the right to health of the population, as a contribution and mechanism for social development and the reduction of poverty and inequality. Within the framework of a national State health policy, which tends towards equity, its contents must be formulated participatively and developed by various institutions and social actors. The Ministry of Public Health cannot be the only body responsible for public health policies. Public health is a social good and it is society as a whole that must direct its development.

	Question	YES	NO	YES %	NO%
1	Do you know the challenges or changes that the State will have to implement after the pandemic?		15		100%
2	Do you know about the right to health and whether the state has established legal alternatives related to the pandemic?	15		100%	
3	Were the rights to life violated with the declaration of a pandemic by the World Health Organization?	15		100%	
4	Have human rights been violated in the pandemic?	15		100%	
5	Can the State restrict human rights to protect public health?		15		100%
6	Do you consider that, if legal alternatives are created within the framework of the Law, health services and respect for citizens' rights will improve?	15		100%	

## DISCUSSION

In relation to the results of this research, the respondents state that the legal norms that govern the health system and the citizens' right to health and life must be applied and improved with equity and justice, which is based on what was stated by the Ombudsman's Office, as a National Human Rights Institution. In exercise of its mandate to protect the human rights of the inhabitants of the country, expresses its great concern about the problems that continue to affect patients who come to the Public Health Network and, in particular, those who suffer from catastrophic, rare, highly complex and rare diseases, a fact that evidences the irresponsibility, ineffectiveness, inefficiency and mismanagement of public resources by the competent State portfolios and institutions, for which reason it makes the following exhortations:

To the Ministry of Public Health (MSP) and the Ecuadorian Social Security Institute (IESS):

1) To carry out all the pertinent procedures to stock up on medicines, medical devices and supplies for the care of patients suffering from all types of diseases.

(2) To provide quality medical care to all persons, in accordance with the provisions of the Constitution of the Republic of Ecuador, international instruments and other regulations in force in the Ecuadorian legal system.

3) To comply with all judgments regarding access to information and the provision of medicines, medical devices and supplies for patient care, urgently.

4) To carry out the corresponding investigations due to the lack of supply of medicines, medical devices and supplies for the care of patients and to send the findings of these to the pertinent control authorities.

To the MSP:



- 1) To incorporate into the national table of basic medicines - CNMB all the medicines necessary to guarantee the right to health, to the integrity of life of all people, privileging the application of the human rights approach and the application of the standard or norm most favorable for the validity of human rights in the face of economic or monetary issues.
- 2) To carry out, urgently, the classification of diseases in the categories of catastrophic, rare, highly complex and infrequent, so as to allow people to access retirement due to disability or disability.
- 3) To continue and expedite the qualification processes for obtaining disability cards.
- 4) Through its attached technical body, the National Agency for Regulation, Control and Sanitary Surveillance-ARCSA to carry out price control of medicines for human use that are marketed within Ecuadorian territory, in order to avoid speculation and comply with the prices determined by the National Council for Fixing and Reviewing Prices of Medicines for Human Use and Consumption.
- 5) Through its attached technical body, the Agency for Quality Assurance of Health Services and Prepaid Medicine-ACESS to monitor and control the quality of the services provided by health providers, ensuring the safety of patients and users through regulation and quality assurance and under gender rights approaches, Interculturality, generational and bioethical.
- 6) To guarantee access to the necessary vaccine doses, foreseen in the vaccination schedule in force for 2021, so as to solve the serious difficulties identified, at national level, in the process of inoculation of children under 5 years of age, avoiding violating the rights to health, life and public services of optimum quality for girls, children and adolescents.

To the courts, Provincial Courts, Tribunals and the Constitutional Court:

- 1) To effectively monitor compliance with their judgments regarding access to information and medicines, medical devices, supplies for patient care and medical care. If non-compliance is detected, they are urged to apply the necessary measures to sanction the authorities that fail to comply with judicial decisions that guarantee the rights to health, integrity and life of people.

To the Attorney General's Office:

- 1) To initiate, immediately, investigations by the prosecutors of each province of the country, which will make it possible to determine if there are connections between shortages in the public health network and drug speculation. (Ombudsman, 2022)

In addition, the Consumer Protection and Defense Code establishes as consumer rights the protection of their economic interests and, in particular, against unfair terms, coercive commercial methods, speculation or hoarding in a duly declared emergency situation or any other similar crime and interestedly misleading information about products or services. "In emergency situations, hoarding and speculation of goods or services officially declared essential is prohibited. This prohibition applies in the time and geographical space indicated in the norm that establishes the declaration of the regime of exception", also reads the same Code.

## CONCLUSIONS

It is concluded that the health system, both the public and private sectors, for different reasons, present various problems in the provision of their services, which generate the dissatisfaction of their users and the compromise of the quality of care.

With regard to public health, problems involving the precariousness and reduction of their physical structures are identified; shortage of material and human resources; Reduction of care units, hindering the population's access to diagnostic and therapeutic methods. These problems are caused by the fact that there is less and less budget for the operation of the health system, which restricts or makes adequate public procurement unfeasible.

Ecuador itself lacks universal health coverage without medical records that can be accessed virtually through public and private providers. However, the country has capacity, from civil society organizations, local political offices and public institutions with knowledge or contact with their communities, these local multisectoral structures helped adopt a modular testing and information strategy that improved unnecessary mobility and increased the need for health care facilities (Molina, 2020).



Health centers would aggregate data to improve epidemiological modeling and provide specialized support. When the incidence of infection is low, potential groups should already start working, convening local stakeholders to assess existing social assets and potential support from the overall health system (Sedano-Chiroque, 2020).

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