

Confronting COVID19 in Colombia

A Brief Introductionⁱ

On 6 March 2020, dread became reality for Colombians when the [first confirmed case of COVID19](#) was registered in the nation's capital, Bogotá. What was once a far-off health crisis in Europe and Asia had arrived with apocalyptic force, bringing with it a wave of panic and fear and changing overnight the social and political landscape, which for the past 3 months had seen hundreds of thousands of [Colombians taking to the streets to protest](#) for social and political change.

Reacting quickly to the pending crisis, the Ministry of Health issued Resolution 380 on 10 March, which instituted a mandatory quarantine period for people arriving from certain countries especially affected by the COVID19 pandemic. This was followed by its 12 March Resolution 385, which declared a national health emergency and placed restrictions on large gatherings, mandated hygienic measures to be implemented in public institutions, and grounded all maritime passenger travel.

The government response reached its climax on 17 March 2020, when Colombian President Ivan [Duque declared a state of emergency](#) and on 22 March 2020, when the Ministry of the Interior issued a [mandatory quarantine decree](#). These measures taken by the government seemed to open the floodgates to an ever-expanding

promulgation of decrees, resolutions, circulars, and directives by the President and his ministries, and governors and mayors. By 25 May 2020, there had been 211 measures adopted to confront the COVID19 crisis. Because of the sheer number of measures adopted in Colombia, the task of monitoring and challenging such measures to ensure their compliance with permissible human rights restrictions has proven extremely difficult.

Therefore, the purpose of this three-part policy briefing series is twofold. First, we hope to provide critical and timely information to researchers, academics, and activists who are planning to travel to Colombia and/or conduct field work, as well as for those currently residing in Colombia. Second, we aim to identify the impacts on the enjoyment of human rights and the peace-building agenda, as well as to analyse how the economic toll of the pandemic will likely affect human rights policies and peace-building efforts in the future. In this first instalment, we will attempt to provide a broad overview of the 211 measures Colombia has taken in the wake of the COVID19 pandemic, and the ways in which such measures may or already have impacted human rights. While the first section of this policy briefing will be more descriptive in nature, in the second part, we will present some of the particular challenges related to these measures in Colombia. Lastly, we will mention some of [Dejusticia's litigation efforts](#) and interventions before the Colombian Constitutional Court to ensure the protection of human rights during the COVID19 pandemic.



Overview of COVID19 Measures

To date, the Colombian national and local governments have enacted 211 legal measures aimed at responding to the COVID19 crisis. This hyperinflation of norms has bled into every area of private and public life, as the implications of these measures run the gamut from encroaching on civil/political rights to economic/social/cultural rights. The following section provides a brief overview of some of these COVID19 measures, which can be broadly characterised as those restricting movement, those ensuring public services such as health, those addressing other socio-economic provisions, and those relating to access to courts and public information.

Restrictions on Movement

Measures to limit the freedom of movement have been the most widely utilised and discussed, due to their severe restrictions on this fundamental human right. Declared in furtherance of public order, the Colombian Ministry of the Interior announced Decree 457 which mandated a mandatory quarantine from 25 March until 13 April, and Decree 531 extended the quarantine until 27 April. Generally speaking, the decrees confined all people to their houses and prohibited the circulation of vehicles, with some exceptions: people who provide health services, work in grocery stores, or work in food transportation, banks, prisons, etc. were exempt, and one person from each household was allowed to

leave to buy groceries, receive certain health services, use banking services, or take their pets out for 20-minute periods. Decree 593 extended the quarantine to 11 May, but allowed the [opening of certain construction and manufacturing businesses](#), as well as some gambling establishments. Decree 636 extended the quarantine once again to 25 May, and on 19 May, the President extended it once more to 31 May. During this current phase of the mandatory quarantine, people are now [allowed to exercise outside](#), albeit with stringent parameters. Also, Colombian municipalities, which are [unaffected by the virus](#), may request the lifting of quarantine measures.

As a result, people whose livelihoods depend on face to face interaction, such as [sex workers](#) and street vendors, will face disproportionate impacts on their livelihoods. Local police enforcement of isolation measures could also lead to disproportionate impacts on vulnerable groups such as trans women, youth, the homeless, and [those protesting for basic food and health necessities](#) expose themselves to public scorn and police retaliation.

President Duque announced Decree 637 on 6 May, which renewed the state of emergency for another 30 days. On 19 May, President Duque announced that [businesses would gradually start opening](#) beginning on 1 June, but with the rapidly-evolving COVID19 crisis, it remains unclear how and to what extent this reopening will be carried out.

With regard to flights, on 15 March, the Ministry of Health banned all



international passenger flights through Resolution 408, which would last until 30 May. Similarly, Decree 457 instituted a ban on all domestic passenger air travel starting on 25 March and lasting until 13 April. The Ministry of the Interior subsequently extended this ban until 11 May through Decree 593 and again until 25 May through Decree 693. Currently, Colombia has [extended its ban on international passenger flights](#) until at least 31 August and its [domestic passenger flights](#) until at least 30 June.

Community-specific restrictions on movement and travel may lead to disproportionate impacts on protected groups living in the rural areas. The Ministry of Culture announced External Circular on 13 March and Circular No. 001 on 14 March to prevent the spread of COVID19 among Indigenous, Afro-Colombian, Raizales, Palenqueras and Pueblo Rrom communities. Both mandates are in effect until further notice. These circulars include mandates for hand washing and hygiene in these communities along with restrictions on large community gatherings. These measures also limit in-person visitations by NGOs, unless cases of extreme necessity demand such visitations. Although these restrictions are intended to protect the public health of marginalised communities, they could run the risk of limiting critical communication with NGOs, especially since only 17% of Colombia's rural population has [access to internet](#). Additionally, [mandatory quarantine for human rights defenders](#) living in these communities may increase their risks for threats or assassinations,

as they are easier to find in their homes.

Public Health Provisions

The Colombian government has announced multiple measures to regulate public health. Decree 476 from the Ministry of Health guarantees prevention and treatment services for COVID19, along with provisions to secure testing logistics. Currently, there are [54 medical centres](#) in the country administering COVID19 testing, and there are about 13,500 tests administered each day. For those with the mandatory health insurance in Colombia, testing is covered by the insurance. With respect to sectors of the [population without health insurance](#), such as migrants and the homeless, the government has guaranteed the administration of testing without cost. Additionally, the country is equipped with 2,650 ICU beds for COVID19 patients, and only [130 are currently occupied](#). The Ministry of Health also announced Decree 499 to relax contractual conditions for acquiring medical devices and other items, such as personal protective equipment, to provide health services to the infected or potentially infected population. This measure was taken in order to manage the crisis and mitigate its negative effects, and as required, the decree is based on an in-depth factual justification.

Decree 538 from the Ministry of Health made it [mandatory for medical professionals to provide medical service](#) and, in Article 11, the Decree discusses financial compensation for this work, but



fails to specify how much and how many times compensation will be provided. Decree 538 could have serious human rights implications related to labour law and freedom of contract, and it is currently being reviewed by the Constitutional Court.

Other Socio-Economic Provisions

Many vulnerable groups will also face downstream socio-economic repercussions from the COVID19 pandemic, especially related to their informal employment status. The Colombian government has implemented a host of measures to help ameliorate socio-economic uncertainties resulting from COVID19.

Decree 441 from the Ministry of Housing, City and Territory guarantees the right to water and sewage services, and Decree 467 and 470 from the Ministry of Education create provisions to implement education through digital platforms. The Ministry of Agriculture guarantees access to food and basic necessities through Decree 486, and the Ministry of Information and Communication Technology (Decree 464) and the Ministry of Energy (Decree 517) have deemed services such as electric power, fuel, and telecommunications as essential, creating mandates to ensure their provision.

With respect to [cash transfer programs](#), Colombia is already equipped with the [Families in Action](#) program since 2001 and the [Youth in Action](#) program since 2013. Both programs provide conditional cash transfers to

vulnerable families and youth that comply with the nutrition, education, and other programmatic requirements. In order to provide cash transfers to the vulnerable population that is currently not a beneficiary of these cash transfer programs, social protection subsidies for the elderly, or sales tax compensations, the Ministry of Finance and Public Credit created the Solidarity Income program on 4 April through Decree 518. Through the program, so far, [about 2 million beneficiaries](#) have received two payments of 160.000 pesos (roughly USD\$42) and will be shortly receiving their last payment of 160.000, for a grand total of about USD\$126. The program is expected to benefit about 3 million Colombians in total, although there is concern that [many qualifying people will not receive a cash transfer](#) for failing to show up in the government's databases.

Financial measures also include the Emergency Mitigation Fund outlined in Decree 444 from the Ministry of Finance and Public Credit. [The fund provides financing](#) to private, public, or semi-public companies that carry out activities in the national interest. Additional measures include Decree 513 from the Ministry of Finance and Public Credit, which will be providing funding for public investment projects. Decree 486 from the Ministry of Agriculture also created a cash transfer program for [Colombian farmers over 70 years old](#).

Access to Courts and Information

The Superior Council of the Judiciary of Colombia announced



several measures in response to the COVID19 pandemic. On 23 March, the Judiciary [suspended administrative processes](#) related to coercive collections, salary and benefit claims, and disciplinary proceedings. Activities exempted from this suspension include critical functions such as constitutional revision of legislative decrees and evaluation of administrative acts issued during current state of emergency. Accord PCSJA20-11556 [extended this suspension until 8 June](#). The Accord also clarified that *tutela* (actions for immediate protection of an individual's fundamental constitutional rights) and habeas corpus actions are exempt from the suspension, as well as proceedings in the Constitutional and administrative jurisdictions related to judicial review of COVID19 measures.

Through Decree 491, the Colombian government significantly extended the amount of time it has to answer public requests for information. In Colombia, these requests for information from public institutions (*derechos de petición*) are enshrined in the Constitution as a fundamental right, and public institutions are required to resolve requests within 15 days (if it is a request for information or documents, it needs to be resolved in 10 days, and if it is a request to authorities related to their mandates, within 30 days). Decree 491 doubled the response time of the first two types of requests and changed the 30-day response time for mandate requests to 35 days. Despite this limitation on a fundamental right, the Decree does not include protocols for prioritising critical information on public health remedies, scientific

research, subsidies, or economic relief.

Concerns and Challenges of COVID19 Measures

While states of emergency and exceptional measures are permitted, and often necessary, to confront crises of such magnitude as the COVID19 pandemic, it is imperative that any restrictions or limitations on human rights are taken within the permitted parameters and are temporary. The [OHCHR](#) reminds states that restrictions on the freedom of movement, freedom of expression, and freedom of peaceful assembly should be necessary and proportionate to the interest at stake and should be applied in a non-discriminatory manner.

In the case of Colombia, such obligations should be closely complied with by the Colombian courts and the Congress to ensure the fundamental rights enshrined in the Colombian Constitution are not violated. This is especially necessary in light of Colombia's long experience with suspending large portions of its various constitutions through declaring states of exception, beginning in 1886. In fact, from 1886 until 1991, the year in which Colombia's current Constitution went into force, Colombia lived in an almost perpetual state of exception, facilitating the governments' abilities to violate a whole host of its citizens' rights. For example, between 1970 and 1991, Colombia lived [18 out of 21 years under a state of exception](#). While the [current 1991 Constitution introduced](#) time limits, stringent constitutional



judicial review, and other substantial prohibitions, this long history of abuse under the guise of legal authority still hangs in the minds of Colombian activists and scholars.

In Colombia, states of exception can be [categorised into three types](#): external war, internal unrest, and state of emergency. On 17 March 2020, President Duque declared an Article 215 state of emergency, which covers crises that threaten the economic, social, or ecological order or constitute a serious public calamity. The Colombian Constitution also establishes provisions on the duration, scope, and breadth of such emergency declarations. Exceptional circumstances must be met for a state of emergency, the President must solicit the signatures of all his/her ministers, and a direct and specific connection between the crisis and the state of emergency must exist. Moreover, a state of emergency can last for thirty days per declaration, and although multiple declarations are possible, their sum [cannot exceed ninety days](#) in a calendar year.

In addition, subsequent states of emergency declarations do not have to be continuous; for example, President Duque waited almost three weeks after the expiration of the first state of emergency to declare the second one on 6 May. If the President declares a third one on 5 June, the final state of emergency would expire on 5 July, and the government would not be able to declare any more states of emergency this calendar year. However, independent of this time restriction, the government can

declare a state of internal unrest, during the current state of emergency or after, and this state of internal unrest can potentially last for 180 days. In addition, during a state of internal unrest, the President is granted [expansive legislative powers](#) and can limit and restrict fundamental rights to address the internal unrest. Currently, [there is an unresolved debate](#) regarding whether the government can or should declare a state of internal unrest.

While Colombian scholars and activists see the [state of emergency as justified](#) in dealing with the pandemic, there exist many concerns over how measures related to COVID19 should be enacted, as well as which court gets to review such measures and when. With the lack of consensus on critical issues as these, guaranteeing fundamental human rights during the pandemic will continue to be precarious in Colombia.

Ordinary vs. Exceptional Measures

The current debate centres on the distinction between the two types of measures that may be taken by the executive branch to address the COVID19 crisis during the state of emergency: ordinary power measures and exceptional power measures. Each type of measure is attached to different political controls and judicial review procedures. As such, the type of measure enacted has important human rights implications.

Extraordinary power measures draw their legal authority from the states of exception enshrined in the Constitution. Specifically,



exceptional power measures, according to Article 215 of the Constitution, may be taken unilaterally by the President and his ministers, as long as the measure is exclusively directed towards ending the crisis and its respective effects and is strictly tailored to that purpose. Each exceptional power measure is subject to review by the Congress within 30 days of its enactment. Moreover, the Constitutional Court has automatic judicial review over each measure to ensure it is constitutional, which it begins to exercise the day after its enactment.

In contrast, ordinary power measures taken by the executive in states of exception are usually administrative and [claim to derive their power](#) from the ordinary governmental functions of preserving and restoring the public order. Measures adopted through these [ordinary powers have no time limits](#) and are subject to judicial review only by the State Council, and only if an individual brings a challenge. In such cases, [a challenge to an ordinary power measure](#) may take years to resolve.

As such, ordinary power measures adopted in states of exception are especially susceptible to abusing fundamental human rights, given their weak judicial and political controls and their potentially indefinite duration. In this vein, it is concerning that the Colombian government has enacted its most sweeping and restrictive measures using ordinary powers. For example, the [measures related to mandatory quarantine and border closures](#), which place enormous restrictions on human rights, have

been enacted through ordinary powers. With regard to judicial review, the [questions circulating regarding ordinary power measures](#) such as these are the following: 1.) are these measures derived exclusively through ordinary powers, and as such, only subject to the State Council's judicial review upon a challenge, 2.) even if such measures are exclusively derived from ordinary powers, should the State Council, nonetheless, exercise automatic judicial review, since the measures are related to addressing the crisis, 3.) should the Constitutional Court exercise automatic judicial review over such measures, since their content is materially legislative. While the debate still remains unresolved, time is of the essence for Colombia to establish an authoritative approach to monitoring and reviewing the 211 measures that have so far been enacted. At any rate, it is particularly concerning that, more than two months after its enactment, the Constitutional Court has just ruled (on 20 May) that the [17 March state of emergency is constitutional](#). This [is the only COVID19 measure](#) that has so far been decided by the Court.

With regard to political controls on measures taken during the state of emergency, the Congress also plays a fundamental role in reviewing, and if necessary, legislatively overturning or modifying such measures. While the Congress must review all measures derived from exceptional powers, there is no consensus on whether to review, and when, ordinary power measures. Another enormous challenge the Congress has faced is related to holding regular sessions,



since prior to the pandemic, there was no legal authority for the [Congress to hold sessions virtually](#). Despite Decree 491 permitting the Congress to convene virtually, there still remains much uncertainty regarding the legality of this change of venue. As a result of the debates and uncertainty regarding the role and procedures of the Congress, [only 7 bills](#) have addressed any of the state of emergency measures adopted by the executive branch. With the [Senate's virtual sessions](#) starting on 13 April, and the [House of Representatives](#) starting the following day (the HoR has since switched to [semi-virtual sessions](#)) it remains to be seen whether the Congress will effectively exercise their powers to limit and review the executive's enormous power during the state of emergency.

Dejusticia's Litigation

In the midst of the mass promulgation of measures at all levels of Colombian government, navigating the political and judicial landscape has proven to be a difficult but necessary task. With the heightened potential for violations of fundamental human rights brought by the state of emergency, Dejusticia has been closely monitoring the measures that have been enacted, and when it deems necessary, challenging certain measures before the Constitutional Court. The following cases highlight these challenges and interventions and help to show the complexities of protecting human rights in a state of emergency.

Measures related to movement: On 22 April, [Dejusticia sent a petition to the Constitutional Court](#) regarding

Decree's 457, 531, and 536, urging the Court to exercise its judicial review over these quarantine-related measures. The petition argues that, although restrictions on movement are proportionate and necessary to the COVID19 pandemic, these measures draw their power from the state of emergency, and therefore, should be adopted through exceptional instead of ordinary powers.

Measures related to health: Dejusticia is currently developing its litigation strategy to challenge Decree 538, which, among other things, obligates medical personnel to work.

Other socio-economic responses: Dejusticia has also pursued litigation on specific issues relating to Decrees 555, 444, and 486. Dejusticia challenged [Decree 555](#) because of its differential treatment between prepaid and postpaid cell phone users. Dejusticia argues that these measures unjustly differentiate against economically vulnerable groups. For [Decree 444](#), Dejusticia argues that the creation of the Emergency Mitigation Fund, although constitutional, should prioritise strengthening the healthcare system coverage and guarantee services to the most poor and vulnerable populations before moving to other financial issues. For Decree 486, Dejusticia has argued to the Court that farmers above between 60 and 70 years old should also be included in the measure.

Measures related to access to information: [Dejusticia has challenged Decree 491](#) before the Constitutional Court, which extends the time public institutions have to



respond to petitions for information. In its intervention, Dejusticia asked for an exception for information related to the health crisis, arguing that such petitions for information should be resolved in a time period even shorter than the normal amount given.

What's Next?

The scale of the COVID19 crisis and its unprecedented impacts on Colombia's economic, social, and political environment and the peace process necessitate oversight and timely research. As discussed above, COVID19 measures have implicated issues of constitutional and congressional authority along with far-reaching impacts on movement, public health, the economy, and service provisions. These changes will inevitably impact the work of human rights activists and academics, as well as the daily functioning of transitional justice institutions. Such changes may last beyond the duration of the government's emergency declaration and likely extend after the COVID19 pandemic. As shown in this policy briefing, the legal measures are being enacted at breakneck pace, with subsequent measures extending the time limits of previous measures. At the same time, judicial review and political control over such legal measures has been significantly lagging. In such a chaotic and ever-changing context, which has left more questions than answers, the prospects for a return to normalcy in the near future remain uncertain. The next policy briefings in this series will build on specific ways in which the COVID19 pandemic and

the Colombian government's response will impact the implementation of the Colombian peace process and the ways in which the Colombian economy and fiscal policy will be impacted.

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