

Mexico City, April 16, 2020

Human Rights impact of the declaration of sanitary “emergency” due to COVID-19

This document consists of three parts: an introduction to the Decree (first part); a brief analysis of the impact of the decree from a human rights perspective (second part); and conclusions and recommendations (third part).

I. Introduction

On March 30, 2020, the General Health Council published in the Federal Official Gazette (“**DOF**”) a decree declaring the disease caused by the SARS-CoV2 virus a health emergency due to force majeure, stating that the Ministry of Health will determine all the actions that are necessary to attend to said emergency¹.

Extraordinary actions derive from this decree, which *de facto* constitutes certain restrictions on human rights, due to the implementation of various actions directed to the entire population, in order to mitigate the spread and transmission of the COVID-19 virus.

It is essential to mention that the aforementioned decree must be interpreted jointly with the following:

- Decree dated March 27 published in the DOF by the Head of the Federal Executive Branch, declaring extraordinary actions in the affected regions of the entire national territory in terms of general health to combat the serious disease of priority attention generated by the SARS-CoV2 virus; and;
- Decree dated March 31 published in the DOF by the Ministry of Health, which establishes extraordinary actions to address the health emergency caused by the SARS-CoV2 virus.

From these actions, measures are derived whose effect is the restriction in the exercise of certain rights; however, it is essential to highlight that **it does not in any way constitute a formal suspension of rights**, since if that were the case, it must necessarily be decreed in terms of Article 29 of the Political Constitution of the United Mexican States, which precisely provides for the temporary suspension of rights and guarantees issued by the head of the executive branch and with the prior approval of the Federal Congress or of the Permanent Commission, as appropriate.

¹ To view the full text of the aforementioned decree, click the following link: http://www.csg.gob.mx/descargas/pdf/index/informacion_relevante/acuerdo-covid19-csg.pdf



II. Impact on Human Rights

As indicated in the previous section, the decrees do not constitute any formal suspension or restriction of rights, however, their implementation does entail factual restrictions to such rights, to which we will refer below.

We must emphasize that the purpose of the aforementioned measures, arises from the protection of the **right to HEALTH and LIFE** to reduce the risk of contagion, as well as complications and death from COVID-19 in the population residing in Mexico.

In this sense, the first measure implemented was to request the country's inhabitants to remain at their homes (#quedateentucasa), which necessarily impacts on the **person's freedom**, which implies restrictions to the right of free **TRANSIT**, by limiting citizen outings to work, to carry out recreational and leisure activities, such as the theater, cinema, museums and sports centers, and concatenately limiting the **rights to CULTURE and ENJOYMENT OF FREE TIME**².

In relation to the **right to WORK**, this has been greatly affected, since the immediate temporary suspension of non-essential activities of companies was ordered. In this regard, the Organization for Economic Cooperation and Development ("**OECD**") estimates that Mexico will be one of the most affected countries as a result of closings and stoppages of commercial establishments, as containment measures for the coronavirus, affecting around 30% of national GDP at constant prices³.

Consequently, there are considerable effects on micro, small and medium-sized companies, as well as on informal trade. Street vendors will be one of most affected informal sectors since its active population reaches 4 million people, of which 25% have an informal business⁴, thereby affecting vulnerable groups, particularly: homeless people, indigenous groups, the elderly and people with disabilities⁵, which are the most exposed to the effects of the pandemic, due to the reduction of their scarce sources of employment and the lack of effective public policies to tend integrally to their needs.

The aforementioned affectations to the **right to WORK**, in turn, affect other rights by limiting access to sufficient economic remuneration and decent living conditions for

² Rights recognized in different international instruments, such as the Universal Declaration of Human Rights (Article 24), the International Covenant on Economic, Social and Cultural Rights (Articles 7 d and 15, respectively), and the Protocol of San Salvador (Article 14).

³ OECD, 2020; Report "Assessing the initial impact of the containment measures by COVID-19 on economic activity"; To access the document, see the following link: <http://www.oecd.org/perspectivas-economicas/marzo-2020/>

⁴ Ivette Saldaña (Mexico, 2020); "Coronavirus puts 18 million jobs at risk"; March 24, 2020, from El Universal Newspaper; Website: <https://www.eluniversal.com.mx/cartera/coronavirus-pone-en-riesgo-18-millones-de-empleos>

⁵ WHO, 2020; Report "Disability Considerations During the COVID-19 Outbreak"; To access the document, click the following link: https://www.who.int/docs/default-source/documents/disability/spanish-covid-19-disability-briefing.pdf?sfvrsn=30d726b1_2



workers and their families, allowing them to guarantee other **rights such as to ADECUATE STANDARD OF LIVING, FOOD AND HOUSING**⁶, respectively.

Another side effect derived from domestic confinement to prevent the spread of the pandemic, is that of the increase in domestic violence.

It is worth noting the absence of a gender perspective in the policies adopted to contain the disease, since according to information from the **United Nations Organization (“UN”)** from the start of the pandemic, “the number of calls to help lines in Lebanon and Malaysia have doubled; in China have tripled; and in Australia, search engines like Google experienced the highest volume of domestic violence help queries in the past five years⁷”. Mexico is not the exception: according to information from the Attorney General of Mexico City, during phases I and II of the contingency, there was a 7.2% increase in complaints of family violence, initiating around 1,608 investigation folders for this crime.

In this regard, another effect of the measures taken in Mexico against the pandemic is the negative impact on **GENDER EQUALITY**, since violence against women has worsened in the country, increasing the inequality gap and marginalization of this population group, and putting it at risk by not having effective mitigation measures in this subject, thereby threatening rights such as **HEALTH** and **LIFE**, if we take into account that the WHO considers “health” as “the state of complete physical, mental and social well-being, and not only the absence of conditions or diseases”.

Likewise, the temporary suspension of in-person classes at all educational levels, directly impacts the population's **right to EDUCATION**, since such activities are not considered essential for society during the present health emergency in the decree.

It is worth remembering what the **UN Committee on Economic, Social and Cultural Rights** has established regarding this right in its General Comment No. 13, which states that education in all its forms and at all levels, must have four interrelated characteristics, namely: (i) availability, (ii) accessibility, (iii) acceptability, and (iv) adaptability.

Consequently, given that the country's educational system is not adaptable, since it does not have the necessary and sufficient flexibility to adapt to the needs of societies and communities in transformation and to respond to the needs of students of diverse cultural and social contexts, such as the one that presents the pandemic, the emergency makes education inaccessible and hardly available during the crisis, configuring a material affectation to the aforementioned right.

Regarding **FREEDOM OF EXPRESSION**, the decrees issued by the executive branch consider the existence of risks that must be noticed.

⁶ Rights recognized in different international instruments, such as the Universal Declaration of Human Rights (Article 25), the International Covenant on Economic, Social and Cultural Rights (Articles 7 and 11, respectively), and the Protocol of San Salvador (Article 16).

⁷ According to information from the official UN news portal, available at the following link: <https://news.un.org/es/story/2020/04/1472392>



In this regard, different civil society organizations such as **Reporters Without Borders**, warned that human health did not depend exclusively on immediate access to medical care, but that it also relied on access to accurate information on the nature of threats and the means to protect oneself, as well as the family and the community as a whole.

In this sense, it is essential to establish that international law provides that governments have an obligation to protect the right to freedom of expression, including the right to seek, receive and disseminate information of all kinds, regardless of borders. This means that any permissible restriction to this right on the grounds of public health, cannot jeopardize the right itself; it can only be imposed and applied in accordance with the law, must serve a legitimate general interest purpose and be as less intrusive and restrictive as possible to accomplish its objective⁸.

Finally, it should be noted that **rights such as the right of PETITION**, concatenated with the **right of ACCESS TO JUSTICE**⁹, have been affected as a result of the decision of the Federal Judicial Branch to suspend jurisdictional activities during the pandemic, declaring as unworkable the days starting from March 18, 2020 to April 30, 2020, limiting their operations to certain actions that are considered urgent at federal and local levels¹⁰.

III. Conclusions and Recommendations

It is clear that, with the declaration of emergency due to force majeure, various **human rights** have been restricted -even though they have not been expressly mentioned in the previous lines-, since such are not isolated in the various legal systems, but coexist with other rights in an interrelated and complementary way to achieve a standard of respect and comprehensive protection of the person's dignity.

From a reasonable judgment perspective, preliminarily it could be considered that there is an evident **disproportion**, between the **human rights** that are being preserved, such as **LIFE and HEALTH PROTECTION**, with those previously identified. However, given the spread and imminent contagion in most of the population and the severity of the Covid-19 disease, from the weighting among these rights the measures adopted by the federal government as a consequence of the declaration of "health emergency" are considered necessary, as well as the collateral impact of said measures on the enjoyment and exercise of other rights, as previously noted.

Given the health crisis that the country is experiencing, the health personnel is the most exposed to contagion by coronavirus, therefore, the measures adopted by the government agencies for this purpose are seen as priorities, especially to safeguard the

⁸ In accordance with the standards and considerations developed by the group of special rapporteurs and members of committees and special procedures groups of the UN Human Rights Council (March 2020).

⁹ <http://www.internet2.scjn.gob.mx/red2/comunicados/noticia.asp?id=6099>

¹⁰ General Decree number 3/2020, of the seventeenth of March of two thousand and twenty, of the Plenary of the Supreme Court of Justice of the Nation, by which jurisdictional activities are suspended and, therefore, the days that comprise from the eighteenth of March to April 19, two thousand and twenty, are declared non-workable, and the days that are necessary to provide for the admission and suspension of urgent constitutional controversies are enabled. Available at the following link: http://www.dof.gob.mx/nota_detalle.php?codigo=5589708&fecha=18/03/2020



rights of health workers. Consequently, it is pertinent to consider the strict application of different regulatory instruments, such as:

- NOM-197-SSA1-2000, which establishes the minimum infrastructure and equipment requirements for hospitals and specialized medical care offices;
- NOM-032-SSA2-2002, For the epidemiological surveillance, prevention and control of vector-borne diseases; and
- NOM-017-STPS-2008, Personal protective equipment- Selection, use and management in the workplace

Some suggested measures that can be implemented during the containment of the pandemic without generating adverse effects on the enjoyment and exercise of the human rights of the population, such as in the case of domestic violence, may be to increase investment in online help services, as well as in specialized civil society organizations, and declare shelters for victims of violence as indispensable or essential services, and establish emergency alert systems in pharmacies and commercial establishments.

Any formal restriction and suspension of rights, if applicable, must be declared in terms of article 29 of the Political Constitution of the United Mexican States, as well as of article 27 of the American Convention on Human Rights, and article 4 of the International Covenant on UN Civil and Political Rights.

In addition to the aforementioned, it is worth noting that the Syracuse Principles¹¹, as well as the General Observation No. 5 of the UN Human Rights Committee on states of emergency and freedom of movement provide authorized guidelines on governmental response mechanisms that restrict human rights for reasons of public health or national emergency. Consequently, any measure taken to protect the population that limits people's rights and freedoms must be legal, necessary and proportional. States of emergency must be of limited duration and any reduction in rights must take into account the disproportionate impact on specific populations or marginalized groups.

Finally, it is essential not to forget that in the face of a health emergency, the strictest international human rights standards, such as General Comment No. 14 of the UN Committee on Economic, Social and Cultural Rights¹², provide that one of the indispensable measures to effectively guarantee **the right to health** is to have health facilities, goods and services that (i) are sufficient in quantity and availability, (ii) accessible and the within the reach of all, without any discrimination, even to the most vulnerable and marginalized sectors of the population, and (iii) are appropriate from a scientific and medical point of view, (iv) as well as of good quality.

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¹¹ The Syracuse Principles on the Limitation and Repeal Provisions of the International Covenant on Civil and Political Rights, were adopted by the UN Economic and Social Council in 1984, and are available for consultation at the following link: <http://www.derechos.org/nizkor/excep/siracusa84.html>

¹² UN Committee on Economic, Social and Cultural Rights; General Comment No. 14: The right to the enjoyment of the highest attainable standard of health (Article 12).


