



WHITE & CASE

IFRC COVID-19 Emergency Decree Pro Bono Research: Colombia

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- *Questions to be answered by close of business Friday, 27 March are listed below.*
- *Please be sure to include English translations of relevant text where possible.*

1. Is there coordination between state and non-state actors, e.g. through a national emergency response mechanism?

Like most countries, the Colombian government has passed numerous pieces of legislation in order to tackle the COVID-19 crisis. The Colombian Ministry of the Interior has published a series of decrees, which address a multitude of government responses.

Article 3(6) of the decree issued on 22 March 2020 ("**Decree 457**")¹ mentions that *Organización Panamericana de la Salud* ("**OPS**") and all other international health organizations are entities that are exempted from the prohibition of free movement (which will be explained in more detail below). This is justified on grounds of the right to life and maintenance of health.

Whilst explicit mention of co-ordination between state actors and OPS, the Red Cross and/or other health or humanitarian non-state actors was not found, the Colombian government has ensured (as outlined below) that these organizations will not be hindered in their efforts (with the slight exception being international travel, as will be explained below), and have undertaken in a decree of 8 April 2020 ("**Decree 531**")² - see Article 7 – that medical efforts will not be impeded by the government. Like Decree 457, Article 3(6) of Decree 531 expressly includes (amongst others) the OPS and every international health and humanitarian organization in the list of entities exempted from the prohibition of movement.

Further, and as provided in Article 3 Paragraph 7 of Decree 531, in the event mayors or governors from different cities and departments of Colombia would like to provide exceptions to the decrees, they may do so provided that they consult and coordinate with the Ministry of Interior.³

2. Is there mention of the role of Red Cross (RC) or humanitarian actors? In what areas/sectors? What responsibilities are ascribed to RC?

¹ Available in Spanish: <https://dapre.presidencia.gov.co/normativa/normativa/DECRETO%20457%20DEL%2022%20DE%20MARZO%20DE%202020.pdf>

² Available in Spanish: <https://dapre.presidencia.gov.co/normativa/normativa/DECRETO%20531%20DEL%208%20DE%20ABRIL%20DE%202020.pdf>

³ Available in Spanish: <https://dapre.presidencia.gov.co/normativa/normativa/DECRETO%20531%20DEL%208%20DE%20ABRIL%20DE%202020.pdf>

No such mention has been found in the relevant legislation other than as specified above.

3. Are there exceptions to travel restrictions that will facilitate the movement of RC/humanitarian relief teams and/or aid across borders? What (if any) quarantine requirements or other conditions are attached?

Travel within Colombia

Decree 457 ordered a period of lockdown from midnight on 25 March 2020 to midnight on 13 April 2020 (which was subsequently extended to 27 April 2020 by Decree 531). These Decrees place restrictions on movement within Colombia. There is a complete limitation on the free movement of people and vehicles, as well as a ban on domestic air travel.

The specific exceptions to the lockdown measures are laid out in more detail below, but the travel restrictions are structured such that the Red Cross and other humanitarian relief teams are not restricted (by the operation of law) from accessing various parts of the country, provided they originated their travel within Colombia. This is because the specific exemptions to the lockdown measures, as set out below, only apply to internal travel originated within Colombia, and do not apply as an exemption to the restrictions on people attempting to enter Colombia, for which there are other exemptions as explained further below.

Article 5 of Decree 457 and Article 5 of Decree 531 also allow for certain exceptions to the ban on domestic air travel. These are respective forms of travel being necessary:

- for emergency humanitarian aid;
- for the transport of cargo and merchandise; and
- “due to force majeure or Act of God”

Article 7 of Decree 531 includes an added protection, stating that mayors and governors shall ensure that the full exercise of rights of medical personnel and any other person related to the provision of health service are not impeded or obstructed, nor shall they allow acts of discrimination against them.

Travel into Colombia

Article 1 of Decree 412 of 15 March 2020 (“**Decree 412**”)⁴ issued by the Colombian Ministry of the Interior, indicates that the Colombian land, river and sea crossings with the borders of Panama, Ecuador, Peru and Brazil will be closed from 17 March 2020 to 30 May 2020. Article 1 of Decree 402 of 13 March 2020 (“**Decree 402**”)⁵ indicates that the river and land crossings with the border of Venezuela continue to be closed until 30 May 2020.

Article 2 of Decree 412 provides the following exceptions:

- travel which is necessary “due to force majeure or Act of God”; and
- cargo transportation.

Article 1 of Decree 439 of 20 March 2020 (“**Decree 439**”)⁶ issued by the Colombian Ministry of the Interior, bans all international air travelers from arriving in or transiting via Colombia for thirty (30) calendar days commencing from midnight on 23 March 2020. Only individuals that fall under cases of “humanitarian emergency”, due to “force majeure or Act of God”, or that obtain the prior authorization of

⁴ Available in Spanish:

<https://dapre.presidencia.gov.co/normativa/normativa/DECRETO%20412%20DEL%2016%20DE%20MARZO%20DE%202020.pdf>

⁵ Available in Spanish:

<https://dapre.presidencia.gov.co/normativa/normativa/DECRETO%20402%20DEL%2013%20DE%20MARZO%20DE%202020.pdf>

⁶ Available in Spanish:

<https://dapre.presidencia.gov.co/normativa/normativa/DECRETO%20439%20DEL%2020%20DE%20MARZO%20DE%202020.pdf>

the Special Aeronautic Unit (*Unidad Administrativa Especial Aeronáutica Civil*) and the Special Immigration Unit (*Unidad Administrativa Especial Migración*) are permitted to undertake such travel.

4. Are there exceptions to quarantines, curfews and other restrictions on movement that allow RC/humanitarian organizations access to vulnerable populations (including for psychosocial or non-medical aid)?

Decree 457 and Decree 531 also include exceptions to lockdown measures, which include (as per question 3 above) a ban on the free movement of people and vehicles, and a ban on domestic air travel.

Article 3 of Decree 457 lays out some key exceptions to these rules, which are repeated in Decree 531. The movement of people is allowed in thirty-four (34) (and thirty five (35) in Decree 531) cases or situations. The following are particularly relevant:

1. for health workers to undertake their employment (Article 3(1));
2. to buy essential items (Article 3(2));
3. to help children, young people, people over 70, and other vulnerable people (Article 3(4));
4. “due to force majeure or Act of God” (Article 3(5));
5. in relation to people working with the OPS, and all international health organizations. This includes people who provide professional, administrative, operative and technical services in relation to the provision of private or public healthcare (Article 3(6));
6. in relation to emergency activities, including veterinary services (Article 3(8));
7. in relation to the activities of civil servants that are strictly necessary to prevent, mitigate and deal with the health emergency (Article 3(13));
8. in relation to interfaith activities whose purpose is (amongst others) psychological aid (Article 3(29));
9. in relation to private and public sector institutions who are able to assist in education in relation to COVID-19 (Article 3(33)); and
10. for the construction of healthcare infrastructure to prevent, mitigate, and deal with the health emergency due to COVID-19 (Article 3(34)).

There is an important qualification to the above, which is that any person who carries out the aforementioned activities must be accredited and identified in the performance of their roles/duties.

Article 4 of Decree 457 guarantees that transportation services that are essential for the above mentioned activities will be maintained.

5. Have any special legal facilities or exemptions been put in place for the importation of medical aid or other relief items or personnel (International Disaster Response Law)? What (if any) quarantine requirements or other conditions are attached?

Decree 410 of 2020 of 16 March 2020 (“**Decree 410**”)⁷ issued by the Colombian Ministry of Finance addresses the concern that in order to adopt the measures required to mitigate the financial impact of COVID-19 in the health and aviation sector, a modification of the customs tariffs was needed. This measure will be in force for six (6) months counted as from the date of issuance of Decree 410.

Article 1 of Decree 410 establishes a 0% tariff on imports made by the more than 150 countries who are members of the World Trade Organization, called most favored nations (“**MFN**”) in respect of medical equipment⁸ for neonatal, pediatric, and adult intensive and intermediate care units, and acute respiratory disease emergency rooms.

⁷ <http://www.suin-juriscol.gov.co/viewDocument.asp?ruta=Decretos/30038950>

⁸ [Article 1 of Decree 410 identifies the products with a specific number which is the classification used by the Colombian Customs Authority in the subheadings of the tariff.](#)

Likewise, Article 2 of Decree 410 establishes a 0% tariff for cargo and passenger aviation transport companies on imports made by the MFN in respect of some medicines, medical supplies, medical devices, and also those related to the aviation sector⁹.

Decree 476 of 2020 of 25 March 2020 (“**Decree 476**”)¹⁰ issued by the Health and Protection Ministry establishes mechanisms that facilitate the import or local manufacture of medical devices and other products such as gloves, face masks, antibacterial gel, cleaning products, among others. Article 1 of Decree 476 gives the Colombian Health and Social Protection Ministry the powers to be flexible on the different requirements for the evaluation of applications in respect of health registries, marketing permits and production of medicines and other necessary medical equipment, among others. Particularly subparagraph 1.6 of Article 1 mentions the need to be flexible on the requirements with which importation companies must comply to obtain the Certificate of Storage and/or Conditioning (*Certificado de Almacenamiento y/o Acondicionamiento* - CCAA) in respect of medical devices, biomedical equipment and in vitro diagnostics reagents.

Article 1 of Decree 463 of 22 March 2020 (“**Decree 463**”)¹¹ issued by the Colombian Ministry of Commerce, Industry and Tourism established a 0% tariff on imports made by MFN in respect of some medicines and chemical reactive medical devices, hygiene and cleaning items, as well as supplies, equipment and materials for water and basic sanitation¹². This measure will be in force for six (6) months counted as from the date of issuance of Decree 463 in order to mitigate the health impact of the pandemic coronavirus COVID-19. Article 2 of Decree 463, at 4(a)-(i), indicates nine (9) industries which producers and importers must prioritize when distributing goods. Article 4(a) of Decree 463 includes institutions that provide healthcare within that list.

Also, Article 1 of Decree 544 of 13 April 2020 (“**Decree 544**”)¹³ issued by the Colombian Health and Social Protection Ministry establishes that contracts whose purpose is to acquire medical equipment, medicines and other necessary relief items as indicated in the list attached therein in the international market, will not be governed by the Public Administration Contracting Statute and consequently will be governed by the applicable laws governing private agreements, regardless of whether they are signed with foreign individuals or foreign legal entities. Governmental entities will have the power to hire/contract directly with any foreigner or entity that provides the goods or services mentioned therein.

Decree 551 of 15 April 2020 (“**Decree 551**”)¹⁴ issued by the Colombian Ministry of Finance addresses the concern that in order to continue adopting the measures to mitigate the financial impact of COVID-19, tax measures will be taken to reduce the tax on the import and acquisition of goods and other products in Colombia which are essential for the provision of medical services to patients affected with the virus and for the preventive medical services to be provided to all Colombian citizens. The tax measure consists of exempting from the value-added tax (VAT) the 211 goods and products listed in Article 1 of Decree 551, which shall be in force as from the date of issuance of the Decree until 30 May 2020, being the term of the health emergency declared by the Colombian Health and Social Protection Ministry.

Finally, no additional quarantine measures or other conditions have been included to the exemptions previously mentioned regarding the importation of medical aid or other relief items.

⁹ [Article 2 of Decree 410 identifies the products with a specific number which is the classification used by the Colombian Customs Authority in the subheadings of the tariff.](#)

¹⁰ Available in Spanish:
<http://www.suin-juriscol.gov.co/viewDocument.asp?ruta=Decretos/30039024>

¹¹ Available in Spanish:
<https://dapre.presidencia.gov.co/normativa/normativa/DECRETO%20463%20DEL%2022%20DE%20MARZO%20DE%202020.pdf>

¹² [Article 1 of Decree 463 identifies the products with a specific number which is the classification used by the Colombian Customs Authority in the subheadings of the tariff.](#)

¹³ Available in Spanish:
<http://www.suin-juriscol.gov.co/archivo/decretoscovid/DECRETO544DE2020.pdf>

¹⁴ Available in Spanish:
<http://www.suin-juriscol.gov.co/archivo/decretoscovid/DECRETO551DE2020.pdf>

6. Is the RC (or humanitarian organizations) categorized as 'essential' or 'emergency' services, for the purposes of exemptions to restrictions on business operations and opening hours?

Though Decree 531 indicates that certain business activities (those specified in Articles 3(12) and 3(23) thereof) could be conducted during the hours of 06:00 and 20:00 as per Article 3 Paragraph 5 thereof, a subsequent Decree 536 of 11 April 2020 (“**Decree 536**”)¹⁵ has meant that this is no longer the case, with Article 1 of Decree 536 cancelling Article 3 Paragraph 5 of Decree 531. As a result, the language of a complete lockdown as envisaged by Article 1 of Decree 531 (subject to the exceptions discussed above and as found at Article 3 of Decree 531) indicates that there is no exemption to the total restriction of activities in Colombia. Please note, though, that under Article 3 Paragraph 7 of Article 531 additional exemptions may be added by governors and mayors of different cities.

7. What other measures are provided in the emergency decrees? (for governmental actors, for communities, for health workers, etc).

Several of the measures the Colombian Government has implemented to respond to the outbreak of the coronavirus are discussed below. The list below is not exhaustive. A complete list of measures is available at the following link: <http://www.suin-juriscol.gov.co/legislacion/covid.html>.

Decree 457

Electric Power Distributors

Under Article 3 of Decree 457 electric power distributors are not permitted to suspend services to residential clients¹⁶.

- Prohibition on Public Consumption of Alcohol

Under Article 6 of Decree 457, mayors and governors must prohibit the consumption of alcoholic beverages in open spaces and in commercial establishments from March 24 through 12 April 2020¹⁷. Article 1 of Decree 531 extended this measure until May 11 2020¹⁸.

Decree 531

- Public Works

Under Article 3 Paragraph 33 of Decree 531, public infrastructure, transportation, and other public works are exempt from lockdown orders¹⁹. This exemption also applies to any infrastructure works that cannot be suspended due to risks of collapse or threat to structural integrity.

Non-discrimination against Health Workers

¹⁵ Available in Spanish:
<http://www.suin-juriscol.gov.co/archivo/decretoscovid/DECRETO536DE2020.pdf>

¹⁶ Available in Spanish:
<https://www.eltiempo.com/politica/gobierno/coronavirus-decreto-sobre-la-cuarentena-obligatoria-en-colombia-476252>

¹⁷ Available in Spanish:
<https://id.presidencia.gov.co/Paginas/prensa/2020/Gobierno-Nacional-expide-Decreto-457-mediante-el-cual-imparten-instrucciones-para-cumplimiento-Aislamiento-Preventiv-200323.aspx>

¹⁸ Available in Spanish: <https://dapre.presidencia.gov.co/normativa/normativa/DECRETO%20531%20DEL%208%20DE%20ABRIL%20DE%202020.pdf>

¹⁹ Available in Spanish:
<https://www.semana.com/nacion/articulo/coronavirus-en-colombia-el-abc-del-nuevo-decreto-sobre-la-cuarentena-ampliada/662839>

Under Article 7 of Decree 531, mayors and governors must prevent any impediment to or restriction of the rights of health workers as well as any acts of discrimination against them²⁰. This measure was implemented in response to claims that health workers had faced discrimination for allegedly exposing their residential communities to coronavirus as a result of coming into contact with contagious patients.

Decree 538 of 12 April 2020 (“Decree 538”)²¹

- Human Capital

Under Article 9 of Decree 538, all persons involved in providing health services must be available to provide such services to clinics and hospitals. In recognition of health service providers’ service, Article 11 of Decree 538 provides for the implementation of a special compensation program for those who are directly involved in the management of COVID-19. The compensation amount will be a one-time lump-sum payment calculated based on a worker’s average basic income. Compensation will be transferred by the Resource Administrator of the General System of Social Security (ADRES, being its acronym in Spanish) to the institutions that provide health services, which will be in charge of distribution to the beneficiary personnel.

- Creating Hospital Spaces

Under Article 1 of Decree 538, Departmental and District Health offices may temporarily authorize a health service provider to adapt spaces not intended for the provision of health services to hospital spaces²².

- Centralized Management of ICUs

Article 4 of Decree 538 provides for centralized management of intensive care units (ICU) and intermediate care units in the Emergency Regulatory Centers of Colombian territories when there is a high patient demand²³. This measure will promote up-to-date information on the actual availability of intensive care and intermediate care beds in the different hospitals in the country’s departments and cities.

- Financial Compensation for COVID-19 Patients

Article 14 of Decree 538 creates a system for financially compensating patients diagnosed with COVID-19, who must remain in mandatory confinement²⁴. The compensation is the equivalent to seven (7) days of minimum wage, once and one per nuclear family. The payment of this compensation will be conditioned on compliance with isolation measures.

- Encouraging Telemedicine

²⁰ Available in Spanish:
<https://id.presidencia.gov.co/Paginas/prensa/2020/Decreto-531-instrucciones-para-cumplimiento-Aislamiento-Preventivo-Obligatorio-14-dias-territorio-colombiano-200409.aspx>

²¹ Available in Spanish:
<https://id.presidencia.gov.co/Paginas/prensa/2020/Decreto-538-fortalecimiento-servicios-salud-en-Colombia-manejo-covid-19-200413.aspx>

²² Available in Spanish:
<https://id.presidencia.gov.co/Paginas/prensa/2020/Decreto-538-fortalecimiento-servicios-salud-en-Colombia-manejo-covid-19-200413.aspx>

²³ Available in Spanish:
<https://id.presidencia.gov.co/Paginas/prensa/2020/Decreto-538-fortalecimiento-servicios-salud-en-Colombia-manejo-covid-19-200413.aspx>

²⁴ Available in Spanish:
<https://id.presidencia.gov.co/Paginas/prensa/2020/Decreto-538-fortalecimiento-servicios-salud-en-Colombia-manejo-covid-19-200413.aspx>

Article 8 of Decree 538 establishes that using phone calls and video conferences, health professionals can not only treat patients, but also prescribe medications and send the prescriptions through means such as email²⁵.

Decree 546 of 15 April 2020 (“Decree 546”)²⁶

- Prisoners’ Rights

The Colombian Government will place incarcerated populations vulnerable to COVID-19 under house arrest, subject to compliance with certain requirements. The measure will permit roughly 5,000 incarcerated persons to return to their homes. According to Article 2 of Decree 546, the beneficiaries of the release are those over 60 years of age, pregnant and lactating mothers or those with a minor child (3) years of age, people suffering from serious illnesses or those with disabilities, as well as those who have been sentenced to less than five (5) years and who have served 40 percent of the sentence. Per Article 3 of Decree 546, release will take place for a period of six (6) months, at which point, incarcerated persons must return to prison to complete their sentences.

Invima Regulations²⁷

Manufacturing Medical Equipment

Invima, the National Institute for Food and Drugs, changed its regulations to facilitate the manufacture and importation of medical equipment. Previously, individuals required prior approval from Invima to manufacture or import medical equipment²⁸. However, in light of shortages associated with COVID-19, individuals are temporarily permitted to manufacture and import the following types of personal protective equipment without prior approval: protective glasses, latex and nitrile gloves, sterile gloves, N95 masks, FFP2 and FFP3 respirators, masks with filters, protective clothing (e.g. coats, hats, sterile surgical clothes), facial protection such as masks or visors, disposable facemasks, and bio-protection suits²⁹.

Like other countries, the Colombian government has been very active in addressing issues across different sectors of the country³⁰, such as implementing the following measures:

- COP \$300,000 million payment for 2,660,000 households, 204,000 young people and 1,500,000 elderly people
- Free access to water to 1 million families who had no service due to lack of salary payments
- VAT reimbursement to 100,000 vulnerable families
- Credit facilities for small and medium enterprises

²⁵ Available in Spanish:
<https://id.presidencia.gov.co/Paginas/prensa/2020/Decreto-538-fortalecimiento-servicios-salud-en-Colombia-manejo-covid-19-200413.aspx>

²⁶ Available in Spanish:
<https://www.eltiempo.com/justicia/delitos/coronavirus-decreto-para-excarcelar-hasta-a-7000-presos-484526>

²⁷ Available in Spanish:
https://www.invima.gov.co/documents/20143/1646661/ACTA_EXTRAORDINARIA_MARZO_2020_DMRDI_FINAL.pdf

²⁸ Available in Spanish:
https://www.invima.gov.co/documents/20143/1687892/acta-extraordnaria-003_24032020.pdf/6820cb48-b392-0ecf-dac9-d0b36f6b13cd?t=1586373934468

²⁹ Available in Spanish:
<https://www.invima.gov.co/coronavirus-covid-19>

³⁰ Available in Spanish:
<https://www.eltiempo.com/economia/sectores/gobierno-restringe-exportacion-de-24-bienes-por-el-coronavirus-476564>

8. Have restrictions been adopted or put in place that ban the export of protective medical equipment?

Yes, Colombia has adopted measures to restrict exports of protective medical equipment.

Under Article 1 of Decree 462 of 22 March 2020 (“**Decree 462**”)³¹, the Colombian Ministry of Commerce, Industry and Tourism has banned the export of certain products necessary to respond to the sanitary crisis caused by COVID-19. These products include rubbing alcohol, soap, toilet paper, antibacterial gel, and face masks, and may not be exported for a period of six (6) months, beginning 22 March 2020 and ending 22 September 2020³². Additional items covered by these restrictions include: rubber gloves, protective glasses, electrocardiograph machines, vital signs monitoring equipment, neonatal cribs, ventilators, respiratory machines, x-ray equipment, and hospital beds.

Article 2 of Decree 462 also directs manufacturers and importers of such goods to prioritize distribution to the following beneficiaries: health service organizations, mass transit organizations, transportation companies, airports, government entities at a local or national level, government security forces, and pharmacies, among others³³.

³¹ Available in Spanish:

<http://www.regiones.gov.co/Inicio/assets/files/108-decreto-462.pdf>

³² Available in Spanish:

<https://id.presidencia.gov.co/Paginas/prensa/2020/Gobierno-Nacional-restringe-exportaciones-bienes-necesarios-para-prevenir-y-contener-el-coronavirus-200324.aspx>

³³ Available in Spanish:

<https://id.presidencia.gov.co/Paginas/prensa/2020/Gobierno-Nacional-restringe-exportaciones-bienes-necesarios-para-prevenir-y-contener-el-coronavirus-200324.aspx>