



WHITE & CASE

IFRC COVID-19 Emergency Decree Pro Bono Research: Venezuela

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- **Questions to be answered by close of business Friday, 24 April 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?

- **Regulations regarding Private/Public Collaboration:** On 13 March 2020, President Nicolas Maduro¹ enacted the Emergency Decree Declaring a State of Alarm to Attend the Sanitary Emergency of the Coronavirus (the “Emergency Decree”).² The effects of the Emergency Decree have been extended until 13 May 2020.³
- The Emergency Decree created a special commission called the “Presidential Commission for the Prevention and Control of the Coronavirus” (“COVID-19 Commission”), which is in charge of “coordinat[ing] and advis[ing] on all issues related to the implementation of the measures necessary to stop and control the spread of the pandemic.”⁴ This Commission is integrated by the Republic’s Vice-President and several Ministers, including the Ministers of Health, Education, Internal Affairs.⁵
- The Emergency Decree provides that the COVID-19 Commission will request the advice of “public and private” persons and entities it considers appropriate, “which must provide their collaboration, if requested.”⁶
- **Private/Public Collaboration in Practice:** Our research has revealed limited written sources discussing collaboration between the Executive and non-state actors. On 10 April 2020, the United Nations published a report titled “Intersectional Plan of COVID-19 Preparation and Attention” (*Plan Intersectorial de Preparación y Atención COVID-19*), which identifies as one of the limitations to a humanitarian response in Venezuela, the “lack of funding [and] limited

¹ All references to Venezuela’s Executive Power in this report refer to the Government branch presided by Mr. Nicolás Maduro.

² Presidential Decree Declaring a State of Alarm to Attend the Sanitary Emergency of the Coronavirus, Official Gazette No. 6,519 dated 13 Mar. 2020 (“Emergency Decree”).

³ Official Gazette No. 6,528 dated 12 Apr. 2020.

⁴ Emergency Decree, Art. 30.

⁵ Emergency Decree, Arts. 30.

⁶ Emergency Decree, Art. 33, *see also* Emergency Decree, Art. 36 (providing that “organs and entities of the National Public Administration, as well as enterprises and other private associations, have the obligation to collaborate with the COVID-19 Commission in the execution of their duties.”).

operational capacity” of international non-governmental organizations, particularly due to a “lack of a registration mechanism.”⁷

- As of late March 2020, the Executive, however, had sought the assistance of the United Nations and the Red Cross to implement measures to contain COVID-19.⁸ Both the United Nations and the Red Cross were allowed to import medical supplies in April.⁹
- The International Federation of the Red Cross has provided at least two shipments (the second on 20 April 2020) of technical assistance and medical supplies to Venezuela in cooperation with the Ministry of Health. The shipment of 22 tons of supplies included water purification tables, first aid kits, sanitizer kits and medical supplies. Venezuela’s Executive and the International Federation of the Red Cross signed a roadmap agreement in 2019 to strengthen Venezuela’s health care system. The IFRC is to open an office in Venezuela as part of that agreement.¹⁰
- While any interaction or collaboration between the Executive and other non-governmental organizations is limited or non-existent, we understand that there has been some collaboration with civil society groups to address a separate crisis in Venezuela caused by critical fuel shortages.¹¹ The Government also is reportedly considering allowing private operators to import and distribute gasoline to replenish supply, an issue that currently is impeding the distribution of food and medical aid intended to contain the COVID-19 outbreak.¹²

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

- The Emergency Decree does not specifically refer to the Red Cross or humanitarian actors. The Red Cross and humanitarian actors, however, likely are encompassed by the Emergency Decree’s references to public and private actors in the health sectors. As discussed above, with respect to private actors in the health sector, the Emergency Decree imposes an obligation to collaborate with the COVID-19 Commission.¹³

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?

- **Internal Travel Restrictions and Exceptions:** The Emergency Decree authorizes the President to “order restrictions to circulation in selected areas or geographical zones, as well as any entries and exits to these areas, when necessary as a measure to protect or contain COVID-19.”¹⁴ State and municipal governments moreover, have enacted additional restrictions and fines for those who do not comply with quarantine and social distancing measures.¹⁵ The restrictions are more

⁷ United Nations, *Intersectoral COVID-19 Preparedness and Response Plan* dated 10 Apr. 2020, at 5.

⁸ United Nations, *Intersectoral COVID-19 Preparedness and Response Plan* dated 10 Apr. 2020, at 5 (noting how the Executive requested the assistance of the United Nations on 19 March 2020); *Cruz Roja Evalúa situación de ayuda humanitaria en Venezuela*, PRENSA LATINA (14 Apr. 2020) (discussing a meeting between representatives of the Red Cross, the Vice-President and the Minister of External Affairs).

⁹ *Cruz Roja Venezolana Recibe 46 Toneladas de Ayuda Humanitaria*, DIARIO LAS AMERICAS (13 Apr. 2020); *Llega a Venezuela Envío Humanitario de la ONU para la prevención del Coronavirus*, Voz de America (8 Apr. 2020).

¹⁰ *Venezuela receives a second shipment of technical assistance from International Federation of Red Cross/Red Crescent Societies to fight COVID-19* (22 Apr. 2020).

¹¹ See, e.g., *Fedecamaras advierte: situación del combustible amenaza el abastecimiento*, EL INFORMADOR (30 Mar. 2020).

¹² Ministry of External Affairs, *Venezuela eyes private-sector path out of fuel crisis*, ARGUS (9 Apr. 2020).

¹³ Emergency Decree, Arts. 33, 36.

¹⁴ Emergency Decree, Art. 7.

¹⁵ *Conozca los estados donde sancionan o multan por incumplir la cuarentena*, EFECTO COCUYO (31 Mar. 2020).

significant in states with more density, higher number of reported cases, and/or proximity to the Colombian border.¹⁶

- There are several exceptions to the restrictions in the Emergency Decree. One of these exceptions – which likely covers the Red Cross and humanitarian relief teams – is “activities of the public or private sector that provide health services in the national health system: hospitals, clinics, centers of integral attention, and other establishments that provide these services.”¹⁷
- The Government has restricted the sale of gasoline to address the critical shortages. The press, however, has reported that doctors, members of the military, and persons involved in the transportation of food are authorized to purchase gasoline where available.¹⁸ Any other person that requires gasoline must request an official permit from the Government (*salvoconducto*).¹⁹
- Several entities, including neighborhood associations known as “*consejos comunales*” are issuing circulation permits for doctors and non-Governmental organizations. These are not regulated and there may be issues associated with their recognition.
- **Flight Restrictions, Exceptions, and Quarantine Requirements:** The Emergency Decree authorizes the Executive to “suspend the flights to or from the Venezuelan territory, when convenient, or when there is a risk that the entry of passengers or merchandise may contain COVID-19, or such transit may pose risks to the containment of the virus.”²⁰
- On 13 March 2020, the National Institution of Civil Aeronautic (“INAC”) issued a statement suspending all flights to and from Venezuela until 13 May 2020 (the “INAC Communication”). The INAC Communication provides an exception for cargo flights, humanitarian flights or flights authorized by the United Nations, which likely encompass flights carrying Red Cross and humanitarian relief teams.²¹ The INAC Communication however, states that the flights that fall within this exemption must be “pre-authorized” by the INAC, as well as health and migration authorities.²²
- The INAC Communication further states that any passengers in exempted flights “must comply with the collective social quarantine under strict State supervision, and subject themselves to appropriate medical examinations.”²³ There are no indications regarding the location or extent of the quarantine requirement.
- **Border Crossings, Exceptions, and Quarantine Requirements:** Both Colombia and Brazil currently have closed their land borders with Venezuela.²⁴ In the case of Colombia, such restrictions will remain in place at least until 30 May 2020.²⁵ The border closures are creating critical issues, particularly in the Colombia-Venezuela border, in light of the significant flow of Venezuelan migrants that transit this border. In this regard, the United Nations has reported that it has “limited access to border areas in this moment and do[es] not have access to quarantine areas for returning migrants.”²⁶ The press reports that a protocol is underway to allow

¹⁶ *Conozca los estados donde sancionan o multan por incumplir la cuarentena*, EFECTO COCUYO (31 Mar. 2020).

¹⁷ Emergency Decree, Art. 9(3).

¹⁸ Alonso Moleiro, *Gasolina solo para médicos, militares y transporte de alimentos en Venezuela*, EL PAÍS (25 Mar. 2020).

¹⁹ Alonso Moleiro, *Gasolina solo para médicos, militares y transporte de alimentos en Venezuela*, EL PAÍS (25 Mar. 2020).

²⁰ Emergency Decree, Art. 15.

²¹ *Inac extiende prohibición de vuelos en el país*, PRIMICIA (12 Apr. 2020) (includes INAC official communication).

²² INAC Communication dated 12 Apr. 2020.

²³ INAC Communication dated 12 Apr. 2020.

²⁴ Andrea Salcedo, Sanam Yar and Gina Cherehus, *Coronavirus Travel Restrictions, Across the Globe*, NEW YORK TIMES (15 Apr. 2020); Oliver Griffin, *Colombia to close borders to prevent spread of coronavirus*, REUTERS (16 Mar. 2020).

²⁵ Oliver Griffin, *Colombia to close borders to prevent spread of coronavirus*, REUTERS (16 Mar. 2020).

²⁶ UN News, *Coronavirus, venezolanos, Colombia, ayuda humanitaria* (14 Apr. 2020).

humanitarian aid and migrants to cross the border, but we have not located specific Governmental policies in this regard.²⁷

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)?

- **Exceptions on Curfews and Quarantine:** As noted in Question 3 above, with respect to movement, the Red Cross and humanitarian organizations likely are exempted from restrictions on movement or curfews under the Emergency Decree.²⁸ The restrictions on access to gasoline are another limitation on the movement of people, although doctors and individuals possessing special permits are reportedly allowed to purchase gasoline, if available.²⁹
- **No Exception to Quarantine Requirement:** As further discussed above in Question 3, it does not appear that the Red Cross and humanitarian organizations are exempted from complying with quarantine requirements when arriving from abroad.³⁰

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?

- **VAT Exemption for Importation of Essential Goods:** On 24 March 2020, the Ministry of Economy and Finance published a Resolution exempting from VAT payments any importation of materials necessary for the manufacturing of medicines, polymers, spare parts for machinery and refrigeration equipment, as well as specific foods, including sugar, rice, and corn.³¹ In order to obtain this exemption, the importer must present to Customs authorities: (i) a description of the imported goods; and (ii) a commercial invoice from the importer.³²
- **Guidance on Restrictions for Humanitarian Aid based on U.S. Sanctions:** On 6 August 2019, prior to the COVID-19 emergency, the U.S. Government issued a guidance noting that the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") maintains several authorizations that permit humanitarian-related transactions.³³

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?

- We have not located any explicit references to the Red Cross or humanitarian organizations deemed as "essential" or "emergency services" for the purpose of exemptions to restrictions. As

²⁷ *Colombia abre canal humanitario en frontera para la salida de venezolanos*, EL TIEMPO LATINO (4 Apr. 2020).

²⁸ Emergency Decree, Art. 9(3).

²⁹ Alonso Moleiro, *Gasolina solo para médicos, militares y transporte de alimentos en Venezuela*, EL PAÍS (25 Mar. 2020).

³⁰ *Inac extiende prohibición de vuelos en el país*, PRIMICIA (12 Apr. 2020).

³¹ KPMG Legal Summary, Resolución N° 011/2020 contentiva de la exoneración del pago de Impuesto al Valor Agregado (IVA), el Impuesto de Importación y la tasa por Determinación del Régimen Aduanero dated 30 Mar. 2020.

³² KPMG Legal Summary, Resolución N° 011/2020 contentiva de la exoneración del pago de Impuesto al Valor Agregado (IVA), el Impuesto de Importación y la tasa por Determinación del Régimen Aduanero dated 30 Mar. 2020.

³³ Office of Foreign Assets Control, *Guidance Related to the Provision of Humanitarian Assistance and Support to the Venezuelan People* dated 6 Aug. 2019.

detailed in Answer 3 above, the Red Cross and humanitarian organizations likely are exempted from restrictions on movement or curfews under the Emergency Decree.³⁴ It is important that representatives possess the required circulation permits issued by the relevant authorities or proper identification when traveling within the country.

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

- **Suspension of Judicial Activities**: In accordance with Resolution No. 001-2020, the Supreme Court of Venezuela has suspended all judicial activities until 13 May 2020.³⁵ The Resolution provides for limited exceptions to receive actions for constitutional rights protection (*amparo*) and criminal arraignments.
- **Suspension of Payments under Lease Agreements for Primary Homes and Commercial Spaces**: In accordance with Presidential Decree No. 4,169, all payments under lease agreements for primary homes and commercial spaces are suspended until 1 September 2020.³⁶
- **Exoneration from the Payment of Income Tax of Selected Individuals**: In accordance with Presidential Decree No. 4,171, individuals that earn an income of less than three times the minimum wage salary will be exempted from the payment of income tax (currently, the minimum wage is roughly US\$ 2.2 per month (two dollars and twenty cents)).³⁷

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

- Our research did not reveal particular restrictions for the export of protective medical equipment.

³⁴ Emergency Decree, Art. 9(3).

³⁵ *El Supremo Venezolano extiende for 30 días suspensión de atención en tribunales por COVID-19*, SPUTNIK NEWS (14 Apr. 2020).

³⁶ Decree No. 4,169 suspending leases Official Gazette No. 6,522 dated 23 Mar. 2020.

³⁷ Decree No. 4,171 exempting income tax in Official Gazette No. 6,523 dated 2 Apr. 2020.