

OXFORD CONSTITUTIONAL LAW

# The Oxford Compendium of National Legal Responses to Covid-19

## **Mexico: Legal Response to Covid-19**

Mexico [mx]

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Except where the text indicates the contrary, the law is as it stood on: 15 February 2021

## I. Constitutional Framework

1. Based on the Constitution of 1917, Mexico is a presidential state in which the executive branch at the federal level is held by one person, who exercises a series of powers and competences independently from the legislative and the judicial branches.<sup>1</sup> The President may appoint and remove cabinet members, with only some officials, such as the Secretary of Foreign Affairs (*Secretario de Relaciones Exteriores*), or the Attorney General of the Republic (*Fiscal General de la República*) requiring congressional ratification. The Mexican Constitution limits the President's tenure to one six-year term.
2. Executive powers at the federal level are enshrined in Article 89 of the Constitution. While the Article provides a list of 20 clauses granting specific powers, it is not an exhaustive one, as the last clause also provides for 'other powers expressly conferred by this Constitution'.<sup>2</sup>
3. The Constitution of Mexico enshrines a federal republic in Article 40. The form of government was first established in the Constitution of 1824, being directly based on the model of the United States.<sup>3</sup> Moreover, Article 124 of the Constitution provides that 'powers not expressly granted ... to federal officials' are reserved to the states.
4. As established in Article 43 of the Constitution, Mexico is comprised of 32 federal states. Each state, in turn, may and has issued a Constitution where additional rights and liberties may be granted. However, in cases of contradiction between them, Article 41 of the Constitution says that the federal Constitution will always prevail. Exceptionally, Article 122 of the Constitution stipulates that Mexico City is mostly the legal equivalent of a federal state, whereas its internal administrative divisions named 'delegations' (*delegaciones*) are considered to be municipalities.
5. The current report will focus on two federal units: Mexico City and Jalisco. Mexico City, taken as the equivalent of a state, is located in the most populated metropolitan area of the country, and one of the biggest in the world, having almost 9 million inhabitants in the city's territory.<sup>4</sup> With an official death toll of more than 125,000 confirmed Covid-19 cases and more than 9,600 deaths,<sup>5</sup> it has been the most affected state in Mexico. The population density and the crowded public transportation system have arguably enhanced the negative impact of the Covid-19 pandemic. The head of government of Mexico City is a member of the ruling party at the federal level, *Morena*. In line with Articles 115 and 122 of the Constitution, its delegations have powers broadly equivalent to those of municipalities.
6. Jalisco is the 4<sup>th</sup> biggest state (8.25 million inhabitants) but with the second biggest metropolitan area in Mexico, namely Guadalajara, with more than 5 million inhabitants. So far, Jalisco has had more than 26,900 confirmed cases of Covid-19, and almost 4,000 deaths.<sup>6</sup> As for its political setting, Jalisco is currently governed by a party (*Movimiento Ciudadano*) different to the one ruling at the federal level. It was also one of the states with the earliest response to Covid-19, so it experienced spikes later in time in comparison to other territories.<sup>7</sup>
7. Mexico currently has 2,465 municipalities in total,<sup>8</sup> which are founded in accordance with state constitutions and laws. However, all municipalities in Mexico must be constituted in accordance with core principles established in Article 115 of the Constitution, which grants them jurisdiction over issues such as the functioning of city markets and public transportation. State legislation may also grant municipalities additional powers than those expressly enumerated in the Constitution.
8. Under Article 4 of the Constitution, public health is a matter of shared jurisdiction between the federal and state governments. As a result, states may regulate their own healthcare systems though they may not disregard federal regulations where such exist. Constitutional reform in 1984 marked a 'decentralization' process,<sup>9</sup> which so far has had varying degrees of implementation. There are reports of major disparities in the capacity of state-level healthcare systems.<sup>10</sup> The result is a documented unequal access to health

services depending on states' average GDP.<sup>11</sup> Further fragmentation has occurred as a result of the exponential growth of the private healthcare sector,<sup>12</sup> which accounts for 48% of total healthcare spending. De facto this has resulted in yet another system with parallel regulations at both the federal and state levels.

9. Since its inception in 1917, Article 73 XVI of the Constitution grants jurisdiction in case of 'severe epidemics or the danger of an invasion of exotic diseases' to the federal executive, particularly to a General Health Council (*Consejo de Salubridad General*) and the Department of Health (*Secretaría de Salud*). Despite the fact that both bodies are dependent on the executive branch, such powers in the case of epidemics are in a subsection of Article 73, which enumerates Congress' powers. Consequently, subsection XVI may be understood as a transfer of powers to the Executive which would usually fall under the purview of the legislative branch.<sup>13</sup>

10. So far, the Covid-19 pandemic has not led to any reforms in Mexico reallocating powers. All actions have fallen within the purview of the pre-existing constitutional framework.

## II. Applicable Legal Framework

### A. Constitutional and international law

11. The Mexican Constitution foresees different types of emergencies. Under Article 73 XVI of the Constitution, a public health emergency caused by 'severe epidemics' belongs to a specific typology, which can lead to extraordinary powers but does not necessarily entail suspending or derogating human rights.<sup>14</sup> In turn, Article 29 of the Constitution applies in emergency situations that 'place society in severe danger', leading to a state of exception including the suspension of human rights. So far, no public health emergency—Covid-19 included—has led to a state of exception under Article 29.

12. Against this backdrop, while a public health emergency declaration was published by the General Health Council on 30 March 2020,<sup>15</sup> it is not a state of exception foreseen by Article 29 of the Constitution, which so far has not been declared. Therefore, no individual rights have been suspended. Consequently, there have been no derogations from any international human rights or other relevant international conventions at the time of writing.<sup>16</sup>

13. The World Health Organization's (WHO) International Health Regulations are directly incorporated in Article 359 of the General Health Law. The relevant provisions confirm national authorities' obligation to report certain diseases to the WHO. This means that the International Health Regulations may be, in principle, legally invoked domestically to hold national authorities accountable. Furthermore, in the preamble of its orders of 19<sup>17</sup> and 30 March 2020<sup>18</sup> (see also Part IV below), the General Health Council invoked the WHO Director-General's own declaration of a pandemic of 11 March 2020 as part of the justification for declaring an emergency.<sup>19</sup> Previously, the National Committee of Epidemiological Surveillance (see Part IV below) had updated its guidelines for pandemic response in line with the WHO's declaration of a public health emergency of international concern on 30 January 2020,<sup>20</sup> grounded on the International Health Regulations. This led to an update of the criteria for emergency healthcare, in line with the WHO's guidelines.

### B. Statutory provisions

14. In addition to Article 73 XVI of the Constitution, Articles 181, 183, and 184 of the General Health Law (*Ley General de Salud*) 1984 provides the statutory basis for the adoption of extraordinary measures in case of 'severe epidemics', such as Covid-19. In case of 'severe epidemics' or 'public health emergencies', as declared by the General Health Council, the Secretary of Health will have the authority to issue a range of measures to confront the threat.<sup>21</sup> Article 184 of the General Health Law has an open clause, wherein the Department of Health, through its Secretary, may adopt all measures it may deem necessary for facing the extraordinary situation. Such authority is exercised through secretarial orders (*acuerdos*) published in the official gazette.<sup>22</sup> The latter must then be validated (*sancionadas*) by the President of the Republic, who may further specify the geographical scope of application of the measures. Furthermore, no declaration of a state of exception for the purposes of Article 29 of the Constitution is required for the

adoption of emergency measures described in the General Health Law. Specific public health measures which may be adopted during emergencies are described in more detail in Part IV below.

**15.** While the Constitution grants federal officials powers with respect to ‘severe epidemics’, the General Health Law also allows states to adopt measures considered to be necessary to face the spread of epidemic diseases affecting them.<sup>23</sup> Thus, the executive branches of states may adopt measures in addition to those the federal government mandates. Whilst under no circumstances may state-level governments disregard federal measures, they have the leeway to adopt additional measures, should they consider it necessary in their territories. The implementation by state authorities of measures going further than those at the federal level are legally grounded in the exercise of police powers enshrined in local constitutions.

**16.** In its order dated 19 March 2020,<sup>24</sup> the General Health Council declared that the spread of Covid-19 throughout the country warranted extraordinary measures. The declaration provided the basis for the adoption of exceptional measures, as provided for in the General Health Law. However, prior to this several states had issued declarations of public health emergencies: Colima,<sup>25</sup> Jalisco (see Part IV below), Michoacán, and Yucatán.

**17.** No new general laws have been issued by the legislature to deal with the Covid-19 pandemic. However, as explained in Part I above, orders by the General Health Council may have general effects comparable to those of legislative acts.

### **C. Executive rule-making powers**

**18.** Country-wide response measures to the Covid-19 pandemic have been steered mainly by the executive branch at the federal level. In line with Article 73 XVI of the Constitution, both the General Health Council and the Department of Health took the lead in decision-making. The General Health Council is a collegiate ad hoc body composed of several cabinet members, the heads of medical associations, and the Dean of the National Autonomous University of Mexico.<sup>26</sup> It is directly accountable to the President of the Republic. The Council may issue administrative acts of general observance (*acuerdos*), which would otherwise be reserved to the legislature. They are functionally equivalent to decree-laws.

**19.** With respect to ‘severe epidemics’, the federal Department of Health acts as an executive authority, tasked with issuing response measures. As established in Articles 148 and 181 of the General Health Law, during epidemic events the Department of Health may exercise direct authority over the entire healthcare system including all levels of government, as well as the private sector.

**20.** The main administrative acts have consisted of Presidential decrees, as well as orders (*acuerdos*) adopted by the General Health Council, the Department of Health, and Departments (*Secretarías*) with competences in other areas, such as education. Presidential decrees are based on the authority granted by Article 89 of the Constitution, whereas orders issued by the Secretary of Health are grounded in statutory powers deriving from Article 12 of the Organic Law of the Public Administration 1976 (*Ley Orgánica de la Administración Pública*), a secondary law. Herein, competences are enumerated depending on subject matters, with competences for the Department of Health found in Article 39 of the Organic Law of the Public Administration.

**21.** The General Health Council, acting under the direct authority of the President, issued two early orders regarding Covid-19: one on 19 March 2020,<sup>27</sup> deeming the spread of the disease as a matter of priority for the purposes of Article 73 XVI of the Constitution; and another order on 30 March 2020<sup>28</sup> declaring Covid-19 to be a severe emergency for the purposes of Article 181 of the General Health Law. In legal terms, no major distinction exists between both declarations, although the second one led to the adoption of additional restrictions that did not entail a suspension of rights.

**22.** In turn, the main sources of extraordinary, country-level measures against Covid-19 implemented in Mexico are the four secretarial orders of 24 and 31 March, 21 April, and 14 May 2020, all issued by the Secretary of Health (see Part IV below). The first Secretarial Order of 24 March 2020<sup>29</sup> introduced a series of restrictive measures at the national level, regardless of degrees of infection at any given moment, and were initially scheduled to last until 30 April. The second Secretarial Order of 31 March 2020<sup>30</sup> promulgated the most restrictive measures, including, notably, the suspension of all non-essential

activities. A subsequent secretarial order of 21 April 2020<sup>31</sup> extended the duration of all extraordinary measures until 30 May 2020, though allowing municipalities with no recorded cases of Covid-19 to refrain from implementing measures from 18 May onwards. The last of these four secretarial orders, issued on 14 May 2020,<sup>32</sup> created an ‘epidemiological traffic-light’ system (see Table 1, Part IV.A below) which provides for a standing self-renewing cycle of lifting and reimplementation of restrictions. This order is currently still in force, and does not have any sunset provision, but rather states that the cycle of mandatory measures will cease once there is a formal declaration by the General Health Council that the emergency has ended.

**23.** Lastly, two Presidential decrees were issued on 24 March<sup>33</sup> and 27 March 2020,<sup>34</sup> but they did not lead to the imposition of any new measures. Instead, the first was issued as a procedural requirement to confirm the secretarial order of the same day entailing restrictive country-wide measures, in accordance with Article 73 XVI of the Constitution. The second decree further specified extraordinary competences for the Department of Health such as the expedited public procurement of medical goods. Beyond that, said decree of 27 March 2020 restated the contents of Article 184 of the General Health Law.

**24.** The acts cited above may be challenged in courts, though very specific requirements of legal standing need to be met. In abstract constitutional control, through proceedings known as ‘unconstitutionality lawsuits’ (*acción de inconstitucionalidad*) and ‘constitutional disputes’ (*controversias constitucionales*), as provided by Article 105 of the Constitution, only certain public entities—and not individuals—have legal standing. No abstract constitutional challenges against the secretarial orders providing the grounds for the extraordinary public health response at the federal level have been reported.

**25.** Under Articles 103 and 107 of the Constitution, the declaration of emergency and secretarial orders imposing general measures may not be challenged directly by individuals. However, their implementation by authorities at the federal, state, or municipal level may be subjected to concrete constitutional review (*amparo*). The requirement for having legal standing in concrete constitutional control stems from Article 107 of the Constitution. There is a possibility to request an injunction (*suspensión*), through which judges may mandate a temporary halt in the application of specific measures to individuals. However, ongoing proceedings are officially published only after there is a final ruling and parties agree to do so. Consequently, there are no available accounts of how many applications have been filed at federal courts due to Covid-19. Every year, in late November–early December, the federal judiciary in Mexico provides a public report with the yearly statistics related to applications of constitutional control. Data from these reports is not disaggregated, since no details on individual plaintiffs are provided, nor are the grounds for the applications explained in detail.

**26.** Concrete constitutional review challenges against both state-level measures, going beyond the federally mandated ones,<sup>35</sup> and against federal measures implemented by local health authorities through sanctions, may be filed. In certain cases, challenges may also deal with omissions by the executive branch, for instance to provide appropriate medical equipment (see Part III.C below).

## **D. Guidance**

**27.** At the federal level and throughout multiple states, guidance was issued by the Department of Health both for the public at large as well as for healthcare personnel,<sup>36</sup> with the latter being much more detailed than the former as it pertains to the provision of medical services to Covid-19 patients. As for the general public, the Department issued a continuous recommendation for persons with symptoms to self-isolate.<sup>37</sup> Similarly, neither a safe distance of 1.5 metres nor the use of masks were deemed to be mandatory at the federal level, but were rather suggested through technical guidance.<sup>38</sup> Several measures envisaged in federal guidelines as recommendations had a mandatory nature in some states (see Part IV below).

## **III. Institutions and Oversight**

### **A. The role of legislatures in supervising the executive**

**28.** Although Article 29 of the Constitution provides the compulsory oversight by the legislature of the declaration of a suspension of rights, no such formula is applicable for statutory emergency declarations

not leading to suspensions of rights. Nevertheless, the second paragraph of Article 93 of the Constitution gives both Chambers of Congress the authority to summon cabinet members to provide an account of actions taken in their areas of competence. Thus, the Undersecretary of Health Prevention and Promotion Dr. Hugo López-Gatell, the lead architect of Mexico's response to the Covid-19 pandemic, held online hearings at the Senate on 27 May and 12 October 2020.<sup>39</sup> By contrast, the Secretary of Health, despite being the person with the legal authority to issue corresponding measures, held his first hearing only on 30 September 2020.<sup>40</sup>

**29.** The legislature has no say in the declaration of emergency for the purposes of Article 73 XVI of the Constitution or its duration, ie whether and when it should be terminated. Consequently, the powers granted in the provision to the General Health Council and the Department of Health have been criticised by legal scholars as a 'sanitary dictatorship'.<sup>41</sup> However, a potential declaration of suspension of rights under Article 29 of the Constitution would be subjected to a compulsory vote by the legislature to confirm it. If the legislature rejects it, the suspension of rights is immediately terminated. Ultimately, the declaration of a public health emergency for the purposes of Article 73 XVI will finish only when determined by the General Health Council.

**30.** Even though the legislature may not review the executive's emergency declaration under Article 73 XVI of the Constitution, nor the measures mandated under its purview, they may scrutinise the acts of public officials during hearings. While their withdrawal is not at stake, the Chambers of Congress may nevertheless issue legally non-binding resolutions, whether condemning the performance of the executive, requesting the improvement through measures in addition to those in place, or commending ongoing actions.<sup>42</sup>

## **B. The functioning of the legislature where its ordinary business is disrupted**

**31.** Under normal circumstances, there are two ordinary sessions for every legislative year, with the first period starting in September and the second one in late January or early February.<sup>43</sup> In the case of the Chamber of Deputies, the plenum issued a resolution (*acuerdo*) approving a proposal by the committee of political coordination to suspend most of its activities. The resolution also enabled the conducting of online sessions for the discussion and approval of legislative proposals in smaller groups called 'commissions'.<sup>44</sup> Afterwards, the plenum of the Senate approved a similar proposal by its own committee of political coordination. All plenary sessions were suspended, and the Chamber's overall work was limited to smaller commissions dealing with matters pertaining to the health emergency, or to fulfil fixed Constitutional timeframes, for example, when confirming the appointment of certain high-ranking public officials or debating urgent legislative proposals introduced by the executive.<sup>45</sup> Through a general resolution approved by an agreement of the main political forces, both Chambers decided to end the corresponding ordinary period prematurely on 30 April 2020.<sup>46</sup> Thus, only smaller groups—including a special task force for Covid-19—have been able to meet physically in the Chambers since the outset of the pandemic from March until September 2020.

**32.** After an ordinary period of legislative sessions ended in April 2020, both Chambers of Congress have held virtual meetings for the conduct of business. On 8 September 2020, the Senate approved a general resolution setting the criteria for how legislative debates will take place during the Covid-19 pandemic.<sup>47</sup> Basically, they implement the Department of Health's general guidelines on the use of masks, maintaining a safe distance between persons, as well as preventing the presence of more than 50 persons in one place at a time. As of 14 September 2020, a new ordinary period began with the use of a hybrid in-person/online format. Most of the legislators vote through electronic means, whereas only smaller groups of persons are physically present in the Chambers. Debates are publicly transmitted through the Congress' devoted television channel, which also offers live streaming.<sup>48</sup>

## **C. Role of and access to courts**

**33.** While federal and state courts suspended or greatly reduced their activities during the first months of the emergency, legal action was allowed in cases deemed to be 'urgent'.<sup>49</sup> This effectively paralyzed most open proceedings. Afterwards, thanks to the shift from in-person to online proceedings, legal actions,

where possible, have been undertaken through electronic means. The submission of documents was allowed via e-mail, instead of the usual physical delivery at the court's registrars.

**34.** On 17 March 2020, the Plenum of Mexico's Supreme Court of Justice of the Nation issued a general decision (*acuerdo general*)<sup>50</sup> suspending its jurisdictional activities from 18 March until 19 April 2020. The only judicial deliberations taking place were those related to the urgent constitutional review (constitutional disputes) of acts by the executive or the legislature. Afterwards, on 13 April 2020, the Plenum of the Supreme Court issued another general decision authorizing online proceedings for its own sessions from 20 April onwards,<sup>51</sup> mostly for proceedings initiated before the Covid-19 pandemic. In the same decision, the Supreme Court's Plenum further extended the postponement of ordinary jurisdictional activities and applicable deadlines. Procedural terms remained frozen and were reinstated through a general decision of 28 July 2020, which stated that the regular course of judicial proceedings would restart from 3 August onwards.<sup>52</sup>

**35.** As for federal courts and tribunals in general, Article 100 of the Mexican Constitution tasks the Federal Judicial Council with the administration and disciplinary oversight of federal courts, with the exception of the Supreme Court and the Federal Electoral Tribunal. Consequently, on 17 March 2020, the Council issued a general decision of its own (*acuerdo general*),<sup>53</sup> suspending most judicial activities in federal courts and tribunals. An exception was made for courts 'on shift' dealing with urgent cases, such as criminal procedures involving defendants in trial detention, the request for search warrants, or cases dealing with extradition requests. The procedural deadlines in all ongoing non-urgent trials were postponed. In those courts 'on shift' dealing with urgent matters, the entry of persons older than 60 years to the court is precluded, and no more than half of a court's personnel should be present. The agreement provided for the substitution of in-person work with remote activities.

**36.** Through a general decision of 27 April 2020,<sup>54</sup> the Federal Judiciary Council provided guidelines for the conducting of online proceedings. A new working scheme for guaranteeing access to justice was developed, based inter alia on the tenets of Resolution 1/2020 of the Inter-American Commission of Human Rights.<sup>55</sup> In particular, the general decision restricted in-person work to the minimum amount possible and indicated that court employees belonging to risk groups (see Part IV below) would not be compelled to be present in the premises. Minors were barred from entering judicial buildings. Furthermore, special indications were formulated for hearings in criminal cases, where business could not be fully conducted online. Such in-person hearings were subjected to general measures such as physical distancing and the use of protective masks by all those present. Notably, the Council's decision of 27 April expanded the understanding of 'urgent cases', in order to include cases of domestic violence, alimony, and children's rights. Lastly, the decision in question lifted the suspension of all procedural deadlines for applications filed electronically, though not for preexisting cases where in-person hearings were still needed.

**37.** Official statistics on federal judicial proceedings during the Covid-19 pandemic were published in the federal judiciary's annual report of activities of 2020, with a cut-off date of 15 November 2020.<sup>56</sup> In the Supreme Court of Justice, a total of 1,936 electronic procedures of all types—constitutional actions, notifications of court decisions, and hearings—were reported during the year, representing an increase of 578% in comparison to the same period in 2019.<sup>57</sup> As for federal courts countrywide, a total of 143,130 filings of actions, 742,807 procedural submissions, and 523,576 notifications.<sup>58</sup> Of those, in the period ranging between 7 April and 15 November 2020, a total of 15,953 hearings in federal criminal proceedings took place.<sup>59</sup>

**38.** Similar to the Federal Judiciary Council's decisions, the President of the Federal Electoral Tribunal mandated the suspension of all proceedings requiring public hearings on 16 March, restricting its activities to those strictly necessary and with minimum personnel.<sup>60</sup> The Tribunal briefly attempted, unsuccessfully, to conduct its sessions and deliberations via email.<sup>61</sup> The decision was later overturned and the Tribunal issued a general decision approving the use of digital tools for online meetings.<sup>62</sup> In its yearly report of activities comprising the period between 1 November 2019 and 31 October 2020, the Federal Electoral Tribunal documented 13,890 submissions of all types.<sup>63</sup> The report does not specify how many of these were filed electronically. It does, however, record the digitalization of 60,000 proceedings from the 2016–2019 period to make them available online.<sup>64</sup>

**39.** In the case of state courts, the implementation of online tools has been haphazard. Some states moved the entirety of proceedings to videoconferences, and others maintained mostly in-person hearings, though with safety measures in line with Covid-19 guidelines, such as mask usage and physical distancing.

**40.** According to secondary sources (formulated by an NGO focused on transparency),<sup>65</sup> judicial proceedings may take place mostly online in the following states: Baja California, Baja California Sur, Coahuila, Guerrero, Nuevo León, Puebla, Tamaulipas, and Veracruz. Conversely, in the rest of the states, proceedings are conducted through in-person hearings with restrictive conditions: Aguascalientes, Campeche, Chiapas, Chihuahua, Colima, Durango, Guanajuato, Hidalgo, Jalisco, Michoacán, Morelos, Nayarit, Oaxaca, Querétaro, Quintana Roo, San Luis Potosí, Sinaloa, Sonora, Tabasco, Tlaxcala, Yucatán, and Zacatecas.

**41.** In the case of Mexico City, on 17 March 2020, the Judiciary Council ordered the suspension of activities in all courts from 18 March onwards.<sup>66</sup> The suspension lasted for a total of 79 working days,<sup>67</sup> until the courts fully resumed their activities on 3 August 2020.<sup>68</sup> During the period of suspension, courts dealing with 'sensitive areas' such as criminal and family proceedings remained partially open, with 'strictly necessary personnel' to be determined by each judge.<sup>69</sup> The suspension of activities in Mexico City courts led to a yearly output of 102,601 concluded proceedings in all areas of law in 2020, compared to 219,150 for 2019, representing a decrease of 46.8%.<sup>70</sup> Online judicial proceedings were inaugurated in 13 July 2020 for family law cases.<sup>71</sup>

**42.** Similarly, on 17 March 2020, both the Supreme Tribunal and the Judiciary Council<sup>72</sup> of Jalisco suspended all procedural terms and precluded all physical interactions with users in state courts until 7 August 2020.<sup>73</sup> Judicial personnel over 60 years old, those with symptoms of respiratory illness or with chronic diseases, and those pregnant or lactating, were exempted from their duties.<sup>74</sup> A system of rotating shifts for dealing with urgent criminal, civil, and family proceedings was instituted.<sup>75</sup> As for the output of Jalisco's judiciary during the pandemic, publicly available statistics are grouped for the 2017–2020 period.<sup>76</sup>

**43.** As for the broader socioeconomic context, a notable inequality in access to broadband services across the population was documented in a report published in May 2020 by the Mexican Senate.<sup>77</sup> According to data of 2019 from the National Institute for Statistics and Geography of Mexico, the latest available at the time of writing, there were 80.6 million household internet users in the country (64% of the population), and 86.5 million cell-phone users (68.6% of the population).<sup>78</sup> This situation is bound to create additional obstacles for those living with either no internet connection or with deficient bandwidth. However, no detailed empirical data related to the difficulties linked to this technological gap and access to courts in times of Covid-19 is available in Mexico.

**44.** The declaration of a state of emergency under Article 73 XVI of the Constitution is, in itself, not reviewable by courts. However, it is possible to challenge the implementation of measures whenever a person considers that it has led to a violation of constitutional rights and liberties, including those of due process. The review of measures is contingent upon complaints by parties through concrete constitutional control (*amparo*), where the legal standing requirements entail that only those persons directly affected by a specific measure may challenge them in court. There are no reports on pending proceedings of constitutional control against the country-wide measures mandated by the federal government, rather only against the additional measures taken by certain states, ie mobility restrictions issued in Michoacán and Jalisco.<sup>79</sup>

**45.** Conversely, constitutional control challenges were filed requesting the government to take action, namely the request of a preliminary injunction (*suspensión de plano*) for authorities to inform which measures had been adopted to protect medical personnel.<sup>80</sup> Federal district courts (*Juzgados de Distrito*) from the state of Chihuahua approved the preliminary injunctions requested by plaintiffs. These decisions were confirmed by a federal collegiate circuit court (*Tribunal Colegiado*),<sup>81</sup> thus constituting binding precedent for all lower federal courts and state courts nationwide.<sup>82</sup> As a result of the injunction, authorities are obliged to ensure that medical equipment given to healthcare personnel follows the guidelines from both the WHO<sup>83</sup> and the Department of Health.<sup>84</sup>



## **D. Elections**

**46.** No federal elections have taken place in 2020. However, two local elections were postponed until proper measures to guarantee the safety of voters amidst the pandemic were implemented—the states of Coahuila and Hidalgo suspended local legislative elections and municipal elections, respectively.<sup>85</sup>

**47.** Federal elections for the Chamber of Deputies are planned to take place in July 2021. Additionally, several state-level elections will also be conducted. Guidelines for the setup of polling booths have been issued by the National Electoral Institute.

## **E. Scientific advice**

**48.** The General Health Council, a collegiate body with the power to declare an emergency due to a ‘severe epidemic’ and issue acts of general observance, has amongst its voting members representatives of medical associations.<sup>86</sup> Its actions are thus the result of deliberation where persons with a background of medical and public health expertise may vote. Although the Council is directly accountable to the President, it may adopt legally binding decisions independently. Moreover, the Secretary of Health has the executive authority to determine which public health measures must be implemented to face ‘severe epidemics’. The designation of Secretary is not dependent upon specific qualifications, rather only the generic ones established by Article 91 of the Constitution, ie being Mexican by birth, a minimum of 30 years of age, and having legal capacity to fully exercise their rights.

**49.** Although the Secretary of Health has the authority to dictate specific measures taken to face a pandemic, the main scientific advisor on the subject matter of Covid-19 has been the Undersecretary for Health Prevention and Promotion Dr. López-Gatell. The post is directly designated by the Secretary. The Undersecretary has the legal mandate to give advice to the Secretary on policy proposals related to epidemiological surveillance, disease control, and international health.<sup>87</sup> During the Covid-19 pandemic, the Undersecretary has provided daily press conferences during the first four months of the spread of the virus in Mexico, sharing the daily number of infections, as well as new guidance on what measures ought to be adopted. Thus, the Undersecretary has been the public official at the forefront of communications with the media on the governmental response to the pandemic.

## **F. Freedom of the press and freedom of information**

**50.** No reports on restrictions aimed at the media have been identified. A daily press conference by the President of the Republic, cabinet secretaries, and public officials with a particular expertise, has taken place almost without interruption. In addition, journalism was designated as an ‘essential activity’ in the Secretary of Health’s order of 31 March 2020.<sup>88</sup> Hence, there has been no mandated interruption of activities by the press due to the pandemic. However, information gathered by an international NGO has indicated that as of 5 January 2021, 45 journalists have perished in Mexico due to Covid-19.<sup>89</sup>

**51.** No special provisions regarding access to information have been issued. Existing transparency requirements under Article 6 of the Constitution of Mexico have continuously been in force.

## **G. Ombuds and oversight bodies**

**52.** At the federal level, the ombudsperson (National Commissioner of Human Rights) would have legal standing to request the abstract constitutional control of general measures, such as those dictated by the General Health Council and the Secretary of Health. The federal ombudsperson did not contest any of the measures mandated by the executive through the corresponding orders. She did, however, recommend an integrative approach in their implementation for: ensuring the safety of healthcare personnel,<sup>90</sup> incorporating a gender perspective,<sup>91</sup> as well as to avoid discrimination against vulnerable groups (eg senior citizens and indigenous groups).<sup>92</sup> Furthermore, the ombudsperson ordered the institutional prioritization of complaints filed by persons claiming a transgression of their rights due to measures against Covid-19.<sup>93</sup>

**53.** At the state level, one action of abstract constitutional control (*acción de constitucionalidad*) was filed in Coahuila on 29 April 2020 by the local ombudsperson.<sup>94</sup> Legally grounded in the state’s Constitution,

the action of abstract constitutional control challenged the decree issued by the governor authorizing municipal officials to impose restrictions on mobility (see Part IV.A.1 below). The Supreme Tribunal of the State of Coahuila issued a ruling on 11 May 2020, affirming the decree’s constitutionality.<sup>95</sup>

## IV. Public Health Measures, Enforcement and Compliance

### A. Public health measures

**54.** The first case of Covid-19 infection in Mexico was reported by the federal Department of Health on 28 February 2020.<sup>96</sup> The patient was a person who had travelled to Italy. By 24 March 2020, when the first two nationwide orders regarding Covid-19 were issued by both the General Health Council and the Department of Health (see Part II.C above), there were 41 confirmed cases in the country, with 155 suspected cases. At the time of writing, Mexico has one of the highest death tolls due to Covid-19 per 100,000 inhabitants in the world, with its response ranked poorly compared to other countries.<sup>97</sup>

**55.** The federal Secretary of Health’s order of 14 May 2020 created an ‘epidemiological traffic light’ system, which has been applied country-wide from 1 June onwards. Its colour-based ratings are linked to severity assessments—namely, the assessments formulated by the General Directorate of Epidemiology, one of its departments—based on indicators such as the percentage of hospital occupancy or infection and death rates (estimated according to the number of cases per 100,000 inhabitants) (see Table 1 below). The traffic light codes applicable restrictions by colour, namely red, orange, yellow, or green, and is updated weekly.

**56.** During a first period, between 14 May and 22 July 2020, the highest weight of the risk assessment (50%) was given to existing hospital occupancy rates. Infection (30%) and mortality rates (20%) had a lower value. Due to the lower reliability of data from the hospital network, a revised version reshuffled these values, with a higher weight given to infection rates (40%), and a slightly lower one for mortality (30%) and hospital occupancy (30%).<sup>98</sup>

**Table 1.** Epidemiological traffic light in Mexico

	<b>Activity</b>	<b>Description of activities</b>
<b>Red</b>	Schools	Suspended
	Public spaces	Suspended
	Economic activities (essential only)	Only essential work allowed
<b>Orange</b>	Schools	Suspended
	Public spaces	Restricted attendance in activities in outdoor public spaces. Suspended activities in enclosed public spaces.
	General economic activities	Essential work allowed, non-essential work with reduced operation.
<b>Yellow</b>	Schools	Suspended
	Public spaces	Gatherings in outdoor public spaces allowed. Restricted activities in indoor public spaces.
	General economic activities	All types of work allowed.
<b>Green</b>	Schools	

Activity	Description of activities
Public spaces	No restrictions
General economic activities	

**57.** In line with the federal government’s primary competence provided by Article 73 XVI of the Constitution, the secretarial order of 14 May 2020 establishing the epidemiological traffic light system is mandatory for all Mexican authorities. As it does not have an expiration date, it remains in place until the Secretary of Health decides it is no longer necessary. A practical goal was to avoid the need to continuously issue new secretarial orders, relying instead on a single administrative act and thus enshrining a self-renewing system.

**58.** The measures described in the epidemiological traffic light system set a minimum level that all public authorities in the country must implement. However, in accordance with Mexico’s federalist system, states may impose additional measures to those mandated at the federal level and several have done so. Furthermore, although the catalogue of measures is fixed, state authorities may choose how to adapt them to their local circumstances.<sup>99</sup>

**59.** State governments are directly responsible for calculating the epidemiological traffic light indicators applicable to their territories. Therefore, the outcome of risk assessments is directly dependent on the information provided by state-level authorities. It does not mean they enjoy full discretion in deciding which colour to assign, since they are statutorily obliged to provide all accurate epidemiological information to the federal government.<sup>100</sup> Such information may then be cross-checked by the federal Department of Health.

**60.** The main sources of data used for undertaking risk assessments for the epidemiological traffic light system are both federal-level healthcare providers as well as state-level governments. The latter are under an obligation to provide the necessary epidemiological information. On certain occasions, inconsistency in the use of data by the federal government for assessing the state-level of risk was the source of criticism. On 11 December 2020,<sup>101</sup> the Undersecretary of Health Prevention and Promotion was questioned due to the use of outdated information regarding infection rates and hospital occupancy in Mexico City. Thus, the colour in the traffic light remained at a ‘milder’ stage—orange instead of red—than it would have been under the most updated information. It allowed the government of Mexico City, ruled by the same party at the federal level, to avoid resorting to the harshest measures.<sup>102</sup> Pursuant to the powers under Article 115 of the Constitution, the Governor of Mexico City and her cabinet members issued an order on 29 May 2020 through which the federal epidemiological traffic light system was further granulated.<sup>103</sup> A detailed list was included, describing which activities would be suspended depending on the levels of the virus’ spread reflected in a particular colour.

**61.** In the case of the state of Jalisco, and in line with concurrent constitutional competences in the field of health, its government decided to implement a series of public health measures before the federal secretarial orders were issued.<sup>104</sup> Once the federal Secretary of Health issued the order on 31 March 2020 mandating country-wide measures,<sup>105</sup> those that had been previously adopted by Jalisco were subsumed by similar federal ones. While the state of Jalisco was legally obliged to follow the federal epidemiological traffic light system, it went further in terms of restrictive public health measures.

**62.** Both Mexico City and the state of Jalisco have experienced the highest levels of the epidemiological traffic light system (red, orange, and yellow) on several occasions. They have yet to enter the mildest ‘green’ phase. In both states, the red-level alert was imposed from the moment in which the epidemiological traffic light system was established, 1 June 2020. Jalisco would remain at the maximum level of alert until 15 June,<sup>106</sup> and Mexico City until 29 June.<sup>107</sup> Mexico City would enter the maximum alert level on a second occasion from 19 December 2020 to 15 February 2021.<sup>108</sup> In Jalisco, the red-level alert was active again from 30 October 2020 to 11 February 2021.<sup>109</sup> Between these periods of time, both states have been at the ‘orange’ alert level.

### **1. Individual mobility restrictions on citizens (stay-at-home, curfews, etc)**

**63.** The federal government has to date not issued any community-level quarantines or stay-at-home orders. The federal Secretary of Health's order of 31 March 2020, included hortatory language urging citizens to 'stay at home' as much as possible until 30 April 2020. But this did not have the force of law and had no accompanying sanctions for non-observant individuals.

**64.** However, the Governor of Mexico City and her cabinet members issued an order on 22 April 2020 restricting the use of private personal vehicles several days per week,<sup>110</sup> on the basis of a pre-existing environmental transit control program known as '*Hoy No Circula*'. An exception was made for medical personnel, taxi drivers, and operators of public transportation, as well as people with disabilities.

**65.** On 19 April 2020, the Governor of Jalisco and his cabinet members issued an order for the social isolation of risk groups (people over 60 and those with underlying chronic illnesses), which lasted until 17 May 2020.<sup>111</sup> There has been a constitutional challenge to this order and at the time of writing we await a ruling by the Supreme Court of Justice of the Nation (see Part II.C above). Through an Order of 1 July 2020,<sup>112</sup> the Governor of Jalisco and cabinet members formulated a gradual plan for lifting the stay-at-home order which included a recommendation to not use public transit unless essential to do so.

### **2. Restrictions on international and internal travel**

**66.** No general bans on travel within the country have been imposed. On 30 January 2020, on the same day as the WHO's declaration of a public health emergency of international concern, the National Committee of Epidemiological Surveillance—an advisory body composed of personnel from several Departments—issued a warning recommending that Mexican residents do not travel to the most affected areas in China.<sup>113</sup> The warning did not lead to travel bans, in line with the WHO's recommendations on the subject matter.<sup>114</sup> On 27 February 2020, the Undersecretary for Health Prevention and Promotion clarified in a communiqué that the decision to refrain from such restrictions was precisely due to the WHO's recommendations.<sup>115</sup>

**67.** Regarding air travel, starting from 20 March 2020 onwards, international travellers from high-risk areas could be subjected to additional health screenings at airports. In cases where a Covid-19 infection was confirmed, they could be placed under mandatory isolation.

**68.** On 20 March 2020, the governments of the United States and Mexico announced a joint initiative to restrict crossings of the countries' shared land border from 21 March onwards.<sup>116</sup> Non-essential travel was further specified as tourist or recreational activities. The initiative does not have a binding nature under international law. In Mexico, the Department of Foreign Affairs is responsible for implementing this policy. At the time of writing, the policy is still in force.<sup>117</sup> By contrast, traffic across Mexico's southern border with Guatemala was not subjected to similar restrictions. Instead, a joint communiqué issued by the Mexican and Guatemalan governments on 21 March 2020 announced enhanced screening at the land crossing.<sup>118</sup> These measures were based on the criteria established in the WHO's International Health Regulations.

**69.** At the state level, authorities from Nuevo León imposed mandatory quarantine of 14 days for travellers arriving from other countries.<sup>119</sup>

### **3. Limitations on public and private gatherings and events**

**70.** The Secretary of Health's Order of 24 March 2020 prohibited public gatherings involving more than 100 people. Initially, the order was for the period 24 March–30 April 2020, but it was later extended to 30 May 2020. From 1 June onwards, restrictions on public gatherings are imposed depending on the colour indicated in the federal epidemiological traffic light system (see Table 1 above). When the two maximum levels in the traffic light are reached, ie red or orange, all mass gatherings are suspended. In the case of yellow, events such as concerts may have gatherings of up to 50% of regular capacity.<sup>120</sup>

**71.** Prior to federal restrictions taking force, the fact that several large gatherings occurred in Mexico City (eg a music festival on 13 March 2020) was criticized due to concerns about its potential to maximize the spread of Covid-19.<sup>121</sup>

72. Before the federal government's orders, some state authorities had already imposed their own limitations on public events. For instance, the government of Nuevo León<sup>122</sup> cancelled all mass gatherings from 14 March 2020 onwards.

#### **4. Closure of premises and facilities (eg schools, shops, services, parks, churches, sport facilities)**

73. A secretarial order by the Secretary of Education of 15 March 2020 led to the suspension of activities in preschools, elementary, secondary, and high-schools from 20 March until 17 April 2020.<sup>123</sup> Public institutions of higher education, which according to the latest official data amount to 5,716 institutions,<sup>124</sup> were also closed, though not those enjoying autonomy as they do not fall under the authority of the Secretary.<sup>125</sup>

74. The Secretary of Education's order to close schools at the national level was followed, and legally subsumed, by the subsequent secretarial order from the Secretary of Health of 24 March 2020,<sup>126</sup> mandating the suspension of several non-essential activities involving the concentration of people in enclosed spaces or the movement of persons, until 17 April 2020. The definition of essential activities varied between the public and the private sectors. In the case of the public sector, essential activities were defined by the heads of administration and financing in every institution; as for the private sector, a non-exhaustive list of activities considered to be essential was included, namely: business activities necessary to respond to the public health emergency, such as hospitals, medical clinics, pharmacies, laboratories, general medical and financial services, telecommunications and the media, hotels, restaurants, petrol stations, markets, supermarkets, shops, transportation services, and the distribution of gas, as long as they did not lead to agglomerations in closed spaces. In all activities, both essential and non-essential, the presence of persons at particular risk was prohibited, which consisted of: persons older than 65 years of age; pregnant and lactating women; children under 5 years old; persons with physical disabilities; persons with chronic non-communicable diseases (ie hypertension, pulmonary ailments, renal insufficiency, lupus, cancer, diabetes mellitus, obesity, liver failure, or cardiac disease), as well as persons subjected to treatments compromising the immune system.

75. The Department of Health's Secretarial order of 31 March 2020 extended the scope of restrictions by suspending all non-essential labour activities.<sup>127</sup> Essential activities were defined in more detail as those pertaining to: all medical and public health services, as well as their suppliers; public security, defence, and civil protection; judicial and legislative functions at all levels; fundamental sectors of the economy, namely the financial sector, fiscal administration, the sale and distribution of gas, petrol, and general products from the area of energy; generation and distribution of potable water; production and sale of food and nonalcoholic beverages; retail services; transportation and cargo services; agriculture and fishing; production of chemical and cleaning products; hardware stores; post and delivery services; private security; day-care and childcare centres; long-term care facilities for the elderly; refuges and shelters for female victims of violence and their children; telecommunication and the media; private emergency services; funerary and burial services; storage facilities; logistical activities such as airports, ports, and railways; those activities the suspension of which would have irreversible effects for their continuation; social governmental programs; and the activities necessary for the maintenance of critical infrastructure ensuring the provision of essential services, such as potable/drinking water, electrical energy, gas, oil, and petrol, basic sanitation, public transportation, medical infrastructure, and those others closely related to these areas. Furthermore, in those places where essential activities were undertaken, meetings or gatherings of more than 50 people were forbidden.

76. Parks, town squares, and similar public spaces have always remained open for the public at large. Depending on the colour of the epidemiological traffic light, there are gradual limits on the allowed attendance to these spaces depending on their capacity (red: 25% capacity; orange: 50% capacity; yellow, 75% capacity).<sup>128</sup>

77. On 21 April 2020, a new order by the Secretary of Health extended the suspension of non-essential activities until 30 May.<sup>129</sup> From this date, whether or not schools, shops, and businesses remained closed is mostly contingent on the epidemiological traffic light system (see Table 1, Part IV.A above). Case-by-case closure is also possible in case of reported infections in some facilities. Only states and/or municipalities with a green traffic light, indicating no active transmission of Covid-19, are allowed to hold

in-person classes.

**78.** As with health, the federal government and states share jurisdiction with respect to education.<sup>130</sup> Therefore, states may regulate education provided in schools constituted under each state's laws, though they may not contravene existing federal regulations on specific matters, such as religion. Higher education institutions, such as universities, are constituted under every state's laws. Determinations on the suspension of courses is seen as falling within the purview of concurrent competences. During the Covid-19 pandemic, prior to the federal closure of schools, state-level governments had already proceeded to issue orders for school closures, either at some or at all educational levels (preschool, elementary, secondary, and high school). In the states of Colima,<sup>131</sup> Guanajuato,<sup>132</sup> Jalisco,<sup>133</sup> Michoacán,<sup>134</sup> Nuevo León,<sup>135</sup> Sonora,<sup>136</sup> Tamaulipas,<sup>137</sup> Tlaxcala,<sup>138</sup> Veracruz—the closure of schools in Veracruz on 17 March 2020 applied only to the four most populous municipalities, in the rest of the state, schools were closed from 20 March of the same year onwards—<sup>139</sup>and Yucatán, preschool, elementary, and secondary schools were closed from 17 March 2020 and in the state of Durango schools were closed from 19 March onwards.<sup>140</sup>

**79.** As for businesses, shops, and other on-site commercial activities in Mexico City, through an order of 1 April 2020, the Governor (*Jefa de Gobierno*) of Mexico City reiterated the list of essential activities and further delimited which ones would be suspended.<sup>141</sup> On the same day, the Deputy Director of Administration of Mexico City's System of Collective Transportation—a decentralized body within the executive branch with decision-making autonomy—issued an order prohibiting all commercial activities within and around the premises of the metro transport until 30 April 2020.<sup>142</sup> Inspectors are tasked with verifying whether businesses have been compliant with the general measures.

**80.** On 27 April 2020, the general coordinator of Mexico City's Supply Centre (*Central de Abasto*) issued a series of regulations stipulating mandatory hygiene and safety measures for those employed in the Centre's premises.<sup>143</sup> Due to its relevance for the supply of produce and foodstuff, the Supply Centre's scaling down of activities had a major economic impact for thousands of businesses within the metropolitan area.

**81.** The Governor of Jalisco and several of his cabinet members issued a joint order on 13 March 2020 mandating the closure of schools from 17 March onwards.<sup>144</sup> This preceded the federal Secretary of Education's Order of 15 March 2020<sup>145</sup> which, likewise, ordered the closure of schools starting from 20 March. In a similar vein, and previously to the federal Department of Health's Secretarial Order of 31 March 2020 suspending non-essential activities,<sup>146</sup> the Governor of Jalisco and his cabinet issued a joint order on 17 March 2020 closing 'nightlife leisure' centres but not restaurants or movie theatres, for example.<sup>147</sup>

## **5. Physical distancing**

**82.** A minimum physical distance of 1.5 metres was the subject of guidance and awareness campaigns by the federal Department of Health (see Part II.D above). These were not mandatory. However, on 29 May 2020, the Government of Mexico City ordered businesses to ensure a safe distance of 1.5 metres between persons, daily measurement of employee's body temperature, and the placement of sanitization products throughout their premises.<sup>148</sup> Similarly, the Government of Jalisco's Order of 17 March 2020,<sup>149</sup> entailing the suspension of certain leisure establishments, allowed for keeping specific ones open, such as restaurants and bars. In the case of the latter, mandatory health and hygiene measures were adopted, such as safe physical distancing of at least one metre for all persons, including patrons.

## **6. Use of face coverings and personal protective equipment (PPE)**

**83.** No mandatory use of masks has been instituted at the federal level. Nevertheless, certain states have implemented variations of the measure. On 29 May 2020, the Governor of Mexico City and her cabinet staff ordered the use of protective masks in public by all inhabitants.<sup>150</sup> In the case of Jalisco, the Order of 17 March 2020 instituted the compulsory use of masks for all employees, though patrons were not included in the latter. Later, the Order of 19 April expanded the mandatory use of masks to all public spaces,<sup>151</sup> lasting until 30 May 2020. From 18 June onwards, use of protective masks was mandatory on public transportation, with the possibility to impose sanctions for non-compliance.<sup>152</sup>

## **7. Isolation of infected individuals and quarantine of individuals suspected of infection**

**84.** In accordance with Article 404 of the General Health Law, the Secretary of Health mandated authorities to implement isolation and quarantine for individuals with a confirmed or suspected infection, respectively. These measures could take place either in hospitals or in a person's residence. In the case of quarantines, the mandated period was 14 days. A disregard of the order to isolate or quarantine could result in a fine of up to 16,000 times the minimum wage, circa USD \$95,600 at 2020 rates, though the exact amount depends on multiple circumstances, including socioeconomic ones.<sup>153</sup> Alternatively, a breach may lead to an arrest of up to 36 hours.<sup>154</sup> There are no reports of whether such sanctions, due to a breach of an order to either quarantine or isolate, have been imposed.

**85.** Generally, the implementation of isolation and quarantine orders, including the potential sanctions, rests with state-level governments (see Part IV.B below). As a result, approaches toward the matter varied. Some state-level governments, such as Mexico City, refused to impose sanctions altogether. Others, such as in the states of Jalisco and Yucatán, indicated that persons violating individual isolation or quarantine orders could be subjected to fines and even prison sanctions, in accordance with local criminal and health laws.

## **8. Testing, treatment, and vaccination**

**86.** Testing policies for Covid-19 may be determined at both the federal and state levels of government. However, these diagnostic tools are required by law to be registered at the federal Department of Health.<sup>155</sup> The registry of Covid-19 tests falls within the jurisdiction of the Institute of Diagnostics and Epidemiological Reference (InDRE), itself under the authority of the Department of Health.<sup>156</sup> Registered tests include antigen-based<sup>157</sup> and RT PCR.<sup>158</sup>

**87.** In line with Article 73 XVI of the Constitution, the federal government has legal powers to implement testing policies nationwide. Nevertheless, in the initial stages federal authorities declined to substantially ramp up testing capacities, opting instead to rely upon the so-called 'sentinel' system.<sup>159</sup> Broadly speaking, this system is based on epidemiological modelling from a sampling of Covid-19 hospitalization cases in 475 different medical units in the country.<sup>160</sup> Nevertheless, the approach was criticized on the basis that it was designed for monitoring influenza, a disease with important epidemiological features different to those of Covid-19. Due to the limitations of national-level policies in the matter, data from May 2020 showed that Mexico was the Organisation for Economic Co-operation and Development (OECD) country with the lowest testing rates.<sup>161</sup>

**88.** In light of the restricted nationwide testing policy, some state-level governments decided to implement their own strategies. On 14 April 2020, the government of Jalisco announced the purchase of PCR tests sufficient for up to 500 patients per day.<sup>162</sup>

**89.** On 8 December 2020, the federal Department of Health published the national Covid-19 vaccination plan, later updated on 11 January 2021.<sup>163</sup> The vaccine had received regulatory approval from the Federal Commission for the Protection Against Sanitary Risks (*Comisión Federal para la Protección contra Riesgos Sanitarios*) on 11 December 2020.<sup>164</sup> The national plan prioritizes healthcare personnel, whereas for the population at large age and comorbidities are the relevant factors.<sup>165</sup> The first phase began on 24 December 2020, after the initial delivery of 3,000 doses of the Pfizer/BioNTech vaccine.<sup>166</sup> At the moment of writing, the country had engaged in advance purchase agreements for up to 234 million doses from five different manufacturers (Pfizer, AstraZeneca, Sputnik V, Sinovac, and Cansino).<sup>167</sup>

## **9. Contact tracing procedures**

**90.** In Mexico, contact tracing is the responsibility of state-level authorities. These are mostly interview-based, where persons with a confirmed infection are asked to provide information on their most recent contacts. However, there are no official or unofficial reports of sanctions in cases of non-cooperation by infected persons.

**91.** Moreover, beyond the state-level, some high-density municipalities have recorded the implementation of contact tracing procedures for those infected. A notable example is the highly touristic

city of Cancún, in the state of Quintana Roo. While the state, by itself, did not implement robust contact tracing processes, the municipality chose to implement its own.

**92.** In Mexico City, an improved large-scale mechanism of contact tracing was announced on 17 March 2020.<sup>168</sup> It is mostly based on personal interviews of infected persons and their contacts, whilst also using SMS, hotlines, social media, and log-in websites, though participation is voluntary. By 15 February 2021, official data showed that the system had identified 211,731 positive cases of Covid-19 after employing 1,095,118 PCR tests.<sup>169</sup> While personal data is not made public, information provided by infected persons is understood as active consent for authorities to use it to trace their contacts.

### **10. Measures in long-term care facilities or homes for the elderly, restrictions on visitors etc.**

**93.** The federal government has issued a series of guidelines (‘strategies’) to prevent the spread of Covid-19 in long-term care facilities.<sup>170</sup> These guidelines included recommendations to restrict all visits to long-term care facilities during the harshest level of the epidemiological traffic light system, with exceptions such as visits to terminally ill persons. Although legally non-binding, the federal government’s guidelines are framed as if they were requirements. Press reports indicate that several long-term care facilities have imposed multiple restrictions on visitation.<sup>171</sup>

## **B. Enforcement and compliance**

### **1. Enforcement**

**94.** At the time of writing, the federal government has refused to use its constitutional powers to include coercive means against individuals for not complying with the public health measures.<sup>172</sup> The President of the Republic justified such a comparatively lax approach in his daily press conference of 16 November 2020.<sup>173</sup> He deemed the use of coercive means of enforcement to be ‘a repressive approach’.

**95.** Although the federal government via its epidemiological traffic light system (see Table 1, Part IV.A above) has been the lead for most public health measures, health authorities and police forces at the state-level have been responsible for implementing most of those measures.<sup>174</sup> This has provided leeway in determining if and what type of sanctions are imposed, in accordance with state laws. But it resulted in an uneven implementation between states, possibly as a result of disparities in economic capacity (see Part I above). Thus, some state-level governments have decided to resort to stricter measures than those corresponding to their epidemiological situation. For instance, some states assessed as ‘orange’ in the traffic light decided to maintain measures corresponding to the ‘red’ scenario,<sup>175</sup> ie suspension of all non-essential business activities and closure of all public spaces. In a similar vein, the implementation of contact tracing procedures is dependent on the willingness of state authorities to assign devoted personnel, as the federal Department of Health does not have the capacity to undertake country-wide activities in that regard.

**96.** The military have not, so far, been deployed to enforce the multiple measures related to Covid-19. However, a new gendarmerie, the National Guard (*Guardia Nacional*), was created through a constitutional reform of 26 March 2019.<sup>176</sup> The new body is composed of personnel previously belonging to the military forces. While not imposing health measures across the population, the National Guard has stated its availability for safeguarding hospitals during the Covid-19 pandemic, if needed. On 30 October 2020, in the border city of Ciudad Juárez, both the National Guard and customs authorities intercepted a truck entering Mexico from the United States purporting to smuggle Covid-19 tests into the country.<sup>177</sup>

**97.** The main legal consequence for the non-observance of legally mandated measures has been the imposition of civil-administrative sanctions, ie fines. Given how the implementation of federally-mandated public health measures has mostly fallen upon states, there is leeway in the choice of legal tools for dealing with non-compliance. The largest number of sanctions are related to business establishments not complying with the order to suspend their activities.<sup>178</sup> Health authorities of all levels of government have the power to inspect private premises in order to verify compliance with the measures.<sup>179</sup> Thus, authorities at the state and municipal levels have exercised these police powers related to, inter alia, the observance of mandated closure of public spaces, as well as mobility restrictions.<sup>180</sup>



**98.** The Order of 29 May 2020 issued by the government of Mexico City,<sup>181</sup> dictating multiple mandatory measures in addition to those at the federal level, is a legally binding administrative act. Nevertheless, the Governor of Mexico City announced that sanctions for the general population would not be imposed, but rather only on non-compliant businesses.<sup>182</sup> By contrast, up to 9 July 2020, Jalisco's Department of Transportation had reported the imposition of hundreds of fines on public transportation drivers for not wearing their protective masks.<sup>183</sup>

**99.** At the federal level, the use of prison sanctions was not deployed in order to ensure compliance. As the implementation of most of the federally mandated measures rested upon state-level governments, they had discretion in terms of which type of sanctions foreseen by health laws could be imposed. For example, in Querétaro, Yucatán, and Jalisco, authorities have threatened to use prison sanctions for those violating mandatory isolation and quarantine.<sup>184</sup> No instance of a person subjected to a criminal procedure for violating measures related to Covid-19 has been reported in publicly available data.

## **2. Compliance**

**100.** Given how there was no sanctions-based enforcement against individuals at the federal level, there was no regular oversight of compliance with the public health measures. Available accounts are usually based on secondary sources, such as journalistic reports. Most of the oversight was undertaken by state and municipal-level governments. Nevertheless, the Department of Labour and Social Security has conducted several inspections of business establishments to ascertain their adherence to the suspension of non-essential activities. In a communiqué of 27 April 2020,<sup>185</sup> the Secretary of Labour and Social Security reported that 87% of the inspected companies complied with the measures regarding Covid-19. Those that did not were subjected to a warning which, if not heeded, could then lead to both a forced suspension of activities and the imposition of a fine. In another press conference of 2 June 2020, the Secretary of Labour and Social Security claimed that of 4,000 inspected companies until that moment, 95% were in compliance with public health measures. According to the yearly report of activities by the Department of Labour and Social Security, a total of 5,176 inspections were conducted between April and June 2020.<sup>186</sup> There is, however, no data on how many sanctions were imposed to those that did not comply with the temporary closure due to Covid-19.

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## **Footnotes:**

<sup>1</sup> KY Tan, 'Presidential Systems', Max Planck Encyclopedia of Comparative Constitutional Law (OUP 2017) [14] ; J Carpizo, *El presidencialismo mexicano* (Siglo XXI 2002) .

<sup>2</sup> Unless otherwise indicated, textual quotations are taken from the unofficial translation of the Mexican Constitution provided by the Constitute Project, 'Mexico 1917 (rev. 2015)' (accessed 15 February 2021).

<sup>3</sup> D Elazar, *Exploring Federalism* (University of Alabama Press 1991) 136 .

<sup>4</sup> National Institute for Geography and Statistics (Mexico), 'Data of National Inhabitants in 2015' (accessed 15 February 2021).

<sup>5</sup> Federal Department of Health (Mexico), 'Online Dashboard' (accessed 24 November 2020).

<sup>6</sup> Ibid.

<sup>7</sup> M Patiño and G Reyes, 'Las medidas adoptadas por las entidades federativas ante la emergencia del Covid-19', Cuaderno de Investigación No. 7 (Senate of the Republic/Belisario Domínguez Institute, May 2020) 91–93 .

<sup>8</sup> National Institute for Geography and Statistics/INEGI, 'Territorial Division Data' (accessed 15 February 2021).

<sup>9</sup> JM Serna, *El sistema federal mexicano. Un análisis jurídico* (UNAM 2008) 88–90 .

- <sup>10</sup> Secretaría de Salud, *Informe sobre la Salud de los Mexicanos 2016. Diagnóstico General del Sistema Nacional de Salud* (2016) 40–41.
- <sup>11</sup> M González Block, H Reyes Morales, L Cahuana Hurtado (et al), 'Mexico. Health system review' (2020) 22(1) *Health Systems in Transition 2* (World Health Organization/European Observatory on Health Systems and Policies) 180 .
- <sup>12</sup> *Ibid*, 42–43 .
- <sup>13</sup> P **Villarreal** , *Pandemias y Derecho: Una Perspectiva de Gobernanza Global* (UNAM 2019) 151 .
- <sup>14</sup> *Ibid*, 150–153 .
- <sup>15</sup> Order of the General Health Council of Mexico (30 March 2020).
- <sup>16</sup> United Nations Treaty Collection, 'Depository notifications to the United Nations Secretary General' (accessed 15 February 2021).
- <sup>17</sup> Order of the General Health Council of Mexico (19 March 2020).
- <sup>18</sup> Order of the General Health Council of Mexico (30 March 2020).
- <sup>19</sup> World Health Organization, 'WHO Director-General's opening remarks at the media briefing on COVID-19' (11 March 2020).
- <sup>20</sup> World Health Organization, 'Statement on the second meeting of the International Health Regulations (2005) Emergency Committee regarding the outbreak of novel coronavirus (2019-nCoV) (30 January 2020).
- <sup>21</sup> General Health Law 1984, art 181.
- <sup>22</sup> Original denomination: '*Diario Oficial de la Federación*' .
- <sup>23</sup> General Health Law 1984, art 184(I).
- <sup>24</sup> Order of the General Health Council (19 March 2020).
- <sup>25</sup> Governor of Colima's Emergency Declaration (18 March 2020).
- <sup>26</sup> Internal Regulations of the General Health Council, art 3.
- <sup>27</sup> Order of the General Health Council of Mexico (19 March 2020).
- <sup>28</sup> Order of the General Health Council of Mexico (30 March 2020).
- <sup>29</sup> Secretarial Order of the Secretary of Health (24 March 2020).
- <sup>30</sup> Secretarial Order of the Secretary of Health (31 March 2020).
- <sup>31</sup> Secretarial Order of the Secretary of Health (21 April 2020).
- <sup>32</sup> Secretarial Order of the Secretary of Health (14 May 2020).
- <sup>33</sup> Presidential Decree (24 March 2020).
- <sup>34</sup> Presidential Decree (27 March 2020).
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