



## EDITORIAL

# Public Enemy. A global state of exception and the protection of human rights in unstable times

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## Abstract

Of the different demons that surround and stalk the global population with a force that seems uncontrollable as it unfolds. The COVID-19 pandemic represents, together with other evils of present era, the greatest challenge from State in being able to neutralize its mega-impact from the radiation of normative devices, management and activation of basic resources. Along these lines, this study seeks to analyze the side effects of having deliberated the declaration of a state of exception in the face of a lethal enemy. Well, it is not surprising that the dominant process pandemic has had dissimilar impacts in magnitude and intensity in groups of special vulnerability. From this, it can be recognized that when adopting the necessary measures to guarantee the protection of fundamental rights in scenarios of public calamity, a decentralized and differentiated approach should be considered for treatment of these deprived groups by the State.

**Keyword:** COVID-19, Pandemic, State, human rights, states of exception.

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## ***Enemigo Público. Estado de excepción global y la protección de los derechos humanos en tiempos inestables***

### **Resumen**

*De los diferentes demonios que rodean y acechan a la población global con una fuerza que parece incontrolable mientras se desarrolla. La pandemia del COVID-19 representa junto a otros males de la presente era, el mayor desafío para el Estado en poder neutralizar su mega-impacto desde la radiación de dispositivos normativos, de gestión y activación de recursos básicos. En esa línea, este estudio busca analizar los efectos laterales de haber deliberado la declaratoria del estado de excepción frente a un enemigo letal. Pues, no extraña que el dominante proceso de la pandemia ha tenido impactos disímiles en magnitud e intensidad en grupos de especial vulnerabilidad. De esto, puede reconocerse que al momento de adoptar las medidas necesarias para garantizar la protección de los derechos fundamentales en escenarios de calamidad pública, se deba considerar un enfoque descentralizado y diferenciado para el tratamiento de estos grupos desprovistos por parte del Estado.*

**Palabras Clave:** COVID-19, Pandemia, Estado, derechos humanos, estados de excepción.



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### **INTRODUCTION**

In different Latin American and Caribbean countries, the rigid imposition of a state of exception during 2020 has been characteristic after the catastrophe caused by the COVID-19 pandemic. Such an extreme and extraordinary situation opinion has a definite destiny, to end the common enemy, a State purpose that supposes partially or totally limiting civil mobility, where the police and military presence in the national territory takes an escalation and a preponderant position to do effectively and quickly deal with serious emergency situations (Fix-Zamudio, 2004). In such an attempt, the provision not only ends in curfews, but also with certain citizens' rights suspended, at least until the supreme provision is liquidated or the evil that causes it is defeated and a regime of law is reinstated (rule of law) that ends the oppression and tyranny of the evil one (Barzotto, 2020).

However, contrary to safeguarding the rule of law and the macro principles of democracy or putting the full validity of citizen security at the top, in some countries of the region, the side effect of an exception regime can disrupt rights humans disproportionately, in depth and time. This, if the public problem is poorly structured (Á. M. López, 2021), to the point of breaking them or awakening certain tensions between the law and the power detached from the State.

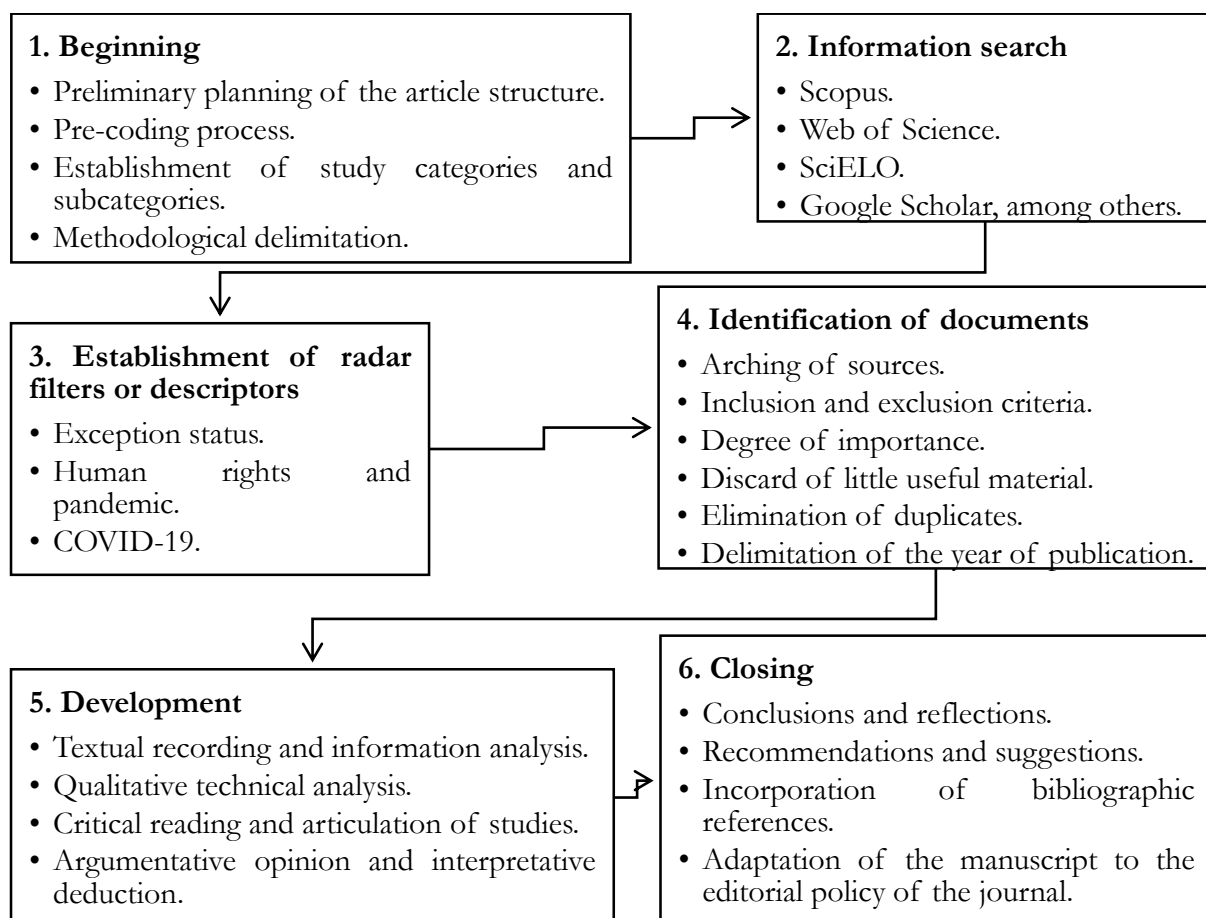
In this sense, the study aims to analyze the effects incurred at the time of applying the state of exception and guaranteeing the protection of fundamental and / or constitutional rights in the ruling process of the COVID-19 pandemic. Well, in times of strong imbalances caused by large-scale wars, religious conflicts, environmental catastrophes, forced displacement, food insecurity, famine, poverty, inequality, disputes over the scarcity of natural resources and the manifestation of lethal diseases or other problems that do not exist. less important that reform the environment and

the basic structure of society. The State carries with it the harsh implementation of normative devices (they refer to the set of norms and laws), management (points to the pre-existing or new organizational structure) and activation of basic resources (refers to the specific possibilities of activating policies, such as human, financial and technological resources) that allow it to prevent, face and solve the problem of public interest (Nercesian, Cassaglia & Morales, 2021). However, for some analysts (Cárdenas, Andrade & Durán, 2021), the so-called state of exception as a legal control tool against the pandemic has ended up reducing the exercise and enjoyment of human rights in the region to a minimum. Effect that leads to taking certain decision notes.

## METHODOLOGY

This research is positioned within a qualitative, descriptive perspective, where the documentary technique and the doctrinal analysis of studies of first and second bibliographic sources were taken as a starting point. In this sense, it should be noted that different scattered data were articulated that allowed to provide the same panoramic plan of the current state of human rights in the midst of a turbulent place determined by the pandemic (Canaza-Choque, 2018; 2019; 2020a; 2020b; Canaza -Choque, Escobar-Mamani & Huanca-Arohuanca, 2021; Canaza-Choque, Condori-Pilco, Peralta-Cabrera & Dávila-Quispe, 2021; Canaza-Choque, Cornejo-Valdivia, Condori-Pilco & Yabar-Miranda, 2021). Likewise, the procedure followed a conventional route from start to finish, which is characteristic of this type of study, outlining 6 procedural moments or phases (Graph 1).

**Graph 1. Phases of the study procedure**



Source: Own elaboration, 2021.

## RESULTS AND DISCUSSION

### From execution to impact: turbulence and stress

A little more than 30 years ago, Norberto Bobbio (1991) mentioned that the conditions in which the world-civilization was moving in the time of rights, meditated seeing and understanding that they were sufficiently chained and loaded with inevitable climatic disasters, of an accelerated population growth and an excessive advance in the development of weapons. This terrifying nature led us to suppose that this world was heading for unpredictable turbulent scenarios and of enormous unquantifiable risk for the global population.

In this way, faced with such concern about chaotic images and finding himself in the middle of all this, Bobbio (1991) was certain that the seismic epicenter of international debates would revolve around the protection and recognition of human rights. . And as the jurist conceived it, this problem would not have been born today, at least, the beginning of this point of pronouncement was in the Middle Ages - a historical period conventionally understood between the 5th and 15th centuries. But more profoundly, as the Italian political scientist points out, the problem of human rights and its inflexible rise found the imperative universal touch since the end of the Second World War (1945).

So after the disaster, you had to take things seriously. Since the postwar period declined European empires and simultaneously, the rise of new superpowers in the geopolitical terrain (USA and USSR) that would give rise to a declared open war under the dominant doctrine of mutual assured destruction. Consequently and in the face of this, it was necessary to create an international institution to ensure diplomatic relations, multilateral cooperation and, above all, to avoid an atomic future or unpayable disaster. Thus, the United Nations (UN, 1945) would become one of the largest institutions with extraterritorial power that would seek to maintain peace, international security and repair global problems of drag or those that could arise and figure on the itinerary.

At the same time, it was also necessary to form a trend that seeks support points for the evolution, duration and internationalization of human rights in a world that, after all, would end up going through decisive moments of collective action in order to neutralize armed conflicts, humanitarian catastrophes , political storms, prolonged inequalities, climatic instabilities and other common enemies that would pose disintegration of the pillars of international well-being (Brown, 2019) and of putting state forces and sustainability standards to the limit.

In this rude and hard idea, on the basis of the Universal Declaration of Human Rights ([UDHR] 1948, Paris), regional protection courts such as the European Court of Human Rights (ECHR, 1959), the Inter-American Court of Human Rights began to be created. Human Rights (IDH Court, 1979) and the African Court of Human and Peoples' Rights (CADHP, 1987) that emerged within continental human rights protection systems. Judicial bodies that since their foundation have had a significant evolution in protecting the treaties signed between the parties; and that although at the time of ruling their decisions, they do not have coercive powers, they have been implementing processes of inspection and monitoring of compliance with the sentence, in addition to the fact that their pronouncement has a direct impact on the functions of the State and the adequate national implementation of legal mechanisms in the human rights protection system (Quiñones, 2020).

Hence, the tendency of most of the constitutional charters to adhere to a greater or lesser degree humanist content in progress and rules aimed at strengthening human rights. Even this expressive and reasonable effort of each State becomes more weighted, whenever it is a member of an international human rights organization, than based on the principle of *pacta sunt servanda*, that is, after signing and ratifying the instruments international organizations must also strictly comply with the objectives related to the protection of human rights, especially, to be able to empower minorities. At this rate, the end of the 20th century has witnessed enormous transformations that made the notion and expansion of human rights remarkable and the role of the State in consolidating their increase due to social demands and temporary problems (Santano, 2019).

However, this determination could have been much more stressed during the second decade of the 21st century by the emergence of dominant problems such as the COVID-19 pandemic. Well, what started at the end of December 2019 in the Wuhan regions in China (AM López, Casas-Moreno & Balseca, 2021) would cause a closure of massive proportions three months later with measures and plans of enormous rudeness and full of restrictions which, of course, would lead to stiff tax rates for human rights. Where the protection and making it effective at a global level, would awaken its debate again (Hoffmann, 2021).

### **State of exception and the protection of human rights**

In the midst of historical weaknesses and far-reaching structural problems. The pandemic has undoubtedly had a disastrous economic and social impact in the region. Highlighting, on the one hand, the freezing of external demand and the implosion of supply (Tórtola & Alfaraz, 2020) that has been represented by the total closure of approximately 2.7 million Latin American companies dedicated mostly to tourism, hotels, restaurants, communication services, culture, commerce, transport and fashion (Sánchez & García, 2021).

In effect, this stoppage of economic activities would immediately translate into the reduction of wages (Zúñiga, 2021) or the destruction of thousands of formal and informal jobs during 2020. Tragedy that would directly damage the income and budget of urban households and rural areas, thus reducing their employment chances and leading to an untimely and unstable scenario (Baanante & Nopo, 2020).

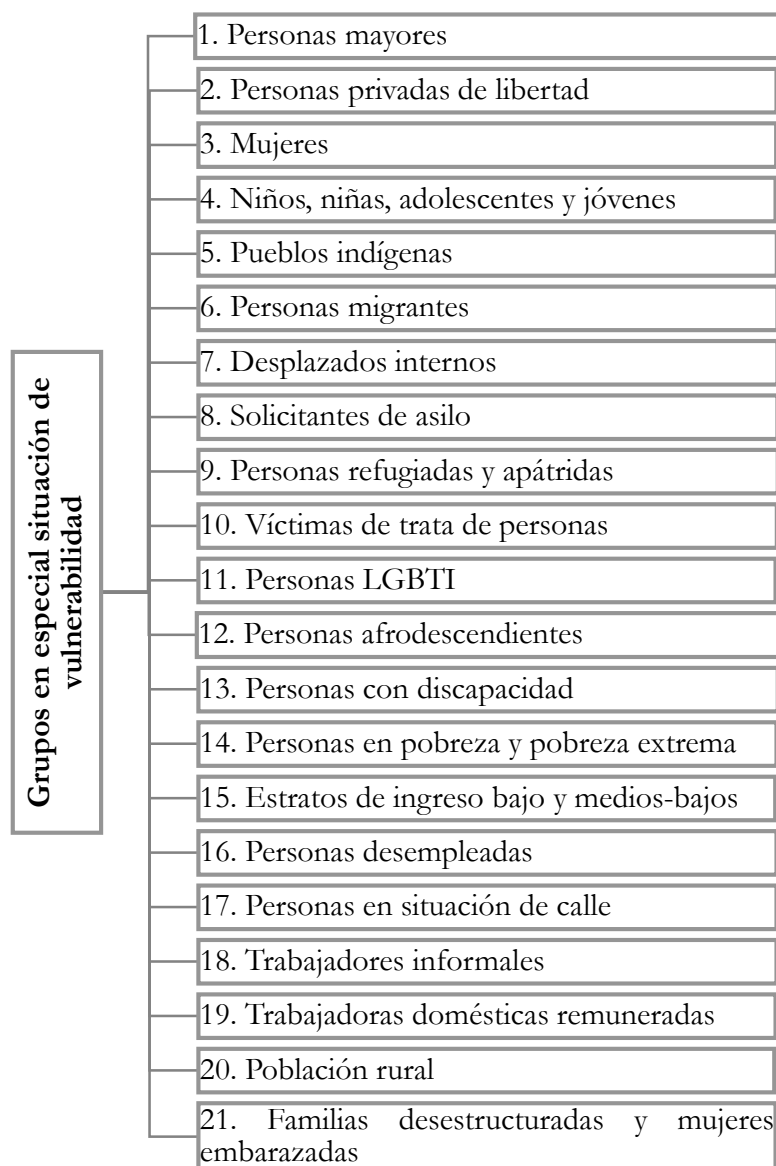
On the other hand, amid high and low levels of informality or submerged economies (Ruesga, 2021), the stoppage of production processes and the drop in consumption outlined an increase in the public deficit and public debt; in addition to putting pressure on the national budget in basic and heavily damaged sectors such as health and education. Given that the necessary implementation of social protection programs and health measures have slowed the growth of the Gross Domestic Product (GDP), facing the State with a shortage of public resources, especially financial (Zúñiga, 2021).

In this way, with different regimes (Prieto-Silva, Sarmiento-Hernández & Prieto-Silva, 2020), a weak and unequal infrastructure of the health systems, while most Latin American countries lacked comprehensive systems or universal access to health, the worst effects have been stopped and felt particularly in territories affected by poverty and extreme poverty or where inequality indices are highly high (Burki, 2020).

From this, the different reports compiled by the Economic Commission for Latin America and the Caribbean ([CEPAL], 2020a; 2020b), specify that during 2020, the pandemic has had a heartbreaking and discriminatory impact that reflects the matrix of social inequality between the

different socioeconomic strata, gender, life stage, ethnic-racial characteristics, area of origin and residence, in addition to including other factors such as precarious condition or no basic services, disability, immigration status, which, in sum, constitute a nucleus and a fragile base for different social groups of special vulnerability (Graph 2). Where the affected areas transcend physical-mental health, food, education, labor income, child labor, access to basic services (water, sanitation, electricity, gas, digital technologies), unpaid care work or violence intrafamily, among others.

**Graph 2. Populations most affected by the socioeconomic impacts of COVID-19**



**Source:** Prepared by the authors based on data from CEPAL (2020) and the Inter-American Commission on Human Rights ([IACHR], 2020).

It was not surprising that, within this scenario of extreme inequities (Cabezas, 2020) and with the reasonable purpose of stopping further damage, confronting, preventing and flattening the increase in infections, morbidity and mortality, it required an aggressive intervention on the part of the State (Caduf, 2021) in order to protect public health and the threat of being destroyed. Thus, the unleashing of states of emergency, states of exception, state of catastrophe due to public calamity,



or health emergency through regulations of diverse nature and dissimilar texture (Table 1). Thus, the restriction implied the suspension of fundamental rights and freedoms, the closing of borders, isolation or social distancing, the interruption of economic and educational activities, among other measures (Carrasco, Gonzales & Sanjinez, 2020).

**Table 1. Exceptional regimes in the constitutions of Latin America**

<b>País</b>	<b>Nomenclatura</b>
1. Argentina	–Estado de sitio –Estado de emergencia –Decreto de necesidad y urgencia
2. Bolivia	–Estado de excepción
3. Chile	–Estado de asamblea –Estado de sitio –Estado de catástrofe –Estado de emergencia
4. Colombia	–Estado de excepción –Estado de conmoción interna –Estado de emergencia
5. Ecuador	–Estado de excepción
6. El Salvador	–Estado de excepción
7. Guatemala	–Estado de prevención –Estado de alarma –Estado de calamidad pública –Estado de sitio –Estado de guerra
8. Honduras	–Estado de sitio
9. Panamá	–Estado de urgencia
10. Paraguay	–Estado de excepción
11. Perú	–Estado de excepción –Estado de emergencia –Estado de sitio
12. República Dominicana	–Estado de defensa –Estado de conmoción interna –Estado de emergencia
13. Surinam	–Estado de sitio –Estado de emergencia civil y militar

**Source:** Cervantes, Matarrita & Reza (2020).

However, as for the most important measure, unlike the rule of law that governs by the principle of *legality in genere*. In other words, I perceive that it establishes that the authorities have a limit, and that is, the rule of law. Consequently, the State must strictly respect the constitution and the laws governed by it. Whereas, a Democratic State of Law can face different dangers awakened at the internal and / or external level that, in order to safeguard it, the guarantees can be temporarily and temporarily suspended while the abnormality scenario remains present. A situation known as a

state of exception, which, despite its imperative urgency, must respect the constitutional regime and the non-alteration of the principles on which the rule of law is founded, as well as the fundamental rights of the person (Dorantes, 2012).

From the foregoing, the invocation of this legal figure must have certain prerequisites or essential states for its adoption. Among them is that there is a strong demand for the severity or unique situation of disaster (war, international conflict, internal commotion, economic emergencies); the interference of a situation that deforms the regular development of society and / or that disturbs peace, territorial order, or the impact of internal order due to a huge catastrophe and serious circumstances that threaten the life of the nation and the State (Muñoz, 2002).

In the same way, this exceptionality is generated by the extraordinary powers that are granted to the Executive Power to face a situation of strong emergency or chaotic, for which, in this case, the system of division of powers stops operating in the same way. that it would do so under normal conditions (Dorantes, 2012) or before said atypical scenario exploded; that, within its plan, the first lines of action are the restriction of civil liberties in its most diverse modality. Thus, a facet of reduced rights prevents all social activity and another non-essential (Figuroa, 2020).

So, for all that has been said, the case of the COVID-19 pandemic has a justification for a state of exception. Given that, the different measures of distancing, mandatory isolation (quarantine) and restrictions on individual freedom would not be possible through other regular or minor measures (Figuroa, 2020). However, foresee this normative device as the only alternative in the face of a multiplicity of factual situations (Dorantes, 2012) and the existence of different population groups with different types and degrees of risk and response, as well as the incorrect identification of the public problem (Á. M. López, 2021), can damage the rights of the person without this having been malicious by the State.

## CONCLUSIONS

By the time the pandemic further weakened problems that the past had failed to reverse or repair. The impact defined a terrain full of instabilities for the main pillars of well-being, in addition to that detached unease took hold among the human crowd and international politics. Well, the mega-crisis, in the words of the ninth Secretary General of the United Nations, António Guterres, began to devour human rights in an unflinching way. In this sense, in the face of the danger of global disaster and overflowing structural weaknesses, the term state of exception had a wide development of direct and aggressive response against the common enemy. Limiting, suspending, restricting and reducing fundamental rights in order to preserve public health were denominators of the same line in the most unequal region of the planet.

In the midst of this, extreme measures, untimely and more or less improvised, tried to limit the mobility and the excessive spread of the virus through the legal irruption of states of exception. However, the special regime did not have the same effect in the different Latin American and Caribbean states. Given that the crisis, expressed a disproportionate impact on the vulnerable population, and even more, the precarious and deprived. Hence, the effort of the State and multilateral cooperation should respond to and / or mitigate the mediate threat in a proportionate way, relentlessly safeguarding the rule of law and human rights from a decentralized and differentiated approach.



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