

# Democracy in Latin America under COVID-19

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Just like all over the world, Latin America's current state of emergency concerns saving the health, integrity and lives of people. Nevertheless, in the context of COVID-19 the region is also [witnessing](#) increasing inequalities, discrimination and exclusion of stigmatized or vulnerable groups, and repressive state measures that heavily counteract the enjoyment of human rights and democratic developments.

This article lays out relevant determinants of democratic erosion in times of the pandemic and highlights major challenges and perspectives in Latin America. The article follows the main argument that the democratic standards of the Inter-American system for the protection of human rights, enshrined in an *ius constitutionale commune*, are essential to resist the pandemic, to constrain emergency powers, and finally to strengthen democratic rule of law in Latin America.

## Exceptional measures and democracy under pressure

The current Latin American "regional state of emergency" rests on a [variety of exceptional measures](#) and has been declared predominantly by presidential decrees or declarations that responded to the rising health crisis. Some exceptions exist, e.g. in Brazil the Decree-Law of 20 March was approved by Congress without the intervention of the President, and in Mexico the first resolution was issued by the respective Ministry of Public Health. To date, [the majority of countries](#) has notified the so-called suspension of rights provided for in Art. 27 American Convention on Human Rights (ACHR). This high number of extensive suspensions in a short period of time is historically unprecedented.

In that regard, the global [discourse](#) on the [pandemic's impact](#) offers two central findings. First, adopting exceptional measures to address the pandemic in most cases came with the [derogation from basic rights](#) and the [accumulation of additional powers in the executive](#). In constitutional democracies and under international law such adaptations [must meet legal requirements](#), such as of proportionality, necessity and temporariness, alongside the maintenance of checks and balances, at all times. A major challenge hence is to comply with such requirements. This, second, [proved to be an acute problem](#) in struggling democracies and highly repressive states with pre-existing institutional weaknesses. Latin America looks back on a long tradition of [authoritarianism, presidentialism and the weakness of institutionality](#) and more recently on major incidents of social unrest and political crises. The region's greatest risk hence lies in the danger that the health emergency might add to and thus reinforce severe [pre-existing democratic deficits](#).

## Challenges and perspectives in Latin America

The diverse emergency measures taken so far by governments in Latin America have rung alarm bells and [have been analyzed](#) with regard to their impact on human rights. The [IACHR](#) found attacks against the freedom of the press, limitations on the freedom of information, attacks against journalists, violations of the rights of persons deprived of their liberty and illegal and arbitrary detentions associated with failure to comply with quarantine. The measures adopted since March 2020 also allowed the rise of security forces and the [disproportionate use of violence](#), even in countries that are not considered fragile democracies, such as Colombia.

Furthermore, in many countries the lack of an independent system of checks and balances becomes apparent. In El Salvador, the regime of exception approved by Legislative Decree No. 594 has given rise to at least [five claims of unconstitutionality](#). In Venezuela, the state of alarm decreed in March 2020 by Nicolás Maduro has not been approved by the National Assembly and is [entirely unconstitutional](#). This act reflects the general lack of judicial independence, of the rule of law and the dismantling of democracy in the country in the scope of a long-lasting human rights crisis. Also in Nicaragua, where similar institutional weaknesses persist, a lack of comprehensive measures, of transparency and responsible leadership led to [claims of the State's failure](#) to comply with international law and to save the health and lives of its people.

Finally, by prohibiting any kind of public gathering or demonstration and by cancelling elections, [two crucial elements for democracy in Latin America](#) have been affected. In Chile and Bolivia the electoral process seemed the only way out of deep political crises. The postponed elections in both countries first had generated uncertainty, but recently turned into a historic moment by unveiling that democracy and civic virtue can survive amidst crisis: In Chile, on 25 October 2020, an overwhelming majority voted for the [replacement of the Chilean military dictatorship-era Constitution](#). In Bolivia, [clean elections](#) took place and handed the presidency to Luis Arce, who is expected to continue with former president Morales' social politics while also enforcing democratic core principles.

### **The Inter-American democratic test**

In light of the broad discourse on democratic erosion, these fragilities in the sphere of the rule of law, of constitutional and legal matters, and of political leadership must be countered by restoring and strengthening democracy in all its dimensions. In this context, the Inter-American democratic test can be an instrument to face the pandemic and to work towards a renewed equilibrium of democracy, rule of law and particularly human rights. The test is shaped by the guiding principles of an *Ius Constitutionale Commune in Latin America* which is based on the interaction between domestic public law, comprising national institutions and central actors such as national judges and civil society, and the Inter-American Human Rights System, composed of the [American Convention on Human Rights](#), the [Inter-American Court of Human Rights](#) (IACtHR), and the [Inter-American Commission on Human Rights](#) (IACHR). The transformative impact of this system can be seen in the way constitutional law and human rights discourse are applied at the national level and, in return, in the way international law and human rights instruments are incorporated and promoted at the regional level.

Furthermore, the Inter-American democratic test derives, as established in the [Inter-American Democratic Charter](#) (IDC), from the joint interpretation of the essential elements and fundamental components of democratic consolidation, such as transparency of governmental activities, probity, government accountability in public management, respect for social rights and freedom of expression and of the press (Arts. 3 and 4 IDC), and of a dual conditionality between democracy and human rights (Arts. 7 and 8 IDC). As a consequence, in the face of COVID-19, the crucial factor for States to pass this democratic test is to comply with and apply human rights instruments like those provided by the now well-known [Syracuse Principles](#) and the entire body of an *ius commune* in the light of the indivisibility, interdependence and intersectionality of human rights (Arts. 26 and 27 ACHR).

### **Paradigmatic examples**

There are various cases of best-practice reactions in the Latin American region that go in line with the presented Inter-American test and which underline its significance for the region. An example of such is the decision No.1-20-EE/20 of April 16, 2020, of the Ecuadorian Constitutional Court for [keeping the executive accountable](#) during the pandemic through supervision. Also the Constitutional Court of Colombia [assumed automatic control](#) of decree-laws. In the case of Guatemala, according to article 11 of Government Decree 6-2020, all actions in the scope of this decree must be carried out with full [respect for the integrity and guarantee of the human rights](#) of the inhabitants. In Brazil, the Federal Supreme Court established [limits to police operations](#) in the favelas. In another decision, it determined that the federal government should adopt measures to [protect indigenous peoples](#) and contain the advance of COVID-19 in their communities. In Argentina, a [district judge](#) ordered the government of the city of Buenos Aires to provide potable water to communities without access to water.

With perspective on the Inter-American Human Rights System, the IACHR specified in [Resolution 01/20](#) and the IACtHR in [Declaration 01/20](#) that states have an obligation to respect and guarantee international norms, to protect fundamental freedoms and the rule of law, as well as to guarantee the independence of state organs and control mechanisms. Particularly the first resolution approved in the context of the pandemic has been a new milestone for enhanced human rights protection: Through her [respective resolution](#) Elizabeth Odio, President of the IACtHR, recognized the rights of migrants in a situation of high vulnerability and obliged the State of Panama to ensure “immediate and effective access to essential health services without discrimination” for persons in situations of migration detained in the Darién province.

Finally, the pandemic might also be considered as a starting point for increased attention on democracies in crisis, on the multidimensional nature of such crises, and on opportunities: Eduardo Levy Yeyati and Andrés Malamud, for example, have claimed that next to a potential [pandemic backsliding](#) there are also “[side benefits from the damage](#)”. Tom Ginsburg and Mila Versteeg counter the argument on diminished checks and balances in times of the pandemic and illustrate cases of a “[bound executive](#)”. [ParlAmericas](#) is monitoring legislative incentives to resume control in Latin America and strives for [strengthening the role of parliaments](#). The

[Global Monitor of COVID-19's impact on Democracy and Human Rights](#) offers insights about related developments and developments to watch; such data can be supplemented by economic, social and other dimensions of the crisis as offered in the [COVID-19 Observatory in Latin America and the Caribbean](#).

## Conclusions

Latin America struggles with a crisis that surpasses the health emergency and presents a preceding democratic erosion as one major risk. In order to depart into a more resilient, integrative and peaceful post-COVID society, change in the legal-political reality must commence in times of the pandemic. The Inter-American test exemplifies how indispensable standards and instruments are already promoted for protecting democracy in crisis and that the Latin American *ius constitutionale commune* can provide central insights on how transformative change is possible even in times of crisis. The international standards on protection of the rule of law during states of emergency and the awareness of the role of judges in these circumstances have [helped to underpin](#) the controls that have been exercised over acts or omissions of the executive. The crisis finally calls for a more [holistic and integral approach](#) to human rights protection and emphasizes the need to take into account the interdependence and indivisibility of human rights and the intersectional impacts on vulnerable groups.

