

State of Constitutional Exception

On March 18, 2020, Supreme Decree 104 of 2020 of the Ministry of the Interior and Public Security was published in the Official Gazette, whereby the President of the Republic declared a state of constitutional exception of **state of catastrophe**, which will be in place for 90 days starting 0:00 a.m. on March 19, 2020.

According to the Constitution, once a state of catastrophe has been declared, the President is allowed:

- To restrict the freedom of locomotion and reunion;
- To arrange for property takings;
- To establish limitations to the exercise of the right of property; and
- To adopt all extraordinary administrative measures necessary for the rapid restoration of normality in the affected zone.

The declaration of the state of catastrophe itself does not necessarily involve any restrictions (unless the decree declaring the state of catastrophe establishes any). Normally, once a state of catastrophe has been declared, limitations or restrictions are established through successive administrative acts, whose effects are temporary and are in constant review by the authority.

The Organic Constitutional Law on States of Constitutional Exception details the possible measures that the authority may adopt. It provides that, once a state of catastrophe has been declared, the respective zones remain under the immediate dependence of the Chief of National Defense appointed by the President, and that Chief of National Defense may establish a series of measures, among them the following:

- Control the entry and exit to the country and the transit of people in all the national territory;
- Order the collection, storage or reserve of food, articles and goods needed for the care and subsistence of the population of the zone and control the entry and exit of such goods;
- To determine whether to distribute or use, free of charge or for a fee, the goods for the maintenance and subsistence of the population in the affected zone;
- Set conditions for holding meetings in places of public use; and
- Dictate the measures required for the protection of public utility services, mining and industrial centers among others.

The Constitution states that courts are not allowed to review the grounds for the declaration of a state of catastrophe. However, **with regard to particular measures**

affecting constitutional rights, it is possible to appeal to the judicial authorities through the appropriate mechanisms.

Furthermore, it provides that **any takings made will entail compensation** in accordance with the law, and that any **limitations on the right of property will also give rise to compensation** if they result in the deprivation of any essential attribute or faculty of the property right, thereby causing damage.

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