

# **Maximum Disclosure: Secrecy in COVID-19 Vaccine Contracts and Other Shortcomings of Colombia's Vaccine Rollout**

A Briefing Paper  
July 2021

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## **Acknowledgments**

This Briefing Paper was written and researched by Timothy Fish Hodgson, Rocío Quintero M and Alicia Quijano-Evans. Livio Zilli provided legal review.

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## A. INTRODUCTION

Colombia has experienced some of the highest reported COVID-19 transmission rates and COVID-19 related deaths in Latin America. As has happened in other parts of the world, the COVID-19 pandemic has aggravated a previously existing socio-economic crisis in Colombia, deepening poverty, inequality and social unrest. In particular, the pandemic has had a disproportionately detrimental effect on some sectors of the population, such as women, non-citizens and older persons.

In this context, as early as October 2020 already, ICJ's Commissioner, Rodrigo Uprimny, observed: "The pandemic has shown that inequality is a huge problem in relation to the enjoyment of economic, social and cultural rights. Many economists have shown that if you do not reduce social inequality, the impact of the COVID-19 pandemic will be even more serious."<sup>1</sup>

As this briefing paper shows, while it is true that the COVID-19 pandemic has exacerbated inequality in Colombia, it is also true that prevailing inequality in Colombia has, itself, exacerbated the impact of the COVID-19 pandemic.

This briefing paper presents an overview of the impact of the COVID-19 pandemic in Colombia, and describes some key aspects of the National Government's response to it, focusing, in particular, on Colombia's COVID-19 vaccination rollout programme. In so doing, it highlights a recent decision of the Administrative Tribunal of Cundinamarca requiring transparency in Colombia's contracting for COVID-19 vaccines with pharmaceutical companies.

As leading Colombian human rights organization Dejusticia has noted, the Colombian authorities lack of transparency in regard to COVID-19 vaccine contracts with pharmaceutical companies are "only a reflection of how the National Government chose secrecy in handling the pandemic... this opacity damages citizen control and the transparent management of public resources."<sup>2</sup>

The ICJ, therefore, advocates for increased transparency from the Colombian government about the COVID-19 vaccine acquisition process, as well as more generally with respect to the authorities' response to the pandemic.<sup>3</sup>

The present briefing paper is divided into four further sections.

Section A makes some introductory remarks, and summarizes the content of the paper. In Section B, we summarize the impact of the COVID-19 situation in Colombia, including by providing some relevant information on the effect of the pandemic on the health system and marginalized sectors of the population, such as women and non-citizens.

In Section C, we address Colombia's COVID-19 vaccination strategy directly. To do so, we analyze the main elements of Colombia's vaccination plan. The section pays particular attention to the

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<sup>1</sup> International Commission of Jurists, Conversation with Rodrigo Uprimny, 22 October 2020, available at: <https://www.facebook.com/ICJAsia/videos/416526732855462>

<sup>2</sup> Dejusticia, Las preguntas que siguen pendientes sobre los contratos de las vacunas, 1 June 2021, available at: <https://www.dejusticia.org/las-preguntas-que-siguen-pendientes-sobre-los-contratos-de-las-vacunas/>.

<sup>3</sup> International Commission of Jurists, Living Like People Who Die Slowly: The Need for Right to Health Compliant COVID-19 Responses, September 2020, page 104-117, available at: <https://n9.cj/oehvg>

vaccination strategy for non-citizens and the role of private companies in Colombia's vaccine rollout and acquisition.

In Section D, we examine the importance of ensuring transparency in Colombia's contracting with pharmaceutical companies for the procurement of COVID-19 vaccines. In this regard, we summarize and analyze a landmark ruling handed down by the Administrative Tribunal of Cundinamarca. We underscore the Tribunal's human rights-based approach, in particular in relation to the right to information and the principle of "maximum disclosure". Furthermore, we underline that the Tribunal's approach, premised on an understanding of COVID-19 vaccines as a global public health good, provides a strong precedent to follow for courts and human rights defenders seeking to protect human rights in the context of COVID-19 vaccine access.

Finally, in Section E, we provide recommendations to the Colombian authorities on how to improve their own compliance with the country's international human rights law obligations in the process of ensuring access to COVID-19 vaccines.

The Briefing Paper is published alongside a full summary of the decision of the Administrative Tribunal of Cundinamarca.<sup>4</sup>

## **B. COVID-19 SITUATION IN COLOMBIA**

On 6 March 2020, Colombia reported the first confirmed case of COVID-19.<sup>5</sup> To curb the spread of the virus and address the social and economic effects of the pandemic, the national government has enacted numerous social and economic measures,<sup>6</sup> which, overall, have proven to be insufficient.

Colombia has endured one of the worst COVID-19 outbreaks in Latin America. As of 28 July 2020, the Colombian Ministry of Health has reported 4,757,139 COVID-19 cases and a death toll of 119,801 people,<sup>7</sup> albeit, as with most countries, this is most likely a significant underestimation.<sup>8</sup>

Since April 2021, Colombia has been facing its third and thus far most severe wave of COVID-19 infections. During this period, on average, the Ministry of Health has reported more than 400 COVID-19 related deaths daily, with as many as 693 individuals dying of COVID-19 reported on a single day on 26 June 2021. Up until mid-July there was also an upward trend on reported daily new COVID-19 cases.<sup>9</sup> At the same time, the healthcare system is on the brink of collapse. In several provinces (*departamentos*), such as Antioquia,<sup>10</sup> Santander,<sup>11</sup> Valle del Cauca<sup>12</sup> and

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<sup>4</sup> The summary of the decision is available at: <https://bit.ly/3zSCxGq>

<sup>5</sup> Ministerio de Salud, Colombia confirma su primer caso de COVID-19, 6 March 2020, available at: <https://n9.cl/tawm>

<sup>6</sup> For example, see: Ministerio de Salud, Medidas frente a la pandemia COVID-19, available at: <https://n9.cl/k08mj>

See also: P Delgado Gómez, Ingreso Solidario: ¿nuestra renta básica?, El Espectador, 25 July 2021, available at: <https://bit.ly/376FcQi>

<sup>7</sup> Instituto Nacional de Salud, COVID-19 en Colombia, available at: <https://bit.ly/373FBDb>

<sup>8</sup> World Health Organization, The true death toll of COVID-19 – Estimating global excess mortality, available at: <https://www.who.int/data/stories/the-true-death-toll-of-covid-19-estimating-global-excess-mortality>; IHME Healthdata, Estimation of excess mortality due to COVID-19, 13 May 2021, available at: <http://www.healthdata.org/special-analysis/estimation-excess-mortality-due-covid-19-and-scalars-reported-covid-19-deaths>.

<sup>9</sup> Gobierno de Colombia, Coronavirus Colombia, available at: <https://n9.cl/m0g2>

<sup>10</sup> Caracol Radio, Antioquia desinstala UCI por falta de médicos y no por baja ocupación, 2 June 2021, available at: <https://n9.cl/5kjlB>

<sup>11</sup> Blue Radio, El drama para buscar una cama UCI en medio del colapso hospitalario en Santander, 9 June 2021, available at: <https://n9.cl/8scfx>

<sup>12</sup> Gobernación del Valle del Cauca, Pacientes que requieren UCI son intubados en unidades de urgencias ante falta de camas, advierte la Gobernadora del Valle, 8 June 2021, available at: <https://n9.cl/lap1p>

Boyacá,<sup>13</sup> there is a shortage of available intensive care unit (ICU) beds. In some cases, more than 100 people have been on the waiting lists for ICU beds.<sup>14</sup>

Unfortunately, the increase in COVID deaths and transmissions has not been met with an adequate response by the Colombian authorities. For instance, in early June 2021, the Colombian president issued a presidential guideline requiring the return of all public servants of the executive branch to their workplaces despite surging COVID-19 transmission. The guideline also encourages the other branches of the government to promote on-site work.<sup>15</sup> In addition, in some major cities with high occupancy rates of ICU beds, such as Cali and Medellín, local authorities have decided not to adopt new COVID-19 measures, including restrictions, based on their belief that to do so would negatively impact local economies.<sup>16</sup>

Moreover, the pandemic has had a catastrophic social and economic impact on some sectors of the population, including migrants,<sup>17</sup> women,<sup>18</sup> children,<sup>19</sup> indigenous people,<sup>20</sup> and LGBT persons.<sup>21</sup> In October 2020, the National Administrative Department of Statistics acknowledged, for example, that the pandemic had had a disproportionately negative impact on women's employment, with more women than men having lost their jobs.<sup>22</sup> These disparities have continued during 2021.<sup>23</sup> Similarly, in 2020, National Authorities also reported a stark increase of calls to emergency lines reporting incidents of domestic violence.<sup>24</sup>

The pandemic has also had a disproportionately deleterious impact on people living in poverty. It is estimated that 21 million people (42,5% of the Colombian population) were living in poverty in 2020, even prior to the epidemic. This percentage already represented an increase of 3.5 million people in comparison with 2019. Evidence also shows that Colombia became a more unequal country in 2020.<sup>25</sup> Despite this dire situation, the national government has not taken adequate action to strengthen and expand social measures to address the worst effects of the pandemic on marginalized and disadvantaged groups of persons.

Moreover, the third wave of COVID-19 has hit the country at a time of significant social unrest and protest taking place against a background of already deteriorating poverty and inequality. Since 28 April 2021, the dire social and economic situation of the country, aggravated by the COVID-19 pandemic, has led to mass public demonstrations as protestors demanded radical changes to Colombia's current social and economic model.

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<sup>13</sup> Radio Nacional de Colombia, Colapsa sistema de salud en Boyacá por ocupación de 100% de UCI, 3 June 2021, available at: <https://n9.cl/s5vmt>

<sup>14</sup> Noticias RCN, En Medellín hay cerca de 100 personas a la espera de una cama UCI, 11 June 2021, available at: <https://n9.cl/27kxm>

<sup>15</sup> Presidente de la República, Directiva Presidencial No. 04, 9 June 2021, available at: <https://n9.cl/lt5ab>

<sup>16</sup> Portafolio, Vuelve el toque de queda y zonas con medidas especiales, 28 June 2021, available at: <https://n9.cl/vy7kw>

<sup>17</sup> For instance, see: International Commission of Jurists, Living Like People Who Die Slowly: The Need for Right to Health Compliant COVID-19 Responses, September 2020, page 45 and ff, available at: <https://n9.cl/oehvq>; La Vida de Nos and Dejusticia, Los Confinados, available at: <https://n9.cl/vvd79>

<sup>18</sup> For instance, see: UN Women and International Labour Organization, El impacto de la COVID-19 en las mujeres trabajadoras de Colombia, 2021, available at: <https://n9.cl/clubk3>

<sup>19</sup> For instance, see: El Espectador, El daño irreparable de la pandemia en la educación colombiana, 13 April 2021, available at: <https://n9.cl/cqcm1>; J Turkewitz, 1+1=4? Latin America Confronts a Pandemic Education Crisis, The New York Times, 26 June 2021, available at: <https://n9.cl/rhvu0>

<sup>20</sup> For Instance, see: Observatorio de Derechos Territoriales de los Pueblos Indígenas, Impactos del COVID-19 en los derechos territoriales de los pueblos indígenas en Colombia, Junio 2020, available at: <https://bit.ly/3wZbZ4f>

<sup>21</sup> For Instance, see: International Commission of Jurists, Invisible, Isolated, and Ignored, Human Rights Abuses Based on Sexual Orientation and Gender Identity/Expression in Colombia, South Africa and Malaysia, March 2021, available at: <https://n9.cl/pod6j>

<sup>22</sup> Departamento Administrativo Nacional de Estadística (Dane), Informe sobre cifras de empleo y brechas de género, October 2020, available at: <https://n9.cl/jcvt>

<sup>23</sup> M C González Olarte, Así ha sido el golpe de la crisis en las mujeres, Portafolio, 12 April 2021, available at: <https://n9.cl/t0wbf>

<sup>24</sup> Ministerio de Salud, Todos podemos poner fin a la violencia contra la mujer, 25 November 2020, available at: <https://n9.cl/xazt>

<sup>25</sup> Departamento Nacional de Planeación, Pobreza monetaria y pobreza monetaria extrema, 19 de abril de 2021, available at: <https://n9.cl/u8k4j>



## Human rights violations during the 2021 protests in Colombia

The authorities' response to the 2021 protests has involved widespread human rights violations, such as documented instances of torture and ill-treatment, sexual violence, extrajudicial killings and enforced disappearances.<sup>26</sup> In this regard, the Inter-American Commission on Human rights has said that Colombia's response to the protests was "characterised by an excessive and disproportionate use of force, in many cases, including lethal force".<sup>27</sup>

The human rights violations committed during the protests are, in part, the result of a lack of compliance by the authorities with the September 2020 Colombian Supreme Court's ruling on measures to guarantee peaceful protests.<sup>28</sup> As the 23 June 2021 joint statement to the UN Human Rights Council of over 300 organizations, including the ICJ, notes:

"these violations are taking place in spite of a Supreme Court ruling ordering the security forces to refrain from acting violently and arbitrarily in a systemic manner during demonstrations, and calls by human rights mechanisms to cease these violations".<sup>29</sup>

## Increase of violence during the pandemic

During the COVID-19 pandemic Colombia has also faced a significant increase of human rights violations and abuses, such as killings, death threats, forced mass displacements and recruitment of child soldiers in areas historically characterized by limited State presence, illicit economies and high levels of poverty.<sup>30</sup>

In this regard, in relation to the 2020 human rights situation in Colombia, the Office of the United Nations High Commissioner for Human Rights in Colombia affirmed that Colombia "continued to face endemic violence".<sup>31</sup> More specifically, the Office informed that in various areas of Colombia, "violence intensified and territorial and social control by non-State armed groups and criminal groups increased."<sup>32</sup> Furthermore, the Office documented an "increase in the number of massacres

<sup>26</sup> See, for instance: Comisión Interamericana de Derechos Humanos, La CIDH condena las graves violaciones de derechos humanos en el contexto de las protestas en Colombia, rechaza toda forma de violencia y reitera la importancia de que el Estado honre sus obligaciones internacionales, 25 May 2021, available at: <https://n9.cl/tw9yo>; The Office of the UN High Commissioner for Human Rights, Statement by Michelle Bachelet, UN High Commissioner for Human Rights, 21 June 2021, available at: <https://n9.cl/e9pty>

<sup>27</sup> M Janetsky, Colombia used 'excessive' force against protesters: IACHR, Aljazeera, 7 July 2021, available at: <https://n9.cl/q982q>  
See also: Comisión Interamericana de Derechos Humanos, Observaciones y recomendaciones de la visita de trabajo de la CIDH a Colombia realizada del 8 al 10 de junio de 2021, 7 July 2021, available at: <https://n9.cl/j6rd6>

<sup>28</sup> In the ruling, the Supreme Court identified serious violations regarding the intervention of law enforcement officials, especially police officials, in protests and demonstrations. The Court identified systematic violence against demonstrators, the existence of stereotypes and prejudice against those who criticize the government's policies, and a lack of mechanisms to hold the officials accountable.

See: Corte Suprema de Justicia, Sala de Casación Civil, Sentencia de Tutela, STC7641-2020, 22 de septiembre de 2020, M.P.: Luis Armando Tolosa Villabona, available at (in Spanish) <https://n9.cl/xzp3j>

<sup>29</sup> International Commission of Jurists, Colombia: ICJ joins 300 NGOs expressing concern about human rights violations before UN Human Rights Council, 23 June 2021, available at: <https://n9.cl/qjayd>

See also: International Commission of Jurists, Colombia: ICJ and CCJ alert UN Human Rights Council of widespread human rights violations during social protests, 1 July 2021, available at: <https://n9.cl/7nu0r>

<sup>30</sup> For instance, see: International Commission of Jurists, Colombia: Desaparición Forzada y Ejecuciones Extrajudiciales Estudio de línea de base, August 2020, Page 13 and ff, available at: <https://bit.ly/3BAB3SZ>

<sup>31</sup> The Office of the United Nations High Commissioner for Human Rights in Colombia, Situation of human rights in Colombia, A/HRC/46/76, 17 March 2021, para 5.

<sup>32</sup> Ibid, para 5.

and human rights violations against human rights defenders, primarily in municipalities with high levels of multidimensional poverty, where illicit economies that fuel endemic violence flourish.”<sup>33</sup>

In 2020, the Office reported 76 massacres (the highest number since 2014); the killing of 73 former members of FARC-EP, a demobilized guerrilla group; the killing of 133 human rights defenders, and 94 mass displacements involving 25,366 people.<sup>34</sup>

Significantly, on 21 June 2021, when the COVID-19 death toll in Colombia reached more than 100,000 people, without any supporting evidence Colombia’s President asserted that more than 10,000 deaths could have been prevented if protests and demonstrations had not taken place. While the President acknowledged that the right to peaceful protest was a fundamental right, he nonetheless urged Colombians to halt the protests.<sup>35</sup>

### C. GENERAL OVERVIEW OF COLOMBIA’S COVID-19 VACCINATION STRATEGY

In late 2020, the National Government began sharing some information about its COVID-19 vaccination strategy. In November 2020, the Minister of Health stated that negotiations with pharmaceutical companies had started as early as mid-2020,<sup>36</sup> and that Colombia had signed confidentiality agreements with six pharmaceutical companies: “Pfizer, AstraZeneca, Janssen, Sinopharm, CanSino and the Serum Institute”. These agreements were signed even before concluding contracts to acquire vaccines. The Minister also indicated that Colombia would acquire COVID-19 vaccine doses through the COVAX facility.<sup>37</sup>

#### **What is COVAX (COVID-19 Vaccines Global Access)?<sup>38</sup>**

The COVAX Facility is co-led by the Coalition for Epidemic Preparedness Innovations, Gavi, the Vaccine Alliance, and the World Health Organization, and was “created to maximise (...) chances of successfully developing COVID-19 vaccines and manufacture them in the quantities needed (...)”.<sup>39</sup> Through pooled funding, the Facility was able to invest in and gain access to multiple COVID-19 vaccine candidates. COVAX aims to provide 20 percent of participating countries’ populations with vaccine doses, and thereby increase equitable and timely access to vaccines globally.<sup>40</sup>

Participating countries either receive vaccines through “self-financing” mechanisms, if they are upper-income and upper-middle-income economies, or as donations through the Advanced Market Commitment (AMC) plan<sup>41</sup> if they are lower-middle and low-income economies.<sup>42</sup> In total, 92 low- and middle-income economies are eligible for these donations, and COVAX “expects” to provide

<sup>33</sup> Ibid, para 6.

<sup>34</sup> Ibid, paras 9, 10, 11 and 21.

<sup>35</sup> El Espectador, Duque responsabiliza al paro por incremento de muertes por COVID-19, 21 June 2021, available at: <https://n9.cl/vjuiz>

<sup>36</sup> Ministerio de Salud, Esperamos aplicar la primera vacuna en primer semestre de 2021, 25 November 2020, available at: <https://n9.cl/vacun>

<sup>37</sup> Ministerio de Salud, Minsalud explica proceso para adquisición de vacuna contra covid-19, 10 November 2020, available at: <https://n9.cl/9h16g>

<sup>38</sup> Information taken from: International Commission of Jurists, The Unvaccinated: Equality not Charity in Southern Africa, May 2021, Page 19, available at: <https://bit.ly/3x5WFCV>

<sup>39</sup> S Berkley CEO of Gavi, the Vaccine Alliance, COVAX explained, 3 September 2020, available at: <https://bit.ly/2Vb4euP>

<sup>40</sup> Gavi Webpage, “COVAX”, available at: <https://www.gavi.org/covax-facility#what>

<sup>41</sup> World Health Organization, Fair allocation mechanism for COVID-19 vaccines through the COVAX Facility, 9 September 2021, available at: <https://bit.ly/3eOcvzZ>

<sup>42</sup> Gavi Webpage, “COVAX”, available at: <https://www.gavi.org/covax-facility#what>

these economies with approximately 1,7 billion, 26 percent of their populations, vaccine doses in 2021.<sup>43</sup>

In November 2020, The National Government also presented several key aspects of Colombia's vaccine distribution plan. The Ministry of Health indicated that health workers, persons over 60 years of age, and persons with comorbidities would be prioritized in the initial stages of vaccine rollout.<sup>44</sup> The Minister of Health indicated further that, once those priority individuals had been vaccinated, the goal of the vaccination plan would be to vaccinate 34,234,649 people (70% of the Colombian population), with the stated, ultimate aim of achieving "herd immunity".<sup>45</sup> In addition, the Minister confirmed that COVID-19 vaccines would be provided to the public free of charge.<sup>46</sup>

### 1. What legal regulation on COVID-19 vaccines has the Colombian Congress enacted?

In December 2020, the Colombian Congress adopted Law 2064 of 2020. The legislation declares the COVID-19 immunization process as a matter of public interest (*interés general*). According to Congress, the adoption of the legislation was made necessary as a result of vaccine hoarding by wealthier countries, predominantly located in the Global North. In the Congress's view, vaccine hoarding, combined with a global supply shortage, required the National Government to have tools at its disposal to compete on the international market for vaccine procurement. Therefore, Law 2064 seeks to facilitate the National Government's response to pandemic diseases, including the current COVID-19 pandemic, in a number of ways.<sup>47</sup>

For example, Law 2064 authorizes the National Government to invest public money in scientific institutions (public and private) to guarantee access to preventive and therapeutic treatments related to pandemic diseases. It also empowers the National Government to seek strategic partnerships with multilateral bodies and the private sector to gather scientific, financial and logistics resources to rapidly respond to pandemics.

In addition, the Law creates a very restricted liability regime for pharmaceutical companies that sell COVID-19 vaccines to the National Government. In this regard, the Law establishes that pharmaceutical companies selling COVID-19 vaccines to the National Government are liable in a very limited set of circumstances. Specifically, the Law sets out that companies will be held liable only for serious negligence actions or omissions (*acciones u omisiones dolosas o gravemente culposas*). The Law does not specify or provide specific information or examples of such actions or omissions but does establish that the companies will be held liable for failures to comply with good manufacturing practices.

Civil society and experts alike have heavily criticized this special regime. Indeed, this liability regime may contravene the wider liability regime established by Article 78 of the Colombian

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<sup>43</sup> COVAX Global Supply Forecast, 7 April 2021, available at: <https://bit.ly/3hZL3NG>

<sup>44</sup> Ministerio de Salud, Esperamos aplicar la primera vacuna en primer semestre de 2021, 25 November 2020, available at: <https://n9.cl/vacun>

<sup>45</sup> Ministerio de Salud, Colombia adquirió 40 millones de dosis de vacunas contra el covid-19, 18 December 2020, available at: <https://n9.cl/del7xw>

<sup>46</sup> Ministerio de Salud, Esperamos aplicar la primera vacuna en primer semestre de 2021, 25 November 2020, available at: <https://n9.cl/vacun>

<sup>47</sup> Gaceta del Congreso No. 710, Senado y Cámara, 13 agosto de 2020, page 11 and ff.

Constitution.<sup>48</sup> Furthermore, it is noteworthy that the imposition of such regimes is not a standard practice. States in the Global North, such as the United States and European Union countries, have not adopted similar liability regimes in relation to COVID-19 vaccines.<sup>49</sup>

## 2. What is Colombia's vaccine rollout plan?

In early January 2021, the Ministry of Health presented the first draft of a comprehensive document on the National Vaccination Plan against COVID-19 (*Plan de Vacunación Nacional contra el COVID-19*).<sup>50</sup> The document includes information on a range of issues: COVID-19 vaccine procurement; vaccination rollout phases; vaccine storage and handling; local authorities' responsibilities; and vaccine distribution. Since then, the plan has been updated more than once and remains openly available online.<sup>51</sup> In late January, the majority of the substantial elements of the plan were incorporated into the Colombia legislation through Decree 109 of 2021.<sup>52</sup> The plan includes five vaccination phases, summarized in the box below.

### Colombia's five-phase vaccination plan

**Phase 1** covers (1) adults over 80 years of age and (2) health personnel working on medium and high-complexity medical procedures. This includes medical staff and administrative staff who work in health centres, including cleaning and security personnel.

**Phase 2** covers (1) adults over 60 years of age and (2) other health personnel.

**Phase 3** covers a wide group of people, including: (1) people over 16 years of age with comorbidities (e.g., diabetes, cancer, tuberculosis, etc.), (2) education staff, (3) military forces and police, (4) Attorney General Office's personnel, (5) funeral service workers and (vi) some members of indigenous groups.

**Phase 4** also covers different sectors of the population, such as (1) prisoners and detainees, (2) prison staff, (3) firefighters and first responders, (4) homeless people, (5) air traffic control specialists, pilots and flight attendants, and (6) people aged 40-49 years.

**Phase 5** comprises people over 16 years of age who are not covered by phases 1-4.

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<sup>48</sup> Article 78 states: "The law will regulate the control of the quality of goods and services offered and provided to the community as well as the information that must be made available to the public in their marketing. Those who in the production and marketing of goods and services may jeopardize the health, safety, and adequate supply to consumers and users will be held responsible in accordance with the law. The State will guarantee the participation of the organizations of consumers and users in the study of the provisions that concern them. In order to enjoy this right, the organizations must be of a representative nature and observe internal democratic procedures."

<sup>49</sup> Cámara de Representantes, Comisión Accidental para el Seguimiento al Plan Nacional de Vacunación contra el COVID-19, 11 June 2021, Page 5, available at: <https://n9.cl/0fqbx>

<sup>50</sup> El Espectador, Revelan detalles del plan de vacunación contra el COVID-19 en Colombia, 5 January 2021, available at: <https://n9.cl/w0an>; Ministerio de Salud, Minsalud socializó Plan de Vacunación con los territorios, 2 January 2021, available at: <https://n9.cl/60r43>

<sup>51</sup> The current version of the plan (February 2021) is available here: <https://n9.cl/t593z>

<sup>52</sup> The Decree was modified by Decree 404 of 2021, Decree 406 of 2021, Decree 630 of 2021 and Decree 744 of 2021. See also: Resolution 588 of 2021 and Resolution 744 of 2021.

The first COVID-19 vaccine was provided in Colombia on 18 February 2021.<sup>53</sup> By 14 July 2021, Colombia had started implementing Phase 5.<sup>54</sup>

### 3. Which vaccines has Colombia procured?

The National Government has informed the public that Colombia has acquired five different COVID-19 vaccines: Pfizer (15 million doses);<sup>55</sup> AstraZeneca (10 million doses);<sup>56</sup> Sinovac (7.5 million doses);<sup>57</sup> Moderna (10 million doses)<sup>58</sup> and Janssen/Johnson & Johnson (9 million doses).<sup>59</sup>

In addition, the Ministry of Health indicated that Colombia would receive 20 million doses of COVID-19 vaccines through the COVAX mechanism. However, the Ministry did not mention which vaccines had been acquired through this mechanism.<sup>60</sup> On 1 March 2021, Colombia became the first country in the Americas to receive COVID-19 vaccines through COVAX.<sup>61</sup>

By 3 June 2021, 3,276,180 of these doses (less than 20% of those promised) had arrived in Colombia.<sup>62</sup> This includes doses of Pfizer<sup>63</sup> and AstraZeneca vaccines.<sup>64</sup> In addition to doses received from COVAX, the United States has donated 2.5 million doses of the Janssen (Johnson & Johnson) vaccine<sup>65</sup> and 3.5 million doses of Moderna vaccine<sup>66</sup> to Colombia.

Colombia's actual vaccination rollout started with the dissemination of the Pfizer vaccine.<sup>67</sup> Since the beginning of the rollout, the vaccination plan has included rural and distant provinces, such as Amazonas, Guainía, and Vaupés.<sup>68</sup> So far, Colombian inhabitants have been vaccinated with Pfizer, Sinovac, AstraZeneca, and Janssen/Johnson & Johnson vaccines. As of 27 July 2021, 25,902,416 people had received at least one COVID-19 vaccine dose, and 11,605,364 people had been fully vaccinated.<sup>69</sup>

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<sup>53</sup> El Tiempo, En Sincelejo comenzó este miércoles un nuevo capítulo contra el covid, 18 February 2021, Available at: <https://n9.cl/9zx3m>

<sup>54</sup> El Espectador, Coronavirus en Colombia: inicia vacunación para personas entre los 35 y 39 años, 13 July 2021, Available at: <https://bit.ly/3hAlIPE>

<sup>55</sup> Ministerio de Salud, "Tenemos garantizadas vacunas para 29 millones de personas": Minsalud, 31 December 2020, available at: <https://n9.cl/pqqmi>; Revista Semana, ¡Atención! Gobierno adquirió 5 millones de vacunas de la farmacéutica Pfizer, 14 May 2021, available at: <https://n9.cl/v0un>

<sup>56</sup> Ministerio de Salud, "Tenemos garantizadas vacunas para 29 millones de personas": Minsalud, 31 December 2020, available at: <https://n9.cl/pqqmi>

<sup>57</sup> Ministerio de Salud, Colombia comenzará la vacunación contra el covid-19 el 20 de febrero, 29 January 2021, available at: <https://n9.cl/ocymj>; Ministerio de Salud, Vacunación contra COVID-19, available at: <https://n9.cl/tu6ol>

<sup>58</sup> Ibid.

<sup>59</sup> Ministerio de Salud, "Tenemos garantizadas vacunas para 29 millones de personas": Minsalud, 31 December 2020, available at: <https://n9.cl/pqqmi>

<sup>60</sup> Ibid.

<sup>61</sup> Specifically, Colombia received 117.000 doses of the Pfizer vaccine. See: Organización Panamericana de la Salud, Colombia recibe las primeras vacunas que llegan a las Américas a través del Mecanismo COVAX, 1 March 2021, available at: <https://n9.cl/xhzil>

<sup>62</sup> Ministerio de Salud, Colombia recibió un nuevo lote de vacunas a través de COVAX, 3 June 2021, available at: <https://n9.cl/ub5cv>

<sup>63</sup> Ministerio de Salud, Colombia recibió un nuevo lote de vacunas a través de COVAX, 24 May 2021, available at: <https://n9.cl/d6wxq>

<sup>64</sup> Ministerio de Salud, Colombia recibió un nuevo lote de vacunas a través de COVAX, 3 June 2021, available at: <https://n9.cl/ub5cv>;

Unicef, Colombia recibe segundo envío de 912.000 vacunas anti covid-19 a través del mecanismo COVAX, 26 April 2021, available at: <https://n9.cl/0idw6>

<sup>65</sup> El Tiempo, Así serán distribuidos los 2,5 millones de vacunas que donó EE. UU., 1 July 2021, available at: <https://n9.cl/sa80n>

<sup>66</sup> Presidencia de la República, Declaración del Presidente Ivan Duque a la llegada de 3,5 millones de vacunas de Moderna contra el covid-19, donadas por el Gobierno de los Estados Unidos a Colombia, 25 July 2021, available at: <https://bit.ly/2TxvEdY>

<sup>67</sup> El Tiempo, En Sincelejo comenzó este miércoles un nuevo capítulo contra el covid, 18 February 2021, Available at: <https://n9.cl/9zx3m>

<sup>68</sup> Ministerio de salud, Minsalud presentó criterios de distribución de primer lote de Sinovac, 23 February 2021, available at: <https://n9.cl/w2lft>

Regarding the regional distribution of COVID-19 vaccines, see: Cámara de Representantes, Comisión Accidental para el Seguimiento al Plan Nacional de Vacunación contra el COVID-19, 11 June 2021, Page 18 and ff, available at: <https://n9.cl/0fqbx>

<sup>69</sup> Ministerio de Salud, Vacunación contra COVID-19, available at: <https://bit.ly/370rf6C>

It should be noted that the National Government does not provide disaggregated data about the vaccines administered by gender, age, profession, migration status, ethnicity, or in respect of the type of vaccine administered.<sup>70</sup> This situation makes it difficult to assess the effectiveness of Colombia's vaccine rollout in reaching marginalized groups, and determine possible unequal access to COVID-19 vaccines.<sup>71</sup>

Finally, despite Colombia's own difficulties in vaccine procurement and the Congress's recognition that the adoption of Law 2064 had been made necessary by vaccine hoarding and vaccine nationalism, to date, the country has not supported the proposed waiver of intellectual property rights on COVID-19 vaccines and therapeutics, proposed by India and South Africa and receiving almost unanimous support from countries in the Global South.<sup>72</sup> This stance appears in stark contrast with the fact that the Colombian president and Colombian Courts have stated that COVID-19 vaccines should be considered a global public good, and that economic or political barriers should not hinder access to COVID-19 vaccines.<sup>73</sup>

#### 4. Does Colombia's vaccination rollout cater for non-citizens?

In late December 2020, the Colombian President announced that Colombia would not vaccinate "migrants with irregular status" (*migrantes en condición irregular*).<sup>74</sup> He suggested that vaccinating these migrants would act as a pool factor, giving rise to mass migration by people expecting to get vaccinated in Colombia. These statements were widely criticized by civil society. Some individuals highlighted that the decision to exclude migrants from the vaccination rollout was both discriminatory from a human rights perspective and a mistake from an epidemiological perspective.<sup>75</sup>

This wide-spread criticism led the National Government to moderate its position. In January 2021, the President indicated that Colombia would need the economic assistance of the international community to acquire vaccines for "migrants with irregular status". He also indicated that migrants in this situation would be included in the vaccination plan on the same conditions as Colombian citizens.<sup>76</sup> For its part, the Ministry of Health affirmed that vaccination of "migrants with irregular status" was difficult due to the lack of certainty about their place of residence.<sup>77</sup>

Ultimately, this more moderate position is reflected in the Colombia's vaccination plan ("Plan"). In this regard, the rollout plan acknowledges the importance of including all "migrants" (*migrantes*) as the virus ignores people's migration status. The Plan sets out that, from a human rights

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<sup>70</sup> D Guarnizo, J García, and D León, Global perspectives on Covid-19 vaccination Dealing with scarcity: Equitable access to Covid-19 vaccines in Colombia, Heinrich-Böll-Stiftung European Union, June 2021, Page 9, available at: <https://bit.ly/3edLyS3>

<sup>71</sup> Ibid, Page 9.

<sup>72</sup> See: Dejusticia, Le pedimos a Duque que apoye la suspensión temporal de propiedad intelectual sobre vacunas contra COVID-19, 4 May 2021, available at: <https://n9.cl/lqdh0>; R Uprimny, Vaccine patents: healthy or harmful?, 5 March 2021, available at: <https://n9.cl/7ucwo>; Cámara de Representantes, Comisión Accidental para el Seguimiento al Plan Nacional de Vacunación contra el COVID-19, 11 June 2021, Page 9 and 10, available at: <https://n9.cl/0fqbx>

<sup>73</sup> Ntn24, Presidente Duque a favor que vacunas anticovid sean un bien público de la humanidad, 23 June 2021, available at: <https://n9.cl/3lqim>

<sup>74</sup> Blu Radio, Venezolanos que no tengan doble nacionalidad ni estén regularizados no tendrán vacuna COVID: Duque, 21 December 2021, available at: <https://bit.ly/3ru3u02>

<sup>75</sup> R Sedano, El gobierno de Colombia excluirá de la vacunación a venezolanos irregulares en el país, France 24, 22 December 2020, available at: <https://bit.ly/3yGYaJb>

<sup>76</sup> La República, Presidente Duque pide apoyo de comunidad internacional para vacunar a migrantes irregulares, 12 January 2021, available at: <https://n9.cl/tmjiz>; S Serna Duque, El radical cambio que dio Colombia con respecto a su política de vacunación contra la COVID-19 a los migrantes, Agencia Anadolu, 5 February 2021, available at: <https://bit.ly/3hvAhi8>

<sup>77</sup> S Serna Duque, El radical cambio que dio Colombia con respecto a su política de vacunación contra la COVID-19 a los migrantes, Agencia Anadolu, 5 February 2021, available at: <https://bit.ly/3hvAhi8>

perspective, all migrants, without consideration of their immigration status, should be provided with access to COVID-19 vaccines.

However, despite these assertions, “migrants with irregular status” in the country remain uncatered for in the implementation of vaccination rollout. In this respect, the Plan explicitly indicates that “such migrants” were not included in the National Government’s planning because it would be difficult to establish their identity and location. It also maintains that it would be challenging to ensure that migrants would come back for a second dose of the vaccine, and that it would be difficult to monitor possible side effects of the vaccines.<sup>78</sup>

Therefore, the Plan concludes that although “migrants with irregular status” should be vaccinated, it is necessary to look for alternatives, such as international cooperation, to overcome the current challenges.<sup>79</sup> In this regard, in February 2021, the Ministry of Health affirmed that National Government was devising a special vaccination plan for “migrants with irregular status”.<sup>80</sup> This exclusion most dramatically affects people from Venezuela living in Colombia.

### **Venezuelan migrants and refugees in Colombia**

The political and economic upheaval and general human rights crises of recent years in Venezuela,<sup>81</sup> has engendered widespread exodus of migrants and refugees.<sup>82</sup> As of early June 2021, it was estimated that at least 5,636,986 Venezuelans had left their homeland.<sup>83</sup> Colombia and Venezuela share a large border and Colombia “is the country that has received the largest number of refugees and migrants from Venezuela”.<sup>84</sup>

According to the Regional Interagency Coordination Platform for Refugees and Migrants of Venezuela (the Platform), as of May 2021, more than 1.7 million Venezuelans lived in Colombia, 983,343 of them with an irregular status.<sup>85</sup> As of 31 December 2020, the Office of the United Nations High Commissioner for Refugees (UN Refugee Agency) reported that there were 771 recognized refugees from Venezuela living in Colombia.<sup>86</sup> The UN Refugee Agency also reported that there were more than 19,600 pending asylum claims.<sup>87</sup>

By end-2020, commenting on the social and economic situation, the Platform underscored that the “lives of refugees and migrants and host communities were significantly impacted by COVID-19 isolation measures, which were causing job and livelihood losses, a reduced capacity to access

<sup>78</sup> Ministerio de Salud, Plan Nacional de Vacunación contra el Covid-19, February 2021, Page 33 and 34, available at: <https://n9.cl/t593z>

<sup>79</sup> Ministerio de Salud, Plan Nacional de Vacunación contra el Covid-19, February 2021, Page 34, available at: <https://n9.cl/t593z>

<sup>80</sup> Ministerio de Salud, Colombia trabaja en programa de vacunación para migrantes irregulares, 1 February 2021, available at: <https://n9.cl/jkh6>

<sup>81</sup> In that regard, the Inter-American Commission on Human Rights has stated that “Venezuela is facing a humanitarian crisis characterized by shortages of food and medicine, regular cuts to public utilities such as drinking water and electricity, a public health system in critical condition, and high rates of violence and insecurity”. See: Inter-American Commission on Human Rights, Annual Report 2019, Chapter IV.B, Venezuela, para 8.a.

<sup>82</sup> See: Office of the United Nations High Commissioner for Refugees, Global Trends, Force Displacement 2018, Page 24.

<sup>83</sup> Plataforma de Coordinación para Refugiados y Migrantes de Venezuela, Respuesta a los venezolanos, available at: <https://data2.unhcr.org/es/situations/platform>

<sup>84</sup> Coordination platform for refugees and migrants from Venezuela, Refugee and migrant response Plan 2020 (revision), May 2020, page 32, available at: <https://r4v.info/es/documents/download/76210>

<sup>85</sup> Regional Interagency Coordination Platform for Refugees and Migrants of Venezuela, GIFMM Colombia: RMRP 2021 Response Monitoring Overview - January to April 2021, 25 June 2021, available at: <https://n9.cl/dsev7>

<sup>86</sup> The Office of the United Nations High Commissioner for Refugees, Colombia Operation Data Portal, available at: <https://data2.unhcr.org/en/country/col>

<sup>87</sup> Coordination platform for refugees and migrants from Venezuela, Total pending asylum claims per country, available at: <https://bit.ly/2WheGSf>

basic goods and services (particularly, food, healthcare and education), evictions resulting in homelessness and others living in overcrowded conditions”.<sup>88</sup> Along the same lines, a survey conducted in December 2020 found that 97,7% of Venezuelans in Colombia had informal jobs and 85,4% of them did not have health insurance.<sup>89</sup>

Although there is no official disaggregated data on COVID-19 related cases deaths and deaths in relation to migrant and refugee status, as of June 2021, the UN Refugee Agency had documented 49,416 COVID-19 cases for Venezuelans in Colombia, and 559 deaths.<sup>90</sup>

At the time of writing, no announcement has been made regarding solutions and alternative to ensure the vaccination of “migrants with irregular status”. This means that this marginalized population has not had access to COVID-19 vaccines yet, effectively violating their right to non-discriminatory access to COVID-19 vaccines. In this regard, it is important to note that the Plan does not consider several alternatives that would have catered for all migrants, including “migrants with irregular status”. For instance, one possibility would have been to prioritize one-dose vaccines for this population to avoid problems raised regarding the ensuring of returns for second doses.

Similarly, although there is no official data on “migrants with irregular status” in the country, the Plan does not consider using other sources, such as the information collected by humanitarian organizations or issuing unique documents for the specific purpose of COVID-19 vaccination. Furthermore, bearing in mind that the Plan includes Colombian homeless people, who do not have a permanent residence and are similarly difficult to track, the government’s stated position appears to be irrational and internally inconsistent.

Since there were multiple alternatives to explore, the fact that COVID-19 vaccination of migrants has been left to depend on the economic assistance of the international community creates a discriminatory situation against “migrants with irregular status”. It also shows that the government is unwilling to commit its own resources to a certain section of the population merely because of their status as non-citizens. This is *prima facie* discriminatory and in violation of its obligations in terms of the right to health in both domestic and international law.<sup>91</sup>

As noted by the UN Committee on Migrant Workers, for example, in its Joint Guidance Note on Equitable Access to COVID-19 Vaccines for All Migrants, “the prioritization of vaccines delivery should not exclude anyone on the basis of nationality and migration status”.<sup>92</sup> Similarly, the Inter-American Court of Human Rights has ruled that the rights to equality and non-discrimination impose a duty on States to provide access to COVID-19 vaccines to migrants, without any

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<sup>88</sup> The Regional Interagency Coordination Platform for Refugees and Migrants of Venezuela, End Year Report 2020, 14 July 2021, Page 34, available at: <https://bit.ly/3y8qJ96>

See also: International Commission of Jurists, Living Like People Who Die Slowly: The Need for Right to Health Compliant COVID-19 Responses, September 2020, page 45 and ff, available at: <https://n9.ci/oehvq>

<sup>89</sup> D C Carranza Jiménez, Cerca del 50% de los migrantes venezolanos en Colombia viven en pobreza y hacinamiento, según encuesta, Agencia Anadolu, 7 April 2021, available at: <https://bit.ly/3hZhtzr>

<sup>90</sup> The Office of the United Nations High Commissioner for Refugees, UNHCR Colombia Operational Update, June 2021, available at: <https://data2.unhcr.org/es/documents/details/87840>

<sup>91</sup> R Quintero & TF Hodgson “The Right to Health of Venezuelans in Colombia: From Principle to Policy (Part 1)” (22 April 2020): <http://opiniojuris.org/2020/04/22/the-right-to-health-of-venezuelans-in-colombia-from-principle-to-policy-part-1/>; R Quintero & TF Hodgson “The Right to Health of Venezuelans in Colombia: From Principle to Policy (Part 2)” (22 April 2020): <http://opiniojuris.org/2020/04/22/the-right-to-health-of-venezuelans-in-colombia-from-policy-to-practice-part-2/>.

Colombia is a State party of the main human rights treaties at the international and regional level. This includes the International Covenant on Economic, Social and Cultural Rights, American Convention on Human Rights, and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights (Protocol of San Salvador).

<sup>92</sup> UN Committee on Migrant Workers et alia, Joint Guidance Note on Equitable Access to COVID-19 Vaccines for All Migrants, 8 March 2021, available at: <https://bit.ly/2UGKizU>



distinction based on their migratory status.<sup>93</sup> Moreover, considering that migrants “may be more vulnerable to poor health by virtue of their often low socio-economic status, the process of migration and their vulnerability as non-nationals in the new country”,<sup>94</sup> the inclusion of all migrants should have been a priority of the Plan.

In addition, it worth noting that, in February 2021, the National Government announced that a “Statute for the Temporary Protection of Venezuelan Migrants in Colombia” (*Estatuto de Protección Temporal para migrantes venezolanos en Colombia*) would be issued. The temporary protection status aims to regularize the presence of over one million “Venezuelan migrants” in Colombia.<sup>95</sup> The regularization may well facilitate access to the Colombian health system for Venezuelans, and therefore, access to COVID-19 vaccines for this population. After the temporary protection status announcement, *Migración Colombia*, the Colombian migration authority, indicated that Colombia would purchase two million COVID-19 vaccine doses to vaccinate Venezuelan beneficiaries of the temporary protection status.<sup>96</sup>

Despite the fact that the temporary protection status was put in place in March 2021 (Decree 216 of 2021), Venezuelan migrants with irregular status have still not been guarantee access to the COVID-19 vaccine. This is, in part, because the implementation of the temporary protection status is in an early stage and, thus far, does not provide access to the Colombian health system.<sup>97</sup> It is also likely that not all Venezuelans can meet the requirements of the temporary protection status.

More recently, on 25 July 2021, the Colombian President affirmed that part of the 3.5 million doses of Moderna donated by the United States would be used to vaccinate the “migrant population” (*población migrante*) in Colombia.<sup>98</sup> In addition, the President also informed that the use of the doses for the migrant population was agreed with the United States’ Government.<sup>99</sup> The President did not make any mention of the migration status of the migrants. However, days before, on 23 July 2021, the Colombian Vice-president stated that the donated vaccines would be used to vaccinate migrants who are beneficiaries of the Statute for the Temporary Protection Status of Venezuelan Migrants.<sup>100</sup>

## 5. What is the role of private companies in Colombia’s vaccine rollout and acquisition?

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<sup>93</sup> Corte Interamericana de Derechos Humanos, Caso Vélez Loor Vs. Panamá, Medidas Provisionales, Resolución de 24 de junio de 2021, para 48.

<sup>94</sup> Special Rapporteur on the human rights of migrants, Report, A/HRC/14/30, 16 April 2010, para 23, available at: <https://bit.ly/3edBIVJ>

See also: Corte Interamericana de Derechos Humanos, Caso Vélez Loor Vs. Panamá, Medidas Provisionales, Resolución de 24 de junio de 2021, para 48.

<sup>95</sup> Cancillería de Colombia, Presidente Duque anuncia decisión histórica de crear Estatuto de Protección Temporal para migrantes venezolanos en Colombia, 8 February 2021, available at: <https://n9.cl/6b0tw>

<sup>96</sup> Blu Radio, Gobierno gestionará dos millones de dosis de vacunas adicionales para venezolanos que se regularicen, 9 February 2021, available at: <https://n9.cl/ycv6m>

<sup>97</sup> C Lobo Guerrero, Las dosis inciertas: ¿podrán vacunarse los migrantes venezolanos en los países donde residen?, 29 March 2021, available at: <https://n9.cl/5cjd>

See also: D Monroy, ¿Cómo va la implementación del Estatuto de Protección para Migrantes Venezolanos?, 10 July 2020, available at: <https://bit.ly/3wzC75P>

<sup>98</sup> Presidencia de la República, Declaración del Presidente Ivan Duque a la llegada de 3,5 millones de vacunas de Moderna contra el covid-19, donadas por el Gobierno de los Estados Unidos a Colombia, 25 July 2021, available at: <https://bit.ly/2TxvEdY>

<sup>99</sup> Presidencia de la República, Donación de 3.5 millones de vacunas de EE.UU. es un acto de generosidad que responde a alianza histórica, afirmó el Presidente, 24 July 2021, available at: <https://bit.ly/3713Cec>; US Embassy in Colombia, Estados Unidos dona 3,5 millones de vacunas Moderna a Colombia, 23 July 2021, available at: <https://bit.ly/3BCDm7Z>

<sup>100</sup> El País, Migrantes venezolanos en Colombia también serán vacunados con dosis donadas por EE. UU., 23 July 2021, available at: <https://bit.ly/3i3LDdg>

In March 2021, the National Government announced that negotiations with the private sector to define its participation in the COVID-19 vaccination plan had started. In this regard, the President affirmed that the participation of private companies would not modify the phases and groups prioritized in the Vaccination Plan. The announcement responded to the interest that some businesspersons had expressed in having their employees vaccinated against COVID-19.<sup>101</sup>

In mid-April 2021, through Resolution 507 of 2021, the Ministry of Health authorized private companies to purchase COVID-19 vaccines.<sup>102</sup> Crucially, the Resolution establishes that vaccines cannot be acquired for commercial exploitation or profiteering purposes: vaccines purchased by private companies should be provided free of charge for people receiving the vaccines (the final beneficiaries).<sup>103</sup> The beneficiaries of the vaccines have to be defined and approved by the Ministry of Health.<sup>104</sup> Importantly, the Resolution also establishes that the restricted liability regime created by Law 2064 of 2020 does not apply to COVID-19 vaccines acquired by private companies.<sup>105</sup>

The Resolution also indicates that the National Government has made significant progress in the vaccination of the high-risk groups identified in the Vaccination Plan and that the economic recovery, which requires consideration of public health needs, is a priority for the National Government since it is critical to guaranteeing the fundamental rights of the Colombian population. In addition, the Resolution sets out that it aims to draw on the economic capacity of private actors to further advance the ultimate goal of overcoming the pandemic through the immunization of the population.

Vaccination acquisition and rollout by private companies require that the companies follow the health requirements established in the Resolution.<sup>106</sup> The Resolution also set out that private companies are allowed to vaccinate their employees or other individuals with whom the companies have a “contractual relationship” (*relación contractual*). In addition, the employees or other individuals to be vaccinated must live in Colombia.<sup>107</sup> The Resolution also establishes that the vaccination could only commence when the National Government started vaccinating people covered in phase 3 of the Vaccination Plan,<sup>108</sup> which occurred in mid-May 2021.<sup>109</sup>

Based on Resolution 507 of 2021, some private companies and associations, members of the “National Association of Colombian Businesspersons” (*Asociación Nacional de Empresarios de Colombia* - ANDI), have created a programme called “businesses for the vaccination” (*empresas por la vacunación*). The objective of the programme is to join efforts to vaccinate 1,250,000 employees of private companies and reduce COVID-19 related infection and deaths rates. The programme includes large companies and small businesses from all regions of the country.<sup>110</sup>

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<sup>101</sup> See: J García Ruiz, *Vacunación por privados, no tan fácil como parece*, *El Espectador*, 19 March 2021, available at: <https://bit.ly/3hYS3dx>; El Espectador, *Se abre la puerta para que privados traigan vacunas*, 17 March 2021, available at: <https://bit.ly/3kRv0TT>

<sup>102</sup> The Resolution covers (i) companies owned only by private capital and (ii) companies with private and public capital regulated by the private law regime.

<sup>103</sup> Resolution 507 of 2021, Article 1 and 5.

<sup>104</sup> Resolution 507 of 2021, Article 1.

<sup>105</sup> Resolution 507 of 2021, Article 2.

<sup>106</sup> Resolution 507 of 2021, Article 2 and 3.

<sup>107</sup> Resolution 507 of 2021, Article 3.2.

<sup>108</sup> Resolution 507 of 2021, Article 4.

<sup>109</sup> *Revista Semana*, *Etapa 3 de vacunación en Colombia: cuándo inicia, qué grupos la integran y detalles del plan*, 12 May 2021, available at: <https://n9.cl/tywh8>

<sup>110</sup> *Asociación Nacional de Empresarios de Colombia*, *Empresas por la Vacunación*, available at: <https://n9.cl/f8usg>

On 23 June 2021, the ANDI's president announced that businesses and companies participating in the vaccination programme had purchased 2,500,000 doses of the Sinovac vaccine. The ANDI's president also emphasized that, as far as the vaccine procurement process was concerned, the Colombian government's support was important. The ANDI affirmed that the companies would pay around \$60 US for vaccinating each worker with two doses, and confirmed that vaccination would be guaranteed free of charge to workers.<sup>111</sup>

Days after the announcement, the first 1,500,000 doses of the Sinovac vaccine purchased by the private sector arrived in Colombia. The Colombian President stated that the acquisition was historic and showed how public and private efforts could work together to step up the COVID-19 vaccine rollout. He also affirmed that the COVID-19 vaccine procurement had been the biggest solidarity action carried out by the business sector in Colombia's history.<sup>112</sup> On 4 July 2021, the first Sinovac vaccines received under this programme were administered. The vaccination under this program is ongoing.<sup>113</sup> As of 27 July 2021, 390,001 doses have been applied.<sup>114</sup>

Since this programme is at an early stage of implementation, its impact and consequences on the vaccination rollout cannot yet be fully assessed. However, to avoid any negative impact on human rights, including inequalities in COVID-19 vaccine access, it is essential that the National Government closely monitor the implementation of the programme. In this regard, it is worth highlighting that States, including Colombia, have the duty to protect the right to health, which includes an obligation to take effective measures to ensure that third parties, such as businesses, do not impair or abuse the right to health, including a result of discriminatory practices.<sup>115</sup> This clearly applies directly in the context of access to COVID-19 vaccines, which constitutes the exercise and enjoyment of the right to health.

Furthermore, businesses must themselves respect human rights. In relation to COVID-19 vaccines and business activities, the Inter-American Commission on Human Rights has indicated that businesses "must orient and guide their actions and processes based on the applicable international human rights standards", "even when States are not complying or not adequately complying with their obligations regarding the COVID-19 vaccines".<sup>116</sup> Similar responsibilities are articulated in the UN Guiding Principles on Business and Human Rights (UNGPs),<sup>117</sup> as affirmed by the UN Committee on Economic, Social and Cultural Rights' General Comment 24 on Business and Human Rights.<sup>118</sup>

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<sup>111</sup> Asociación Nacional de Empresarios de Colombia, Las primeras 1,5 millones de vacunas contra el Covid-19 adquiridas por las empresas estarán en el país el próximo lunes, 23 June 2021, available at: <https://n9.cl/18vuq>

<sup>112</sup> Asociación Nacional de Empresarios de Colombia, Esta semana se aplicarán las primeras vacunas contra el Covid-19 adquiridas a través de "Empresas por la Vacunación", 28 June 2021, available at: <https://n9.cl/otp6gk>

<sup>113</sup> S Solórzano, Inició la vacunación por parte de privados con las primeras dosis aplicadas en Bogotá, La República, 4 July 2021, available at: <https://n9.cl/ty3u2>

<sup>114</sup> Así va la vacunación en Colombia, available at: <https://bit.ly/36ZM6H2>

<sup>115</sup> See: UN Committee on Economic, Social and Cultural Rights (CESCR), General comment No. 24 on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, E/C.12/GC/24, 10 August 2017, para III, (B), (2)24, available at: <https://www.refworld.org/docid/5beaecba4.html>; UN Human Rights Committee (HRC), General comment no. 31, The nature of the general legal obligation imposed on States Parties to the Covenant, 26 May 2004, CCPR/C/21/Rev.1/Add.13, para. 8, available at: <https://www.refworld.org/docid/478b26ae2.html>

See also: International Commission of Jurists, The Unvaccinated: Equality not Charity in Southern Africa, Mayo 2021, page 16 and 17, available at: <https://n9.cl/7rvs5>

<sup>116</sup> Inter-American Commission on Human Rights, COVID-19 vaccines and inter-American human rights obligations, Resolution 1/2021, 6 April 2021, Para 31, available at: <https://bit.ly/2VCJZ9H>

<sup>117</sup> Principles available here: <https://bit.ly/3zsaBsw>

<sup>118</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), General comment No. 24 on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, E/C.12/GC/24, 10 August 2017, Para 5. OHCHR Guiding principles on business and human rights, principles 11-15.

## D. LACK OF TRANSPARENCY IN COVID-19 VACCINE ACQUISITION CONTRACTS

As mentioned above, the Colombian COVID-19 Vaccination Plan has provided detailed information about the strategy of the national government to vaccinate Colombian inhabitants. However, the National Government has been criticized for the lack of transparency regarding the beginning of the vaccine rollout and the contracts signed with the pharmaceutical companies.<sup>119</sup>

In this regard, for instance, on 18 December 2020, the President stated that the rollout would commence in “the first weeks of 2021”. Based on the President’s statement, some understood that vaccinations would commence during January.<sup>120</sup> However, on 21 December 2020, the President clarified that mass vaccination would start in February, albeit the first vaccine doses would be administered in December 2020 or January 2021.<sup>121</sup>

Nevertheless, on the same day, the Ministry of Health informed the public that the first vaccines would only arrive in February 2021 without specifying a precise date.<sup>122</sup> Specifically, he said that Colombia would receive 1.7 million doses of Pfizer vaccines. In late January 2021, the Ministry stated the rollout would start on 20 February.<sup>123</sup> In the end, the first COVID-19 vaccine was administered in Colombia on 18 February 2021.<sup>124</sup> However, during February 2021, Colombia only received a mere 100,000 doses of Pfizer vaccine.<sup>125</sup>

Regarding this situation, it was argued that the National Government did not initially inform the public of a specific date for the start of the vaccination campaign because the contracts with the pharmaceutical companies had not been signed yet.<sup>126</sup> Observers also noted that the negotiations with the pharmaceutical companies started late in comparison with other countries in the region, such as Chile and Argentina.<sup>127</sup> In these countries, the first vaccines were administered in late December 2020.<sup>128</sup>

At the time of writing, the following elements of Colombia’s COVID-19 vaccination programme are still unknown:

- the numbers of contracts signed by the Government;
- the terms of the contracts signed; and
- the prices of the Covid-19 vaccines paid by the Government.<sup>129</sup>

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<sup>119</sup> El Espectador, De contratos, vacunas y (falta de) transparencia, 16 January 2021, available at: <https://n9.cl/gbco>; Cámara de Representantes, Comisión Accidental para el Seguimiento al Plan Nacional de Vacunación contra el COVID-19, 11 June 2021, Page 38 and ff., available at: <https://n9.cl/0fqbx>

<sup>120</sup> El Tiempo, Colombia asegura 40 millones de vacunas contra la covid-19, 19 December 2020, available at: <https://n9.cl/x8v3w>; La República, Plan de vacunación en Colombia inicia en enero de 2021 con 40 millones de dosis de vacunas, 19 December 2020, available at: <https://n9.cl/0jldz>; El Colombiano, Primeras vacunas contra covid en Colombia se aplicarán en enero, 18 December 2020, available at: <https://n9.cl/4xq94>

<sup>121</sup> Blue Radio, Esta o la próxima semana inician pruebas para vacuna COVID en Colombia: Duque, 21 December 2020, available at: <https://n9.cl/uoc6s>

<sup>122</sup> Ministerio de Salud, En febrero llegará primer lote de la vacuna, 21 December 2020, available at: <https://n9.cl/jaxej>

<sup>123</sup> Ministerio de Salud, Colombia comenzará la vacunación contra el covid-19 el 20 de febrero, 29 January 2021, available at: <https://n9.cl/ocymj>

<sup>124</sup> El Tiempo, En Sincelajo comenzó este miércoles un nuevo capítulo contra el covid, 18 February 2021, Available at: <https://n9.cl/9zx3m>

<sup>125</sup> Ministerio de Salud, Ya llegaron 50.310 dosis más de Pfizer al país, 24 February 2021, available at: <https://n9.cl/vww6x>

<sup>126</sup> El Espectador, De contratos, vacunas y (falta de) transparencia, 16 January 2021, available at: <https://n9.cl/gbco>

<sup>127</sup> El Espectador, Ojos sobre la Cancillería: ¿gestionó oportunamente las vacunas?, 5 July 2021, available at: <https://n9.cl/wxi0o>

<sup>128</sup> L Méndez Urich, México, Chile y Costa Rica en el podio de la carrera por la vacuna en América Latina, France 24, 24 December 2020, available at: <https://n9.cl/2rb0s>

<sup>129</sup> See: Cámara de Representantes, Comisión Accidental para el Seguimiento al Plan Nacional de Vacunación contra el COVID-19, 11 June 2021, Page 8 and 9, available at: <https://n9.cl/0fqbx>

This situation prompted judicial review before the Administrative Tribunal of Cundinamarca to demand access to these critical missing pieces of information. The next section summarizes the ruling handed down by the Tribunal on 11 May 2021.<sup>130</sup>

## 1. What did the Tribunal decide?

On 12 January 2021, the International Institute of Anticorruption Studies (*Instituto Internacional de Estudios Anticorrupción* or “IIAS”),<sup>131</sup> a Colombian non-profit organization, filed a petition (*derecho de petición*) before the National Unit for Disaster Risk Management (*Unidad Nacional de Gestión del Riesgo de Desastres*, UNGRD), the Colombian Government Unit in charge of the COVID-19 vaccines procurement.<sup>132</sup>

### **What is a *derecho de petición*?**

The Colombian Constitution guarantees the right to access information. Article 74 of the Constitution provides that “everyone has the right to access to public documents except in the cases established by law”.

The Colombian domestic legislative framework establishes multiple mechanisms to ensure the exercise of this right. One of the most important mechanisms is set out in Article 23 of the Constitution. The provision establishes the right to present petitions before authorities to access public information and documents. This is a fundamental right called “***derecho de petición***”. Filing a petition as the exercise of the *derecho de petición* does not require following a special procedure or format.

In its petition, the Institute requested access to information regarding government action taken against the COVID-19 pandemic, including details of the acquisition process of COVID-19 vaccines. More specifically it requested:

- preliminary or pre-purchase agreements with pharmaceutical companies;
- advanced purchase agreements;
- confidentiality agreements;
- purchase and sale of vaccines agreements;
- any type of documentation, agreement or contract on vaccine acquisition; and
- the prices paid for COVID-19 vaccines.

The Institute argued that access to this information was required to ensure the public’s control over public resources used to react to the pandemic and acquire COVID-19 vaccines.

In response to the petition, on 15 January 2021, the Government Unit handed over some of the information requested but did not release information on negotiations and contracts with pharmaceutical companies regarding the acquisition of COVID-19 vaccines. The Unit stated that the information requested was subject to confidentiality and thus unavailable to the public. It argued that confidentiality clauses in the contracts with pharmaceutical companies prevented them

<sup>130</sup> Text of the ruling available (in Spanish) at: <https://n9.cl/aw9nr>

<sup>131</sup> More information of the Institute (in English) is available at: <https://n9.cl/9x11>

<sup>132</sup> More information of the UNGRD (in English) is available at: <https://n9.cl/76on>

from sharing any details with the general public, and that these clauses were consistent with Colombian law.

More specifically, the Unit argued that: (i) the information requested should remain confidential as it addressed issues relating to the general public's health and safety; (ii) its disclosure could harm and compromise the general public's interests.<sup>133</sup> In this regard, it explicitly indicated that the Tribunal should consider the global shortage of COVID-19 vaccines, as well as the dominant position and power of pharmaceutical companies in the international COVID-19 vaccine market. In summary, its position was that a disclosure of the information requested in the petition would compromise the Government's ability to negotiate with pharmaceutical companies and, in turn, diminish its ability to ensure access to COVID-19 vaccines and, consequently, undermine the protection of the public's health and safety.<sup>134</sup>

The Institute did not agree with the Unit's decision and related assessment and insisted the information should, contrary to the Unit's arguments, be made publicly available. Consequently, the Institute filed a *recurso de insistencia* (a request for judicial review) before the Administrative Tribunal of Cundinamarca with the objective that a judicial instance would determine the nature of the information requested.

#### **What is a *recurso de insistencia*?**

National and local authorities have the duty to provide access to all information requested in a *derecho petición*. However, they can deny the petition if the information concerned qualifies for classified or confidential treatment. Should the petitioner disagree with the apparent confidential nature of the information requested, Article 26 of Law 1755 of 2015 establishes a judicial remedy, "**recurso de insistencia**", to request the verification of the decision's compliance with the law. The *recurso de insistencia* is a one-instance procedure before administrative judges.

A person or organization can file a *recurso de insistencia* to request an administrative judge to determine if the information should be treated as confidential. If the judge finds the information should not be treated as such, they can order the handover of the requested information to the petitioner.

The Tribunal rejected the Unit's arguments, ultimately ordering the Unit to provide the Institute with:

- Copies of the signed contracts regarding the acquisition of COVID-19 vaccines.
- The contracting model used, the price, the terms of compliance and the national certificate of availability of funds to acquire COVID-19 vaccines.
- The address to which AstraZeneca PLC and Pfizer Inc vaccine doses were agreed to be delivered and the entry dates of the doses in the country.
- Statements confirming whether at the time of signing contracts or other legal agreements/instruments with AstraZeneca and Pfizer the companies had already been granted authorization for emergency use of their vaccines by competent Colombian (sanitary) authorities.

<sup>133</sup> Law 1712 of 2014, Article 19.

<sup>134</sup> Law 2064 of 2020.

- Information regarding whether there has been any contact or work meetings between the Unit or other National Authorities, and the companies BioNTech, Johnson & Johnson, Moderna, GlaxoSmithKline, Cansino Biologics, Sinovac, Novavax or any other pharmaceutical company, targeting the possible acquisition of COVID-19 vaccines. And if such contact can be confirmed, provide the dates on which these took place and by whom they were led.

In coming to this conclusion, the Court drew on a range of international and domestic sources of law, including the American Convention on Human Rights, the American Declaration on the Rights and Duties of Man, the Inter-American Democratic Charter and the Universal Declaration of Human Rights. It also cited decisions of the Inter-American Court on Human Rights and documents issued by the Inter-American Commission on Human Rights.

In summary, the Tribunal based its decision primarily on international human rights standards on the right to access information. In this regard, the Tribunal set out that the right to access information, as part of the right to freedom of thought, belief and expression, plays a critical role in strengthening and maintaining democratic governing systems. In addition, the Tribunal highlighted that the right to access information contributes to ensuring that State officials can be held accountable to their public obligations and official duties.

In relation to COVID-19 vaccine contracts, the Tribunal concluded that maintaining the confidentiality of these contracts would mean that COVID-19 vaccines, other vaccines, and good medical practices would be subjected to private power and contractual clauses instead of public scrutiny and accountability. This would prevent any form of control and simultaneously negatively impact on the fulfilment of human rights. Moreover, the Tribunal underlined that pharmaceutical companies themselves must respect human rights, including the rights to life and the right to health. This implies a duty not to actively obstruct access to these rights, including the access to information about the acquisition of COVID-19 vaccines. For the Tribunal, the interest of the pharmaceutical companies in maintaining details of the contracts confidential, thus, could not prevail over the fundamental right to access information.

Citing a range of documents, including a statement of the World Health Assembly,<sup>135</sup> the Tribunal found that COVID-19 vaccines amount to a “global public good”, which should be universally accessible to all. As vaccines are a “public good” and the Colombian legislation considers the immunization process against COVID-19 as “a public interest issue” (Law 2064 of 2020). Consequently, the Tribunal found that Colombia’s own law on COVID-19 vaccines did not allow for confidentiality of contracts between the Government and pharmaceutical companies. The recognition of COVID-19 vaccines as a global public good also led the Tribunal to conclude that:

- Matters of public interest, such as the COVID-19 vaccine, which is a global public good, require a greater protection of the right to access information. Restrictions on the access to information relating to COVID-19 vaccines cannot be justified on the basis of protecting the public’s health and safety;
- The aggravating social and economic circumstances brought on by the COVID-19 pandemic increase the intensity and urgency of States’ obligations to comply with human rights standards on transparency, access to public information and combatting corruption. This includes in relation to vaccine procurement; and

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<sup>135</sup> General Health Assembly, Resolution WHA73.1, COVID-19 response, 19 May 2020, available at: <https://n9.cl/80pc2>

- Pharmaceutical companies, who carry their own responsibility to respect human rights, must not actively obstruct access to information relating to COVID-19 vaccines. The public interest outweighs the companies' interest in confidentiality.

The Tribunal itself had access to the contracts in question and confirmed that, in its view, revealing the information in the contracts would not jeopardize the public's health and safety. In fact, the Tribunal observed that the confidentiality clauses in these contracts only referred to financial clauses, such as the price or compensation circumstances, and that restrictions on access to this type of information would not, in any event, align with generally applicable national laws on requiring transparency in the use of public resources in public procurement processes. None of the contracts included information on trade secrets or industrial secrets or patents, which could possibly affect or harm the pharmaceutical companies' intellectual property.

The Tribunal therefore concluded that the confidentiality clauses, which are tailored to the interests of pharmaceutical commercial interests, are not justifiable under the "maximum disclosure" principle (*Principio de máxima divulgación*),<sup>136</sup> an Inter-American standard used by the Colombian Constitutional Court,<sup>137</sup> applicable to the right to access information. The Tribunal underlined that maintaining the confidentiality of these contracts would mean that COVID-19 vaccines, other vaccines and good medical practices would be subjected exclusively to private power and contractual clauses instead of public scrutiny and accountability. This would prevent any kind of control, and simultaneously severely impact the fulfilment of human rights. Moreover, the Tribunal held that transparency in access to information may also contribute to preventing overcharging by companies.

The Tribunal also noted that contracts with pharmaceutical companies, including regarding COVID-19 treatments, had been publicized by several countries globally, such as Brazil, Argentina, Dominican Republic, Italy and the United State, as well as by countries in the European Union.<sup>138</sup> It held that there is no evidence that such publicity had compromised the general public's health and safety or access to COVID-19 vaccines in these countries. On the contrary, revealing details of these contracts might improve States' position in negotiations and the public perception of and trust towards pharmaceutical companies.

Ultimately, the Tribunal reiterated its conclusion that the Unit could not legitimately claim that existing challenges to vaccine access or supplies, which have multiple causes, can be attributed to whether or not details of contracts with pharmaceutical companies were made publicly available.

Finally, the Tribunal also criticized the lack of international solidarity and cooperation among States in ensuring equitable access to COVID-19 vaccines thus far.

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<sup>136</sup> This principle means that, as general rule, all information held by public authorities should be publicly accessible. Limitations and restrictions are only possible in very limited circumstances that must be foreseen by the law and must be subject to strict proportional and restrictive interpretations. Regarding this principle, the Inter-American Court of Human Rights has said: "(...) *the State's actions should be governed by the principles of disclosure and transparency in public administration that enable all persons subject to its jurisdiction to exercise the democratic control of those actions, and so that they can question, investigate and consider whether public functions are being performed adequately. Access to State-held information of public interest can permit participation in public administration through the social control that can be exercised through such access. (...) The Court observes that in a democratic society, it is essential that the State authorities are governed by the principle of maximum disclosure, which establishes the presumption that all information is accessible, subject to a limited system of exceptions. It corresponds to the State to show that it has complied with the above requirements when establishing restrictions to the access to the information it holds.*" See: Inter-American Court on Human Rights, *Case Claude Reyes and others Vs. Chile*, Fondo, Reparaciones y Costas, Sentencia de 19 de septiembre de 2006, Serie C No. 151, para 86 to 93.

<sup>137</sup> See: Constitutional Court, decisions C-951 of 2014 and C-274 of 2013.

<sup>138</sup> Regarding the contracts mentioned by the Tribunal, see pages 32 to 37 of the ruling. Text of the ruling available (in Spanish) at: <https://n9.cl/aw9nr>



## 2. Why is the Tribunal's decision important?

In light of the current dramatic shortages and inequality in COVID-19 vaccine supplies, the Tribunal's decision provides an important opportunity for the general public and individual States to gain access to information, specifically pricing and supply amounts, that may positively impact States' ability to fairly negotiate with big pharmaceuticals as well as hold them and governments accountable. To date, however, the Government Unit has not provided the IIAS with the demanded information as it has requested clarification of the Tribunal's decision and thus extended the legal administrative procedure.<sup>139</sup> As a result, greater public awareness about and support for the case is therefore needed to pressure the government to eventually comply with the decision of the Tribunal. The decision also draws attention to the interconnectedness of all human rights, in this case emphasizing the links between the rights to information and health.<sup>140</sup>

It is laudable that the administrative Tribunal refers to international human rights law as the basis of their decision. The Tribunal clear emphasis on the fact that pharmaceutical companies' interests must not trump access to human rights, such as information and health, stands in stark contrast with the Colombian executive's position to comply with pharmaceutical companies' demands. While the Tribunal's decision does not refer either to the UN Guiding Principles on Business and Human Rights<sup>141</sup> or to the UN Committee on Economic, Social and Cultural Rights' General Comment 24 on Business and Human Rights, its conclusion on the responsibilities of pharmaceutical companies is consistent with both.<sup>142</sup> As the ICJ noted as early as September 2020:

"in these exceptional circumstances, the responsibility to respect the right to health requires extraordinary efforts from pharmaceutical companies to cooperate with governments to ensure the affordability of any COVID-19 vaccines consistently with States' obligations to protect the right to health."<sup>143</sup>

Additionally, despite the fact that the Tribunal's decision is not based on the right to health, as such – a right nonetheless protected by Article 49 of the Colombian Constitution, and one that has been vindicated by the Colombian Constitutional Court<sup>144</sup> – it is of vital importance that the Tribunal recognized that COVID-19 vaccines and treatments are a global public good. As the ICJ has consistently argued, the rights to life, health and equal enjoyment of scientific progress, among others, all require States to provide access to information about COVID-19 vaccines.<sup>145</sup> Indeed, States obligations in this regard form part of the minimum core of the right to health, which must be realized immediately.<sup>146</sup> The provision of information by States "concerning the main health

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<sup>139</sup> Dejusticia, Las preguntas que siguen pendientes sobre los contratos de las vacunas, 1 June 2021, available at: <https://n9.cl/7ushq>

<sup>140</sup> See also: International Commission of Jurists, Living Like People Who Die Slowly: The Need for Right to Health Compliant COVID-19 Responses, September 2020, page 104-117, available at: <https://n9.cl/oehvq>; UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant)*, 11 August 2000, E/C.12/2000/4, para 12(b), available at: <https://www.refworld.org/docid/4538838d0.html>

<sup>141</sup> United Nations Guiding Principles on Business and Human Rights (2011), HR/PUB/11/04, available at: <https://n9.cl/itov0>

<sup>142</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), *General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities*, 10 August 2017, E/C.12/GC/24, available at: <https://www.refworld.org/docid/5beaecba4.html>

<sup>143</sup> International Commission of Jurists, Living Like People Who Die Slowly: The Need for Right to Health Compliant COVID-19 Responses, September 2020, page 38, available at: <https://n9.cl/oehvq>

See also: Human Rights Watch, Universal and Equitable Access to Covid-19 Vaccines, Testing, Treatments: Companies' Human Rights Responsibilities, 11 February 2021, available at: <https://n9.cl/kv76j>

<sup>144</sup> See for example Decision T-760 of 2008, summary in English available at: <https://n9.cl/4t2mi>

<sup>145</sup> International Commission of Jurists, The Unvaccinated: Equality not Charity in Southern Africa, May 2021, page 8 to 14, available at: <https://n9.cl/7rvs5>

<sup>146</sup> Ibid, page 10.

problems in the community, including methods of preventing and controlling them”, is an obligation that the UN Committee on Economic, Social and Cultural Rights has described as an obligation of “comparable priority” to a minimum core obligation in terms of the right to health.<sup>147</sup>

Crucially, but perhaps less obviously, the Tribunal’s decision highlights the importance of the accessibility and availability of effective judicial remedies to ensure the protection of human rights in the context of the COVID-19 pandemic.<sup>148</sup> In the context of the right to health, for example, the Committee on Economic, Social and Cultural Rights (CESCR) has clarified that:

“Any person or group victim of a violation of the right to health should have access to effective judicial or other appropriate remedies at both national and international levels. All victims of such violations should be entitled to adequate reparation, which may take the form of restitution, compensation, satisfaction or guarantees of non-repetition.”<sup>149</sup>

What is ultimately clear is that effective implementation of States’ obligations in terms of all human rights requires the availability of effective remedies, including judicial remedies.<sup>150</sup> Without judicial remedies such as the one available to the petitioners in this matter through the Administrative Tribunal, and especially in the context of COVID-19, people are often left without adequate legal recourse for the violation of their rights.

## **E. RECOMMENDATIONS TO COLOMBIAN AUTHORITIES**

In light of the concerns identified above, in the context of their response to the COVID-19 pandemic, the Colombian authorities should take at least the following measures to improve the human rights situation, especially with respect access to vaccines:

1. Comply with the guidance set out in the Tribunal’s ruling and in the order handed down by the Tribunal.
2. Comply with international human rights law and standards on the proactive provision and wide dissemination of health information and information relating to vaccine procurement and allocation. To do so, the authorities should be guided, in particular, by the principle of “maximum disclosure” in access to public information.
3. Revise and reconsider the country’s vaccine rollout plan to ensure its consistency with international human rights law, in particular by ensuring:

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<sup>147</sup> General Comment 14, para 44(d).

<sup>148</sup> International Commission of Jurists, More than words: it is time for urgent action on COVID-19 vaccines (UN Statement), 21 June 2021, available at: <https://n9.cl/a5lwua>; International Commission of Jurists, ICJ calls on States to ensure human rights compliant access to COVID-19 vaccines (UN Statement), 1 March 2021, available at: <https://www.icj.org/icjhrcaq2covid19/>

<sup>149</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant), 11 August 2000, E/C.12/2000/4, para 59, available at: <https://n9.cl/gxfrs>

<sup>150</sup> See: Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

See also: International Commission of Jurists, Practitioners’ Guide No. 2: The Right to a Remedy and Reparation for Gross Human Rights Violations, Revised Edition, 2018, available at: <https://n9.cl/72a4>.

- a. The production of detailed, disaggregated data on the vaccine rollout, including by gender, ethnicity, age, profession and migration status, be made available publicly.<sup>151</sup>
  - b. Provide equitable access to COVID-19 vaccination, meaning access on equal terms with access guaranteed to Colombian citizens, for all non-citizens, regardless of their migration status domestically, consistent with Colombia's international human rights obligations and with international public health policy standards and best practice.
4. Closely and effectively regulate and monitor the implementation of the programme "businesses for the vaccination" to ensure the involvement of private actors in the procurement and provision of COVID-19 vaccines does not result in human rights abuses, including, in particular, discriminatory/inequitable vaccine rollout. More specifically, the authorities should ensure that private actors involved in the "businesses for the vaccination" process comply with the inter-American standards on businesses and human rights established by the Inter-American Commission.<sup>152</sup> At a minimum, the authorities should ensure that private businesses avoid measures and practices that:<sup>153</sup>
- a. exacerbate supply scarcity;
  - b. cause delays in access to COVID-19 vaccines;
  - c. exacerbate lack of affordability of COVID-19 vaccines;
  - d. omit principles of equity and non-discrimination from their business decisions;
  - e. lack transparency or otherwise prevent States from providing information about their actions in relation to essential medicines, such as vaccines.
5. Publicly and openly support South Africa and India's proposed waiver of intellectual property protections on COVID-19 vaccines and therapeutics at the World Trade Organization (WTO).

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<sup>151</sup> See for instance: United Nations General Assembly, Comprehensive and coordinated response to the coronavirus disease (COVID-19) pandemic, A/RES/74/306, 15 September 2020, Para 17, available at: <https://bit.ly/3iPMk9l>

<sup>152</sup> See: Inter-American Commission on Human Rights, Business and Human Rights: Inter-American Standards, 2019, available at: <https://bit.ly/3wFyzif>

<sup>153</sup> S Sekalala et al "Decolonising human rights: how intellectual property laws result in unequal access to the COVID-19 vaccine", 12 July 2021, available at: <https://gh.bmj.com/content/bmjgh/6/7/e006169.full.pdf>; Human Rights Watch, Universal and Equitable Access to Covid-19 Vaccines, Testing, Treatments: Companies' Human Rights Responsibilities, 11 February 2021, available at: <https://n9.cl/ky76j>

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