

# Individual Responsibility as a Protection Measure in Mexico Against the Covid-19<sup>1</sup>

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*Using a legal philosophy approach, this article seeks to reflect on individual responsibility as a protection measure implemented in Mexico to address the Covid-19 pandemic. The #StayHome strategy is studied as an imperfect legal norm that structures the government's reaction in the country to protect the human right to health of the inhabitants of Mexican territory in the context of the health crisis. Subsequently, the opportunity is considered for the (in)action of individuals under a scheme of individual responsibility in order to avoid the spread of contagion and to have a beneficial impact on the natural process of the epidemic. The conclusion is that despite having an explicit regulatory framework of an executive nature, the Government of Mexico has decided to address the health crisis in terms of reducing infections with a strategy based on two aspects: the first, the socialized measure of #StayAtHome and the second, the transfer of health protection measures to individuals.*

*Keywords: individual responsibility, Covid-19, #StayHome*

## INTRODUCTION

The uncertainty of the unknown causes a natural level of alertness in human beings that can lead to extreme behaviors of inaction or outbursts to protect the first of rights, life. But when this uncertainty blurs humanity, the fundamental rights of society and its legal protection scheme are disrupted. All the more so when the threat comes from a biological element that acts against organisms and endangers the health of human beings, revealing their unique equality, that is, their vulnerability as finite beings.

We are facing what Žižek categorizes as an “event” that in his words provokes “...the loss of a primordial unity and harmony that never existed, that are nothing more than a retroactive illusion<sup>2</sup>”. This “event” unfolds in three dimensions that Donald Rumsfeld, quoted by Žižek, enunciated to justify the US attack on Iraq. First, there is the known known; there are things we are aware that we know. Then, there is the known unknown; that is, there are things we are aware that we do not know. But there is also the unknown unknown; things we are not aware that we do not know. These dimensions are completed by Žižek with one more, the unknown known, i.e., the things we are not aware that we know<sup>3</sup>.

These dimensions of unawareness have been gradually revealed with respect to the SARS-CoV-2 pandemic. Today we know, among other things, that the coronavirus has a low lethality, but a wide potential for spread. On the other hand, we are aware that we do not know how often people with symptoms could transmit the virus. We also recognize that we do not know the drug or vaccine to treat the disease. However, in the scientific arena we still have many areas that cover the spectrum of the unknown unknown and the

unknown known and we hope that scientific research will lead us to unravel these areas to facilitate combating the virus globally and the transit of humanity to another stage.

This lack of knowledge of the new coronavirus has caused the Mexican government<sup>4</sup> to act cautiously and not to assume its responsibility completely, but to use the federal scheme to transfer the obligations to the state level ministries of health and even to individuals themselves.

In this regard, the following questions serve as structuring questions for our essay; is the Mexican State fully responsible for guaranteeing the right to health of its inhabitants in the context of the COVID-19 pandemic? Is the #QuédateEnCasa strategy a justified, proportional and suitable measure to confront the COVID-19 pandemic? Are individuals responsible for their right to health?

To begin with, let's discover the known aspects of the pandemic and how this has shaped the response of the Government of Mexico.

COVID-19 became known to the planet unexpectedly, starting from the existence of the SARS-CoV-2 coronavirus. Its spread in terms of contagion and information has been vertiginous. The World Health Organization (WHO) considered Covid-19 to be a pandemic on March 11, 2020, given its high level of contagion and severity. This is why the WHO urged national governments to implement all measures at their disposal to rapidly and effectively reduce the number of infections among their inhabitants<sup>5</sup>.

The Mexican government opted to implement a “sentinel” surveillance system for the new virus at the outset. This surveillance system first identified focalized infections, without intervening directly in the population. Its purpose was to diagnose the balance between infected people and the human and material resources available for their care in the health sector.

Subsequently, when it was realized that the rate of infection had reached the community level, the #QuédateEnCasa strategy for the new virus was introduced as the main measure to organize the governmental response at the federal level and to direct the response of the Federal States. This led to the establishment on March 23, 2020 of a “National Healthy Distance Campaign” (Sana Distancia) for 69 days. This is a strategy that has a millenary origin and has been used by the human being since its rational evolution made it recognize the risks of the exterior, before which it resorted to the shelter as a space of first protection. Paradoxically, it is the unknown elements that have led us to the affirmation of the protection space par excellence, the home, which is inhabited in community.

This was the message delivered and boasted by the President of the Republic when he presented his strategy to face the COVID-19 pandemic before the international community describing the importance of the family as the “most important social institution in the case of the people of Mexico to ensure the protection of people<sup>6</sup>”. Therefore, the Government of Mexico opted for social isolation within the home as a fundamental strategy to respond to the health crisis. This strategy was socialized with the #QuédateEnCasa hashtag as a “compulsorily voluntary” legal norm for the inhabitants of the republic. The mandatory nature is embodied in the administrative act that originated it, but in practice it has not been enforceable and has been applied, by express indication of the president of the republic, according to the conscience and common sense of the population.

The Mexican government's position in the face of the new virus was to transfer responsibility to a large extent to private actors in order to avoid new contagions. That is, measures were directed to the community, through families, where human beings seek their natural protection, without the intervention of the state authority.

The Mexican State, in recognition of its material incapacity to attend to the exponentially serious cases arising in the public sphere, ceded its sphere of action to prevent further contagion to the families themselves, disaggregated into individuals. However, the Mexican Government was extremely careful to communicate that these isolation measures did not affect the individual freedom of persons. In this regard, it has been repeatedly stated by State agents that there will be no suspension of guarantees, curfew or any repression to enforce the preventive health measures.

Following the end of the “National Healthy Distance Campaign”, as argued by the Federal Government when assessing the need to gradually reactivate economic activity, on May 31, the so-called “new normality” began throughout the country and a model was implemented to control the spread of infections

based on two elements; the first, composed of the #QuédateEnCasa strategy with the intention of discouraging social mobility (II).

The second element consists of transferring responsibility to individual human beings to reduce the level of transmission and, consequently, of hospitalizations in a confusing scheme of recommendations and general provisions to be followed according to the criteria of individuals.

### **THE #QUÉDATEENCASA STRATEGY AS AN IMPERFECT STANDARD OF PROTECTION TO AVOID THE COLLAPSE OF THE HEALTH SYSTEM**

The COVID-19 pandemic clearly places the Mexican State under the obligation to respond quickly and effectively to the spread of contagion in order to avoid as much as possible the disease or the loss of life of its inhabitants. The State is perceived in this context in its most orthodox contractual conception of guarantor of the security of individuals against the unknown outside. The clauses of the Rousseauian social pact by which men gave up their natural liberty in exchange for civil liberty are fully actualized here for the sake of utility. The dependence of individuals on one another by convention created the State as a governmental entity that, starting from the family cell, assimilated the common interest to the individual<sup>7</sup>. By means of the social contract the human being loses its natural freedom to gain the civil freedom that, in turn, gives origin to the moral freedom by which the human being becomes an intelligent being and owner of itself<sup>8</sup>. The basis of every legal system is the common good<sup>9</sup>, the sole purpose of state institutions and the reason why every society must be governed.

In this sense, the first of our questions in this essay is answered positively, since it is indeed the obligation of the Mexican State to guarantee the right to health of its inhabitants in the context of the Covid-19 pandemic. This is so stated in articles 1, 4 and 73, section XIV, bases 1, 2 and 3 of the Political Constitution of the United Mexican States; as well as in articles 25 of the Universal Declaration of Human Rights, 1, 2 and 4 of the American Convention on Human Rights, 2 and 6 of the International Covenant on Economic, Social and Cultural Rights. The reason for the above is the very existence of the State as an entity to protect its inhabitants.

To this end, the Government of Mexico has a national regulatory framework to face the possibility of facing an epidemic or “exotic diseases”, to quote the conceptual terms in which the Constituent Assembly of 1917 established the wording of article 73 section XVI 2<sup>nd</sup> of the Constitution of the United Mexican States. Interestingly, this provision has only been reformed once, namely on August 2, 2007<sup>10</sup>, to make it consistent with the current state of the federal public administration and replace the figure of the Department of Health (Departamento de Salubridad) with the Ministry of Health (Secretaría de Salud) as the authority obliged to “...immediately dictate the indispensable preventive measures, subject to being later sanctioned by the President of the Republic<sup>11</sup>”. This provision is taken up, in an almost identical syntax, in Article 181 of the General Health Law. This obligation in the case of the Covid-19 pandemic has not been fulfilled, since the preventive measures dictated by the Ministry of Health suffer from formal defects and were late if by immediate we mean actions that take place without delay.

We consider that the compliance of the Ministry of Health with its obligation suffers from formal defects since, although it is true that on March 24, 2020, the *AGREEMENT establishing the preventive measures to be implemented for the mitigation and control of the health risks implied by the SARS-CoV2 virus disease (COVID-19)* (Agreement) was published in the evening edition of the Official Gazette of the Federation, in which a series of measures contemplated in the “National Healthy Distance Campaign” are imposed as mandatory for the civilian authorities, specifically the one socialized with the formula #QuédateEnCasa, in addition to a series of basic personal hygiene measures in order to promote social distancing, thus reducing the number of contagions and preventing the epidemic from spreading over time and providing better medical care; it is also true that these preventive measures have not been sanctioned to date by the President of the Republic, as provided for in the Constitution. This is so, because the power granted by the Magna Carta to the Ministry of Health has the purpose that preventive measures be taken without delay in the face of the urgency implied by the arrival of an epidemic or “exotic disease” to the country. However, such decisions issued by the Ministry of Health in the form of preventive measures must

have the approval, even if only after the fact, of the head of the Federal Executive, which has not happened to date.

We affirm the above, without failing to note that the General Health Council, in its second provision of the *Agreement by which the General Health Council recognizes the epidemic of SARS-CoV2 virus disease (COVID-19) in Mexico as a serious disease of priority attention, as well as establishing the activities of preparation and response to the epidemic*, sanctioned one day before the Agreement of the Ministry of Health that dictates the preventive measures was published in the Official Gazette of the Federation:

...the preparation, prevention and control measures for the SARS-CoV2, COVID-19 virus disease epidemic, designed, coordinated and supervised by the Ministry of Health, and implemented by the agencies and entities of the Federal Public Administration, the Legislative and Judicial Powers, the institutions of the National Health System, the governments of the Federal Entities and several organizations of the social and private sectors...<sup>12</sup>

Such an act does not comply with the provisions of the Constitution which, as we have seen, states that the preventive measures adopted by the Ministry of Health must be sanctioned by the President of the Republic, even if this is done after their implementation.

This makes sense in the Mexican legal system, given that the Ministry of Health depends directly on the President of the Republic and it is the latter who is ultimately legally obliged to respond for the health of the inhabitants of the national territory in the presence of a risk of contagion of a disease that threatens the population. In this sense, it is not by chance that the legal norm in question is located in article 73 of the Constitution, which refers to the powers of the Congress to issue laws, among other fields, on general health.

In other words, the Constituent authorized the Federal Executive, through its Ministry of Health, at the time the Department of Health, to issue general legal provisions that would ordinarily correspond to the Legislative Power, but given the urgent need to act in the face of the sanitary risk, they are authorized to be taken immediately by a scientific administrative authority, which is not subject to the political interests and times that would imply the establishment of the ordinary or extraordinary legislative process and even without prior notification to the President of the Republic. What is prioritized in the norm, as we can see, is the immediate containment of the epidemic.

It is in this sense that we say that the action of the Ministry of Health did not comply with the immediacy required by the Constitution to take preventive measures, since it was only on March 24, 2020 when it issued these measures, that is, with a delay of thirteen days with respect to the declaration of the WHO on March 11, 2020 on Covid-19 as a pandemic and the recommendation to the national governments to take the necessary preventive measures. This, despite the fact that the first case registered in Mexico occurred on February 28, 2020.

The late adoption of preventive measures by the Ministry of Health is even more evident given that the Mexican Government knew at least a month in advance of the spread of the virus around the world. This delay is magnified by the fact that even before the Ministry of Health, other governmental institutions, including the Ministry of Education, the Supreme Court of Justice, the Federal Superior Audit Office and the Ministry of Communications and Transportation, had already taken preventive measures within their respective competencies to avoid contagion.<sup>13</sup>

But why did the Ministry of Health decide to confront Covid-19 by issuing the administrative act dictating the preventive measures? A logical-legal answer would be because it is so provided by the fundamental law, seconded by the general health law. But it is interesting for our purpose to inquire more about the depth of the norm, what Luis Recaséns Siches would call its “intentionality<sup>14</sup>”.

Let us pause for a moment to review the history of how this legal obligation of the Ministry of Health as first responder in the event of an epidemic was created in order to understand the scope and purpose of the law.

When reviewing the 1917 Constituent Assembly's debate diary, we notice in principle the clarity with which the problem of epidemics and "exotic diseases" was discussed. Their possible consequences for the health of the inhabitants of the republic were correctly dimensioned, but also the affectation of the traffic of people and merchandise between the federated states and even between nations with the latent possibility of affecting "...transiently all the sources of wealth and national subsistence..."<sup>15</sup>

Furthermore, the constituents warned and defended that in these cases the Federal Executive should have control, exemplifying the cases of bubonic plague in Mazatlan, yellow fever in Monterrey and the isthmus, or smallpox in Torreon and typhus, registered by the constituents as "...the last great epidemic in Mexico..."<sup>16</sup>, in which the technical and financial capacities of the federated States were insufficient to promptly attack these epidemics and their consequences for those Entities and neighboring ones. Hence, they opted for the direct intervention of "...the first sanitary authority of the country"<sup>17</sup>, that is, the head of the Federal Executive with the collaboration of the Health Council, whose powers were strengthened so that it would go from being a consultative body dependent on other Ministries to an institution directly dependent on the President of the Republic and with an executive character, without the administrative authorities being able to oppose its decisions in order to avoid being affected by political interests.

The arguments put forward by Congressman Dr. José M. Rodríguez to centralize the governmental response to pandemics or "exotic diseases" in the Federal Executive leave us in no doubt as to the importance given to immediacy and unity of action in these cases. In this regard, it was argued:

Since if the sanitary authority does not have general control of the health of the Republic throughout the country, to dictate its provisions and put them into effect, these will cease to be effective at a given moment to avoid the consequences of contagion or invasion of epidemic diseases from State to State or international, it is indispensable that these dispositions emanating from the department of health have the character of general to avoid these consequences, because as we have demonstrated, otherwise the measures taken by the sanitary authorities at a given moment, when the epidemics have already developed, if not precisely late, they certainly caused an enormous loss of life and capital...<sup>18</sup>

Congressman Dr. Rodríguez was explicit in pointing out that "...the sanitary authority is the only tyranny that can be endured at present, because it is the only way to free the individual, the family, the State and the nation from contagions..."<sup>19</sup> and he fiercely defended his proposal against the discursive attacks of Congressman Pastrana Jaimes who opposed the project arguing the possible invasion of the sovereignty of the Federal Entities by a Department of Health that would have broad powers to act even before agreeing with the President of the Republic on the measures to be adopted. In this sense, Dr. Rodríguez could not have been more precise in justifying the reasons for his proposal, stating that "The first condition to live is to live well, the first thing is to be and then the way to be"<sup>20</sup>.

We clearly see that for the constituents of 1917 the risk of a pandemic or "exotic disease" was latent and extremely important for the life of the country (so much so that they did not accept the postponement of the vote on Dr. Rodríguez's project even for one day) and, therefore, they classified it as primordial, designating a central, independent and executive authority to make urgent decisions, even without the prior consent of the President of the Republic, to combat such serious evils. That is to say, the constituents of 1917 enshrined in the Magna Carta what Luis Recaséns Siches calls the "necessity of the need to be"<sup>21</sup> of the norms in order to avoid at all costs their non-compliance. For the constituents of 1917, the decisions of the Department of Health, now the Ministry of Health, could not have any margin of non-observance, since this would put at risk the first right of the inhabitants of the republic, the right to live, to live well.

We now understand in our essay the adequacy of the preventive measures dictated by the Ministry of Health to face the Covid-19 pandemic. However, we note that, although in their wording and by their very nature, as we have noted from the historical review, the decisions of the Ministry of Health are constitutionally mandatory, in practice it was left to the discretion of individuals to implement them, both in the private and social sphere.

This has been the narrative of the President of the Republic and the head of the Undersecretariat of Prevention and Health Promotion, who in article 2 (f) of the Agreement was designated as the communicator of the other necessary preventive measures determined by the Ministry of Health, but who in practice has been in charge of the technical direction of the pandemic.

Both officials have constantly reiterated that the measures regarding individuals will not be enforced coercively, since they instead appeal to the conscience of the people. The #QuédateEnCasa strategy was conceived and has been applied as an imperfect legal norm without sanction and without coercion that ignores the reasons for the creation of the very legal basis that gave rise to the need to regulate the power of the Ministry of Health to dictate immediate preventive measures in cases of the occurrence of an epidemic in Mexico. In other words, the Government of Mexico has renounced, contrary to the provisions of the law, the executive nature of the preventive measures dictated by the Ministry of Health.

We should ask ourselves whether this renunciation of the executive nature of the preventive measures has not caused the pandemic not to have been controlled to date? In this sense, we take up again the phrase of the Undersecretary of Prevention and Health Promotion when explaining the projections of the dynamism of the pandemic and conditioning the verification of these estimates to the fact that they will be effective if and only if the citizens comply with the measures of healthy distance, but is it not valid to ask ourselves if the useful condition for the reduction of contagions is if and only if the executive nature of the preventive measures is complied with?

We refer here to the false dilemma that coerciveness in this case would imply an affectation of the Rule of Law. Indeed, every democratic society understands that fundamental freedoms can be restricted, as long as such restrictions are made within the constitutionally and conventionally permitted framework<sup>22</sup>. As far as our country is concerned, this means that the hard core of rights set forth in Article 29 of the Constitution and in Article 272 of the American Convention on Human Rights must not be affected, which are the rights to non-discrimination, to recognition of legal personality, to life, to personal integrity, to protection of the family, to name, to nationality; the rights of the child; political rights; the freedoms of thought, conscience and religious belief; the principle of legality and retroactivity; the prohibition of the death penalty; the prohibition of slavery and servitude; the prohibition of forced disappearance and torture; and the judicial guarantees indispensable for the protection of such rights.

Also, restrictions on the exercise of rights and guarantees must be for a limited period of time, by means of general precautions and without the restriction or suspension being limited to a specific person, be founded and motivated in the terms established by the Constitution and be proportional to the danger to be faced, observing at all times the principles of legality, rationality, proclamation, publicity and non-discrimination.

In this regard, the Inter-American Court of Human Rights has pronounced on the characteristics that the measures adopted by the governments of the American continent to confront COVID-19 must meet, stating that:

All those measures that States adopt to address this pandemic and that may affect or restrict the enjoyment and exercise of human rights must be limited in time, legal, adjusted to the objectives defined according to scientific criteria, reasonable, strictly necessary and proportional, and in accordance with the other requirements developed in Inter-American human rights law.<sup>23</sup>

These constitutional and conventional parameters allow us to affirm that the #QuédateEnCasa measure applied by the Mexican Government is justified, being rational with the seriousness of the health crisis we are facing and designed to prevent the spread of disease.

Likewise, the #QuédateEnCasa measure is proportional, since it does not imply the detriment of the human rights of persons, but rather the purpose sought with the measure, which is the protection of the right to health, was weighed with the rest of the human rights protected by the Mexican legal framework. Thus, the #QuédateEnCasa measure does not entail a disproportionate burden on the human rights of individuals, but rather it achieves compliance with its objective<sup>24</sup>.

As we said before, the #QuédateEnCasa measure is suitable in consideration of the dispersion of infections in the country. Therefore, the intervention of the population is necessary to avoid the collapse of the national health services. In other words, the measure adopted by the Mexican Government is in accordance with the intended purpose<sup>25</sup>.

From what has been analyzed, we can see that the Mexican Government has the ideal legal instruments to face a pandemic such as the one we are experiencing and to attack the problem with a completely public health approach and not a political one as it has been conducted up to now.

However, the Mexican government has turned the pandemic into an issue in which politics takes precedence over people's lives. The speech of the President of the Republic in the sense that the epidemic has come to him "like a ring to the finger" shows how the approach to this "event" implies the presidential narrative of deconstruction of the country's reality.

Certainly, as Fernando Mires points out, every democracy aspires to reach the ideal moment in which civil society is capable of self-regulation and can continue to function even in the absence of the political class<sup>26</sup>; however, we believe that at a time of health crisis such as the one we are going through, leaving the responsibility to individuals in a discretionary manner implies a greater risk to the health of all the inhabitants of the country.

## **INDIVIDUAL RESPONSIBILITY TO AVOID CONTAGION**

According to official information from the Government of Mexico, the #QuédateEnCasa strategy has managed to reduce the number of infections nationwide by up to 75%. Without being able to verify these figures, since the federal Undersecretary of Prevention and Health Promotion himself has said that no country has a total record of cases of infection or deaths, what is certain is that the Mexican State has transferred to private individuals a greater responsibility to prevent the spread of the virus. It is in this sense that we affirm that private individuals in Mexico have an individual and social responsibility to confront the pandemic, since the Mexican Government has desisted from applying the executive nature of the preventive measures dictated by the Ministry of Health.

Now, let us consider the contextual elements of this responsibility of individuals in order to clarify its legal scope.

For Rousseau, individuals have a bond in two ways, firstly, in relation to the others as part of the sovereign being, and then as members of the State in relation to the sovereign body; a situation that gives them the rights of the citizen, but also requires them to respect the rights of the latter and the former, otherwise the order of the political body would be violated, which would have the full right to force that individual to submit his particular interest to the general will<sup>27</sup>.

It is important to ask ourselves first of all why have the people in Mexico stayed at home? The first reason is due to a natural instinct that defines the being before the human being, that is, survival. Given that the new virus is a risk to life, a large part of the population remained, at least for the first few weeks, at home as a place of basic protection.

A second reason is due to the fact that at the beginning of the confinement phase it was thought (certainly as an erroneous social expectation, but not isolated from the inaccuracies in governmental messages) that a relatively short confinement could accelerate the end of the epidemic. The truth is that this expectation has proven to be unrealistic and now it is reiterated again and again that the epidemic will be long and the major impact of the #QuédateEnCasa strategy is to avoid the collapse of the national health system.

The situation becomes complex when human beings are faced with the dilemma of weighing for themselves the risks of leaving their homes against the need to satisfy their needs and exercise their rights, which the Mexican State has not interrupted.

The position of human beings in Mexico has been, in the great majority of cases, to leave confinement for various reasons; mainly to work and to obtain the resources to feed themselves, but not only. After a long stay at home, Mexicans have unfortunately realized that home is not as safe as they thought, especially

due to the increase of domestic violence<sup>28</sup>, or that private life is not enough to achieve their personal development.

Faced with this panorama, individuals in Mexico ask themselves: why should I stay at home? Am I responsible for the hygiene measures that I fail to apply and that have an impact on others? Why, if others leave their homes, even for non-essential actions, should I stay at home?

These questions do not find a definitive answer in the Mexican legal framework. In principle, because, as we have said before, the foundational administrative act for the implementation of the preventive measures has a "compulsorily voluntary nature" and has been left to the good judgment of the individuals.

Next, because despite a certain development of the legal theory of the effectiveness of fundamental rights in relation to particulars in Mexico<sup>29</sup>, the truth is that the scheme for guaranteeing fundamental rights has remained in the sphere of the public power as virtually the only actor capable of violating human rights, even though Article 5 of the Amparo Law recognizes the figure of authority for the purposes of those individuals who carry out acts equivalent to those of the authority<sup>30</sup> and the Supreme Court of Justice of the Nation has issued jurisprudence in the sense that the recognition of the horizontal effectiveness of human rights in Mexico is mediated through the courts<sup>31</sup>.

Nor are we facing a criminal liability of individuals who fail to comply with the preventive measures issued by the Ministry of Health. The closest thing to a criminal sanction is the crime of danger of contagion regulated in article 199-Bis of the Federal Criminal Code<sup>32</sup>. However, the legal structure of the criminal type requires proving intent and an element that is difficult to prove in the face of this new virus, such as the certainty of the human being to know that they are infected with SARS-CoV-2. Therefore, in order to comply with the punitive provision, it would be necessary that the defendant was fully aware of being infected and knowingly carried out acts tending to fraudulently transmit it to another human being. Definitely the criminal reason is not a cause for individual responsibility in order to avoid further contagion.

If the reason for individual responsibility for preventing the spread of SARS-CoV-2 is not of a criminal legal nature, then what type is it?

International law has developed individual responsibility regarding the right to health in international instruments, specifically in the Universal Declaration on Bioethics and Human Rights, article 5 of which establishes that individuals have the autonomy to make their own decisions regarding their health and to assume responsibility for the consequences of those decisions for themselves and with respect for the autonomy of their fellow human beings; while article 14 of the same document states that the promotion of health is a shared task of all sectors of society<sup>33</sup>.

Likewise, the Bangkok Declaration for the promotion of health in a globalized world states that it is the task of all sectors of society to work to promote public health<sup>34</sup>.

In this sense, social responsibility has been understood as a task of all community actors, both public and private, national and international. Hence, it is currently understood that human beings have an individual and social responsibility to promote their own health and that of their fellow human beings, in order to seriously face the problems of the human species<sup>35</sup>. However, this model of individual responsibility has been questioned due to the lack of consideration of the asymmetries of the population, since it assumes that all people have sufficient access to information and are equipped with sufficient elements to make their own decisions<sup>36</sup>.

Ultimately, acting with social responsibility implies being committed to the well-being of the surroundings, in this case the health of others<sup>37</sup>. The truth is that individual responsibility cannot be separated from social responsibility. Only the conjunction of both is the right way to face a health problem that impacts the community. In reality, no one is capable of guaranteeing their own health<sup>38</sup>.

The Mexican State has used this approach of individual and social responsibility to attack the pandemic in the sense of avoiding contagion through the permanence of individuals in their homes and has sought to reinforce it with moral and even religious motivations.

It has been said by the Government of Mexico that people should act freely and on their own conscience. Conscience is, in the words of Patricia Villegas, the "dynamism of dynamisms" that gives meaning to all human action<sup>39</sup>, since all action reflects what a person is, wants to be or lacks of being<sup>40</sup>.



But how can my freedom compete with the freedom of others without undermining my own freedom and at the same time contribute to the ethical realization of humans in the community? It is here that conscience is intertwined with solidarity and love, having the community as a point of confluence.

In the words of Patricia Villegas, the action of individuals is communitarian because humans have the communitarian obligation to “earn their being<sup>41</sup>”, since community is a reality that contradicts individualism and refers to it with the presence of love, which can only be through others<sup>42</sup>.

Solidarity is, in fact, another of the moral values that the Government of Mexico has upheld as the foundation of individual and social responsibility to confront the pandemic. Solidarity implies individual responsibility with the community. It is the search for the common good through love<sup>43</sup>.

On the other hand, the value of love converges in the discourse of the Government of Mexico with religious principles. Certainly, the human being has the duty to preserve the human species and to keep an attitude of love for others and compassion for the helpless; this is the rational law of nature that is imposed on any human being regardless of the jurisdiction to which they are subject<sup>44</sup>.

We are faced here with what Paul Ricoeur calls the “mutual indebtedness” of one man to another as an element that signals dependence on the other in a framework of mutual disinterest<sup>45</sup> guided by the Golden Rule (the biblical instruction to treat one’s neighbor as oneself).

This is the narrative that the president of the republic has used when making his public recommendations in the form of a decalogue based on moral and religious precepts to transcend earthly concerns and seek spiritual elevation.

This allows us to affirm that the Mexican Government has faced the Covid-19 pandemic, particularly with regard to the reduction of infections, with a position of making individuals responsible in individual and social terms with a reinforced focus on moral and religious values, given that this is part of a political and ideological vision of the president of the republic who considers that postmodernity is a crisis of neoliberalism, but that the prevalence of liberal democracy cannot be denied, otherwise it would lead to totalitarian regimes.

The concept of community is thus prioritized so that in society there is a balance between autonomy and order. In Fernando Mires’ terms, the community is a space for dialogue between people that goes beyond the social sphere, in the sense that it is not political. That is to say, community converges with privacy and intimacy where neither law nor morality are all-encompassing. To think of the community is to insert the individual in a circle much larger than the family and in a different degree of participation than society<sup>46</sup>. Therefore, civil society is the space of civility to which the States cannot have access and which must exist not only in reference to the State, but also in relation to itself. It is where society is politically constituted<sup>47</sup>. This is the position that the president of the republic has adopted and that has transcended in the social combat to the pandemic of COVID-19.

For the Government of Mexico, the number of SARS-CoV-2 infections is directly related to the deconstruction of Mexican society. It is intended that individuals retake the concept of community and build for themselves their own space, free from political interference, in order to form a new civility. This is the individual and social responsibility that the Mexican Government has promoted to face the COVID-19 pandemic and that will undoubtedly have a transforming effect on the lives of Mexicans.

Now we will have to wait and see if the effects of the application of this governmental position do not result in a disproportionate number of victims. Perhaps, in this case, it would have been better to implement more technical and less political decisions; more practical and less ideological.

## CONCLUSIONS

The Covid-19 pandemic has implied the rethinking of the protection schemes for the right to health around the world.

Despite having an explicit regulatory framework of an executive nature, the Government of Mexico has decided to face the health crisis in terms of reducing the number of infections with a strategy based on two aspects; the first, consisting of the strength of family unity among the Mexican population, has been

socialized with the #QuédateEnCasa (#StayAtHome) and places the responsibility on families to ensure their own health, by reducing their mobility in the private and social spheres.

The second aspect is the transfer of health protection measures, through permanence at home and the application of personal and community hygiene measures, to individuals. This transfer of responsibility is based on social duties reinforced by moral and religious values.

The reason for implementing this scheme of individual and social responsibility is part of a political and ideological project promoted directly by the president of the republic, which tends to deconstruct Mexican society at its foundations. The Mexican government projects the transformation of the community through the involvement of a participative civil society that assumes greater responsibility without the intervention of the authorities.

Even if this dimension can lead us to a civilizing development, we hope that the implementation of this democratizing conception of society will not lead to a vast number of deaths in our country as a consequence of COVID-19.

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## ENDNOTES

1. This text was published in Spanish under the title *La responsabilidad individual como medida de protección en México frente a la COVID-19* in the journal *métodos*. Electronic Journal of Applied Research in Human Rights of the CDHCM, No. 19, July-December 2020, published by the Human Rights Commission of Mexico City.
2. Slavoj Žižek, *Acontecimiento (Event)*, translated to Spanish by Raquel Vicedo (Madrid: Sexto Piso, 2014), 53.
3. Žižek, *Acontecimiento (Event)*, 22.
4. We refer here to the Mexican Federal Government, although we recognize that the federal states and municipalities possess and have exercised their concurrent health powers to address the COVID-19 pandemic. However, given the coordination exercised at the federal level and the pretension of this essay to recognize national efforts, we will focus our attention on the strategy coordinated by the national government.
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8. Rousseau, “Du contrat social ou principes du droit politique”, 78.
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10. Diario Oficial de la Federación, “Decreto por el que se reforman los artículos 29, 73, 90, 92, 93, 95, 110 y 111 de la Constitución Política de los Estados Unidos Mexicanos publicado el 2 de agosto de 2007 (Decree amending articles 29, 73, 90, 92, 93, 93, 95, 110 and 111 of the Political Constitution of the United Mexican States published on August 2, 2007)”, [http://www.diputados.gob.mx/LeyesBiblio/proceso/lx/041\\_DOF\\_02ago07.pdf](http://www.diputados.gob.mx/LeyesBiblio/proceso/lx/041_DOF_02ago07.pdf) (Obtained: 19 June 2020).
11. Constitución de los Estados Unidos Mexicanos del 5 de febrero de 1917 (Constitution of the United Mexican States of February 5, 1917) (Diario Oficial de la Federación, last amended 08 May 2020), article 73 section XVI 2<sup>nd</sup>.
12. Acuerdo por el que el Consejo de Salubridad General reconoce la epidemia de enfermedad por el virus SARS-CoV2 (COVID-19) en México, como una enfermedad grave de atención prioritaria, así como se establecen las actividades de preparación y respuesta ante dicha epidemia (Agreement whereby the General Health Council recognizes the epidemic of SARS-CoV2 virus disease (COVID-19) in Mexico as a serious

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  14. Luis Recaséns Siches, “Pregunta sobre cuál es la región del Universo a la que pertenece el Derecho (Question about the region of the Universe to which the Law belongs.)”, in Tribunal Superior de Justicia del Distrito Federal, *Lecturas de Filosofía del Derecho*, Volume I, (Mexico: Dirección General de Anales de Jurisprudencia y Boletín Judicial, 2001), 153.
  15. Cámara de Diputados del Congreso de la Unión, “Diario de los debates del Congreso Constituyente, 21-11-1916 al 31-01-1917 (Journal of the debates of the Constituent Congress, November 21, 1916 to January 31, 1917)”, [http://www.diputados.gob.mx/LeyesBiblio/ref/cpeum/DD\\_Constituyente.pdf](http://www.diputados.gob.mx/LeyesBiblio/ref/cpeum/DD_Constituyente.pdf) (Obtained: 19 June 2020).
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  21. Recaséns Siches, “Pregunta sobre cuál es la región del Universo a la que pertenece el Derecho (Question about the region of the Universe to which the Law belongs.)”, 156.
  22. Fernando Mires, *Civilidad. Teoría política de la posmodernidad (Civility. Political theory of postmodernity)*, (Madrid: Trotta, 2001), 85.
  23. Corte Interamericana de Derechos Humanos, *COVID-19 Y LOS DERECHOS HUMANOS: LOS PROBLEMAS Y DESAFÍOS DEBEN SER ABORDADOS CON PERSPECTIVA DE DERECHOS HUMANOS Y RESPETANDO LAS OBLIGACIONES INTERNACIONALES (COVID-19 AND HUMAN RIGHTS: PROBLEMS AND CHALLENGES MUST BE ADDRESSED WITH A HUMAN RIGHTS PERSPECTIVE AND RESPECTING INTERNATIONAL OBLIGATIONS)*, DECLARATION OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS 1/20, (9 April 2020), [https://www.corteidh.or.cr/tablas/alerta/comunicado/declaracion\\_1\\_20\\_ESP.pdf](https://www.corteidh.or.cr/tablas/alerta/comunicado/declaracion_1_20_ESP.pdf) (Obtained: 21 October 2020).
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  25. Laura Clérico, *Derechos y proporcionalidad: Violaciones por acción, por insuficiencia y por regresión. Miradas locales, interamericanas y comparadas (Laura Clérico, Rights and proportionality: Violations by action, by insufficiency and by regression. Local, inter-American and comparative perspectives)*, (Querétaro: Instituto de Estudios Constitucionales of the State of Querétaro, 2018), 170.
  26. Mires, *Civilidad. Teoría política de la posmodernidad (Civility. Political theory of postmodernity)*, 108.
  27. Rousseau, “Du contrat social ou principes du droit politique”, 74-75.
  28. Instituto Nacional de las Mujeres, “¿Sufres violencia? ¿Temes que tu situación se agrave ante el confinamiento por el Covid-19? No estás sola (Are you suffering from violence? Are you afraid that your situation will worsen in the face of confinement by Covid-19? You are not alone)”,

- <https://www.gob.mx/inmujeres/articulos/servicios-de-atencion-a-mujeres-en-situacion-de-violencia-de-los-estados?idiom=es> (Obtained: 20 de junio de 2020).
29. Jesús F. Ramírez Bañuelos, “Consideraciones sobre la aplicación de la drittwirkung en México (Considerations on the application of drittwirkung in Mexico)”, *Revista Jurídica Jalisciense*, Year XXV, no. 53 (July-December 2015): 155-182.
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  31. Suprema Corte de Justicia de la Nación, Primera Sala, jurisprudencia thesis 1./J.15/2012 in constitutional matters, “Derechos Fundamentales. Su vigencia en las relaciones entre particulares (Fundamental Rights. Its validity in the relations between individuals)”, *Semanario Judicial de la Federación y su Gaceta*, ninth period, book XIII, t. 2 (October 2012): 798.
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  40. Villegas Aguilar, *El hombre: dinamisismos fundamentales (Man: fundamental dynamisms)*, 26-32.
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  46. Mires, *Civilidad. Teoría política de la posmodernidad (Civility. Political theory of postmodernity)*, 99-108.
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