

By Alejandro Luna | Tue, 05/12/2020

Now that COVID-19 has spread globally, what are the complications the health sector could face as a result of having to treat high numbers of infected people? I would like to be optimistic, but I believe there will be legal, health and humanitarian implications. While it is true that the government is currently taking stricter measures and providing human, technical and material resources, it is also important to note that it could and should have started this process much earlier, mainly in all aspects of human preparation, material resources and supplies.

At the end of February, it was already evident that a global pandemic would be unleashed, with serious repercussions in terms of the impact on people's health. Above all, the greatest concern was that it was already public knowledge that there was no effective and efficient treatment for COVID-19. In addition, the arrival of a new virus-like COVID-19 with a very fast transmission, low mortality but a very serious rate of contagion became extremely worrying for the international community.

Given the scenario in Mexico at that time, it was clear there was not yet a need for the measures of social confinement and suspension of activities, due to the clear economic repercussions that this could have. However, February was the time for planning, preventing, preparing and reviewing the inventory of necessary medical devices, such as masks, masks, respirators, suits, gloves and disinfectants.

Furthermore, it was also time to review our borders and carry out health screening of passengers from regions where the pandemic was already a serious health problem. Personally, I know someone who traveled from South Korea to Mexico in early March and the only thing that the Mexican authorities in Seoul and Mexico asked him was whether he had visited China, and especially Wuhan, in the last 15 days. Until the day of writing this article, there are no formal and strict measures at the borders and airports other than the ones taken by international companies and entities.

I believe that valuable time was lost to delay the entry of the pandemic. Although it was inevitable, it could have arrived in Mexico when we had a

better-prepared system and with greater reserves, both human and material, and not within days of phase 3, when it was necessary to ask for help from other countries to import necessary supplies on emergency flights.

In the legal field, preventive measures do not have unsupported restrictions, ambiguous terms or non-specific guidelines, unlike the limitations imposed on the “essential sectors,” where the criteria are vague and ultimately will have significant labor, administrative and financial implications.

Also, controversial documents have been issued, in particular the Bioethical Guide for the Allocation of Critical Medicine Resources, which provides guidelines for decisions on using resources like respirators in cases of need. These guidelines were published by the General Health Council, which is the highest health body in Mexico. However, a few days after the guide was published, it was removed due to the criticism it suffered. This is just one example of the legal uncertainty derived from the emergency situation and the lack of legal provisions.

Some people are comparing the situation in Mexico with that faced by European countries. If we think in legal terms regarding the potential challenges that are approaching Mexico, it should be said that more than a regulatory framework, prompt action and legal certainty are required.

In atypical times, it is understood that there is a need to make unusual or uncommon decisions; however, it is still expected that those decisions will be based on generating greater legal certainty and avoiding both debauchery and authoritarianism. For this reason, the criteria used by the Presidential Agreement that declares that all kinds of inputs can be imported to face the pandemic with a minimum of bureaucratic and regulatory requirements, except to confirm safety and efficacy, are implemented without justification and motivation that it seems to be completely under the discretions of few public officials in the government.

This leads us to ask ourselves, how can the country ensure sufficient resources to serve its population in a time of crisis? There are several ways and many variables to consider, but certainly, none are simple. Currently, the government

is receiving the assistance of other countries, such as China and the US, to alleviate the crisis. I don't think it's a bad alternative, but it must be emphasized that this decision is neglecting the contribution and participation of Mexico's private sector, both national and international. There are input providers willing to contribute the necessary supplies and it seems that they are being sidestepped.

The situation makes us suspect that the intention to generate an opening for inputs to face the pandemic is not reflected in practice. Likewise, the lack of a prompt and assertive response from the corresponding authorities and the decisions that have been taken without justification and motivation indicate that the plans have been made unilaterally. The federal government must not forget that the engine of any economy is the private sector. Furthermore, I consider and have attested that the actions taken have not been in accordance with the relevance of the circumstances of the pandemic.

Considering the situation, Olivares is prepared to support companies that require our services. Currently, there is sufficient constitutional and legal scaffolding to guarantee the rights of citizens and foreigners in the country. However, there is still a degree of uncertainty and insecurity regarding the full application of the rule of law. For this reason, the Olivares law firm is fully preparing legal strategies and consultations based on the foundations of the law, international treaties on human rights and the Constitution to start building a legal defense case against the anticipated legal adversities and eventual authoritarian acts.