

Covid-19 Litigation in Latin America

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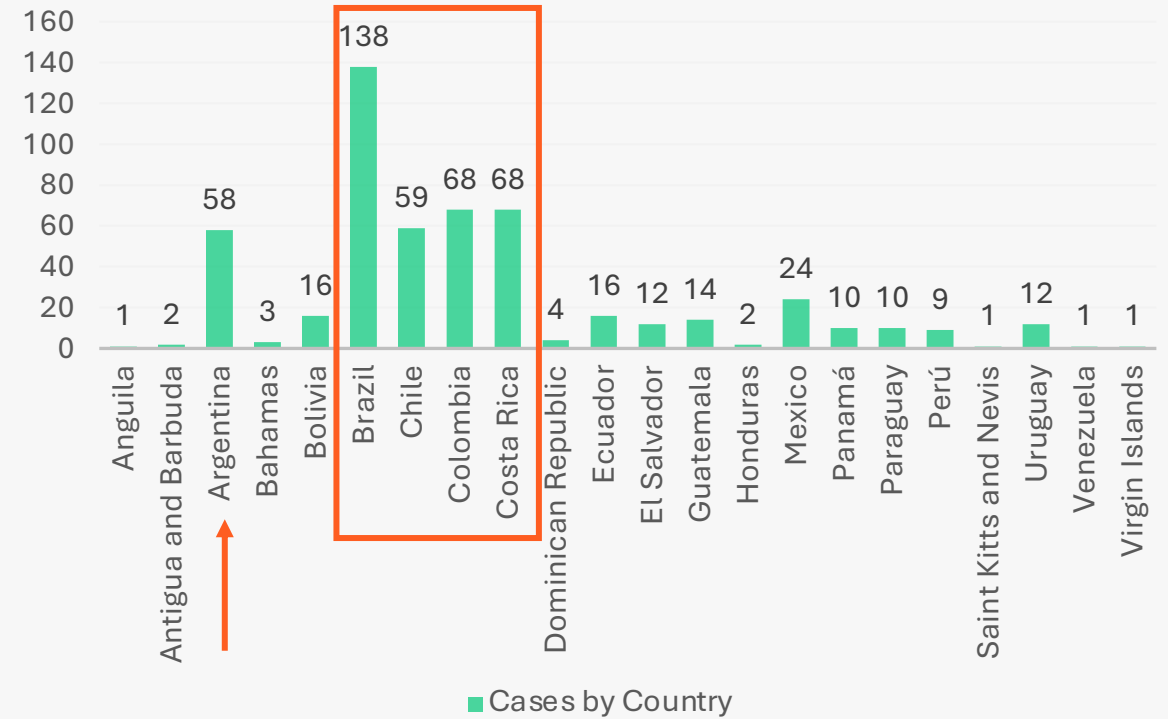
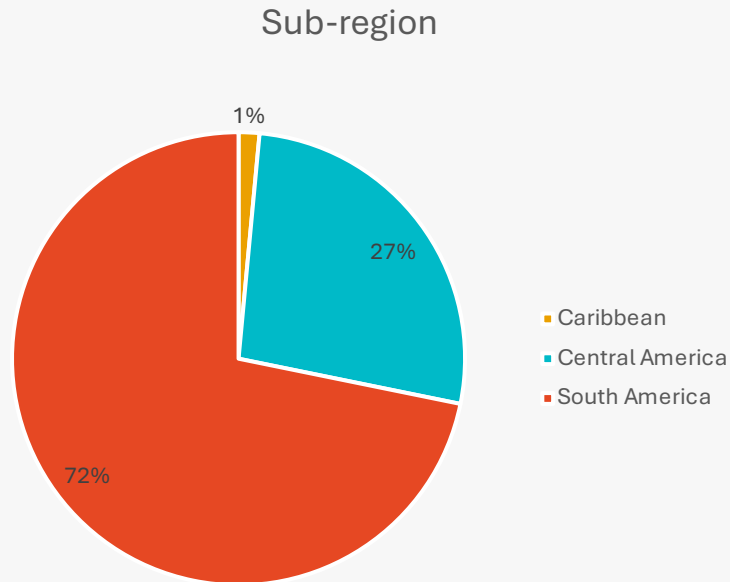
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Covid-19 Litigation
OPEN-ACCESS CASE LAW DATABASE

Some regional data

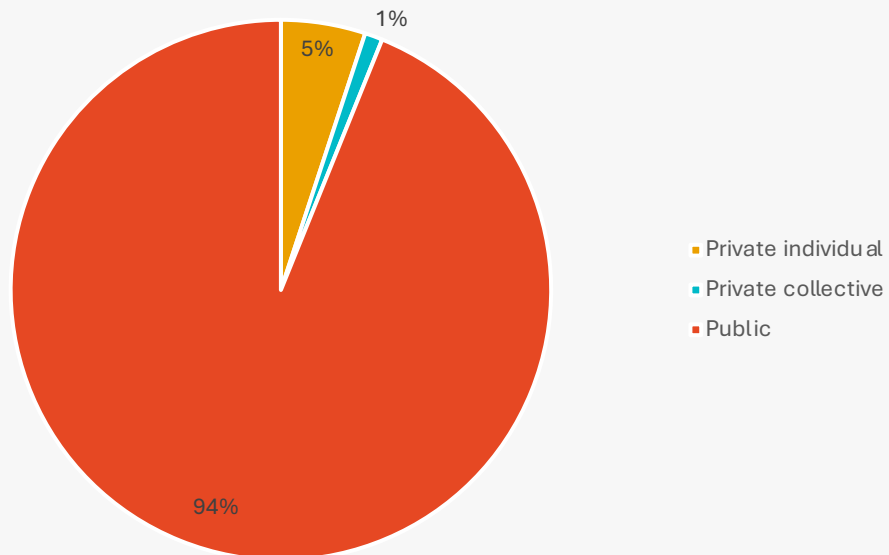


About the selection

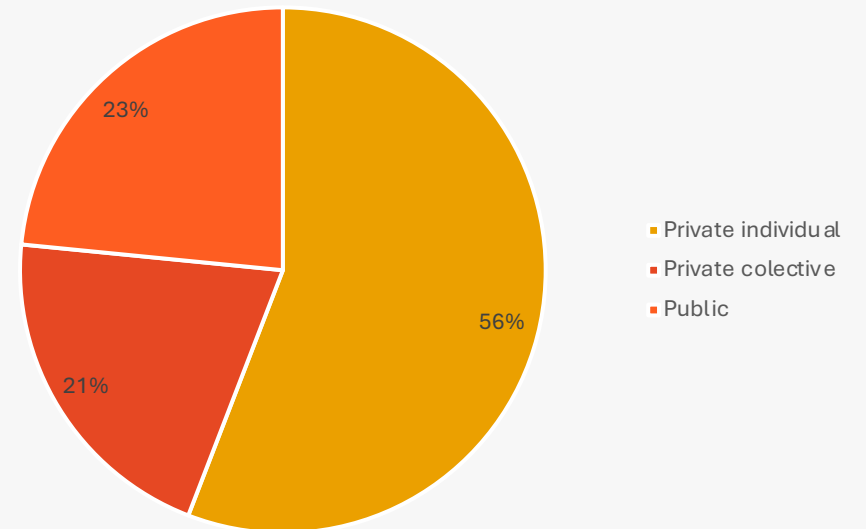
- ***Automatic legality controls and constitutionality controls***
 - Declarations of states of exception: the executive powers temporarily assumed exceptional powers to decree urgent measures to deal with crises
 - Role of the courts in maintaining the balance between public powers and controlling possible attempts to abuse exceptional powers
 - Topics: education, taxes, non-discrimination, population deprived of liberty, health services, public services, state powers, right to information, labor relations, public contracts
 - Richer in argumentation, principles and weighting techniques applied appear more neatly there (specially proportionality and reasonableness) as criteria for verify the constitutionality of executive measures

Some regional data

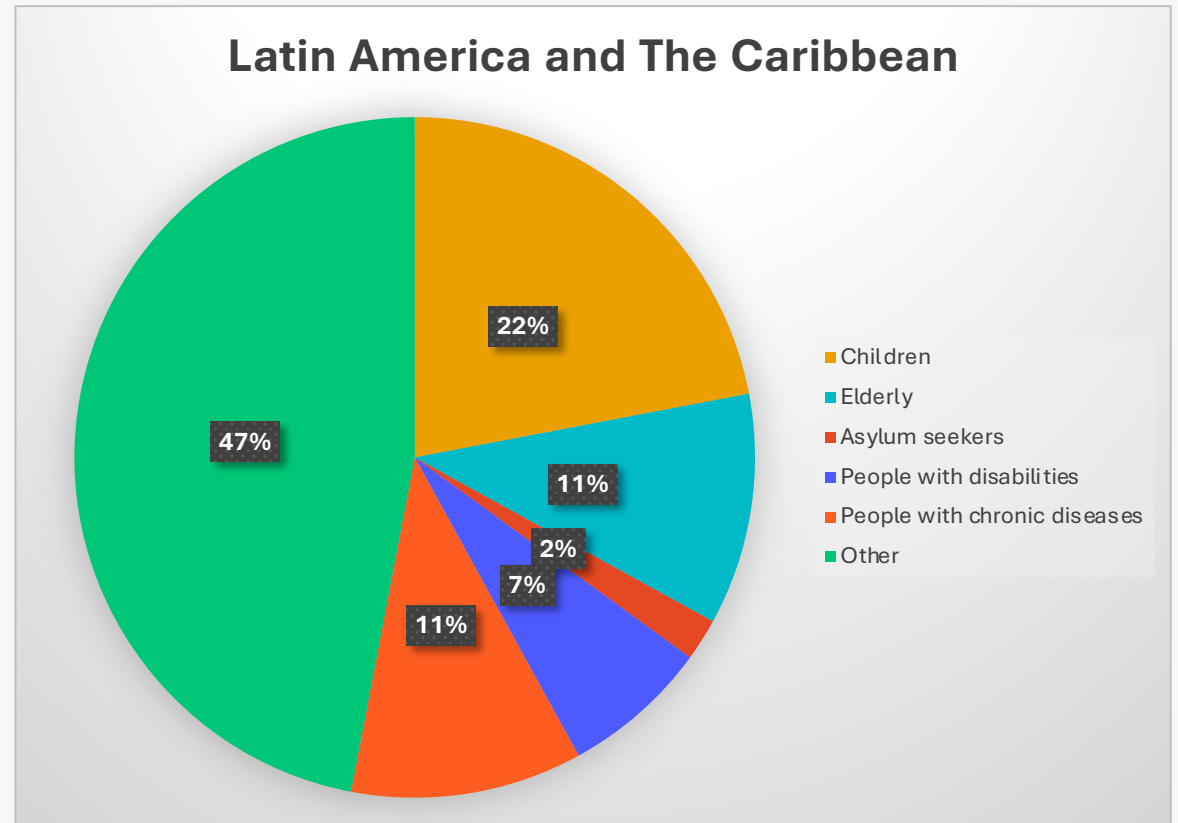
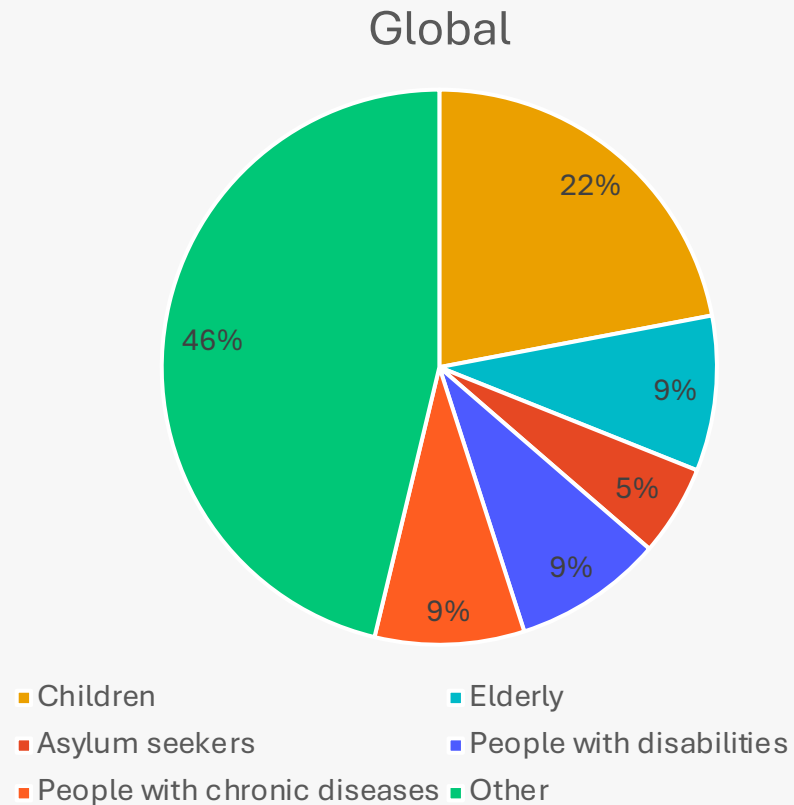
Nature of the Defendants



Nature of the Claimants



Vulnerable groups



- ***In Latin America, 47% of the cases involving vulnerable populations were classified as "Others".***
- ***Of these, 87% correspond to the population deprived of liberty***

Regarding vulnerability

- *IACHR*

- One of the most decisive and transcendent topics of its case law, pertains to the rights and legal status of persons considered “vulnerable” on account of the situation of weakness, helplessness or marginalization in which they find themselves
- Any person in a situation of vulnerability is entitled to special protection, due to the special duties whose fulfillment by the State is necessary to satisfy the general obligations of respect and guarantee of human rights

Regarding vulnerability

- *IACHR*

- The Inter-American Court recognizes that vulnerability is fueled by certain de jure situations (eg, inequalities before the law) and de facto (eg, structural inequalities) that will have decisive consequences in access to public resources
- During the covid-19, the number of vulnerable people has increased significantly, as the people whose rights have been disproportionately affected by the pandemic.

Effective judicial recourse

Article 25, American Convention on Human Rights

Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

Inter-American Court of Human Rights

- Case of Ximenes-Lopes v. Brazil. Judgment of July 4, 2006
 - Advisory Opinion OC9/87 of October 6, 1987, on judicial guarantees in states of emergency (Arts. 27.2, 25 and 8 American Convention on Human Rights).
 - Case Dismissed Employees (PETROPERÚ, MEF AND ENAPU) vs. Peru, Judgment of November 23, 2017
-

Effective judicial recourse

Inter-American Standard

- An effective remedy
 - Must formally exist
 - Should be suitable in order to combat the violation of fundamental rights
 - Its application by the competent authority need to be effectual
- The effectiveness of a remedy is not evaluated based on whether it produces a favorable result for the applicant BUT the judge must examine the reasons invoked by the claimant

Comparative Chart: Writ of Amparo

Country	Name	Objet	Rights	Judge	Against	Type of procedure	Effects
Colombia	Tutela	Protect	Explicit and implicit fundamental rights.	All the judges of the Country/High Courts Constitutional Court (just review)	Public or private individual acts Even judicial decisions	Subsidiary Informal/ less than 1 month	Inter partes Exceptionally inter communis
Costa Rica	Amparo	Protect/ Repair	Constitutional rights	Supreme Court, Constitutional Chamber	Public or private individual acts	Direct Informal/ less than 1 month	Erga omnes
Chile	Protección	Protect	Some constitutional rights	Court of Appeal/Supreme Court	Public or private individual acts	Direct Informal/ less than 1 month	Inter partes
Uruguay	Amparo	Protect	Explicit and implicit fundamental rights	First and second instance judges	Public or private individual acts	Subsidiary Informal/ less than 1 month	Inter partes
México	Amparo	Protect	Constitutional rights	Federal judicial power/Supreme Court	Direct: Public authorities Indirect	Subsidiary Informal/less than 1 month	Inter partes Exception: mandatory precedents

Protection of fundamental rights during COVID-19 pandemic

Country	Rights generally claimed	Groups generally protected	Decision
Colombia	<ul style="list-style-type: none"> - Freedom (against penitentiary authorities). - Access to fundamental public utilities (internet, water and electricity). - Access to healthcare services (e.g., prescription drugs). 	People deprived of liberty.	Usually upheld
Costa Rica	<ul style="list-style-type: none"> - Freedom (against penitentiary authorities/lockdowns). - Vaccination. - Access to healthcare services. 	People deprived of liberty.	Usually upheld
Chile	<ul style="list-style-type: none"> - Equality - Freedom. 	People deprived of liberty. Immigrants	Upheld/reject
Uruguay	<ul style="list-style-type: none"> - Vaccination - Access to healthcare services. 		Usually reject
México	<ul style="list-style-type: none"> - Freedom (against penitentiary authorities). - Access to fundamental public utilities (internet, water and electricity). - Vaccination - Prior consultation 	People deprived of liberty. Children Indigenous people	Usually upheld

Thanks

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