

# INDEPENDENCIA DE LA JUSTICIA



## Decree 575 of 2021: The Duque Administration Declares War on Social Protest

June 3, 2021

Last May 28, President Iván Duque, through the Ministry of Interior, issued Decree 575 of 2021, “by which instructions are given for preserving and re-establishing public order.” Even though it names eight departments (like provinces) and 13 cities, it clearly expresses the eagerness of an authoritarian regime seeking to consolidate its political project based on denying democracy and human rights. The Colombian government seeks to place public order and the interests of privileged political and economic sectors that back the current regime above fundamental rights and freedoms such as the right to protest, enshrined in Article 37 of the Colombian Constitution.

This new decree is part of an incendiary chain of orders that the administration, through its high-level officials, has issued against social protest, which it has responded to on a war footing, prioritizing repression over and above negotiation with the social sectors and grassroots communities engaged in the national strike. The issuance of a decree that is a matter of public order (*orden público*) is also a clear strategy [for covering up a state of emergency whose issuance would require review by the Constitutional Court](#), and which has been unfolding *de facto*, described as providing “military assistance,” but also entailing systematic abuses by the National Police and armed forces, and joint operations of armed civilians deploying alongside government forces. All these actions have been covered by a veil of impunity.

Vaguely and without going further in its justification, the administration merely presents some sections of judgments by the Constitutional Court to note that there are not “absolute rights,” dismissing the following national and international standards, among others:

1. Decree 575 of 2021 is at odds with Articles 1 and 2 of the Constitution, which provide that Colombia is a state under the rule of law, with autonomy for its political-administrative subdivisions, which requires respecting the rights and freedoms of all persons resident in Colombia – with no exceptions whatsoever. With this decree the Duque administration is acting contrary to this constitutional precept, as it is seeking to protect only one group of persons, while leaving unprotected those who exercise their right to protest.
2. The presidential decree also repudiates Article 287 of the Constitution, which specifically provides for the autonomy of departments and municipalities in managing their interests, in keeping with the Constitution and the laws. The national government is seeking to impose itself on the local governments by referring to the president’s role directing and ordering the National Police and armed forces, in order to justify the concept of “providing military assistance,” which is not sufficiently clear in its content and implications, in addition to the decree providing for the imposition of sanctions on governors and mayors who fail to carry out the measures imposed.

In the face of this situation, it must be noted that mayors and governors are authorized to ignore this decree, alleging its unconstitutionality, in keeping with Article 4 of the Constitution,

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which provides that the Constitution shall apply when there is a contradiction between the Constitution and a legal instrument of lower rank, such as Decree 575. Some authorities, such as the governors of [Caquetá](#), [Risaralda](#), and [Nariño](#), and the mayors of [Bucaramanga](#) and [Neiva](#), have already made pronouncements in which they note that they are going to accord priority to dialogue and negotiations, and that they will act in keeping with the Constitution, respecting and guaranteeing the right to protest.

3. As regards standards in the American Convention on Human Rights, this decree issued by President Iván Duque is at odds with Article 13 of that treaty, which recognizes the freedom of thought and expression, and Article 15, the right of assembly.<sup>1</sup> In addition, it also repudiates Articles 1 and 2 of this Convention, which require the states to guarantee the free and full exercise of the rights and freedoms provided for in the Convention, and to adopt measures to ensure their full enjoyment.
4. The Inter-American Commission of Human Rights (IACHR) has picked up on what was said by the UN Human Rights Council, noting that the states' actions must presume the lawfulness of the public protests and demonstrations, on the assumption that they do not constitute a threat to public order<sup>2</sup> and, to the contrary, are part and parcel of democratic freedoms. In addition, the IACHR has been clearly warned that the states, when determining how to act in the context of public demonstrations, often subordinate the right of social protest to the purported maintenance of collective interests such as public order and social peace, based on the vagueness or ambiguity of these terms, to justify decisions that restrict rights such that the public order and social peace that are imposed appear to be concerned only with guaranteeing order as an expression of the power of the state, and according priority to the rights and interests of those who might be temporarily inconvenienced by the protests.<sup>3</sup>
5. The Commission and the Inter-American Court of Human Rights have held that the use of force is a last resort that seeks to prevent a more grievous incident than the one that generates the state's response. It must be justified and in keeping with the principles of legality, absolute necessity, and proportionality, restricting to the utmost degree the use of firearms and in general potentially lethal force, which cannot be deployed exclusively to maintain or restore public order, private property, or other interests that are less valuable than the right to life and the right to physical integrity. In view of both the historical antecedents in which members of the military forces have been involved in grave human rights violations, and in view of the military approach adopted in response to the National Strike (Paro Nacional) there is a sufficient basis to anticipate that the militarization of eight departments and 13 municipalities of Colombia will entail a greater risk of these principles being violated, to the detriment of the demonstrators.

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<sup>1</sup> Article 21 of the International Covenant on Civil and Political Rights also recognizes the right of assembly, Article 19 the right to freedom of thought and expression, and Article 22 the right to freedom of association.

<sup>2</sup> According to the Human Rights Council, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, April 24, 2013, A/HRC/23/39, para. 50.

<sup>3</sup> Inter-American Commission on Human Rights, Office of the Special Rapporteur for Freedom of Expression. Protest and Human Rights. 2019. p. 40. Available at: <http://www.oas.org/es/cidh/expresion/publicaciones/ProtestayDerechosHumanos.pdf>

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In view of all the foregoing, we who have come together in the Campaign for Judicial Independence reject this decree and sound a warning to the risks that it poses to the exercise and enjoyment of human rights. Accordingly, we hope that the IACHR, during its visit to Colombia next week, will be able to monitor the implications of the militarization ordered by the Decree, and will have the opportunity to hear first-hand the testimony of victims and insist on the need for independent investigations to be undertaken, by the Office of the Attorney General (*Fiscalía*) and the Office of the Inspector General (*Procuraduría*), of the incidents that have been reported.

**#NadiePorEncimaDeLaJusticia**

Signed,

## **Human Rights Coalitions**

1. Coordination Colombia Europa Estados Unidos
2. Alianza de Organizaciones Sociales y Afines
3. Plataforma Colombiana de Derechos Humanos, Democracia y Desarrollo

## **Organizations**

1. Colectivo Sociojurídico Orlando Fals Borda
2. Comisión Colombiana de Juristas
3. Consultoría para los Derechos Humanos y el Desplazamiento -CODHES-
4. Colectivo de Abogados José Alvear Restrepo
5. Viva la Ciudadanía
6. Asonal Judicial S.I.
7. Colombia Human Rights Committee
8. Corporación Reiniciar
9. Fasol
10. Grupo Litigio Estratégico UIS
11. Let's Defend Colombia
12. Aluna Suecia.
13. ANDAS - Asociación Nacional de Ayuda Solidaria, Capítulo Huila
14. Asamblea Provincial Constituyente Del Oriente Antioqueño
15. Asociación MINGA
16. Asociación red de mujeres víctimas y profesionales
17. Asociación Red Solidaria.
18. Asojuntas Comuna 10 Estación Gutiérrez Dosquebradas Risaralda
19. ASOMUDEM
20. Associació Huitaca pacte per la vida i per la Pau.
21. Campaña Internacional por la Defensa de las Cortes y la Democracia
22. Ciudadanías por la Paz de Colombia
23. Colectiva de Mujeres Refugiadas, Exiliadas y Migradas.

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24. Colombia humana saint HYACINTHE
25. Comunal
26. Conciliadores En Equidad
27. Convergencia Internacional -NY
28. Corporación Conciudadanía
29. Corporación Cultural para el desarrollo Arlequín y los Juglares
30. CPDH Colombia
31. DESDE ADENTRO Grupo Socio Cultural
32. DLPI Defendamos La Paz Internacional.
33. Escuela Derecho Propio Laureano Inampues
34. FCSPP Atlántico
35. FIV Albacete.
36. Foro Nacional por Colombia
37. Fundación víctimas de estado desaparición Forzada ddhh (FVEDFDH)
38. JAC Olarte
39. MOVICE Meta
40. MOVIMIENTO NACIONAL DE VÍCTIMAS DE CRÍMENES DE ESTADO-MOVICE
41. PDAI Polo Democrático Alternativo Internacional.
42. Polo Democrático Alternativo
43. Red De Mujeres Nodo Caldas
44. Sintraime la Jagua
45. Sintravidricol
46. Unidos por la Paz - Alemania.
47. Vamos Cundinamarca
48. Vamos Por Los Derechos Internacional.

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3. Andrea Toro, Colombia Humana
4. Anton Castro, Partido FARC
5. Beatriz Durango Hernández, Ciudadanía
6. Blanca Valdelamar Navarro, Conciliadores En Equidad
7. Boris Orjuela, Colectivo OFB
8. Carlos Arturo Correa Páez, Ciudadanía
9. Claudia Campo Cisneros, JAC Olarte
10. Cristian Oswaldo Quintero Rincon, Vamos Cundinamarca
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12. Eduardo Bustamante, Asamblea Provincial Constituyente Del Oriente Antioqueño
13. Enrique Rico, Docente Pensionado

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15. Jairo Alberto Guerrero Davila, Escuela Derecho Propio Laureano Inampues
16. Jesus Rodriguez De Las Salas, Sinproseg
17. José David Ortega Ruiz, ASCSUCOR
18. Joselito Rojas Rico, Asonal Judicial S.I.
19. Juan Sebastián Quintero Cabrera, Universidad Nacional
20. Julia De Castro Andrade, Ciudadana
21. Julio Cesar Bonilla Mosquera, Líderes Barriales
22. Leidy Jhoana Dávila Cano, Universidad de Antioquia
23. Leonor Cortés Bolívar, Colombia Humana
24. Luisa Antonia Serrano Gómez, Persona
25. Luisa María Muñoz López, Colectivo de Abogados José Alvear Restrepo
26. Luz Mery Velasquez Carmona, DESDE ADENTRO Grupo Socio Cultural
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28. Maria Cepeda Castro, Vamos Por Los Derechos Internacional
29. Maria Jesus Cedeño Sarmiento, FCSP Atlántico
30. Maria Teresa Muñoz, Foro Nacional por Colombia
31. Martha Rincón, Colombia humana saint HYACINTHE
32. Maureén Maya, Piero x la paz
33. Mildreth Solandy Hernández Rodríguez, Juventudes Unidas por la Sostenibilidad del Planeta
34. Mildrey Corrales Charry, defensora de DDHH
35. Natalie Callejas, NA
36. Nívea Esperanza Dorado Guerrero, Independiente
37. Nixa Wguerddy Triana Balaguera, UNAL
38. Ramiro Antonio Sandoval, Convergencia Internacional -NY
39. Rosario Montoya Hoyos, Ceac
40. Saúl Felipe Malagón Maldonado, Cajar
41. Sonia Racines Velásquez, Comunal
42. Stella Cano, Escuela de Paz Eje Cafetero
43. Victoria Sandino Simanca Herrera, Senadora Partido Fuerza Alternativa Revolucionaria del Común
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