



Picture: U.S. Army National Guard photo by Sgt. Amouris Coss.

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Developing human rights standards during Public Health Emergencies

Applied Research Project of students of the Geneva Graduate Institute in collaboration with the International Commission of Jurists (ICJ)

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Acronyms

GHL	Global Health Law
ICCPR	International Covenant for Civil and Political Rights
ICJ	International Commission of Jurists
IHR	International Health Regulations
IHRL	International Human Rights Law
NGO	Non-Governmental Organization
PHE	Public Health Emergency
WHO	World Health Organization

1. Background

The number of human rights violations pointed out during the Covid-19 Pandemic has brought into question whether the current state of international law is sufficient to account for the variety of policy decisions and actions that are undertaken by nations in combating Public Health Emergencies (PHE). Indeed, States have taken emergency measures ranging from travel restrictions to curfews or “lockdowns” – that have affected the enjoyment of human rights, such as the freedom of expression, the right to peaceful gathering or the right to privacy. Although human rights can be derogated from or limited in health emergencies, States must still comply with certain requirements set by international instruments. Yet, States seem to have frequently exceeded the bounds of permissible restrictions set out in international law instruments, pushing Special Procedure, United Nations human rights experts, to consistently call on States to adopt a human rights-based approach to the Covid-19 crisis.¹ In fact, it is questionable whether States have even referenced or considered human rights instruments in their public health responses.

Since 1952, the International Commission of Jurists (ICJ) has promoted human rights through the rule of law, including in PHE. This study aligns with the ongoing work made by the ICJ on reporting the lack of human rights consideration in Covid-19 responses.² In previous studies, the ICJ concludes that “the pandemic, and States’ responses to it, have had a dramatic effect on civil, cultural, economic, political, and social rights. [...] [A]t best, human rights [...] have been peripheral to much of the public discourse and official responses to COVID-19 globally”.³ Simultaneously, the outdated character of the actual human rights restrictions guidance found in the Siracusa principles, which are outdated (in terms of their lack of reference to the digital

¹United Nations Human Rights Special Procedures, ‘Special Procedures and Covid-19. A Human Rights Response to the Pandemic.’ (2022) <https://www.ohchr.org/sites/default/files/Documents/HRBodies/SP/SPs_and_COVID19_note.pdf>.

²International Commission of Jurists, ‘Living Like People Who Die Slowly: The Need for Right to Health Compliant COVID-19 Responses’ (2020) <<https://www.icj.org/wp-content/uploads/2020/09/Universal-Global-Health-COVID-19-Exec-Sum-Publications-Reports-Thematic-Reports-2020-ENG.pdf>>; Sam Zarifi and Kate Powers, ‘Human Rights in the Time of COVID-19: Front and Centre - ICJ News, Articles, Op-Eds, Legal Blogs, Videos’ (*International Commission of Jurists*, 6 April 2020) <<https://www.icj.org/human-rights-in-the-time-of-Covid-19-front-and-centre/>> accessed 20 June 2022.

³International Commission of Jurists, ‘Living Like People Who Die Slowly: The Need for Right to Health Compliant COVID-19 Responses’ (2020) 7 <<https://www.icj.org/wp-content/uploads/2020/09/Universal-Global-Health-COVID-19-Exec-Sum-Publications-Reports-Thematic-Reports-2020-ENG.pdf>>.

era and the current political landscape) today as they were at the time of publication, is pushing the ICJ to seek for harmonization of Global Health Law (GHL) and International Human Rights Law (IHRL). In particular, the ICJ seeks to update the Siracusa Principles and advocate for human rights considerations in the recently discussed Pandemic treaty.

This study aims at clarifying whether and how States' policy responses to Covid-19 and other PHE have integrated the international law framework. If existing literature has already largely addressed the implementation of human rights in national health measures and violations of human rights for health justifications (See Appendix 1. Literature Review and Legal Framework), room remains for a global analysis of the integration of human rights standards in public health statements, legislations, and policy declarations. The report produced by this project will provide a foundation of empirical evidence and analysis to assist in ICJ advocacy efforts to update the Siracusa principles and in the drafting of the Pandemic treaty. This may result in an improved tool for future policy formulation and an improved set of standards against which to compare PHE responses globally.

2. Research Questions

Have States' emergency response measures to public health emergencies considered and complied with international law standards including those set out in the ICCPR, the IHR and the Siracusa Principles?

To what degree have States implemented/complied with/ purported to comply with, or otherwise considered Article 4 as well as other specific limitations contained in ordinary provisions of the ICCPR, including as detailed in the General Comment No 29, other specific General Comments and the Siracusa Principles, in their responses to PHE? In particular, to what degree have States' emergency responses to Covid-19 and other PHE applied or purport to have applied the following principles?

- they are provided for and carried out in accordance with the law;
- they are based on scientific evidence;
- they are directed toward a legitimate objective;
- they are strictly necessary in a democratic society;
- they are the least intrusive and restrictive means available;
- they are neither arbitrary nor discriminatory in their application;
- they are of limited duration; and
- they are subject to review.

To what degree have States implemented/complied with/purported to comply with, or otherwise considered the IHR in their response to public health emergencies, including Covid-19?

- How have States implemented the “respect for their dignity, human rights, and fundamental freedoms” in their measures?
- To what degree have States complied with the general and specific measures of the IHR document and in particular, the provisions contained in Part VIII: transparency; non-discrimination; in accordance with national law and international law obligations; not restrictive of international traffic, and not more invasive or intrusive to persons than reasonably available alternatives that would achieve an appropriate level of health protection; and based on scientific principles and available scientific evidence?

3. Methodology

3.1 LITERATURE REVIEW

This report is mainly based on the following documents reflecting international law and/or standards (1) the ICCPR, which is composed of an Article 4 on derogations and of specific limitation clauses contained in certain human rights provisions; (2) the Siracusa principles, and (3) the IHR. More information on the existing research on the interlink between Global Health and International Human Rights law; the securitization of health responses, that explains the increasing tendency to limit or restrict human rights; and on the current international legal framework and its limits is available in the literature review attached in Appendix 1, which aims to provide a clear understanding on the purpose of this research report.

3.2 SAMPLE OF STATES SELECTED

In order to answer the research questions, States' responses to PHE have been analyzed. To this end, a sample of 12 States have been selected to represent the international community's responses to PHE and the different emergencies they have faced (See Appendix 2). The selection criteria include:

- 1) The type of health emergencies that States have responded to. Emergencies range from Covid-19 to Ebola virus, Zika virus, health crisis resulting from a natural disaster, and Malaria, to represent the diversity of PHE. Eight of the 12 States' PHE analyzed are in relation to the Covid-19 pandemic, while the four others relate to other PHEs. The overwhelming majority of the analysis being on Covid-19-related measures is due to the recent nature of events, its large-scale, and the large availability of resources and emergency responses recorded;

- 2) The geographical area of the State.⁴ The selection aims at representing States from different geographical zones: Africa, Asia-Pacific, Europe, Latin America and Caribbean, Middle East, North America, and Oceania.
- 3) A particularly striking aspect of the State or emergency. For example, if the State has an authoritarian regime or if the health emergency policy response has been particularly criticized.
- 4) The nature of the measures. For example, some States have imposed large-scale restrictions (i.e., China during Covid-19 outbreak), while some have implemented minimal measures (i.e., Guatemala's health measures after Eta storm).

3.3 RESEARCH DESIGN AND SOURCE MATERIAL

Research Design

We have created an **Analysis Table** to support the evaluation of the different aspect of the international human rights and health documents in the different States' policies (See *Appendix 3* to download the complete Table; and *Appendix 4* for the sole analysis framework). The Table identifies the main requirements of each international instrument (Siracusa principle, ICCPR, IHR, and General Comments) and permits the analysis of each State's policy coherently. The table is structured in four main lines: 1) human rights derogation requirements; 2) human rights limitation requirements; 3) IHR-specific requirements. The divisions of the analysis within the table follow the legal criteria established in the Siracusa principle's Part I and II, Article 4 of the ICCPR, which specifically provides for derogations, the specific limitation clauses of the ICCPR, as well as Article 42 to 45 of the IHR Public Health Emergency Section (see *Section 6.1*). The Table is designed to support the State-by-State analysis, and to provide an overview of the different PHE measures studied. The completed table is downloadable in *Appendix 3* (*Section 6.4*). It provides a basis for further extension.

This report presents a **State-by-State analysis of human rights standards appreciation in public health responses**. To this end, States are analyzed one after the other in *Section 4. State-by-State analysis*. Each State analysis starts with a quick review of the "key policies"

⁴Geographical areas have been freely inspired from the UN Regional groups of Member States.

implemented to face the health emergency that serves the analysis. The analysis is structured in different paragraphs emphasizing an important aspect of the public health response, as identified in the Analysis Table (*See Appendix 3 and 4*) (i.e., “declaration of public health emergency”, “that threatens the life of the nation”, “proportionality and necessity”, “judicial remedies”, etc.). It is worth noting that not *all* principles of the international instruments studied and identified in the Table have been integrated to the State-by-State analysis, but rather the *most relevant* elements.

The individual analysis of each States’ policies is then compared and reevaluated in terms of **general trends and common occurrences** at the global scale in *Section 5. Analysis of General Trends* of this report. This analysis will focus particularly on what aspects of the primary documents are being commonly reflected, disregarded or adhered to interpret where the document is being seen as ineffective or most useful. It will ultimately allow for the identification of potential expansion or revision based on a country-by-country analysis of PHE responses.

Source Material

Throughout this report, “public health (emergency) measures” or “responses” encompass legislation, statements, case law, or any policy implemented to address the emergency studied. As a consequence, this report utilizes legal, policy, and advisory documents and from each of our sample States we will additionally analyze any public policy documents relating to the chosen PHE or available reports and articles published regarding the policies (academic articles, reports of NGOs on specific States, newspaper articles, etc.). In some cases, there were not as many easily accessible policy documents and so the reports and articles both internal and external to the country will provide information for analysis. In addition, for the selection and categorization, we utilize databases keeping track of public emergency declarations, actions taken during the analyzed PHE, and that specifically track adherence of the States to some of the human rights documents being used.

3.4LIMITS OF THE REPORT

The limits of this report need to be considered when reading it. First, some limits are inherent to the type of research conducted. Policy responses are not always available online, which made some research rely on secondary sources rather than on primary sources. Moreover, some States measures were not available in one of the languages spoken by the research team. As a consequence, secondary sources and online translation tools (DeepL.com; Translate.google.com) have been used when necessary (e.g., for the study of China, Israel, Indonesia, Brazil, Guatemala). When resorting to these translation tools, the authors of the report have double-checked as often as possible on available secondary sources.

Second, some limits lie in the scope of the Applied Research Project. An ideal analysis of the reflection of Siracusa and IHR principles in States' PHE responses would have required a deeper analysis of each individual requirement of the principles (i.e., scientific evidence, proportionality and necessity, etc.), and each policy deployed by the States studied (statements, legislations, declaration of a state of emergency, courts decisions, etc.). The present report is a 9-month project conducted on a part-time basis by two students with limited capacity and academic constraints. Therefore, the authors of this report suggest that this study constitutes a basis for further research, outside the scope of the present Applied Research Project (*See Section 3.5 Suggested Way Forward*).

Finally, this report intentionally excludes some elements relevant to the study of the integration of international human rights standards in PHE responses, this being to stick to ICJ assignment, academic requirements, or as a consequence of capacity limitations. For example, derogations of rights not prescribed by the law (practices) have mostly been excluded, the assessment of the incorporation of economic and social rights in policies have been marginalized, and the report overwhelmingly focuses on human rights “derogations”, rather than “limitations”. The focus on derogations comes in part due to the fact that the overwhelming majority of PHE measures occurred in or around an officially declared state of emergency or similar declaration. The original wider scoped analysis that included assessment of a potential Pandemic Treaty in the future and the assessment of economic and social rights during PHE had to be scaled down to accommodate a more detailed review of the policy documents of each State as an individual case.

3.5 SUGGESTED WAY FORWARD

To better improve the reliability and the usefulness of this report, the research team suggests:

- To create a more consistent research design, for example, through an extended analysis table which reports 1) *All* the policy documents studied; 2) *All* the international standards and principles.
- To review, with a dedicated team of researchers, 1) more States responses to PHE and ; 2) a wider range of PHE (such as H1N1, HIV, SARS, etc., which have not been studied in this report). In particular, the research team suggests assigning researchers specifically familiar with the legal context of the State studied, to better understand the context of the policy responses.
- To consider international law outside of human rights law that may still affect the human rights of individuals in a PHE. For example, the World Trade Organization rules surrounding intellectual property waivers and patent licensing for third parties played a major role in vaccine access and equity during the Covid-19 pandemic and will be crucial to consider in a Pandemic Treaty.

4. State-by-State Analysis

4.1 INDONESIA (COVID-19)

Key policies: Presidential Decision No 7 Year 2020 (later amended by the Presidential Decision No 9 of 2020);⁵ Presidential Decree No 11 of 2020;⁶ Government Regulation No 21 Year 2020 on Large Scale Social Restrictions to Expedite Covid-19 Management;⁷ Emergency Regulation No 1 Year 2020;⁸ Law No 2 Year 2020 affirming government regulation in lieu of Law No 1 of 2020 concerning State financial policies and financial system stability for handling Covid-19 pandemic.⁹

Introduction and Overview of the Measures

On 13 March 2020, the President created the Covid-19 Management Task Force, whose general aim is to handle the rapid spread of the Covid-19 disease.¹⁰ On 31 March 2020, Indonesia declared a PHE to fight the Covid-19 pandemic.¹¹ On the same day, the government implemented a number of restrictions ranging from school closure to limitation of public gatherings.¹²

Public Health Emergency that Threatens the Life of the Nation

⁵ Presidential Decree of the Republic of Indonesia Number 7 of 2020 about Task Force to Accelerate The Handling of the Corona Virus Disease 2019 (Covid-19) 2020 [No 010726 A].

⁶ Presidential Decree No. 11 of 2020 Declaring a Public Health Emergency 2020 [NOMOR 11 TAHUN 2020].

⁷ Government Regulation No 21 Year 2020 on Large Scale Social Restrictions to Expedite Covid-19 Management 2020 [SK No 022840 A].

⁸ Law No 2 Year 2020 Affirming Interim Emergency Regulation No 1 of 2020 2020.

⁹ Law No 2 Year 2020 Affirming Interim Emergency Regulation No 1 of 2020 2020.

¹⁰ Presidential Decree of the Republic of Indonesia Number 7 of 2020 about Task Force to Accelerate The Handling of the Corona Virus Disease 2019 (Covid-19) 2020 [No 010726 A].

¹¹ Presidential Decree No. 11 of 2020 Declaring a Public Health Emergency 2020 [NOMOR 11 TAHUN 2020].

¹² Government Regulation No 21 Year 2020 on Large Scale Social Restrictions to Expedite Covid-19 Management 2020 [SK No 022840 A]. The Large-Scale Social Restrictions is infamous for authorizing “large-scale social restrictions or restrictions on the movement of people and goods” that it imposes, including closure of schools and workplaces, restrictions of religious activities and restrictions of activities in public places (Article 4).

Although Indonesia formally declared a PHE, no notification to other States party to the ICCPR was made,¹³ though a number of human rights derogations have been made.¹⁴

The policies implemented by Indonesia during the pandemic indirectly mention the threatening character that requires the implementation of necessary measures. For example, Presidential Decree No 7 of 2020 considers the spread of Covid-19 and mentions the WHO labeling Covid-19 as a pandemic.¹⁵ Similarly, Law No 2 of 2020 refers to the threat that is the Covid-19 Pandemic: it mentions that Covid-19 has been declared as a pandemic in most countries by the WHO, has caused a number of casualties, has social, economic and community welfare implications, and has slowed national economic growth.¹⁶ The document makes reference to economic difficulties, (for example, the explanation attached to the Law specifies that Indonesia's economic growth is expected to decline to "4% or lower"),¹⁷ though the paragraph 41 of the Siracusa principles provides that economic difficulties do not justify derogation.

Temporary Period

No mention of the duration of the measures are made in major Indonesian policies.¹⁸ Moreover, it has been reported that restrictions lasted longer than the exceptional circumstances since the Large-Scale Social Restrictions of 31 March were reconducted with the Instruction of the Minister of Home Affairs No 27 of 2021 on August 2021.¹⁹

Based on a Legal Framework

No mention of International Law instrument is made in Indonesian policy documents. Indonesian measures mention the domestic law they are based on. The declaration of Public

¹³Presidential Decree No. 11 of 2020 Declaring a Public Health Emergency 2020 [NOMOR 11 TAHUN 2020].

¹⁴'Depositary Notifications (CNs) by the Secretary-General' (*United Nations Treaty Collection*) <https://treaties.un.org/Pages/CNs.aspx?cnTab=tab2&clang=_en> accessed 24 June 2022.

¹⁵Presidential Decree of the Republic of Indonesia Number 7 of 2020 about Task Force to Accelerate The Handling of the Corona Virus Disease 2019 (Covid-19) 2020 [No 010726 A].

¹⁶No 2 Year 2020 Affirming Interim Emergency Regulation No 1 of 2020 2020, para a, b and c.

¹⁷No 2 Year 2020 Affirming Interim Emergency Regulation No 1 of 2020 2020, Explanations.

¹⁸For example, no mention is made in the Decree 11 of 2020 proclaiming the state of health emergency, nor in the Government Regulation No 21 Year 2020 in Large-Scale Social Restrictions.

¹⁹Rahadyan Fajar Harris and Natalia Carolina Simanjuntak, 'Implementation of The Siracusa Principles as Foundations for Reformulation of Social Restriction Policies in Public Health Emergencies' (2022) 8 *Unnes Law Journal*: Jurnal Hukum Universitas Negeri Semarang 39, 56 <<https://journal.unnes.ac.id/sju/index.php/ulj/article/view/54504>> accessed 12 May 2022.

Health Emergency²⁰ lies on Article 4 (1) of the Constitution (setting the executive power)²¹ and on Law 6 of 2020 concerning Health Insecurity.²² The implementation of the Task Force is said to be based on Article 4(1) of the Constitution of Indonesia and other Laws related to disease outbreaks, health, and emergencies.²³ Almost the same references to Laws are made by the Large Scale Social Restrictions, which is also based on Article 5(2) of the Constitution, authorizing the President to issue Governmental regulations as required.²⁴ Law No 2 of 2020 mentions that the emergency regulations are taken in accordance with the law, or “in accordance with (the President’s) authority based on the provisions of Article 22 (1) of the 1945 Constitution”.²⁵

Proportionality and Necessity

No direct mention of the principle of necessity or proportionality is made in the policy documents. However, some formulations do recall the international standard requiring measures to be “strictly required” by the urgency of the situation. The Large-Scale Social Restrictions, in its Article 3, requires that the restrictions be only issued when “the number of cases or deaths increases and spreads significantly and rapidly to several regions” and that there is an “epidemiological link to similar events in other regions or countries”, reflecting a threat that “affects the whole of the population or the whole or part of the territory” mentioned in the Siracusa principles.²⁶

The restrictions also include some limitations. For example, school and workplace closure, as well as religious activity restrictions must consider “educational needs, work productivity, and

²⁰Presidential Decree No. 11 of 2020 Declaring a Public Health Emergency 2020 [NOMOR 11 TAHUN 2020].

²¹State Constitution of the Republic of Indonesia (unofficial translation) 1945.

²²Presidential Decree No. 11 of 2020 Declaring a Public Health Emergency 2020 [NOMOR 11 TAHUN 2020].

²³Presidential Decree of the Republic of Indonesia Number 7 of 2020 about Task Force to Accelerate the Handling of the Corona Virus Disease 2019 (Covid-19) 2. On page 2, the Decree mentions the Article 4 of the Constitution, the Law Number 4/1984 on Outbreaks of Communicable Diseases; Law Number 24 Year 2007 on Disaster Management; Law Number 36 of 2009 concerning Health; Law Number 6 of 2018 concerning Health Quarantine; and Presidential Regulation Number 17 of 2018 on the Implementation of Disaster Emergencies in Certain Conditions.

²⁴In addition to Article 5(2) of the Constitution, the Government Regulation is based on Law Number 4 of 1984 on Outbreaks of Communicable Diseases; Law Number 24 of Year 2007 on Disaster Management ; and on Law Number 6 of 2018 on Health Quarantine. See Government Regulation No 21 Year 2020 on Large Scale Social Restrictions to Expedite Covid-19 Management 2020 [SK No 022840 A].

²⁵Law No 2 Year 2020 Affirming Interim Emergency Regulation No 1 of 2020 2020, para c.

²⁶Government Regulation No 21 Year 2020 on Large Scale Social Restrictions to Expedite Covid-19 Management 2020 [SK No 022840 A], Article 3.

population worship”, while restrictions on activities in public spaces or facilities must meet the “basic needs of the population”.²⁷

Parliamentary Review

Major Indonesian policies make no mention of parliamentary review.²⁸ However, the explanations attached to Law No 2 of 2020 do mention that the Government Regulation in Lieu of Law No 1 of 2020 “has received approval from the House of Representatives to be passed into Law [...] based on the provisions of Article 22 (2) of the 1945 Constitution”.²⁹ In practice, the monitoring role of the parliament appeared quasi nonexistent, its only unusual activity being the establishment of a Covid-19 body,³⁰ which did not seem to operate in a broader overview of tasks, but which main role was to “see the situation on the ground”, such as by visiting hospitals.³¹

Judicial Remedies and Review

No mention of judicial remedies is made in the main policy authorizing governmental restrictions, the Large-Scale Social Restrictions.

However, during the Pandemic, the number of cases was multiplied by 5 in 2020.³² Out of the 4 cases listed on the Covid-19 Litigation database, none of them refer to international

²⁷Government Regulation No 21 Year 2020 on Large Scale Social Restrictions to Expedite Covid-19 Management 2020 [SK No 022840 A], Article 4.

²⁸Nor the Presidential decision implementing the Task Force 7/2020, the emergency declaration Decree 11/2020, or the Large-scale social restrictions 21/2020 make mentions of parliament review.

²⁹Law No 2 Year 2020 Affirming Interim Emergency Regulation No 1 of 2020 2020 Explanations.

³⁰Law No 2 Year 2020 Affirming Interim Emergency Regulation No 1 of 2020 2020 ; See also Amalinda Savirani and Linda Yanti Sulistiawati, ‘The Malady of Ignorance? Indonesian Parliament During the COVID-19 Pandemic’ (*New Mandala*, 6 April 2021) <<https://www.newmandala.org/the-malady-of-ignorance-indonesian-parliament-during-the-covid-19-pandemic/>> accessed 3 October 2022; Linda Yanti Sulistiawati and Ibrahim Hanif, ‘Indonesia: Legal Response to Covid-19’, *Oxford Constitutions* (2022) para 34-37 <<https://oxcon.ouplaw.com/view/10.1093/law-occ19/law-occ19-e36?prd=OXCON>> accessed 30 September 2022.

³¹Maria Arimbi Haryas Prabawantibawanti, ‘Tanggulangi Wabah Virus Corona, Satgas Covid-19 DPR Lakukan 3 Aksi Nyata’ (*KOMPAS.com*, 20 April 2020) <<https://nasional.kompas.com/read/2020/04/20/19205471/tanggulangi-wabah-virus-corona-satgas-Covid-19-dpr-lakukan-3-aksi-nyata>> accessed 23 November 2022.

³²CNN Indonesia, ‘The Code of Initiatives Recorded that PR Cases of the Constitutional Court Increased Nearly 5 Times’ (*nasional*) <<https://www.cnnindonesia.com/nasional/20210418203453-20-631436/kode-inisiatif-catat-pr-perkara-mk-naik-nyaris-5-kali-lipat>> accessed 3 October 2022. For more information on judicial review, see Linda yanti Sulistiawati, ‘Indonesian Judiciary during the Pandemic: Staying Afloat on Troubled Water’ (2021) 2021 NUS Asia-Pacific Centre for Environment Law Working Paper <<https://law.nus.edu.sg/wp-content/uploads/2021/12/APCEL-WPS-2105.pdf>>.

instruments explicitly.³³ However, it is worth noting that references to the international standards is still made. For example, the President Regulation No 14 of 2021 on the Amendments to Presidential Regulation No 99 of 2020 on Procurement and Implementation of Vaccinations was challenged before the Supreme Court, the petitioner arguing that his fundamental right to make choices related to health and under the freedom of religion was violated.³⁴ By rejecting the claim, the Court held that the amendment was “necessary” to deal with the Covid-19 emergency and that it was justified by other higher laws,³⁵ thus drawing on the international principles of proportionality and necessity and of requirements of emergency responses to be based on the Law.

Based on Scientific Evidence

Indonesian Covid-19 response does not seem reflect the requirement to be based on scientific evidence. The Decree establishing the Task Force makes no mention of 1) any sort of scientific evidence to support the establishment of the Task Force itself (other than broad reasons such as “greater casualties and material losses”); 2) nor makes any mention of the Task Force basing its work on scientific evidence.³⁶ However, the Large Scale Social Distancing Regulation of 31 March 2021 mentions that the restrictions be based on “epidemiological considerations, the magnitude of the threat, effectiveness, resource support, technical operational, political, economic, social, cultural, defense and security considerations” (Article 2(2)),³⁷ which can, arguably, vaguely be assimilated to scientific evidence.

³³Nur Dini Kalista, ‘Case Overview: Indonesia, Constitutional Court, 25 November 2020, Decision No. 36/PUU-XVIII/2020’ (*Covid-19 Litigation*) <<https://www.Covid19litigation.org/case-index/indonesia-constitutional-court-decision-no-36puu-xviii2020-2020-11-25>> accessed 27 November 2022; Nur Dini Kalista, ‘Case Overview: Indonesia, Supreme Court, 14 October 2020, Decision No. 44 P/HUM/2020’ (*Covid-19 Litigation*) <<https://www.Covid19litigation.org/case-index/indonesia-supreme-court-decision-no-44-phum2020-2020-10-14>> accessed 27 November 2022; Nur Dini Kalista, ‘Case Overview: Indonesia, Supreme Court, 24 March 2021, Decision No. 10 P/HUM/2020’ (*Covid-19 Litigation*) <<https://www.Covid19litigation.org/case-index/indonesia-supreme-court-decision-no-10-phum2020-2021-03-24>> accessed 27 November 2022; Nur Dini Kalista, ‘Case Overview: Indonesia, Supreme Court, 6 May 2021, No. 19 P/HUM/2021’ (*Covid-19 Litigation*) <<https://www.Covid19litigation.org/case-index/indonesia-supreme-court-no-19-phum2021-2021-05-06>> accessed 27 November 2022.

³⁴Nur Dini Kalista, ‘Case Overview: Indonesia, Supreme Court, 6 May 2021, No. 19 P/HUM/2021’ (*Covid-19 Litigation*) <<https://www.Covid19litigation.org/case-index/indonesia-supreme-court-no-19-phum2021-2021-05-06>> accessed 27 November 2022.

³⁵Nur Dini Kalista, ‘Case Overview: Indonesia, Supreme Court, 6 May 2021, No. 19 P/HUM/2021’ (*Covid-19 Litigation*) <<https://www.Covid19litigation.org/case-index/indonesia-supreme-court-no-19-phum2021-2021-05-06>> accessed 27 November 2022.

³⁶Presidential Decree of the Republic of Indonesia Number 7 of 2020 about Task Force to Accelerate The Handling of the Corona Virus Disease 2019 (Covid-19) 2020 [No 010726 A].

³⁷Government Regulation No 21 Year 2020 on Large Scale Social Restrictions to Expedite Covid-19 Management 2020 [SK No 022840 A].

Restriction of International Traffic

Indonesia has issued a number of international and domestic travel restrictions throughout the pandemic, its policy changing often.³⁸ These travel policies were issued by the Covid-19 Task Force Circular Letters.³⁹ For example, the Circular Letter No 8/2021 requires negative PCR test before departure,⁴⁰ or another Circular Letter of September 2022 required full vaccination and the use of the PeduliLindungi app.⁴¹ It is also reported that to enter Indonesian territory, “all passengers and vessel crew must show no signs of infection and follow Covid-19 protocols, such as using face masks, washing hands with water or hand sanitizer, physically distancing, and implementing clean and healthy living guidelines—a broad term, later including specific activities such as reduction of conversation and banning food and drinks on planes.”⁴² Moreover, foreign entry was completely banned on 2 April 2020, again on 15 January 2021, and extended until 25 February 2021.⁴³

³⁸Linda Yanti Sulistiawati and Ibrahim Hanif, ‘Indonesia: Legal Response to Covid-19’, *Oxford Constitutions* (2022) para 85-86 <<https://oxcon.ouplaw.com/view/10.1093/law-occ19/law-occ19-e36?prd=OXCON>> accessed 30 September 2022.

³⁹For example, Circular Letter Number 8 Year 2021 About International Travel Health Protocol During the Corona Virus Disease Pandemic 2019 (Covid-19) 2021.

⁴⁰Circular Letter Number 8 Year 2021 About International Travel Health Protocol During the Corona Virus Disease Pandemic 2019 (Covid-19) 2021.

⁴¹‘Consulate general of the Republic of Indonesia in Los Angeles, United States of America’ (*Kementerian Luar Negeri Republik Indonesia*) <<https://kemlu.go.id/losangeles/en>> accessed 21 November 2022.

⁴²‘Indonesia: Legal Response to Covid-19’ (n 43) 85. Linda Yanti Sulistiawati and Ibrahim Hanif, ‘Indonesia: Legal Response to Covid-19’, *Oxford Constitutions* (2022) para 85 <<https://oxcon.ouplaw.com/view/10.1093/law-occ19/law-occ19-e36?prd=OXCON>> accessed 30 September 2022.

⁴³Linda Yanti Sulistiawati and Ibrahim Hanif, ‘Indonesia: Legal Response to Covid-19’, *Oxford Constitutions* (2022) para 89 <<https://oxcon.ouplaw.com/view/10.1093/law-occ19/law-occ19-e36?prd=OXCON>> accessed 30 September 2022.

4.2 FRANCE (COVID-19)

Key policies: Decree No 2020-247 of 13 March 2020 relating to the necessary requisitions in the context of the fight against the Covid-19 virus;⁴⁴ Governmental order of 14 March 2020 on various measures relating to the fight against the spread of the Covid-19 virus;⁴⁵ Decree No 2020-260 of 16 March 2020 regulating travel in the context of the fight against the spread of the Covid-19 virus;⁴⁶ Law No 2020-290 of 23 March 2020 emergency to deal with the Covid-19 epidemic;⁴⁷ Decree No 2020-1257 of 14 October 2020 declaring the state of health emergency;⁴⁸ Decree No 2020-1262 of 16 October 2020 prescribing the general measures necessary to deal with the Covid-19 epidemic under the state of health emergency;⁴⁹ Decree No 2020-1310 of 29 October 2020 prescribing the general measures necessary to deal with the Covid-19 epidemic under the state of health emergency.⁵⁰

Introduction and Overview of Measures

On 16 March 2020, France declared its first lockdown, to combat the Covid-19 pandemic.⁵¹ The first state of sanitary emergency was declared on 23 March 2020 and was the beginning of two States of emergency, three lockdowns (stay-at-home policy), and other restrictions-ranging from school closure to limitation of gathering or closure of essential shops. France was

⁴⁴Decree No 2020-247 of 13 March 2020 relating to the necessary requisitions in the context of the fight against the Covid-19 virus 2020.

⁴⁵Governmental order of 14 March 2020 on various measures relating to the fight against the spread of the Covid-19 virus 2020.

⁴⁶Decree No 2020-260 of 16 March 2020 regulating travel in the context of the fight against the spread of the Covid-19 virus 2020.

⁴⁷Law No 2020-290 of 23 March 2020 emergency to deal with the Covid-19 epidemic 2020.

⁴⁸Decree No 2020-1257 of 14 October 2020 declaring the state of health emergency 2020.

⁴⁹Decree No 2020-1262 of 16 October 2020 prescribing the general measures necessary to deal with the Covid-19 epidemic under the state of health emergency 2020.

⁵⁰Decree No 2020-1310 of 29 October 2020 prescribing the general measures necessary to deal with the Covid-19 epidemic under the state of health emergency 2020.

⁵¹Decree No 2020-260 of 16 March 2020 regulating travel in the context of the fight against the spread of the Covid-19 virus 2020.

one of the European countries that was most severely hit by the Covid-19,⁵² and which consequently imposed a restricting public health response.⁵³

State of emergency that threatens the life of the nation.

France proclaimed a state of *health* emergency on 23 March and on 17 October 2020, by enacting a new law (instead of based on its Constitution).⁵⁴ The declaration of the state of emergency of the 23 March 2020 is justified “in the event of a health disaster that jeopardizes, by its nature and severity, the health of the population”, which indirectly recalls the Siracusa definition of the “threat to the life of the nation” (See *Appendix 4*).⁵⁵

Based on a Legal Framework

The 16 March-Decree imposing stay-at-home measures mentions the legal framework it is based on: it is based on the “exceptional circumstances doctrine” which makes legal some administrative decisions that would be illegal in ordinary times,⁵⁶ on the Public Health Code (Article L3131-1, which authorizes the Minister of Health to prescribe measures such as isolation or quarantines); and on Civil Law.⁵⁷

The bill of 23 March introduced a new type of emergency that the Constitution does not foresee: the state of *health* emergency.⁵⁸ While modifying the Public Health Code to insert the state of

⁵²On September 2020, France counted 280.000 confirmed cases and 30.600 death. See Bonavero Institute of Human Rights, ‘A Human Rights and Rule of Law Assessment of Legislative and Regulatory Responses to the Covid-19 Pandemic across 27 Jurisdictions’ (2020) 163 <https://www.law.ox.ac.uk/sites/files/oxlaw/bonavero_report_7_2020.pdf>.

⁵³Based on France’s strict stay-at-home and curfew, with little exceptions, for example.

⁵⁴Decree No 2020-1262 of 16 October 2020 prescribing the general measures necessary to deal with the Covid-19 epidemic under the state of health emergency 2020.

⁵⁵Law No 2020-290 of 23 March 2020 emergency to deal with the Covid-19 epidemic 2020, Article 2 adding Article L.3131-12 of the CSP.

⁵⁶Bonavero Institute of Human Rights, ‘A Human Rights and Rule of Law Assessment of Legislative and Regulatory Responses to the Covid-19 Pandemic across 27 Jurisdictions’ (2020) 166-167 <https://www.law.ox.ac.uk/sites/files/oxlaw/bonavero_report_7_2020.pdf>.

⁵⁷Decree No 2020-260 of 16 March 2020 regulating travel in the context of the fight against the spread of the Covid-19 virus 2020, Introduction.

⁵⁸The French Constitution provides for two cases of emergency: Article 16 which gives full powers to the President and Article 36 which provides for a “state of siege” in case of war or armed insurrection. As a consequence, France had to implement a new type of emergency to adapt to the situation: the state of health emergency. See Estelle Chambas and Thomas Perroud, ‘Oxford Constitutional Law: France: Legal Response to Covid’, *Oxford Constitutional Law* (2021) para 7 <<https://oxcon.ouplaw.com/view/10.1093/law-occ19/law-occ19-e9>> accessed 21 June 2022. See Estelle Chambas and Thomas Perroud, ‘Oxford Constitutional Law: France: Legal Response to Covid’, *Oxford Constitutional Law* (2021) para 7 <<https://oxcon.ouplaw.com/view/10.1093/law-occ19/law-occ19-e9>> accessed 21 June 2022.

health emergency, the law does not make any mention of any legal basis to do so. As mentioned in the law, the 23 March-emergency law was adopted by the two legislative chambers. It gave extensive powers to the government in health emergencies, such as restricting the freedom of movement.⁵⁹ In particular, it allowed the government to take governmental measures without the involvement of the parliament until July 2020.⁶⁰

Temporary Period

France mentioned the temporary nature of the emergency, for example by stating that “the state of emergency is declared for a duration of two months” for the first lockdown.⁶¹ Moreover, the state of *health* emergency could only be prolonged after one month if “authorized by the law”.⁶² However, although France imposed a number of human rights restrictions on March 23, the Government did not notify the other State-parties of the ICCPR, as provided in the Siracusa principles.⁶³

Proportionality and Necessity

France directly refers to the principle of proportionality in its policy documents, for example, the Law declaring the state of emergency limits the regulations to “measures [...] strictly proportionate to the health risks incurred and appropriate to the circumstances of time and place. They are terminated [...] when they are no longer necessary”.⁶⁴ The same wording is used for the declaration of emergency of October 2020.⁶⁵ Moreover, the Article L3131-1 of the Public Health Code, on which the stay-at-home Decree, for example, is based, directly mentions the principle of proportionality and necessity.⁶⁶

⁵⁹ For example, the Art. L.3131-15 provides that the Prime minister can impose stay-at-home measures and order isolation measures. Law No 2020-290 of 23 March 2020 emergency to deal with the Covid-19 epidemic 2020.

⁶⁰ Zeynep Or and others, ‘France’s Response to the Covid-19 Pandemic: Between a Rock and a Hard Place’ Health Economics, Policy, and Law 1 <<https://www.ncbi.nlm.nih.gov/pmc/Articles/PMC8007943/>> accessed 22 September 2022.

⁶¹ Law No 2020-290 of 23 March 2020 emergency to deal with the Covid-19 epidemic 2020, Article 4.

⁶² Law No 2020-290 of 23 March 2020 emergency to deal with the Covid-19 epidemic 2020, Article 2.

⁶³ ‘Depositary Notifications (CNs) by the Secretary-General’ (*United Nations Treaty Collection*) <https://treaties.un.org/Pages/CNs.aspx?cnTab=tab2&clang=_en> accessed 24 June 2022.

⁶⁴ Law No 2020-290 of 23 March 2020 emergency to deal with the Covid-19 epidemic 2020, Article 2 adding Art L.3131-15(10) of the CSP.

⁶⁵ Decree No 2020-1257 of 14 October 2020 declaring the state of health emergency 2020.

⁶⁶ Code de la Santé Publique, Article L3131-1.

However, it seems that French derogations were not necessarily “geographically” “strictly required by the exigency of the situation”, as the state of emergency was implemented on the whole territory, and so were lockdowns (though Article 2 of Law 2020-260 establishing the stay-at-home measures states that the State departmental representatives might adopt “stricter” measures).⁶⁷ On 17 April, 2020, the State Council restricted the intervention of the power of local authorities (mayors) in the management of the Covid-19 Pandemic.⁶⁸ However, France gave increasing power to local authorities (“*Prefets*”) when “required by local circumstances”.⁶⁹ In particular, Decree No 2020-1262 of 16 October 2020 authorized “*Prefets*” to make face masks mandatory, restrict freedom of movement, impose isolation or quarantines, and prohibit demonstrations, for example.⁷⁰

Parliamentary Review

On 17 March 2020, the National Assembly (low parliamentary chamber) announced the restriction of its activities to urgent and crisis-related texts.⁷¹ While the parliament abandoned its legislative functions to the benefit of the government,⁷² it did, however, control the government activities during the crisis through 1) sessions of questions to the government by the low chamber; and 2) the implementation of Covid-19-crisis-related control mechanisms by the upper chamber⁷³ and by the lower chamber.⁷⁴ The Law proclaiming the state of emergency directly refers to this parliamentary control, as its Article 2 affirms that the two chambers are

⁶⁷Law No 2020-290 of 23 March 2020 emergency to deal with the Covid-19 epidemic 2020; Decree No 2020-260 of 16 March 2020 regulating travel in the context of the fight against the spread of the Covid-19 virus 2020.

⁶⁸*Port d'un masque de protection, commune de Sceaux* (State Council).

⁶⁹Decree No 2020-1262 of 16 October 2020 prescribing the general measures necessary to deal with the Covid-19 epidemic under the state of health emergency 2020.

⁷⁰Decree No 2020-1262 of 16 October 2020 prescribing the general measures necessary to deal with the Covid-19 epidemic under the state of health emergency 2020.

⁷¹National Assembly, ‘Communiqué’ <https://www2.assemblee-nationale.fr/static/presse/communiqué_presse_presidence_170320.pdf>.

⁷²Law No 2020-290 of 23 March 2020 emergency to deal with the Covid-19 epidemic 2020.

⁷³‘Mission de Contrôle Sur Les Mesures Liées à l'épidémie de Covid-19 - Sénat’ <http://www.senat.fr/commission/loi/missions_de_controle/mission_de_controle_sur_les_mesures_liees_a_lepidemie_de_Covid_19.html> accessed 26 September 2022.

⁷⁴‘Impact, Gestion et Conséquences Dans Toutes Ses Dimensions de l'épidémie de Coronavirus-Covid 19 - Assemblée Nationale’ <[https://www2.assemblee-nationale.fr/15/missions-d-information/missions-d-information-de-la-conference-des-presidents/impact-gestion-et-consequences-dans-toutes-ses-dimensions-de-l-epidemie-de-coronavirus-Covid-19/\(block\)/68850](https://www2.assemblee-nationale.fr/15/missions-d-information/missions-d-information-de-la-conference-des-presidents/impact-gestion-et-consequences-dans-toutes-ses-dimensions-de-l-epidemie-de-coronavirus-Covid-19/(block)/68850)> accessed 26 September 2022; Elina Lemaire, ‘Le Parlement face à la crise du Covid-19 (2/2) Par Elina Lemaire’ (*JP blog*, 13 April 2020) <<http://blog.juspoliticum.com/2020/04/13/le-parlement-face-a-la-crise-du-Covid-19-2-2-par-elina-lemaire/>> accessed 26 September 2022.

“informed” of the measures taken by the government within the state of emergency.⁷⁵ Moreover, it provides that the two parliamentary chambers “can request any complementary information to control or evaluate [emergency] measures”.⁷⁶ The Law also specifies that the prolongation of the state of health emergency can only be authorized by the law (thus parliamentary authorization). The text proclaiming the first stay-at-home policy does not make any mention of parliamentary review.⁷⁷

Judicial Remedies and Review

As for judicial remedies, Law 2020-290 States that the measures taken based on the emergency law can be subject to the review of the administrative judge.⁷⁸ As a consequence, judicial review was prominent during the crisis: the activity of the *Juge des référés* of the Council of State (administrative Supreme Court called “Conseil d’Etat”) increased exponentially during the pandemic.⁷⁹

French Courts referred to international law instruments, including the ICCPR and its Article 18,⁸⁰ and international human rights standards. In particular, the Council of State reviewed the appropriateness, necessity, and proportionality of governmental measures.⁸¹ For example, the Council of State did not suspend the Decree of 29 October 2020, restricting access to places of worship, basing its reasoning on the principles of proportionality and necessity, and on the non-

⁷⁵Law No 2020-290 of 23 March 2020 emergency to deal with the Covid-19 epidemic 2020, Article 2 adding Art L.3131-13 of the CSP.

⁷⁶Law No 2020-290 of 23 March 2020 emergency to deal with the Covid-19 epidemic 2020, Article 2.

⁷⁷Decree No 2020-260 of 16 March 2020 regulating travel in the context of the fight against the spread of the Covid-19 virus 2020.

⁷⁸Law No 2020-290 of 23 March 2020 emergency to deal with the Covid-19 epidemic 2020, Article 2.

⁷⁹Bonavero Institute of Human Rights, ‘A Human Rights and Rule of Law Assessment of Legislative and Regulatory Responses to the Covid-19 Pandemic across 27 Jurisdictions’ (2020) 171-172 <https://www.law.ox.ac.uk/sites/files/oxlaw/bonavero_report_7_2020.pdf>.

⁸⁰Sébastien Fassiaux and Guillaume Halard, ‘Case Overview: France, Council of State, 16 December 2020, No. 440214’ (*Covid-19 Litigation*, 28 October 2021) <<https://www.Covid19litigation.org/case-index/france-council-State-no-440214-2020-12-16>> accessed 27 November 2022; Guillaume Halard, ‘Case Overview: France, Council of State, 7 November 2020, No. 445825’ (*Covid-19 Litigation*, 16 March 2022) <<https://www.Covid19litigation.org/case-index/france-council-State-no-445825-2020-11-07>> accessed 27 November 2022.

⁸¹Bonavero Institute of Human Rights, ‘A Human Rights and Rule of Law Assessment of Legislative and Regulatory Responses to the Covid-19 Pandemic across 27 Jurisdictions’ (2020) 172 <https://www.law.ox.ac.uk/sites/files/oxlaw/bonavero_report_7_2020.pdf>.

discriminatory nature of the restrictions.⁸² The decision also directly mentions the Article 18 of the ICCPR, and the restrictions for public health.⁸³

Most of the time, Courts determined the recourse was unfounded. However, in a few cases, it upheld governmental decisions to protect freedom of movement, the right to privacy or data protection, etc.⁸⁴ For example, the Council of State found that the regulations that restricted freedom of movement implemented by the Ministry of Health in at-risk elderly establishments (EHPAD) “could not be regarded as necessary and proportionate to the objective of prevention of the diffusion of the virus”.⁸⁵ Although, the reasoning is based on the terminology of ICCPR’s principles, no reference to the Covenant or to the Siracusa principles is made.

The Constitutional Council also reviewed French measures against the Constitution and found that the measures providing the collection and accessibility of personal data and preventive quarantine were in violation of fundamental rights (Bill of 9 July 2020, setting the beginning of the state of transition).⁸⁶ Similarly, while the Constitutional Council referred to the civil and political rights contained in domestic law (Constitution, Declaration of the Rights of an and of the citizen), it did not mention any international instruments. However, it based its decision on some of the international standards contained in the ICCPR, Siracusa principles and IHR: “The regime of quarantine and isolation measures, to the extent that the legislator had not provided any other guarantee for their implementation, [...], their *maximum duration*, and *the review of these measures by the judicial judge* if they are deprived of liberty.”⁸⁷

⁸² *Decision N° 445825* (State Council) para 21.

⁸³ *Decision N°445825* (State Council) para 7.

⁸⁴ For example, on July 6th, the Council of State suspended the decree of May 31 2020 requiring the authorization of the prefect to organize protests. Judge Bénédicte Fauvarque-Cosson and Jean-Baptiste Lézat, ‘Case Overview: France, Council of State, 6 July 2020, No. 441257’ (*Covid-19 Litigation*, 18 March 2022) <<https://www.Covid19litigation.org/case-index/france-council-State-no-441257-2020-07-06>> accessed 26 September 2022.

⁸⁵ Sébastien Fassiaux, ‘Case Overview: France, Council of State, 3 March 2021, No. 449759’ (*Covid-19 Litigation*, 16 March 2022) para 11 <<https://www.Covid19litigation.org/case-index/france-council-State-no-449759-2021-03-03>> accessed 27 November 2022.

⁸⁶ *Decision n° 2020-800 DC of 11 May 2020* (Constitutional Council). Bonavero Institute of Human Rights, ‘A Human Rights and Rule of Law Assessment of Legislative and Regulatory Responses to the Covid-19 Pandemic across 27 Jurisdictions’ (2020) 173 <https://www.law.ox.ac.uk/sites/files/oxlaw/bonavero_report_7_2020.pdf>.

⁸⁷ *Decision n° 2020-800 DC of 11 May 2020* (Constitutional Council), para 81; Sébastien Fassiaux, ‘Case Overview: France, Constitutional Council, 11 May 2020, No. 2020-800 DC’ (*Covid-19 Litigation*, 12 January 2022) <<https://www.Covid19litigation.org/case-index/france-constitutional-council-no-2020-800-dc-2020-05-11>> accessed 27 November 2022.

Based on Scientific Evidence

Law 2020-290 states that “available scientific data on the sanitary situation that motivates the decision [to declare emergency] must be made public”, which shows reliance on scientific evidence and their transparency.⁸⁸ The Law also specifies that a scientific committee must be created to provide opinions on the state of the crisis and on the measures to end it.⁸⁹ In practice, throughout the pandemic response, the Comité de Scientifiques and the Comité analyse recherche et expertise (CARE) were established in March 2020 to inform government decisions.⁹⁰ Moreover, government decisions responded to the different phases provided by the French Pandemic Influenza Plan (PIP), based on WHO influenza risk management guidance.⁹¹

Economic and Social Rights

Law 2020-290 declaring the state of emergency provides that health insurance benefits from social security scheme and maintenance of remuneration during leaves for health reasons shall be guaranteed for all work leave during the state of emergency.⁹²

⁸⁸Law No 2020-290 of 23 March 2020 emergency to deal with the Covid-19 epidemic 2020, Article 2 adding Art L.3131-19 of the CSP.

⁸⁹Law No 2020-290 of 23 March 2020 emergency to deal with the Covid-19 epidemic 2020, Article 2 adding Art L.3131-19 of the CSP.

⁹⁰Bonavero Institute of Human Rights, ‘A Human Rights and Rule of Law Assessment of Legislative and Regulatory Responses to the Covid-19 Pandemic across 27 Jurisdictions’ (2020) 169 <https://www.law.ox.ac.uk/sites/files/oxlaw/bonavero_report_7_2020.pdf> ; ‘Olivier Véran Installe Un Conseil Scientifique’ (*Ministère de la Santé et de la Prévention*) <<https://solidarites-sante.gouv.fr/archives/archives-presse/archives-communiqués-de-presse/Article/olivier-veran-installe-un-conseil-scientifique>> accessed 24 June 2022; ‘Installation Du Comité Analyse, Recherche et Expertise (CARE) - Ministère de La Santé et de La Prévention’ (*Ministère de la santé et de la prévention / Ministère des solidarités, de l’autonomie et des personnes handicapées*) <<https://solidarites-sante.gouv.fr/archives/archives-presse/archives-brevés/Article/installation-du-comite-analyse-recherche-et-expertise-care>> accessed 24 June 2022.;

⁹¹Ali Ghanchi, ‘Adaptation of the National Plan for the Prevention and Fight Against Pandemic Influenza to the 2020 COVID-19 Epidemic in France’ *Disaster Medicine and Public Health Preparedness* 1 <<https://www.ncbi.nlm.nih.gov/pmc/Articles/PMC7170809/>> accessed 29 June 2022.

⁹²Law No 2020-290 of 23 March 2020 emergency to deal with the Covid-19 epidemic 2020, Article 8.

4.3 UNITED STATES (COVID-19)

Key policies: National Emergencies Act (50 U.S.C. 1601 et seq.);⁹³ Section 1135 of the Social Security Act (SSA), as amended (42 U.S.C. 1320b-5);⁹⁴ Travel ban for non-U.S. citizens traveling from 26 European countries;⁹⁵ On March 15, 2020, US States began issuing shutdown orders with the White House extending the measures at the federal level from March 28, 2020.⁹⁶

Introduction and Overview of the Measures

The United States will be unique to the States analyzed as only the original declaration, economic stimulus packages, and travel restrictions were provided for by federal law as suggested by paragraph 61 of the Siracusa Principles and IHR 41.1, requiring limitations on ICCPR rights be provided for by law. All other legislation was implemented at a subnational level with national level response coming in the form of recommendations, judicial review, and uncommonly by executive order. On 13 March 2020 the Trump Administration declared the Covid-19 virus a national emergency based on National Emergencies Act (50 U.S.C. 1601 et seq.) and Section 1135 of the Social Security Act (SSA), as amended (42 U.S.C. 1320b-5), though the Health and Human Services department originally declared a Public Health Emergency on 31 January 2020 based on Section 319 of the Public Health Services Act (42 U.S.C. 247d).⁹⁷ The United States subsequently individually implemented lockdown and social distancing procedures with varying degrees of severity. The emergency declaration was renewed 11 times though federal level lockdowns were extended by executive order only once through April of 2020.⁹⁹ Restrictions were placed on gatherings, schools' attendance, non-

⁹³Authenticated U.S. Government Information, 'Statutory Legislative Procedures' <<https://www.govinfo.gov/content/pkg/HMAN-112/pdf/HMAN-112-pg1119.pdf>>.

⁹⁴'Authority to Waive Requirements during National Emergencies' (*Social Security Administration*) <https://www.ssa.gov/OP_Home/ssact/title11/1135.htm> accessed 30 November 2022.

⁹⁵Proclamation - Suspension of Entry as Immigrants and Nonimmigrants of Certain Additional Persons Who Pose a Risk of Transmitting 2019 Novel Coronavirus 2020.

⁹⁶Remarks by President Trump, Vice President Pence, and Members of the Coronavirus Task Force in Press Briefing 2020.

⁹⁷Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak 2020 [2020-05794].

⁹⁸Alex M. Azar, 'Determination That a Public Health Emergency Exists' (*ASPR Administration for Strategic Preparedness & Response*, 31 January 2020) <<https://aspr.hhs.gov/legal/PHE/Pages/2019-nCoV.aspx>>.

⁹⁹'Declarations of a Public Health Emergency' (*ASPR Administration for Strategic Preparedness & Response*) <<https://aspr.hhs.gov:443/legal/PHE/Pages/default.aspx>>.

essential stores opening, and many similar institutions with medical facilities and essential shopping remaining unencumbered in most States beyond added sanitary procedures.

State of Emergency that Threatens the Life of the Nation

The United States officially proclaimed its state of health emergency on 13 March 2020 though it was renewed five times with a period of 3 to 7 months between each renewal and the last taking place on 19 July 2021.¹⁰⁰ In each declaration/renewal as well as in the federal extension of lockdown measures the mechanism was executive order or proclamation by the President or Secretary of Health and Human Services directly. The declaration of 13 March mentions the WHO characterizing Covid-19 as a pandemic and states that the “spread of the [virus] threatens to strain our Nation’s healthcare systems”, reflecting the Article 4 ICCPR and paragraph 39 of the Siracusa principles. The President additionally signed State executive orders on dates ranging from 24 March 2020 to 9 April 2020 for each US State and territory approving their disaster declarations which gives the State funding access to directly combat the pandemic.¹⁰¹ The various States’ approaches and the federal level restrictions and travel bans violated human rights with no notification to other States party to the ICCPR after the declaration.¹⁰² The original emergency declaration and its renewals did not include a time of duration or expectation of renewal.¹⁰³

Judicial Remedies and Review

The Covid-19 Pandemic resulted in a variety of federal level court cases with dozens making their way to the Supreme Court of the United States. These court cases largely revolved around assessing the legality of various State measures. The courts upheld the right to require vaccines

¹⁰⁰Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak 2020 [2020–05794]; Xavier Becerra, ‘Renewal of Determination That A Public Health Emergency Exists’ (*Public Health Emergency*, 19 July 2021) <<https://www.phe.gov/emergency/news/healthactions/phe/Pages/COVID-19July2021.aspx>> accessed 30 November 2022.

¹⁰¹‘COVID-19 Emergency Declarations and Executive Orders’ (*America’s Essential Hospitals*) <<https://essentialhospitals.org/Covid-19/emergency-declarations-executive-orders/>> accessed 30 November 2022.

¹⁰²‘Depositary Notifications (CNs) by the Secretary-General’ (*United Nations Treaty Collection*); <https://treaties.un.org/Pages/CNs.aspx?cnTab=tab2&clang=_en>;_The State Council Information Office of the People’s Republic of China, ‘The Report on Human Rights Violations in the United States in 2020’ (*Embassy of the People’s Republic of China in the United Arab Emirates*, 21 June 2021) <http://ae.china-embassy.gov.cn/eng/xwdt/202106/t20210621_8909898.htm> accessed 30 November 2022.

¹⁰³Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak 2020 [2020–05794].

in all cases except those being instituted at a federal or national level.¹⁰⁴ Additional cases overseen regarded: the rights to restrict gathering for religious purposes (upheld)¹⁰⁵, the containment of inmates in close quarters during a pandemic (upheld)¹⁰⁶, the conditions of ballot casting in elections (mixed)¹⁰⁷, the difficulty to access to abortion medication (upheld)¹⁰⁸, and eviction restriction during the pandemic (mixed)¹⁰⁹.¹¹⁰ In the case pertaining to abortion there was a lawsuit that challenged the legality of women being able to receive access to early stage abortion pills by mail which had previously been an illegal method of acquirement. The decision was ultimately sent to lower courts for narrower review, but the requirement was temporarily suspended allowing access to continue during the pandemic.¹¹¹ What is seen in these cases is a heavy amount of judicial review at the highest level with lower courts administering similar decisions in far higher quantities.

Proportionality and Necessity

The United States' widely different procedures during the pandemic make proportionality difficult to give a definitive answer to. In some States vaccine mandates were prohibited while in other mandates were signed into law as permissible by private businesses.¹¹² The States with the prohibitions tended to be those with the highest rates of infection with the reverse being

¹⁰⁴*Biden v Missouri* [2022] Supreme Court of the United States Nos. 21A240 and 21A241; Erica White, 'COVID-19 Related Opinions and Orders from the U.S. Supreme Court' (*Network for Public Health Law*) <<https://www.networkforphl.org/resources/Covid-19-related-opinions-and-orders-from-the-u-s-supreme-court/>>.

¹⁰⁵*SOUTH BAY UNITED PENTECOSTAL CHURCH, ET AL v GAVIN NEWSOM, GOVERNOR OF CALIFORNIA, ET AL* [2020] Supreme Court of the United States No. 19A1044; *Laddy Curtis Valentine, et al v Bryan Collier, et al* [2020] Supreme Court of the United States No. 19A1034.

¹⁰⁶*Laddy Curtis Valentine, et al v Bryan Collier, et al* [2020] Supreme Court of the United States No. 19A1034.

¹⁰⁷*Timothy K Moore, et al v Damon Circosta, et al* [2020] Supreme Court of the United States No. 20A72; *Republican National Committee, et al v Democratic National Committee, et al* [2020] Supreme Court of the United States No. 19A1016.

¹⁰⁸*Food and Drug Administration, et al v American College of Obstetricians and Gynecologists, et al* [2020] Supreme Court of the United States No. 20A34.

¹⁰⁹The Network for Public Health Law, 'Table - COVID-19 U.S. Supreme Court Judicial Rulings' <<https://www.networkforphl.org/wp-content/uploads/2022/11/Western-Region-Table-%E2%80%93-COVID-19-SCOTUS-Cases.pdf>>.

¹¹⁰Erica White, 'COVID-19 Related Opinions and Orders from the U.S. Supreme Court' (*Network for Public Health Law*) <<https://www.networkforphl.org/resources/Covid-19-related-opinions-and-orders-from-the-u-s-supreme-court/>>.

¹¹¹*Food and Drug Administration, et al v American College of Obstetricians and Gynecologists, et al* [2021] Supreme Court of the United States No. 20A34.

¹¹²'Vaccine Mandates' (*Fisher Phillips*) <<https://www.fisherphillips.com/innovations-center/COVID-19-Private-Employer-Maps-Vaccine-Mandates.html>> accessed 30 November 2022.

true of the permitting States.¹¹³ Some States even attempted reopening as early as April of 2020 against federal recommendations.¹¹⁴ These conditions alone would indicate proportionality and necessity were not met in at least a portion of the nation both in terms of doing too much and too little. Additionally, due to the extremely different rates of infection and the diversity of infrastructure closings it can be said that the policies of the federal and State governments were not necessarily “strictly required by the exigency of the situation”.

Based on Scientific Evidence

The United States took early measures such as a ban on non-US travelers from 26 European nations with no scientific basis as the decision restricted non-citizens against the advice of expert officials.¹¹⁵ Additional actions by States such as early reopening against Center for Disease Control (CDC) recommendations showcase little regard of scientific evidence.¹¹⁶ In other cases, however, such as funding vaccine research and the establishment of a Covid-19 infection database there was some adherence to the scientific evidence available.¹¹⁷

Restriction of International Traffic

The United States implemented multiple bans on international travel first starting with China and then evolving to ban the Schengen area entirely.¹¹⁸ Additional travel requirements were

¹¹³Sean McMinn and Liz Crampton, ‘Covid’s Deadly Trade-Offs, by the Numbers: How Each State Has Fared in the Pandemic’ (15 December 2021) <<https://www.politico.com/interactives/2020/embed/recoverylabcap-4Dk8lwQj/recoverylabcapone/>> accessed 30 November 2022.

¹¹⁴CDC, ‘CDC Museum COVID-19 Timeline’ (*Centers for Disease Control and Prevention*, 5 January 2022) <<https://www.cdc.gov/museum/timeline/Covid19.html>> accessed 8 July 2022.

¹¹⁵Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak 2020 [2020–05794]; Executive Office of the President, Suspension of Entry as Immigrants and Nonimmigrants of Certain Additional Persons Who Pose a Risk of Transmitting 2019 Novel Coronavirus 2020 [2020 12852]; Patrick Wintour, ‘Why Did Donald Trump Exclude the UK from His Coronavirus Travel Ban? | Donald Trump | The Guardian’ *The Guardian* (12 March 2020) <<https://www.theguardian.com/us-news/2020/mar/12/donald-trumps-eu-travel-ban-is-driven-by-politics-not-science-coronavirus>> accessed 30 November 2022.

¹¹⁶CDC, ‘CDC Museum COVID-19 Timeline’ (*Centers for Disease Control and Prevention*, 5 January 2022) <<https://www.cdc.gov/museum/timeline/Covid19.html>> accessed 8 July 2022.

¹¹⁷ DOD, “Trump Administration Announces Framework and Leadership for ‘Operation Warp Speed,’” DOD (Department of Defense, May 15, 2020), <https://www.defense.gov/News/Releases/Release/Article/2310750/trump-administration-announces-framework-and-leadership-for-operation-warp-speed/>.

¹¹⁸Executive Office of the President, Suspension of Entry as Immigrants and Nonimmigrants of Certain Additional Persons Who Pose a Risk of Transmitting 2019 Novel Coronavirus 2020 [2020 12852].

added up to the point of all air travelers requiring vaccination or negative Covid-19 tests before the travel ban and other restrictions were finally lifted after 20 months.¹¹⁹

¹¹⁹Robert Hart, 'U.S. Drops Travel Ban as Covid Cases Surge Across Europe' (*Forbes*, 21 April 2022) <<https://www.forbes.com/sites/roberthart/2021/11/08/us-drops-travel-ban-as-Covid-cases-surge-across-europe/?sh=44124a752041>> accessed 30 November 2022.

4.4 AUSTRALIA (COVID-19)

Key policies: The National Emergency Act 2020, outlines the reasoning for emergency declarations and empowered the national and subnational declaration during Covid-19;¹²⁰ The National Covid Defense Plan, Operation CovidSafe as part of the Privacy Amendment (Public Health Contact Information) Bill 2020;¹²¹ CovidShield;¹²² Statements from the Australian Protection Health Principle Committee;¹²³ and the National Disease Surveillance Plan for Covid-19 all detail the actions taken by the government during the Covid-19 public health emergency.¹²⁴

Introduction and Overview of the Measures

The Covid-19 pandemic afflicted Australia as severely as it did the rest of the world with the subsequent policies and procedures taken in response to the pandemic providing a prime example of a prepared national western response. The nation is unique in that the policy documents available and the attention to human rights is marginally higher than seen in other nations. The nature of the measures were similar to other nations with strict lockdowns which included mask mandates, travel restrictions, gathering prohibitions, and social distancing protocols.¹²⁵ The nation did have surveillance procedures in place that were often cited as being more severe than other nations as they implemented cellphone tracking systems with

¹²⁰ National Emergency Declaration Act 2020 (December 15, 2020) <<https://www.legislation.gov.au/Details/C2020A00128>>

¹²¹ Privacy Amendment (Public Health Contact Information) Bill 2020 (May 14, 2020) <<https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fr6556%22>>

¹²² Australian Government Department of Health and Aged Care, 'Operation CovidShield COVID-19 Vaccine Sentiment Summary' (June 27, 2022) <<https://www.health.gov.au/resources/collections/operation-Covid-shield-Covid-19-vaccine-sentiment-summaries>>

¹²³ Australian Government Department of Health and Aged Care, 'Australian Health Protection Principal Committee (AHPPC)' (September 12, 2022) <<https://www.health.gov.au/committees-and-groups/australian-health-protection-principal-committee-ahppc>>; accessed October 28, 2022

¹²⁴ Australian Government Department of Health and Aged Care, 'Australian National Disease Surveillance Plan for Covid-19' (June 27, 2022) <<https://www.health.gov.au/resources/publications/australian-national-disease-surveillance-plan-for-Covid-19>>

¹²⁵ Commonwealth Parliament; Parliament House C, "Covid-19: A Chronology of State and Territory Government Announcements (up until 30 June 2020)" (October 23, 2020) <https://www.aph.gov.au/About_Parliament/Parliamentary_departments/Parliamentary_Library/pubs/rp/rp2021/Chronologies/COVID-19StateTerritoryGovernmentAnnouncements>; accessed October 28, 2022

randomized geolocation texts required at random intervals for quarantined citizens, an action no other States took.¹²⁶

State of Emergency that Threatens the Life of the Nation

Australia's Governor-General officially declared the Covid-19 pandemic a human biosecurity emergency on 18 March 2020.¹²⁷ The declaration was made based on Biosecurity Emergency Act Section 475 stating in Section 6 of the declaration that Covid-19 has entered Australian territory; and (b) that it is fatal in some cases; and (c) that there was no vaccine against, or antiviral treatment for, immediately before the commencement of this instrument; and (d) that is posing a severe and immediate threat to human health on a nationally significant scale.¹²⁸ The Australian Health Sector Emergency Response Plan for Novel Coronavirus (COVID-19) was initiated earlier on 27 February 2020.¹²⁹ Lockdown procedures were implemented at the national level with travel restrictions and quarantine requirements being implemented before the declaration of emergency had even been made.

Based on a Legal Framework

The initial declaration of emergency was a human biosecurity emergency based on the Biosecurity Emergency Act but following the introduction of the National Emergency Declaration Act (NEDA) 2020 Australia declared Covid-19 a national emergency in December directly following the passing of the NEDA. The Australian Human Rights Commission released numerous statements that used language directly related to the Siracusa Principles with what appears to be direct quotes appearing frequently.¹³⁰ Despite this, the statements and

¹²⁶ Friedersdorf C, 'Australia Traded Away Too Much Liberty' (The Atlantic, October 18, 2021) <<https://www.theatlantic.com/ideas/archive/2021/09/pandemic-australia-still-liberal-democracy/619940/>>; accessed October 28, 2022

¹²⁷ Covid-19 Biosecurity Emergency Declaration (March 18, 2020) <<https://www.legislation.gov.au/Details/F2020L00266>>

¹²⁸ Covid-19 Biosecurity Emergency Declaration (March 18, 2020) <<https://www.legislation.gov.au/Details/F2020L00266>>

¹²⁹ Australian Government Department of Health and Aged Care, 'Australian Health Sector Emergency Response Plan for Novel Coronavirus (COVID-19)' (February 18, 2020) <<https://www.health.gov.au/resources/publications/australian-health-sector-emergency-response-plan-for-novel-coronavirus-Covid-19>>

¹³⁰ The Australian Human Rights Commission, 'What Is the Commission's View on Limiting Human Rights during COVID-19?' (2020) <<https://humanrights.gov.au/about/Covid19-and-human-rights/what-commissions-view-limiting-human-rights-during-Covid-19>> ; accessed October 28, 2022 "They must be prescribed by law. They must be necessary and proportionate to the evaluated risk. Governments must be transparent about the reasons why they consider restricting human rights is necessary. Any limitations on human rights should be the minimum necessary to address the emergency and in place for the shortest time needed to deal with the emergency.

legislation reviewed does not specifically mention the Siracusa Principles beyond referring to “International Law”. The ICCPR is mentioned, however, in Privacy Amendment (Public Health Contact Information) Bill 2020 Part VIIIA 94C(5) which pertains to the CovidSafe app data storage/handling and references ICCPR Article 17 as a basis of the part.¹³¹ The Biosecurity Act 2015 additionally mentions the IHRs fourteen times in various ways primarily speaking on methods of compliance though no mention of the ICCPR or Siracusa Principles occurs.¹³²

Judicial Remedies and Review

Like most other States there were several court cases pertaining to Covid-19 measures where plaintiffs brought measures before a court to have their lawfulness determined. Two particular cases are of note as they mention the ICCPR directly. In the first a paramedic argues that vaccines mandates for his position violate his right to religious freedom under the ICCPR which the court dismissed as ICCPR Article 18(3) permitted the limitation of this right when necessary to protect the public health.¹³³ The second case was on a provision of the Biosecurity Act of 2015 in which travel restrictions could be lifted for individuals under special circumstances by the health minister rather than a biosecurity order which was argued to be invalid as the act prohibits resorting to determinations to issue restrictions which could be introduced by means of biosecurity control orders under a different Section of the act.¹³⁴ Article 12 of the ICCPR was cited initially as providing a right to movement but was considered in the decision to permit the specific style of permission and limitation as the ICCPR permitted limiting movement to protect public health.¹³⁵

Proportionality and Necessity

As with many other countries there has been debate about what would constitute proportional action during the Covid-19 pandemic, but Australia’s procedures did not appear to reach outside of the norms of other nations and is likely generally necessary given the magnitude of the pandemic. Specific actions by the country such as fining children for Covid-19 procedure violations have been mentioned as potentially in violation of international law but Australia

The measures must be consistent with international law and must not discriminate against people on the grounds of race, sex, age, disability or sexual preference.” Direct quote from the Commission.

¹³¹ Privacy Amendment (Public Health Contact Information) Act 2020 No. 44, 2020 <<https://www.legislation.gov.au/Details/C2020A00044>>

¹³² Biosecurity Act 2015 No. 61, 2015 <https://www.legislation.gov.au/Details/C2021C00355>

¹³³ *Larter v Hazzard* [2021] Supreme Court New South Wales NSWSC 1451.

¹³⁴ *LibertyWorks Inc v Commonwealth of Australia* [2021] Federal Court of Australia FCAFC 90

¹³⁵ *LibertyWorks Inc v Commonwealth of Australia* [2021] Federal Court of Australia FCAFC 90

appeared to frequently produce justification at the start of the emergency such as a court case which specifically Stated it is not the responsibility of the minister to protect children.¹³⁶ A lack of transparency was cited as concerning to legislative review committees regarding continuance of the procedures with little justification given and some procedures not being properly prescribed by law.¹³⁷

Based on scientific evidence

Similar to other procedures the scientific reasoning for many procedures at the start of the pandemic was sound, though as restrictions continued there were concerns by the Australian Human Rights Commission that there was not adequate scientific reasoning provided to continue the restrictions.¹³⁸

Restriction of international traffic

A recurring category of note has been restriction of international traffic, likely due to the early action taken. Australia limited international travel before announcing the Covid-19 pandemic as an emergency, and restricted human rights such as family reunification and non-refoulement obligations in the process.¹³⁹ This indicates a gray area not discussed in much international law where emergency procedures are implemented with justification but without proper procedure or evidence in a preventative manner.

¹³⁶ Zwartz H, 'NSW Covid Fines on Kids Could Breach International Law' (UNSW Newsroom, August 5, 2022) <<https://newsroom.unsw.edu.au/news/business-law/nsw-Covid-fines-kids-could-breach-international-law>>; accessed October 28, 2022 ; *Minister for the Environment v Sharma* [2022] Federal Court of Australia FCAFC 35

¹³⁷ The Australian Human Rights Commission, 'Where Is the Line on Covid-19 Emergency Measures?' (2021) <<https://humanrights.gov.au/about/Covid19-and-human-rights/where-line-Covid-19-emergency-measures>>; accessed October 28, 2022

¹³⁸ The Australian Human Rights Commission, 'What Is the Commission's View on Limiting Human Rights during COVID-19?' (2021) <<https://humanrights.gov.au/about/Covid19-and-human-rights/what-commissions-view-limiting-human-rights-during-Covid-19>>; accessed October 28, 2022

¹³⁹ Kate Ogg and Chanelle Taoi, 'Covid-19 Border Closures: A Violation of Non-Refoulement Obligations in International Refugee and Human Rights Law?' (Brill, December 9, 2021) <https://brill.com/view/journals/auso/39/1/Article-p32_4.xml?language=en>; accessed October 28, 2022

4.5 CHINA (COVID-19)

*Key policies:*¹⁴⁰ *Travel lockdowns on Wuhan and nearby cities in Hubei province (23 January 2020);*¹⁴¹ *Opinions of the Supreme People Court on punishing violations and crimes that obstruct the control of the Coronavirus pandemic (10 February 2020);*¹⁴² *Beijing district “wartime emergency mode” (13 June 2020);*¹⁴³ *City of Urumqi “wartime mode” (18 July 2020);*¹⁴⁴ *Yunnan province lockdown (7 July 2020);*¹⁴⁵ *Nanjing lockdown (21 July 2020).*¹⁴⁶

Introduction and Overview of the Measures

China was the first State affected by the Covid-19, as the virus emerged in the city of Wuhan, around November-December 2019.¹⁴⁷ Chinese response is characterized by the unprecedented lockdown that was implemented on 23 January and that cut off Wuhan from the rest of China. Later, China implemented a strict zero-Covid policy. Measures ranged from the lockdown of cities to the shutdown of public transportation, isolation or contact tracing.¹⁴⁸

Based on a Legal Framework

¹⁴⁰‘COVID-19 Civic Freedom Tracker’ (*ICNL*) <<http://www.icnl.org/Covid19tracker/>> accessed 29 May 2022. The closed regime of China, and the consequent lack of availability of primary sources made this State analysis rely on secondary sources (databases, public document issued by Chinese authorities when available, newspaper Articles, etc.). Moreover, online translating tools have been used to translate available documents (see 3.4Limits of the report).

¹⁴¹Chris Buckley and others, ‘As Coronavirus Fears Intensify, Effectiveness of Quarantines Is Questioned’ *The New York Times* (26 January 2020) <<https://www.nytimes.com/2020/01/26/world/asia/coronavirus-wuhan-china-hubei.html>> accessed 6 October 2022.

¹⁴²*Opinions on the Prevention and Control of Illegal Crimes* (Supreme People’s Court).

¹⁴³‘Beijing District in “wartime Emergency” after Virus Cluster at Major Food Market’ *Reuters* (13 June 2020) <<https://www.reuters.com/Article/us-health-coronavirus-beijing-idUSKBN23K03V>> accessed 6 October 2022.

¹⁴⁴‘China’s Western City Urumqi Enters “wartime Mode” after Reporting 16 Coronavirus Cases’ *Reuters* (18 July 2020) <<https://www.reuters.com/Article/us-health-coronavirus-china-cases-idUSKCN24J01L>> accessed 6 October 2022.

¹⁴⁵‘China: Authorities Implementing Lockdown in Urban Areas of Ruili, Yunnan Province, as of July 7 Due to COVID-19 Concerns’ (*Crisis24*) <<https://crisis24.garda.com/alerts/2021/07/china-authorities-implementing-lockdown-in-urban-areas-of-ruili-yunnan-province-as-of-july-7-due-to-Covid-19-concerns-update-7>> accessed 6 October 2022.

¹⁴⁶‘China: Authorities Introduce Restrictions in Parts of Nanjing, Jiangsu Province, as of July 21 Due to COVID-19 Concerns’ (*Crisis24*) <<https://crisis24.garda.com/alerts/2021/07/china-authorities-introduce-restrictions-in-parts-of-nanjing-jiangsu-province-as-of-july-21-due-to-Covid-19-concerns>> accessed 6 October 2022.

¹⁴⁷‘China’s Legal Response to Covid-19’ (*Lex-Atlas: Covid-19*, 12 May 2021) <<https://lexatlas-c19.org/chinas-legal-response-to-Covid-19/>> accessed 5 October 2022.

¹⁴⁸For an overview of measures implemented, see databases, for example, ‘COVID-19 Civic Freedom Tracker’ (*ICNL*) <<http://www.icnl.org/Covid19tracker/>> accessed 29 May 2022.

China's legal response to Covid-19 is based on the Infectious Disease Prevention and Control Law (IDPCL) (amended in 2013) and the Emergency Responses Law (2007).¹⁴⁹ However, while Covid-19 was classified as a Class B disease under the IDPCL,¹⁵⁰ measures classified as Class A have been applied.¹⁵¹ Class A allows stricter measures than Class B: it permits suspected infected patients to “be kept under medical observation” (s24(3)) and allows authorities to “quarantine” and “blockade” (s26).¹⁵² The Emergency Responses Law allowed the government to quarantine and lock people down or provide for liability for the dissemination of false information on the emergency, for example.¹⁵³ However, reference to these laws are not made in the announcement of Wuhan's lockdown.¹⁵⁴

Additionally, Chinese Supreme People's Court issued a notice on 6 February 2020 requiring criminalization of people who do not comply with Public Health Emergency measures, and especially of people spreading “false information”.¹⁵⁵

Temporary Period

Lockdown measures imposed in China generally seem to lack the mention of duration. Newspaper articles report that “While it is unclear how long the controls will remain in place, similar restrictions in other areas of China have typically lasted about two weeks”.¹⁵⁶ For

¹⁴⁹Bonavero Institute of Human Rights, ‘A Human Rights and Rule of Law Assessment of Legislative and Regulatory Responses to the Covid-19 Pandemic across 27 Jurisdictions’ (2020) 131 <https://www.law.ox.ac.uk/sites/files/oxlaw/bonavero_report_7_2020.pdf>.

¹⁵⁰Decision of the 20 January 2020, see The State Council Information Office of the People's Republic of China, ‘Fighting Covid-19 China in Action’ <<http://fj.china-embassy.gov.cn/eng/topic/ZT1/202006/P020210531006072760763.pdf>>.

¹⁵¹Bonavero Institute of Human Rights, ‘A Human Rights and Rule of Law Assessment of Legislative and Regulatory Responses to the Covid-19 Pandemic across 27 Jurisdictions’ (2020) 131 <https://www.law.ox.ac.uk/sites/files/oxlaw/bonavero_report_7_2020.pdf>.

¹⁵²Bonavero Institute of Human Rights, ‘A Human Rights and Rule of Law Assessment of Legislative and Regulatory Responses to the Covid-19 Pandemic across 27 Jurisdictions’ (2020) 131 <https://www.law.ox.ac.uk/sites/files/oxlaw/bonavero_report_7_2020.pdf>.

¹⁵³Bonavero Institute of Human Rights, ‘A Human Rights and Rule of Law Assessment of Legislative and Regulatory Responses to the Covid-19 Pandemic across 27 Jurisdictions’ (2020) 131 <https://www.law.ox.ac.uk/sites/files/oxlaw/bonavero_report_7_2020.pdf>.

¹⁵⁴Wuhan New Coronavirus Infection Pneumonia Prevention and Control Headquarters, ‘Notice of the Prevention and Control Headquarters of Pneumonia in New Coronavirus Infection in Wuhan City (No. 1)’ (23 January 2020) <<https://Covidlawlab.org/wp-content/uploads/2020/07/Wuhan-Travel-and-Movement-Restrictions.pdf>>.

¹⁵⁵*Opinions on the Prevention and Control of Illegal Crimes* (Supreme People's Court); Bonavero Institute of Human Rights, ‘A Human Rights and Rule of Law Assessment of Legislative and Regulatory Responses to the Covid-19 Pandemic across 27 Jurisdictions’ (2020) 134 <https://www.law.ox.ac.uk/sites/files/oxlaw/bonavero_report_7_2020.pdf>.

¹⁵⁶‘China: Authorities Implementing Lockdown in Urban Areas of Ruili, Yunnan Province, as of July 7 Due to COVID-19 Concerns’ (*Crisis24*) <<https://crisis24.garda.com/alerts/2021/07/china-authorities-implementing->

example, in the announcement of Wuhan’s lockdown, it is mentioned that “the recovery time will be announced separately”.¹⁵⁷

Necessity and Proportionality

China has imposed drastic measures to fight the Covid-19 pandemic. For example, authorities announced Wuhan lockdown: “the city’s urban bus, subway, ferry and long-distance passenger transport will be suspended; for special reason, citizens should not leave Wuhan, and the airport and railway station leaving Han passage are temporarily closed”.¹⁵⁸ No mention of exception is made, which would act as a human rights safeguard. Moreover, drastic measures were taken very quickly: the city of Urumqi was put into “wartime mode” and an emergency plan was launched “after the city reported 16 new coronavirus cases”.¹⁵⁹ At a few instances, President Xi Jinping emphasized the need to protect people’s lives and health to justify the implementation of preventive and control measures.¹⁶⁰

However, these drastic measures and prioritization of people’s life and health seems disproportionate, as many reports have highlighted China’s disregard to human rights

lockdown-in-urban-areas-of-rui-li-yunnan-province-as-of-july-7-due-to-Covid-19-concerns-update-7> accessed 6 October 2022; ‘China: Authorities Introduce Restrictions in Parts of Nanjing, Jiangsu Province, as of July 21 Due to COVID-19 Concerns’ (*Crisis24*) <<https://crisis24.garda.com/alerts/2021/07/china-authorities-introduce-restrictions-in-parts-of-nanjing-jiangsu-province-as-of-july-21-due-to-Covid-19-concerns>> accessed 6 October 2022.

¹⁵⁷Wuhan New Coronavirus Infection Pneumonia Prevention and Control Headquarters, ‘Notice of the Prevention and Control Headquarters of Pneumonia in New Coronavirus Infection in Wuhan City (No. 1)’ (23 January 2020) <<https://Covidlawlab.org/wp-content/uploads/2020/07/Wuhan-Travel-and-Movement-Restrictions.pdf>>.

¹⁵⁸Wuhan New Coronavirus Infection Pneumonia Prevention and Control Headquarters, ‘Notice of the Prevention and Control Headquarters of Pneumonia in New Coronavirus Infection in Wuhan City (No. 1)’ (23 January 2020) <<https://Covidlawlab.org/wp-content/uploads/2020/07/Wuhan-Travel-and-Movement-Restrictions.pdf>>.

¹⁵⁹‘China’s Western City Urumqi Enters “wartime Mode” after Reporting 16 Coronavirus Cases’ *Reuters* (18 July 2020) <<https://www.reuters.com/Article/us-health-coronavirus-china-cases-idUSKCN24J01L>> accessed 6 October 2022.

¹⁶⁰ For example, on the 20 January 2020 or 5 February 2020 at CCP Central Committee meetings. See The State Council Information Office of the People’s Republic of China, ‘Fighting Covid-19 China in Action’ <<http://fj.china-embassy.gov.cn/eng/topic/ZT1/202006/P020210531006072760763.pdf>>.

concerns.¹⁶¹ For example, it has been reporting that people could not refill their medicine for diseases other than Covid-19 during the lockdown.¹⁶²

Based on scientific evidence

The Chinese government established the National Health Commission (NHC) on 30 December 2019, to organize research into the disease and to support Covid-19 response.¹⁶³ For example, on 2 January, it formulated “Guidelines on Early Detection, Early Diagnosis and Early Quarantine for Prevention and Control of Viral Pneumonia of Unknown Cause”.¹⁶⁴ Moreover, a few Xi Jinping's public statements praised the “scientific-based approach” of the efforts against Covid-19.¹⁶⁵

Transparency

On the public sphere, China has claimed its transparency regarding the disease.¹⁶⁶ For example, the government of Wuhan started releasing information about the disease as of the 31

¹⁶¹For examples, see ‘China: Respect Rights in Coronavirus Response’ (*Human Rights Watch*, 30 January 2020) <<https://www.hrw.org/news/2020/01/30/china-respect-rights-coronavirus-response>> accessed 29 May 2022; Amnesty International, ‘China 2021’ (*Amnesty International*) <<https://www.amnesty.org/en/location/asia-and-the-pacific/east-asia/china/report-china/>> accessed 28 November 2022; Sarah Cook, ‘China’s Censors Aim to Contain Dissent During Harsh COVID-19 Lockdowns | Opinion’ (*Freedom House*, 19 May 2022) <<https://freedomhouse.org/Article/chinas-censors-aim-contain-dissent-during-harsh-Covid-19-lockdowns-opinion-0>> accessed 28 November 2022; ‘China’s Covid Success Story Is Also a Human Rights Tragedy’ (*Human Rights Watch*, 26 January 2021) <<https://www.hrw.org/news/2021/01/26/chinas-Covid-success-story-also-human-rights-tragedy>> accessed 28 November 2022; Sara Squadrani and Erica Trotta, ‘Shanghai Lockdown 2022. An Analysis of the Consequences of the Chinese Zero-Covid Policy on Human Rights and People’s Welfare’ (*Mondo Internazionale*) <<https://mondointernazionale.org/focus-allegati/shanghai-lockdown-2022-an-analysis-of-the-consequences-of-the-chinese-zero-Covid-policy-on-human-rights-and-peoples-welfare>> accessed 28 November 2022.

¹⁶²‘China: Respect Rights in Coronavirus Response’ (*Human Rights Watch*, 30 January 2020) <<https://www.hrw.org/news/2020/01/30/china-respect-rights-coronavirus-response>> accessed 29 May 2022.

¹⁶³The State Council Information Office of the People’s Republic of China, ‘Fighting Covid-19 China in Action’ <<http://fj.china-embassy.gov.cn/eng/topic/ZT1/202006/P020210531006072760763.pdf>>.

¹⁶⁴The State Council Information Office of the People’s Republic of China, ‘Fighting Covid-19 China in Action’ <<http://fj.china-embassy.gov.cn/eng/topic/ZT1/202006/P020210531006072760763.pdf>>.

¹⁶⁵ For example, meeting on 15 January 2020 or the instruction issued on 27 January 2020 to CPC organizations and members. See The State Council Information Office of the People’s Republic of China, ‘Fighting Covid-19 China in Action’ <<http://fj.china-embassy.gov.cn/eng/topic/ZT1/202006/P020210531006072760763.pdf>>.

¹⁶⁶ For example, China States that “China has released information in an open and transparent manner as required by law while making an all-out effort to contain the virus”. See The State Council Information Office of the People’s Republic of China, ‘Fighting Covid-19 China in Action’ <<http://fj.china-embassy.gov.cn/eng/topic/ZT1/202006/P020210531006072760763.pdf>>.

December 2019.¹⁶⁷ Additionally, the NHC provided daily updates on the Covid-19 on its website and social media platform.¹⁶⁸ The same has been done by local authorities.¹⁶⁹

China has also continuously fought “fake news”, “spreading rumors” or “illegal information dissemination” about the pandemic. The opinions issued by the Supreme Peoples’ Court, the Supreme Peoples’ Procuratorate, the Ministry of Public Security, and the Ministry of Justice (mentioned above) called to “strictly punish crimes of fabricating or spreading rumors in accordance with law” and “criminalize a variety of types of dissemination of “false” information”.¹⁷⁰

However, if it is legitimate to control the spread of false information, NGOs point out the abuses made by China, which has “in some instances [...] appeared more concerned with silencing criticism”.¹⁷¹ They argue that criminalization laws have also been used to criminalize people who were only asking questions or reporting information.¹⁷² It has been reported that from 1 January to 26 March 2020, “authorities charged 484 persons with criminal acts for making public comments about the COVID-19 crisis”.¹⁷³ It has also been reported that rights defenders and dissidents were put in “quarantine”.¹⁷⁴

¹⁶⁷The State Council Information Office of the People’s Republic of China, ‘Fighting Covid-19 China in Action’ <<http://fj.china-embassy.gov.cn/eng/topic/ZT1/202006/P020210531006072760763.pdf>>.

¹⁶⁸The State Council Information Office of the People’s Republic of China, ‘Fighting Covid-19 China in Action’ <<http://fj.china-embassy.gov.cn/eng/topic/ZT1/202006/P020210531006072760763.pdf>>.

¹⁶⁹The State Council Information Office of the People’s Republic of China, ‘Fighting Covid-19 China in Action’ <<http://fj.china-embassy.gov.cn/eng/topic/ZT1/202006/P020210531006072760763.pdf>>.

¹⁷⁰ See “China” under the Civic Freedom Tracker. ‘COVID-19 Civic Freedom Tracker’ (*ICNL*) <<http://www.icnl.org/Covid19tracker/>> accessed 29 May 2022; *Opinions on the Prevention and Control of Illegal Crimes* (Supreme People’s Court).

¹⁷¹ ‘China: Respect Rights in Coronavirus Response’ (*Human Rights Watch*, 30 January 2020) <<https://www.hrw.org/news/2020/01/30/china-respect-rights-coronavirus-response>> accessed 29 May 2022.

¹⁷² Bonavero Institute of Human Rights, ‘A Human Rights and Rule of Law Assessment of Legislative and Regulatory Responses to the Covid-19 Pandemic across 27 Jurisdictions’ (2020) 134 <https://www.law.ox.ac.uk/sites/files/oxlaw/bonavero_report_7_2020.pdf>.

¹⁷³ See “China” under the Civic Freedom Tracker. ‘COVID-19 Civic Freedom Tracker’ (*ICNL*) <<http://www.icnl.org/Covid19tracker/>> accessed 29 May 2022.

¹⁷⁴ ‘COVID-19 Civic Freedom Tracker’ (*ICNL*) <<http://www.icnl.org/Covid19tracker/>> accessed 29 May 2022; Sui-Lee Wee, ‘China Uses Quarantines as Cover to Detain Dissidents, Activists Say’ *The New York Times* (30 July 2020) <<https://www.nytimes.com/2020/07/30/world/asia/coronavirus-china-quarantine.html>> accessed 7 October 2022.

Moreover, China's response to the pandemic was, at first, "delayed by withholding information from public, underreporting cases of infection, downplaying the severity of the infection, and dismissing the likelihood of transmission between humans".¹⁷⁵

¹⁷⁵'China: Respect Rights in Coronavirus Response' (*Human Rights Watch*, 30 January 2020) <<https://www.hrw.org/news/2020/01/30/china-respect-rights-coronavirus-response>> accessed 29 May 2022.

4.6 IRELAND (COVID-19)

Ireland key policies: Health (Preservation and Protection and Other Emergency Measures In the Public Interest) Act 2020 (3rd March, 2020),¹⁷⁶ Emergency Measures in the Public Interest (Covid-19) Act 2020 (27th March, 2020),¹⁷⁷ Companies (Miscellaneous Provisions) (Covid-19) Act 2020 (1st August, 2020),¹⁷⁸ Resilience and Recovery 2020-2021 Plan for Living with COVID-19 (15th September, 2020).¹⁷⁹

Introduction and Overview of the Measures

The primary public health authority for Ireland during the COVID-19 pandemic was the National Public Health Emergency Team (NPHE), who provided the majority of recommendations for mitigating the spread of the Covid-19.¹⁸⁰ Reference to the Siracusa Principles, IHR, or other international law was not made directly though some word usage and action could indicate inspiration from the documents. The measures featured most prominently the prohibition of large gatherings in any capacity, the requirement of facial covering to use public services, and vaccination or proof of non-infection requirements.¹⁸¹ Ireland was uncommon in its approach however as many guidelines and restrictions were removed and added quickly on the basis of scientific evidence indicating necessity rather than left in place for long periods of time which will be discussed in further sourced detail below.

State of Emergency that Threatens the Life of a Nation

¹⁷⁶ Health (Preservation and Protection and Other Emergency Measures in the Public Interest) Act 2020 (March 3, 2020) <https://Covidlawlab.org/wp-content/uploads/2020/06/Ireland_2020.03.20_Ireland-Health-Act-amended_EN.pdf>

¹⁷⁷ Emergency Measures in the Public Interest (Covid-19) Act 2020 (March 27, 2020) <https://Covidlawlab.org/wp-content/uploads/2022/02/Ireland_2020.03.27_Act_Emergency-Measures-In-the-Public-Interest_EN.pdf>

¹⁷⁸ Companies (Miscellaneous Provisions) (Covid-19) Act 2020 (August 11, 2020) <https://Covidlawlab.org/wp-content/uploads/2022/02/Ireland_2020.08.01_Act_Companies_EN-1.pdf>

¹⁷⁹ Resilience and Recovery 2020-2021: Plan for Living with Covid-19 (September 15, 2020) <<https://www.gov.ie/en/publication/e5175-resilience-and-recovery-2020-2021-plan-for-living-with-Covid-19/>>

¹⁸⁰ Department of Health, 'Weekly report from the Chief Medical Officer to the Minister for Health relating to COVID-19' (3 November, 2022) <<https://www.gov.ie/en/collection/6a6db-weekly-report-from-the-chief-medical-officer-to-the-minister-for-health-relating-to-Covid-19/>> accessed 28, October 2022

¹⁸¹ Citizens Information, 'Public health measures for COVID-19' (1 April, 2022) <https://www.citizensinformation.ie/en/health/Covid19/public_health_measures_for_Covid19.html#121895>; accessed 21, October 2022

Ireland's constitutional authority to declare a state of emergency requires very strict limits under Article 28.3(3°) on what can be declared with the requirements largely having to do with military threat, and so a declaration of emergency was never implemented.¹⁸² Instead the parliament of Ireland passed legislation granting wide ranging authority to different areas of the government in the context of an ongoing Public Health Emergency.¹⁸³ The first of these was the Health (Preservation and Protection and Other Emergency Measures In the Public Interest) Act 2020 which provided legal authority to implement lockdowns and measures recommended by the NPHET.¹⁸⁴ The Health Act 2020 provides that exceptional measures should be taken to deal with the "exceptional and manifest risk to human life and public health posed by the spread of the disease known as Covid-19" in its introduction.¹⁸⁵

Judicial Remedies and Review

As there was no deliberate declaration of emergency within Ireland, the laws implemented by the parliament are subject to legal challenge based on their necessity being tied to a public emergency of a kind not mentioned in the constitutional authority for emergency declaration.¹⁸⁶ Several court cases available for review challenged Covid-19 measures though none explicitly mentioned the ICCPR, Siracusa Principles, or IHRs. In three cases however, proportionality was mentioned and the cases dealt with pandemic response issues such as freedom of movement, freedom of religion, and non-discrimination which are themes present in each of the international documents.¹⁸⁷ Each case was only loosely related to any of the rights discussed in this report's relevant international documents, however there was one case which challenged

¹⁸² Constitution of Ireland Article 28.3(3°) <<https://www.irishstatutebook.ie/eli/cons/en/html#part5>> ; European Parliament, "State of Emergency in the Coronavirus Pandemic - European Parliament" (July 2020) <[https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/652002/EPRS_BRI\(2020\)652002_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/652002/EPRS_BRI(2020)652002_EN.pdf)> accessed 28 October, 2022

¹⁸³ European Parliament, "State of Emergency in the Coronavirus Pandemic - European Parliament" (July 2020) <[https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/652002/EPRS_BRI\(2020\)652002_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/652002/EPRS_BRI(2020)652002_EN.pdf)> accessed 28 October 2022

¹⁸⁴ Health (Preservation and Protection and Other Emergency Measures in the Public Interest) Act 2020 (March 3, 2020) <https://Covidlawlab.org/wp-content/uploads/2020/06/Ireland_2020.03.20_Ireland-Health-Act-amended_EN.pdf>

¹⁸⁵ Health (Preservation and Protection and Other Emergency Measures in the Public Interest) Act 2020 Introduction (March 3, 2020) <https://Covidlawlab.org/wp-content/uploads/2020/06/Ireland_2020.03.20_Ireland-Health-Act-amended_EN.pdf>

¹⁸⁶ Conor Casey, 'Opinion: Emergency Covid-19 Legislation Harks Back to the Civil War, 'the Emergency' and the Troubles' (TheJournal.ie, March 30, 2020) <<https://www.thejournal.ie/readme/emergency-legislation-5060044-Mar2020/>> accessed 28 October 2022

¹⁸⁷ *Burke v The Minister for Education, P v The Minister for Education & Skills* [2022] Supreme Court of Ireland IESC 1 35/21 & 36/21; *N.P. (A Minor) & Anor v The Minister for Education and Skills* [2020] High Court of Ireland IEHC 479; *O'Doherty & Anor v The Minister for Health & Ors* [2020] High Court of Ireland IEHC 209

the authority given to the Minister of Health through the Health Act 2020.¹⁸⁸ The case was ultimately dismissed.

Proportionality and Necessity

Ireland represents a comparatively high level of attention to when pandemic measures should increase or decrease in comparison to other States of similar development. The nation designed a method of threat assessment utilizing their Computerized Infectious Disease Reporting (CIDR) system and was able to reduce or add to measures based on current trends in infection, death, and vulnerable populations.¹⁸⁹ In addition, Ireland developed a threat level system for the pandemic within the Resilience and Recovery 2020-2021 Plan for Living with COVID-19. The system allowed for guidelines and regulations to be changed not only at the national level but locally as well depending on their criteria for each threat level ranging from 1 to 5.¹⁹⁰ The Health Act 2020 Part 3 Section 10(1) additionally States the power to "make regulations for the purpose of preventing, limiting, minimizing or slowing the spread of Covid-19 (including the spread outside the State) or where otherwise necessary, to deal with public health risks arising from the spread of Covid-19" indicating regulation will be implemented when it is necessary, though no mention of proportion is made.¹⁹¹ These and all other acts were provided on a limited timeline with parliament able to scrutinize the government's execution of the laws through monitoring and reporting requirements followed by critiques and recommendations from the parliament.¹⁹² The Irish Council for Civil Liberties, and other similar groups concerned with human rights, make criticisms of specific measures such as surveillance applications or hotel quarantines though the criticism appears to be similar or less than that which other nations in the analysis received.¹⁹³

¹⁸⁸ *O'Doherty & Waters V The Minister for Health & Ireland & The Attorney General* [2021] Ireland Court of Appeals IECA 59

¹⁸⁹ Resilience and Recovery 2020-2021: Plan for Living with Covid-19 (September 15, 2020) <<https://www.gov.ie/en/publication/e5175-resilience-and-recovery-2020-2021-plan-for-living-with-Covid-19/>>

¹⁹⁰ Resilience and Recovery 2020-2021: Plan for Living with Covid-19 (September 15, 2020) <<https://www.gov.ie/en/publication/e5175-resilience-and-recovery-2020-2021-plan-for-living-with-Covid-19/>>

¹⁹¹ Health (Preservation and Protection and Other Emergency Measures in the Public Interest) Act 2020 Part 3 Section 10(1) (March 3, 2020) <https://Covidlawlab.org/wp-content/uploads/2020/06/Ireland_2020.03.20_Ireland-Health-Act-amended_EN.pdf>

¹⁹² European Parliament, "State of Emergency in the Coronavirus Pandemic - European Parliament" (July 2020) <[https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/652002/EPRS_BRI\(2020\)652002_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/652002/EPRS_BRI(2020)652002_EN.pdf)> ; accessed October 28, 2022

¹⁹³ Doireann Ansbro et al., 'Human Rights in a Pandemic' (Irish Council for Civil Liberties, May 2021) P. 80 <<https://www.iccl.ie/wp-content/uploads/2021/06/Human-Rights-in-a-Pandemic.pdf>> ; accessed 25 October, 2022

Based on Scientific Evidence

Scientific evidence was the basis for nearly every recommendation and subsequent law that was introduced in Ireland. The legislation itself notes the severity of infection and the danger of the virus as reasoning for much of the law and more specifically the Health Act 2020 directly refers to scientific evidence as a justification for restrictions. The Health Act 2020 States the regulations “may have regard to any relevant guidance [...] provided by the World Health Organization, [...] and other persons with relevant medical and scientific expertise” in paragraph 11 (2)(b) and for restrictions concerning detention or isolation that “(2) When making regulations [...], the Minister have regard to the following: [...] (e) the advice of any other public health officials with relevant medical and scientific expertise” in paragraph 11 (2)(e).¹⁹⁴ The statistics and more specific reasoning are provided by the NPHET continuously as new information is gathered and additional trends and policy suggestions are gathered from CIDR data.¹⁹⁵

¹⁹⁴ Health (Preservation and Protection and Other Emergency Measures in the Public Interest) Act 2020 (March 3, 2020) para 11 (2)(b) and para 11 (2) <https://Covidlawlab.org/wp-content/uploads/2020/06/Ireland_2020.03.20_Ireland-Health-Act-amended_EN.pdf> ; accessed October 28, 2022

¹⁹⁵ NPHET Policy Unit, ‘Timeline and Detail of Public Health Restrictive Measures Advised by NPHET in Reponse to the Covid-19 Pandemic’ (January 13, 2021) <<https://assets.gov.ie/126580/471f8ed0-1ef3-4e0a-a498-5d0dc027fc2d.pdf>> ; accessed October 09, 2022

4.7 NIGERIA (COVID-19)

Nigeria key policies: Quarantine Act (1926)¹⁹⁶, Constitution of Nigeria (2011)¹⁹⁷, Implementation Guidelines for Lockdown (March 1, 2020)¹⁹⁸, Implementation Guidelines for Containment of Covid-19 (April 30, 2020)¹⁹⁹, The Federal Government Covid-19 Regulations (March 30, 2020)²⁰⁰, The Federal Government Covid-19 Regulations no. 2 (March 30, 2020)²⁰¹, The Federal Government Covid-19 Regulations (January 26, 2021)²⁰².

Introductory Paragraph and Overview of the Measures

Nigeria's analysis pertains to the Covid-19 pandemic. The specific measures taken are not unique in comparison to the other nations evaluated though the execution of these regulations and procedures did appear to be carried out with less care than in other nations. The measures included restrictions on international traffic, restrictions on personal and public gatherings, the imposition of curfews, the closure of schools, and the restriction of non-essential commerce in The Federal Government Covid-19 Regulations (March 30, 2020).²⁰³ 14-day limits were placed on the regulation procedures twice with intentions for additional policies to alter procedures over time as evidenced by the first phase planning in Implementation Guidelines for Containment of Covid-19 (April 30, 2020) though no extensions occurred following The

¹⁹⁶Quarantine Act 1926 (May 27, 1926) <<https://Covidlawlab.org/wp-content/uploads/2020/06/Quarantine-Act-1926.pdf>>

¹⁹⁷Nigeria's Constitution of 1999 with Amendments through 2011 (2011) <https://Covidlawlab.org/wp-content/uploads/2021/02/Nigeria_Constitution.pdf>

¹⁹⁸Implementation Guidance for Lockdown Policy (March 1, 2020) <<https://Covidlawlab.org/wp-content/uploads/2020/06/PTF-COVID-19-Guidance-on-implementation-of-lockdown-policy-FINAL.docx-2.pdf>>

¹⁹⁹Implementation Guidelines for Containment of Covid-19 (April 30, 2020) <<https://Covidlawlab.org/wp-content/uploads/2020/06/Implementation-Guidelines-for-Containment-unlock.pdf>>

²⁰⁰Covid-19 Regulations, 2020 (March 30, 2020) <<https://Covidlawlab.org/wp-content/uploads/2020/06/Regulations-COVID-19.pdf>>

²⁰¹Covid-19 Regulations No 2 of 2020 (April 13, 2020) <https://Statehouse.gov.ng/wp-content/uploads/2020/04/Extension-of-COVID-19-Regulations-No-2-o_20200413223217.pdf>

²⁰²Corona Virus Disease (Covid-19) Health Protection Regulations 2021 (January 26, 2021) <https://Covidlawlab.org/wp-content/uploads/2021/08/Nigeria_2021.01.26_Regulations__Coronavirus-Disease-Covid-19-Health-Protection-Regulations-2021_EN.pdf>

²⁰³Covid-19 Regulations, 2020 (March 30, 2020) <<https://Covidlawlab.org/wp-content/uploads/2020/06/Regulations-COVID-19.pdf>>; Corona Virus Disease (Covid-19) Health Protection Regulations 2021 (January 26, 2021) <https://Covidlawlab.org/wp-content/uploads/2021/08/Nigeria_2021.01.26_Regulations__Coronavirus-Disease-Covid-19-Health-Protection-Regulations-2021_EN.pdf>

Federal Government Covid-19 Regulations No 2 (March 30, 2020).²⁰⁴ Additionally during the execution of these policies there were reports of extrajudicial killings, torture, and other inhuman treatments committed against violators of the lockdown orders.²⁰⁵ One important note to add is there were subnational regulations within Lagos region that were more specific than the national policies and though they are not the focus of the analysis their existence indicates effort by the State elsewhere.²⁰⁶

State of Emergency that Threatens the Life of a Nation

The Lockdown of Nigeria was a subject of some note as there were two documents which potentially granted the authority to empower sections of the government in a state of emergency. The Constitution of Nigeria (2011) in Section 305 allows the President to proclaim a state of emergency under certain conditions and by a certain procedure of announcement and this declaration must then be ratified by both legislative houses as per Section 305(2).²⁰⁷ The Quarantine Act (1926) is far more broad and allows the President alone to be empowered with sweeping control in preventing the introduction into, spread in, and the transmission from Nigeria, of dangerous infectious diseases as per Section 4 of the act, which is the route the President chose to go when announcing the state of emergency and citing the act as the source of his authority on 30 March, 2020.²⁰⁸

Proportionality and Necessity

The response to the Covid-19 pandemic within Nigeria was relatively vague in comparison to other States with the Implementation Guidance for Lockdown Policy (March 30, 2020) only mentioning immediate restriction of movement in Section 1 and restriction of international

²⁰⁴Covid-19 Regulations No 2 of 2020 (April 13, 2020) <https://Statehouse.gov.ng/wp-content/uploads/2020/04/Extension-of-COVID-19-Regulations-No-2-o_20200413223217.pdf>; Implementation Guidelines for Containment of Covid-19 (April 30, 2020) <<https://Covidlawlab.org/wp-content/uploads/2020/06/Implementation-Guidelines-for-Containment-unlock.pdf>>

²⁰⁵Lukman Abdulrauf, 'Nigeria's Emergency (Legal) Response to COVID-19: A Worthy Sacrifice for Public Health?' (*Verfassungsblog*, May 18, 2020) <<https://verfassungsblog.de/nigerias-emergency-legal-response-to-Covid-19-a-worthy-sacrifice-for-public-health/>> ; accessed November 16, 2022

²⁰⁶Lagos State Infectious Diseases (Emergency Prevention) Regulations 2020 (27 March 2020) <<https://pwc-nigeria.typepad.com/files/infectious-diseases-regulations-2020.pdf>>

²⁰⁷Nigeria's Constitution of 1999 with Amendments through 2011 (2011) Section 305 <https://Covidlawlab.org/wp-content/uploads/2021/02/Nigeria_Constitution.pdf>

²⁰⁸Quarantine Act 1926 (May 27, 1926) Section 4 <<https://Covidlawlab.org/wp-content/uploads/2020/06/Quarantine-Act-1926.pdf>>

traffic in Section 3 for 14 days.²⁰⁹ Later extensions and policy documents were more detailed, such as the Implementation Guidelines for Containment of Covid-19 (April 30, 2020) which added procedures for temperature checks, operational hours, and social distancing.²¹⁰ The document did continue to use comparably nonspecific language such as “limit number of workers” or “ensure sanitation compliance” without adding detail as to what these actions would entail specifically.²¹¹ Nigeria also was noted to have implemented reduction in the regulations despite increasing case numbers frequently due to public resistance.²¹² The conclusions that can be drawn from the documents are that the response was not made with a level of consideration to meet what was “necessary or proportional” at the time.

Based on Scientific Evidence

Nigeria only broadly mentions scientific evidence in the policy documents analyzed though does appear to have based regulation on advice from the country's center for disease control as they indicate that individuals who are infected by the virus should contact the NCDC directly in Section 1(3) of the Implementation Guidelines for Containment of Covid-19.²¹³ Additionally, in the Covid-19 Regulations, 2020 in Section 4(2) the document mention obeying scientific and medical advice.²¹⁴ One note of interest is that a large portion of the country did not believe in the existence of Covid-19.²¹⁵

²⁰⁹ Covid-19 Regulations, 2020 (March 30, 2020) Section 1 & Section 3 <<https://Covidlawlab.org/wp-content/uploads/2020/06/Regulations-COVID-19.pdf>>

²¹⁰ Implementation Guidelines for Containment of Covid-19 (April 30, 2020) <<https://Covidlawlab.org/wp-content/uploads/2020/06/Implementation-Guidelines-for-Containment-unlock.pdf>>

²¹¹ Implementation Guidelines for Containment of Covid-19 (April 30, 2020) <<https://Covidlawlab.org/wp-content/uploads/2020/06/Implementation-Guidelines-for-Containment-unlock.pdf>>

²¹² Timothy Obiezu, ‘Nigeria Eases Lockdown Measures Despite Increases in Coronavirus Cases’ (VOA News, 7 May, 2020) <https://www.voanews.com/a/Covid-19-pandemic_nigeria-eases-lockdown-measures-despite-increases-coronavirus-cases/6188905.html> ; accessed 2 November, 2022

²¹³ Implementation Guidelines for Containment of Covid-19 (April 30, 2020) Section 1(3) <<https://Covidlawlab.org/wp-content/uploads/2020/06/Implementation-Guidelines-for-Containment-unlock.pdf>>

²¹⁴ Covid-19 Regulations, 2020 (March 30, 2020) Section 4(2) <<https://Covidlawlab.org/wp-content/uploads/2020/06/Regulations-COVID-19.pdf>>

²¹⁵ Lukman Abdulrauf, ‘Nigeria's Emergency (Legal) Response to COVID-19: A Worthy Sacrifice for Public Health?’ (*Verfassungsblog*, May 18, 2020) <<https://verfassungsblog.de/nigerias-emergency-legal-response-to-Covid-19-a-worthy-sacrifice-for-public-health/>> ; accessed November 16, 2022

4.8 ISRAEL (COVID-19)

Key policies: Emergency Regulation (Quarantine in a State Facility for Quarantine) (2 Avril 2020),²¹⁶ Law of Special Authorities to Deal with the Novel Coronavirus (23 July 2020) (“Coronavirus Law”) and its number of amendments.²¹⁷

Introduction and Overview of the Measures

On 27 January 2020, the Minister of Health declared Covid-19 as a dangerous contagious disease which might constitute a risk to public health,²¹⁸ and added the coronavirus to the list of contagious disease of international concern.²¹⁹ In July, the major “Coronavirus Law” was passed, empowering the government to pass a range of measures under the proclaimed state of emergency. Between the emergence of the virus on the territory and the enactment of the Law, measures to deal with the Covid-19 were based on the Article 39 of the Basic Law;²²⁰ and on the Public Health Ordinance,²²¹ which was triggered by the Minister of Health declarations. In September, the Coronavirus Law was amended by Amendment No. 2, which was controversial for restricting demonstrations.²²² The Law has then been amended a number of times.²²³

State of Emergency that Threatens the Life of the Nation

²¹⁶Emergency Regulations (the New Corona Virus) (Isolation in Place of Isolation on Behalf of the State), 555-2020’ <https://www.nevo.co.il/law_html/law19/502_284.htm> accessed 16 November 2022.

²¹⁷(Amended) Law of Special Authorities to Deal with the Novel Coronavirus (Temporary Provision) 2020 2020 [Government Gazette 2015 no. 1320 p. 226].

²¹⁸Notice of Infectious Diseases Under the Public Health Ordinance 2020 [Portfolio of Notifications 8659, 3378].

²¹⁹Notice of Infectious Diseases Under the Public Health Ordinance (n 217); Einat Albin and others, ‘Oxford Constitutional Law: Israel: Legal Response to Covid’, *Oxford Constitutional Law* (2022) para 13 <<https://oxcon.ouplaw.com/view/10.1093/law-occ19/law-occ19-e13?rskey=mjtLys&result=2&prd=OXCON>> accessed 15 November 2022.

²²⁰For example, Israel’s first lockdown was established under this provision, so were imposed quarantines. For more information on the measures passed under Article 39 of the Basic Law, see Einat Albin and others, ‘Oxford Constitutional Law: Israel: Legal Response to Covid’, *Oxford Constitutional Law* (2022) para 27 <<https://oxcon.ouplaw.com/view/10.1093/law-occ19/law-occ19-e13?rskey=mjtLys&result=2&prd=OXCON>>.

²²¹For example, some orders related to isolation and quarantine or mandatory face masks were passed under the Public Health Ordinance. For more information passed under the Public Health Ordinance, see Einat Albin and others, ‘Oxford Constitutional Law: Israel: Legal Response to Covid’, *Oxford Constitutional Law* (2022) para 28 <<https://oxcon.ouplaw.com/view/10.1093/law-occ19/law-occ19-e13?rskey=mjtLys&result=2&prd=OXCON>>.

²²²‘Israel Passes Law to Limit Protests during Coronavirus Lockdown’ *Aljazeera* (30 September 2020) <<https://www.aljazeera.com/news/2020/9/30/israel-passes-law-to-limit-protests-during-coronavirus-lockdown>> accessed 18 November 2022.

²²³ See at the bottom of the Law for all the amendments. (Amended) Law of Special Authorities to Deal with the Novel Coronavirus (Temporary Provision) 2020 2020 [Government Gazette 2015 no. 1320 p. 226].

Although Israel has been in a constant state of emergency since 1948,²²⁴ the country (the Knesset, Israeli parliament) has enacted a Law of Special Authorities to Deal with the Novel Coronavirus on 23 July 2020 (“Coronavirus Law”), which allows the government to declare a state of emergency due to the coronavirus.²²⁵ The Law mentions that the declaration must be declared if the government is convinced that there is a significant harm to public health or there is a real risk of the widespread of the virus.²²⁶ Moreover, the declaration requires the position of the Ministry of Health.²²⁷

Although the reference to the “harm to public health” fall short from referring to the phrasing “threatens the life of the nation”, the High Court of Justice affirmed that Covid-19 could qualify as a “severe and imminent threat to national security” (which rather refers to the General Security Services Law of 2002, but still relates to Article 4 ICCPR).²²⁸

The Coronavirus Law also provides that, on the day it begins, it will be considered as if a declaration of a state of emergency due to the Covid-19 virus has been made.²²⁹ In such cases, the government is authorized to take measures (“governmental regulations”), such as the implemented following measures: limiting activities in private space (limiting a person’s entry to another’s place of residence, receipt of treatment, etc.),²³⁰ limiting activities in public

²²⁴ Israel has been under a state of emergency due to the conflict with Palestine. Since 1992, the Basic Law requires the state of emergency to be approved annually. See Bonavero Institute of Human Rights, ‘A Human Rights and Rule of Law Assessment of Legislative and Regulatory Responses to the Covid-19 Pandemic across 27 Jurisdictions’ (2020) 233 <https://www.law.ox.ac.uk/sites/files/oxlaw/bonavero_report_7_2020.pdf>.

²²⁵(Amended) Law of Special Authorities to Deal with the Novel Coronavirus (Temporary Provision) 2020 2020 [Government Gazette 2015 no. 1320 p. 226] Section 2(a)(2).

²²⁶(Amended) Law of Special Authorities to Deal with the Novel Coronavirus (Temporary Provision) 2020 2020 [Government Gazette 2015 no. 1320 p. 226] Section 2(a)(2); ‘Israel: Law Granting Government Special Authorities to Combat Novel Coronavirus Adopted’ Library of Congress, Washington, D.C. 20540 USA <<https://www.loc.gov/item/global-legal-monitor/2020-07-29/israel-law-granting-government-special-authorities-to-combat-novel-coronavirus-adopted/>> accessed 15 November 2022.

²²⁷(Amended) Law of Special Authorities to Deal with the Novel Coronavirus (Temporary Provision) 2020 2020 [Government Gazette 2015 no. 1320 p. 226] Section 2(a)(3).

²²⁸Bonavero Institute of Human Rights, ‘A Human Rights and Rule of Law Assessment of Legislative and Regulatory Responses to the Covid-19 Pandemic across 27 Jurisdictions’ (2020) 235 <https://www.law.ox.ac.uk/sites/files/oxlaw/bonavero_report_7_2020.pdf>;

Adv Shahar Ben Meir v Knesset [2020] High Court of Justice H CJ 2109/20 para 26.

²²⁹(Amended) Law of Special Authorities to Deal with the Novel Coronavirus (Temporary Provision) 2020 2020 [Government Gazette 2015 no. 1320 p. 226], Section 51 (a).

²³⁰(Amended) Law of Special Authorities to Deal with the Novel Coronavirus (Temporary Provision) 2020 2020 [Government Gazette 2015 no. 1320 p. 226], Section 6.

spaces,²³¹ restrict activity in businesses and workplaces,²³² or limiting activity of educative institutions.²³³

The Coronavirus Law provides that the state of emergency will not exceed 45 days.²³⁴ It can though be extended with the approval of the Knesset for a duration of 60 days each,²³⁵ which has been the case in practice.²³⁶ When the circumstances of the emergency are no longer valid, the government or the Knesset may void the declaration.²³⁷ On 1 February 2022, the Knesset brought the state of emergency to an end by passing Amendment No.11.²³⁸ This amendment brings a lot of changes, especially, it adds the distinction between the state of emergency and the less severe “special health situation”.²³⁹ The Government has not “officially proclaimed” any derogation to the ICCPR.²⁴⁰

Necessity and proportionality

As amended with Amendment No. 11, the Coronavirus Law contains some references to necessity and proportionality. It mentions that the governmental regulations must only be

²³¹(Amended) Law of Special Authorities to Deal with the Novel Coronavirus (Temporary Provision) 2020 2020 [Government Gazette 2015 no. 1320 p. 226], Section 7.

²³²(Amended) Law of Special Authorities to Deal with the Novel Coronavirus (Temporary Provision) 2020 2020 [Government Gazette 2015 no. 1320 p. 226], Section 8.

²³³(Amended) Law of Special Authorities to Deal with the Novel Coronavirus (Temporary Provision) 2020 2020 [Government Gazette 2015 no. 1320 p. 226], Section 8.

²³⁴(Amended) Law of Special Authorities to Deal with the Novel Coronavirus (Temporary Provision) 2020 2020 [Government Gazette 2015 no. 1320 p. 226], Section 2(d).

²³⁵(Amended) Law of Special Authorities to Deal with the Novel Coronavirus (Temporary Provision) 2020 2020 [Government Gazette 2015 no. 1320 p. 226], Section 2(d).

²³⁶ The Oxford Encyclopedia reports that the declaration of the state of emergency was extended until 5 November 2020; until 3 January 2021 ; until March 2021 ; until 1 May 2021. See Einat Albin and others, ‘Oxford Constitutional Law: Israel: Legal Response to Covid’, *Oxford Constitutional Law* (2022) para 13 <<https://oxcon.oup.com/view/10.1093/law-occ19/law-occ19-e13?rskey=mjtlYs&result=2&prd=OXCON>> accessed 15 November 2022.

²³⁷(Amended) Law of Special Authorities to Deal with the Novel Coronavirus (Temporary Provision) 2020 2020 [Government Gazette 2015 no. 1320 p. 226], Section 3(b); ‘Israel: Law Granting Government Special Authorities to Combat Novel Coronavirus Adopted’ Library of Congress, Washington, D.C. 20540 USA <<https://www.loc.gov/item/global-legal-monitor/2020-07-29/israel-law-granting-government-special-authorities-to-combat-novel-coronavirus-adopted/>> accessed 15 November 2022.

²³⁸Toi Staff, ‘Knesset Passes “COVID Law,” Ending state of Emergency in Place for Most of Pandemic’ *The Times of Israel* (26 January 2022) <<https://www.timesofisrael.com/mks-pass-Covid-law-ending-State-of-emergency-in-place-since-start-of-pandemic/>> accessed 18 November 2022.

²³⁹(Amended) Law of Special Authorities to Deal with the Novel Coronavirus (Temporary Provision) 2020 2020 [Government Gazette 2015 no. 1320 p. 226], Section 2(a)(1).

²⁴⁰ Toi Staff, ‘Knesset Passes “COVID Law,” Ending state of Emergency in Place for Most of Pandemic’ *The Times of Israel* (26 January 2022) <<https://www.timesofisrael.com/mks-pass-Covid-law-ending-State-of-emergency-in-place-since-start-of-pandemic/>> accessed 18 November 2022; see also list of amendments at the end of (Amended) Law of Special Authorities to Deal with the Novel Coronavirus (Temporary Provision) 2020 [Government Gazette 2015 no. 1320 p. 226].

passed if the government is “convinced that this is necessary in order to” attain the goals of preventing infection, reducing the spread and morbidity, and protecting at-risk populations.²⁴¹ Moreover, as amended by Amendment No.11, the Law provides that the regulations will be established “only for the period and the extent necessary for the purpose of achieving the goals [...] and after considering alternatives to achieve them”.²⁴² The amended policy also recognize some geographic proportionality, as it provides that regulations shall apply “in the entire country or in a specific area”.²⁴³ Finally, regulations must take “into account the rights and needs” of different categories of minorities.²⁴⁴

Parliamentary Review

When the text was proposed, legal experts have criticized the Law for “empowering the Government to enact broad regulations without the need for Knesset approval—neither for declaring a state of emergency nor for the regulations themselves—distorts the bill’s purpose, which is to replace the emergency regulations with “primary legislation”.²⁴⁵ The Law provided that, unless the Knesset Constitution, Law and Justice Committee opposite, the regulations will go into effect 24 hours after their issue, but in “urgent cases” the government can pass over this 24-hour requirement.²⁴⁶ However, the amendment No. 11 imposed a stricter oversight, as it provides that the Knesset Constitution, Law and Justice Committee or the entire plenum must approve both the state of emergency or the special health situation.²⁴⁷ Moreover, the restrictions in the state of emergency must be ratified after 48 hours by the Constitution Committee (24

²⁴¹(Amended) Law of Special Authorities to Deal with the Novel Coronavirus (Temporary Provision) 2020 2020 [Government Gazette 2015 no. 1320 p. 226], Section 4(a)(3).

²⁴²(Amended) Law of Special Authorities to Deal with the Novel Coronavirus (Temporary Provision) 2020 2020 [Government Gazette 2015 no. 1320 p. 226], Section 4(a)(3).

²⁴³(Amended) Law of Special Authorities to Deal with the Novel Coronavirus (Temporary Provision) 2020 2020 [Government Gazette 2015 no. 1320 p. 226], Section 4(a)(4).

²⁴⁴(Amended) Law of Special Authorities to Deal with the Novel Coronavirus (Temporary Provision) 2020 2020 [Government Gazette 2015 no. 1320 p. 226], Section 4(b).

²⁴⁵Dr. Amir Fuchs, Prof. Mordechai Kremnitzer, and Adv. Lila Margalit, ‘Coronavirus Bill - Professional Opinion Excerpts’ <<https://en.idi.org.il/Articles/31741>> accessed 16 November 2022.

²⁴⁶(Amended) Law of Special Authorities to Deal with the Novel Coronavirus (Temporary Provision) 2020 2020 [Government Gazette 2015 no. 1320 p. 226], Section 4(d)(3); ‘Israel: Law Granting Government Special Authorities to Combat Novel Coronavirus Adopted’ Library of Congress, Washington, D.C. 20540 USA <<https://www.loc.gov/item/global-legal-monitor/2020-07-29/israel-law-granting-government-special-authorities-to-combat-novel-coronavirus-adopted/>> accessed 15 November 2022.

²⁴⁷(Amended) Law of Special Authorities to Deal with the Novel Coronavirus (Temporary Provision) 2020 2020 [Government Gazette 2015 no. 1320 p. 226], Section 3(b)(1); Toi Staff, ‘Knesset Passes “COVID Law,” Ending state of Emergency in Place for Most of Pandemic’ The Times of Israel (26 January 2022) <<https://www.timesofisrael.com/mks-pass-Covid-law-ending-State-of-emergency-in-place-since-start-of-pandemic/>> accessed 18 November 2022.

hours more than in the first version of the law).²⁴⁸ Any request for extension of the declaration of state of emergency or the special health situation also have to be submitted to the Constitution Committee.²⁴⁹

Judicial Remedies and Review

In practice, though the Courts operated under emergency mode, it still remained active in its oversight role.²⁵⁰ It has been reported that the High Court of Justice, at the beginning, mostly rejected the petitions made to challenge Covid-19 measures,²⁵¹ “openly noting that these were ‘far-reaching restrictions [...] on basic constitutional rights [...] which, in normal times, would have been disqualified instantly as patently unconstitutional’”.²⁵² However, the Court increasingly intervene in favor of the petitioners. For example, in *Ben Meir v. Prime Minister* (26 April 2020), the High Court of Justice held that Government’s decision to use General Security Services for cellular contact tracing would require primary legislation to be prolonged.²⁵³ Another example can be found in *Idan Mercar Dimona Ltd. v. Government of Israel* (2 February 2021), when the Supreme Court of Israel repealed the Regulation made by the Government regarding the ability of businesses that provide essential services to sell non-essential products.²⁵⁴ On 1st March 2021, the Supreme Court of Israel held that the Government

²⁴⁸(Amended) Law of Special Authorities to Deal with the Novel Coronavirus (Temporary Provision) 2020 2020 [Government Gazette 2015 no. 1320 p. 226], Section 4(d)(1).

²⁴⁹(Amended) Law of Special Authorities to Deal with the Novel Coronavirus (Temporary Provision) 2020 2020 [Government Gazette 2015 no. 1320 p. 226], Section 2(d)(3).

²⁵⁰ For more information, see Einat Albin and others, ‘Oxford Constitutional Law: Israel: Legal Response to Covid’, *Oxford Constitutional Law* (2022) para 45-53 <<https://oxcon.ouplaw.com/view/10.1093/law-occ19/law-occ19-e13?rskey=mjtLys&result=2&prd=OXCON>> accessed 15 November 2022.

²⁵¹The Petrie-Flom Center Staff, ‘Rights Restrictions and Securitization of Health in Israel During COVID-19’ (*Bill of Health*, 29 May 2020) <<http://blog.petrieflom.law.harvard.edu/2020/05/29/israel-global-responses-Covid19/>> accessed 16 November 2022.

²⁵²Einat Albin and others, ‘Oxford Constitutional Law: Israel: Legal Response to Covid’, *Oxford Constitutional Law* (2022) para 51 <<https://oxcon.ouplaw.com/view/10.1093/law-occ19/law-occ19-e13?rskey=mjtLys&result=2&prd=OXCON>> accessed 15 November 2022. Referring to, for example, *Smadar v Prime Minister* [2020] 2705/20 HCJ (HCJ); see also, eg, *Yedidya Loewenthal v Prime Minister* [2020] 2435/20 HCJ (HCJ); *Community Administration Ramot Alon v the Government* [2020] 2491/20 HCJ (HCJ).

²⁵³The Petrie-Flom Center Staff, ‘Rights Restrictions and Securitization of Health in Israel During COVID-19’ (*Bill of Health*, 29 May 2020) <<http://blog.petrieflom.law.harvard.edu/2020/05/29/israel-global-responses-Covid19/>> accessed 16 November 2022 ; *Ben Meir v Prime Minister* [2020] Israel Supreme Court HCJ 2109/20.

²⁵⁴Dr. Ittai Bar-Siman-Tov, Tal Eyal-Lipschutz, and Amir Pinkus, ‘Case Overview: Israel, The Supreme Court of Israel Sitting as High Court of Justice, 2 February 2021, HCJ 6939/20 Idan Mercar Dimona Ltd. v. Government of Israel’ (*Covid-19 Litigation*, 26 October 2021) <<https://www.Covid19litigation.org/case-index/israel-supreme-court-israel-sitting-high-court-justice-hcj-693920-idan-mercaz-dimona-ltd>> accessed 16 November 2022.

decision to use ISA surveillance violates the right to privacy.²⁵⁵ It ruled that it was “disproportionate and unreasonable to use the tool”.²⁵⁶

The Coronavirus and its Amendment No. 2 have directly been brought before the High Court of Justice, petitioners arguing that the Law “was legislated in an express process which did not allow for proper discussion in the Knesset, that it violates Basic Law: The Government by giving the government rather than the Knesset the authority to declare an emergency situation, that it gives the government extensive discretion and renders parliamentary supervision ineffective, and that it allows the limitation of rights in a manner incompatible with the limitation clause in the Basic Law on human rights”.²⁵⁷ The High Court of Justice rejected the claim against the validity of the Coronavirus Law on 4 April 2021, arguing -amongst other- that if the law violates basic rights, it also includes balances. It “found no basis to conclude that the Special Authorities Law had disproportionately harmed constitutional rights in a way that would justify cancellation”.²⁵⁸ However, the decision still declared unconstitutional the regulation of Amendment 2 that restricted the location of demonstrations.²⁵⁹

²⁵⁵Dr. Ittai Bar-Siman-Tov, Yehonatan Dayan, and Shaiel Tchercansky, ‘Case Overview: Israel, The Supreme Court of Israel Sitting as High Court of Justice, 1 March 2021, HCJ 6732/20’ (*Covid-19 Litigation*, 28 October 2021) <<https://www.Covid19litigation.org/case-index/israel-supreme-court-israel-sitting-high-court-justice-hcj-673220-2021-03-01>> accessed 16 November 2022.

²⁵⁶Dr. Ittai Bar-Siman-Tov, Yehonatan Dayan, and Shaiel Tchercansky, ‘Case Overview: Israel, The Supreme Court of Israel Sitting as High Court of Justice, 1 March 2021, HCJ 6732/20’ (*Covid-19 Litigation*, 28 October 2021) <<https://www.Covid19litigation.org/case-index/israel-supreme-court-israel-sitting-high-court-justice-hcj-673220-2021-03-01>> accessed 16 November 2022.

²⁵⁷Quote from Einat Albin and others, ‘Oxford Constitutional Law: Israel: Legal Response to Covid’, *Oxford Constitutional Law* (2022) para 21 <<https://oxcon.ouplaw.com/view/10.1093/law-occ19/law-occ19-e13?rskey=mjtLys&result=2&prd=OXCON>> accessed 15 November 2022. Referring to Israel My Home Ltd (PBC) v Government of Israel [2021] High Court of Justice 5469/20 HCJ (HCJ).

²⁵⁸Quote from ‘Israel: Supreme Court Voids Coronavirus Lockdown Restrictions Limiting Demonstrators to 1,000 Meters from Residence’ (*Library of Congress, Washington, D.C. 20540 USA*) <<https://www.loc.gov/item/global-legal-monitor/2021-04-15/israel-supreme-court-voids-coronavirus-lockdown-restrictions-limiting-demonstrators-to-1000-meters-from-residence/>> accessed 21 November 2022. Referring to Israel My Home Ltd (PBC) v Government of Israel [2021] High Court of Justice 5469/20 HCJ (HCJ), para 33.

²⁵⁹Einat Albin and others, ‘Oxford Constitutional Law: Israel: Legal Response to Covid’, *Oxford Constitutional Law* (2022) para 21 <<https://oxcon.ouplaw.com/view/10.1093/law-occ19/law-occ19-e13?rskey=mjtLys&result=2&prd=OXCON>> accessed 15 November 2022; Israel My Home Ltd (PBC) v Government of Israel [2021] High Court of Justice 5469/20 HCJ (HCJ).

4.9 LIBERIA (EBOLA)

Key policies: Special Statement by President Ellen Johnson Sirleaf On the Ebola Situation in the Country (30 July 2014);²⁶⁰ Joint Declaration of Heads of State and Government of the Mano River Union for the Eradication of Ebola in West Africa (1 August 2014);²⁶¹ Declaration of the public emergency (6 August 2014);²⁶² Curfew and quarantine imposed in an area of the capital Monrovia on 20 August 2014.²⁶³

Public Health Emergency threatening the life of the nation

On 6 August 2014, Liberia declared a state of emergency to face the spread of the Ebola virus just before WHO declared a Public Health Emergency of International Concern on the 8th August.²⁶⁴ This proclamation happens as the country is experiencing its “largest outbreak in terms of geographical spread” and the number of cases is exponentially increasing.²⁶⁵ In the words of the President in the declaration of the state of emergency, the country is experiencing an “unprecedented outbreak”, which “poses serious risks to the health, safety, security and welfare of [the] nation”, which could be understood to amount to a threat to the life of the nation.²⁶⁶ Moreover, the statement mentions the capacity of the virus to “affect [...] the existence, security, and well-being of the Republic amounting to a clear and present danger”.²⁶⁷

²⁶⁰Special Statement by President Ellen Johnson Sirleaf On the Ebola Situation in the Country 2014.

²⁶¹Madam Ellen Johnson Sirleaf and others, ‘Joint Declaration of Heads of State and Government of the Mano River Union for the Eradication of Ebola in West Africa’ (2014) <https://www.mofa.gov.lr/public2/2press.php?news_id=1216&related=7&pg=sp> accessed 30 September 2022.

²⁶²Statement on the Declaration of a State of Emergency by President Elle Johnson Sirleaf, R.L. 2014.

²⁶³‘Ebola Crisis: Liberia Orders Curfew and Quarantine’ *BBC News* (20 August 2014) <<https://www.bbc.com/news/world-africa-28862591>> accessed 30 September 2022.

²⁶⁴Statement on the Declaration of a State of Emergency by President Elle Johnson Sirleaf, R.L. 2014.

²⁶⁵‘Epidemiological Update: Outbreak of Ebola Virus Disease in West Africa, 21 August 2014’ (*European Centre for Disease Prevention and Control*, 21 August 2014) <<https://www.ecdc.europa.eu/en/news-events/epidemiological-update-outbreak-ebola-virus-disease-west-africa-21-august-2014>> accessed 29 June 2022.

²⁶⁶Statement on the Declaration of a State of Emergency by President Elle Johnson Sirleaf, R.L. 2014, para 1 and 2.

²⁶⁷Statement on the Declaration of a State of Emergency by President Elle Johnson Sirleaf, R.L. 2014, para 7.

Liberia did not notify State parties to the ICCPR of Article 4 derogations.²⁶⁸ Yet, the state of emergency imposes human rights derogations, affirming that “under this state of emergency, the government will institute extraordinary measures, including, if need be, the suspensions of certain rights and privileges.”²⁶⁹ In practice, measures imposed by the government during the Ebola crisis range from curfew, to quarantine of exposed people, isolation of infected persons, surveillance, border closures, or lockdown of entire communities.²⁷⁰ In particular, on 19 August 2014, the government ordered a 21-day quarantine in Monrovia, which was very controversial (see proportionality and necessity Section. The lockdown was lifted after 10 days).²⁷¹

Temporary Period, Based on a Legal Framework and Parliamentary Review

The President of Liberia declared a state of emergency for a “90-day period”.²⁷² The state of the emergency declaration issued by the President, based itself on Article 86(a) and (b) of the Constitution of the Republic of Liberia, which provides that the President may declare a state of emergency, and accordingly “suspend or affect” certain rights and freedoms when there is a “civil unrest affecting the existence, security or well-being of the Republic”.²⁷³ Moreover, the statement affirms that the Declaration will be immediately forwarded to the National Legislature “accompanied by an explanation of the facts and circumstances leading to the Declaration.”²⁷⁴

Proportionality and Necessity

Though the outbreak was the “largest” experienced by Liberia, some have questioned the efficiency of quarantine and isolation measures, which raise doubts on their proportionality and

²⁶⁸‘Depositary Notifications (CNs) by the Secretary-General’ (*United Nations Treaty Collection*) <https://treaties.un.org/Pages/CNs.aspx?cnTab=tab2&clang=_en> accessed 24 June 2022.

²⁶⁹Statement on the Declaration of a State of Emergency by President Elle Johnson Sirleaf, R.L. 2014, para 8.

²⁷⁰James G Hodge and others, ‘Efficacy in Emergency Legal Preparedness Underlying the 2014 Ebola Outbreak’ (2014) 2 Texas A&M Law Review 353, 362 <<https://heinonline.org/HOL/P?h=hein.journals/twlr2014&i=787>> accessed 30 September 2022.

²⁷¹James G. Hodge and others, ‘Global Emergency Legal Responses to the 2014 Ebola Outbreak: Public Health and the Law’ <https://go.gale.com/ps/retrieve.do?tabID=T002&resultListType=RESULT_LIST&searchResultsType=SingleTab&hitCount=1&searchType=AdvancedSearchForm¤tPosition=1&docId=GALE%7CA401904462&docType=Article&sort=RELEVANCE&contentSegment=ZEAI-MOD1&prodId=EAIM&pageNum=1&contentSet=GALE%7CA401904462&searchId=R1&userGroupName=hei&inPS=true> accessed 29 June 2022.

²⁷²Statement on the Declaration of a State of Emergency by President Elle Johnson Sirleaf, R.L. 2014, para 8.

²⁷³Statement on the Declaration of a State of Emergency by President Elle Johnson Sirleaf, R.L. 2014, para 8; Constitution of Liberia 1986 Article 86.

²⁷⁴Statement on the Declaration of a State of Emergency by President Elle Johnson Sirleaf, R.L. 2014, para 9.

necessity.²⁷⁵ In the emergency declaration, no direct or indirect reference is made to the principles of proportionality and necessity. Only the Article 86(a) of the Constitution, on which the governmental measures are based on, vaguely refers to the principles, stating that the suspensions or affection of rights and freedoms are subject to limitations of Chapter IX of the Constitution and that the emergency powers must be used in a “necessary and appropriate” manner. In practice, it has been reported that “data based on the 2014 EVD [Ebola Virus Disease] outbreak in Liberia” suggests “that isolation alone is insufficient to contain the disease”.²⁷⁶ Further, the delay in implementing isolation measures or the lack of strict implementation resulted in contamination. In the same vein, border closure could appear disproportionate as these types of measures are judged ineffective to stop the spread of the Ebola virus and limit importation of health care workers, food, and medical supplies.²⁷⁷ Finally, necessity and proportionality of the lockdown implemented in Monrovia can also be questioned, as lockdowns are “more likely to be counterproductive to public health by fueling public panic and distrust”.²⁷⁸

²⁷⁵ James G Hodge and others, ‘Efficacy in Emergency Legal Preparedness Underlying the 2014 Ebola Outbreak’ (2014) 2 Texas A&M Law Review 353 <<https://heinonline.org/HOL/P?h=hein.journals/twlr2014&i=787>> accessed 30 September 2022.

²⁷⁶ James G Hodge and others, ‘Efficacy in Emergency Legal Preparedness Underlying the 2014 Ebola Outbreak’ (2014) 2 Texas A&M Law Review 353, 371 <<https://heinonline.org/HOL/P?h=hein.journals/twlr2014&i=787>> accessed 30 September 2022.

²⁷⁷ James G Hodge and others, ‘Efficacy in Emergency Legal Preparedness Underlying the 2014 Ebola Outbreak’ (2014) 2 Texas A&M Law Review 353, 373 <<https://heinonline.org/HOL/P?h=hein.journals/twlr2014&i=787>> accessed 30 September 2022.

²⁷⁸ Esther Pearson, ‘Towards Human Rights-Based Guidelines for the Response to Infectious Disease Epidemics: Righting the Response’ (2018) 24 Australian journal of human rights 201, 213.

4.10 GUATEMALA (TROPICAL STORM ETA)

Key policies: The key policies relating to the natural disasters and the response to the subsequent public health emergency are few at this time but include the immediate disaster response, the evidence of funding and direct action, and Guatemala's General Disaster Risk Management framework released to address similar issues.²⁷⁹

Introduction and Overview of the Measures

The Guatemalan Public Health Emergency is unique to our data set as it revolves around displacement and sanitation/healthcare access reduction resulting from natural disasters that have taken place in the country. The disasters are wide ranging in time frame and scope but the analysis has focused mostly on the response to tropical storm Eta which has caused deaths and severe damage to communities within Guatemala starting from 30 October, 2020 and extending even into the most current reports.²⁸⁰ The disaster constitutes a Public Health Emergency because of the health concerns faced by the affected population as they lose access to adequate health facilities, sanitation facilities, and are forced to reside in shelters that aid the rapid spread of disease and viruses such as COVID-19.²⁸¹ The measures that address this issue are largely reactionary and are funded by foreign countries or organizations. The dominant feature of the policies is providing supply and rescue assistance for affected populations within the

²⁷⁹Secretaría Ejecutiva De La Coordinadora Nacional Para La Reducción De Desastres, 'Marco Nacional De Recuperación' (Conred 2020) <<https://conred.gob.gt/>>

²⁸⁰ PAHO, 'The Ministry of Health and Paho/WHO in Guatemala Join Efforts to Respond to the Health Emergency Caused by Tropical Storm Eta,' PAHO/WHO | Pan American Health Organization (November 2020), <<https://www.paho.org/en/stories/ministry-health-and-pahowho-guatemala-join-efforts-respond-health-emergency-caused-tropical>>; accessed 15 May, 2022

²⁸¹Lucía Escobar, 'The impact of hurricanes Eta and Iota' (1 March, 2021) <<https://www.unicef.org/lac/en/stories/impact-of-hurricanes-eta-and-iota>>; accessed 30 October, 2022

country.²⁸² Refugees in other nations have largely been aided by those nations or foreign programs.²⁸³

State of Emergency that Threatens the Life of a Nation

Guatemala declares States of calamity for things ranging from terrorist threats to recent flooding which prompted a thirty day declaration of a “state of calamity” on 22 June 2022.²⁸⁴ The power to make these declarations and the powers granted to the government in these States of calamity are outlined in the Guatemalan Constitution specifically in Article 138, which stipulates the limitation of constitutional rights in a state of calamity and outline procedures for the decree.²⁸⁵ The For tropical storm Eta a thirty day state of calamity was declared on 31 October, 2020.²⁸⁶ This declaration did not specifically stipulate that the issue was a Public Health Emergency but the Pan American Health Organization has described the disaster as a Public Health Emergency following reports of the damage caused in the country and so reporting procedures to other ICCPR members are unclear due to terminology and nature of the emergency.²⁸⁷

Specific State Actions

²⁸² UNICEF, ‘Response to Hurricanes ETA and Iota - UNICEF,’ Response to Hurricanes Eta and Iota Consolidated Emergency Report 2021 (UNICEF, March 2021), <<https://open.unicef.org/sites/transparency/files/2022-04/Response%20to%20Hurricanes%20Eta%20and%20Iota%20CER%202021.pdf>> ; accessed 02 November, 2022; USAID, ‘Hurricanes Iota and ETA: Humanitarian Assistance,’ U.S. Agency for International Development (February 5, 2021), <<https://www.usaid.gov/humanitarian-assistance/hurricanes-iota-eta>> ; accessed 02 November, 2022

²⁸³ Sandra Cuffe, ‘Fleeing the Pandemic and Two Hurricanes, Thousands of Migrants Walk toward the U.S.,’ Los Angeles Times (Los Angeles Times, January 16, 2021), <<https://www.latimes.com/world-nation/story/2021-01-16/fleeing-the-pandemic-and-two-hurricanes-thousands-of-migrants-walk-toward-the-united-states>> ; accessed 10 October, 2022

²⁸⁴ U.S. Embassy Guatemala, ‘Weather Alert: State of Public Calamity Declared Due to Heavy Rains (June 24, 2022),’ (June 24, 2022), <<https://gt.usembassy.gov/weather-alert-state-of-public-calamity-declared-due-to-heavy-rains-june-24-2022/>> accessed 28 October, 2022

²⁸⁵ Constitution of Guatemala (1993) Article 138 <https://www.constituteproject.org/constitution/Guatemala_1993.pdf>

²⁸⁶ IFRC, ‘Guatemala: Hurricane Eta & Iota - Emergency Appeal n° MDR43007, Operations Update No. 2 - Guatemala,’ ReliefWeb (January 21, 2021), <<https://reliefweb.int/report/guatemala/guatemala-hurricane-eta-iota-emergency-appeal-n-mdr43007-operations-update-no-2>> ; accessed 22 October, 2022

²⁸⁷ PAHO, ‘The Ministry of Health and Paho/WHO in Guatemala Join Efforts to Respond to the Health Emergency Caused by Tropical Storm Eta,’ PAHO/WHO | Pan American Health Organization (November 2020), <<https://www.paho.org/en/stories/ministry-health-and-pahowho-guatemala-join-efforts-respond-health-emergency-caused-tropical>> ; accessed 15 May, 2022

The state of calamity empowered departments of government to use available funds with greatly reduced restrictions.²⁸⁸ The funds were used to facilitate search and rescue procedures, implement rebuilding projects, and provide seeds and other necessary items for affected areas to reestablish their agricultural industries.²⁸⁹ The majority of funding and direct cash assistance came from charitable contributions from outside actors such as the European Union and humanitarian organizations.²⁹⁰ Programs assisted all affected populations with an emphasis on citizens under five years old indicating no discrimination beyond what was deemed proportionally necessary.²⁹¹

Based on Scientific Evidence

As the majority of actions appeared to come through external actors and internal action was largely funded by those actors, the government policies available for analysis were very sparse. Scientific evidence was not often considered beyond the recognition of citizens under five as being more vulnerable as a population but even this factor is only mentioned by the PAHO.²⁹² Destruction of approximately 3% of some agricultural sectors provided the basis for government action to provide materials for reseeded farmland.²⁹³

Interpretation

²⁸⁸ U.S. Embassy Guatemala, 'Please See This Link for an Update on Guatemala's State of Calamity Declaration, Border Closings, the Nationwide Curfew, and Blockades,' (January 8, 2022), <<https://gt.usembassy.gov/please-see-this-link-for-an-update-on-guatemalas-state-of-calamity-declaration-border-closings-the-nationwide-curfew-and-blockades/>> ; accessed 28 October, 2022

²⁸⁹ Episcopal Relief & Development, 'Episcopal Relief & Development Supports Response to Hurricane Eta in Central America - Guatemala,' Relief Web Report (November 20, 2020), <<https://reliefweb.int/report/guatemala/episcopal-relief-development-supports-response-hurricane-eta-central-america>> ; accessed 28 October, 2022

²⁹⁰ Sandra Cuffe, 'Fleeing the Pandemic and Two Hurricanes, Thousands of Migrants Walk toward the U.S.,' (Los Angeles Times, January 16, 2021), <<https://www.latimes.com/world-nation/story/2021-01-16/fleeing-the-pandemic-and-two-hurricanes-thousands-of-migrants-walk-toward-the-united-states>> ; accessed 15 October, 2022

²⁹¹ PAHO, 'The Ministry of Health and Paho/WHO in Guatemala Join Efforts to Respond to the Health Emergency Caused by Tropical Storm Eta,' PAHO/WHO | Pan American Health Organization (November 2020), <<https://www.paho.org/en/stories/ministry-health-and-pahowho-guatemala-join-efforts-respond-health-emergency-caused-tropical>> ; accessed 15 May, 2022

²⁹² PAHO, 'The Ministry of Health and Paho/WHO in Guatemala Join Efforts to Respond to the Health Emergency Caused by Tropical Storm Eta,' PAHO/WHO | Pan American Health Organization (November 2020), <<https://www.paho.org/en/stories/ministry-health-and-pahowho-guatemala-join-efforts-respond-health-emergency-caused-tropical>> ; accessed 15 May, 2022

²⁹³ USDA. 'Preliminary Assessment of Eta and Iota Tropical Depressions Impact on Guatemalan Agriculture.' United States Department of Agriculture Foreign Agricultural Service(December 7, 2020) <https://apps.fas.usda.gov/newgainapi/api/Report/DownloadReportByFileName?fileName=Preliminary%20Assessment%20of%20Eta%20and%20Iota%20Tropical%20Depressions%20Impact%20on%20Guatemalan%20Agriculture_Guatemala%20City_Guatemala_12-07-2020> ; accessed 08 October, 2022

The limitation of the derogations of rights during times of Public Health Emergencies largely considers the derogation to occur due to government action though perhaps consideration should be given to government inaction resulting in limiting or removing human rights. Additional consideration should be given to the responsibilities of governments to monitor and coordinate with the measures implemented by external actors.

4.11 BRAZIL (ZIKA)

Key policies: Ordinance No. 1,813, of 11 November 2015, which declares a Public Health Emergency of National Importance (ESPIN);²⁹⁴ Law 13.301/2016 Provides for the adoption of health surveillance measures when a situation of imminent danger to public health is verified by the presence of the mosquito that transmits the dengue virus, the chikungunya virus and the zika virus; and amends Law No. 6,437, of August 20, 1977.²⁹⁵

Introduction and Overview of the Measures

Zika virus outbreaks have emerged in a few countries, but the outbreak was more prominent in Brazil. It is a mosquito-borne disease which can spread amongst human and can result in neurological damage to unborn infants (microcephaly).²⁹⁶ The measures taken by Brazil contrasts from most of the measures studied in this report. Indeed, as Zika results from a Mosquito bite and can mainly be passed by infected pregnant women to their unborn child or via sexual relations, no measures such as lockdown, curfew, mandatory testing has been implemented. In fact, Brazilian fight against Zika focused on “the fight against the mosquito, [...] access to services for affected populations; and technological development, education, and research”.²⁹⁷ For example, response to fight the virus ranged from house inspections, to prevention programs, public bidding on treatment or creation of Centers Specialized in Rehabilitation.²⁹⁸ Human Rights Watch and other NGOs point out the gender discrimination that results from the measures (an heavier burden on women and girls in households effort to

²⁹⁴Minister of State of Health, Ordinance No. 1.813 (11 November 2015) 2015.

²⁹⁵Law No. 13.301 of June 27, 2016 2016 [13.301].

²⁹⁶Pedro A Villarreal, ‘Public Health Emergencies and Constitutionalism Before COVID-19: Between the National and the International’ in Richard Albert and Yaniv Roznai (eds), *Constitutionalism Under Extreme Conditions: Law, Emergency, Exception* (Springer International Publishing 2020) 233 <https://doi.org/10.1007/978-3-030-49000-3_14> accessed 7 June 2022.

²⁹⁷‘Neglected and Unprotected: The Impact of the Zika Outbreak on Women and Girls in Northeastern Brazil’ (Human Rights Watch 2017) <<https://www.hrw.org/report/2017/07/13/neglected-and-unprotected/impact-zika-outbreak-women-and-girls-northeastern>> accessed 16 May 2022.

²⁹⁸Law No. 13.301 of June 27, 2016 2016 [13.301], Article 1; Eduardo J Gómez, Fernanda Aguilar Perez and Deisy Ventura, ‘What Explains the Lacklustre Response to Zika in Brazil? Exploring Institutional, Economic and Health System Context’ (2018) 3 *BMJ Global Health* e000862, 3 <<https://gh.bmj.com/content/3/5/e000862>> accessed 9 October 2022.

maintain a clean environment), the lack of information on the disease and the lack of reproductive rights (access to abortion notably for infected women).²⁹⁹

State of Emergency that Threatens the Life of a Nation

In the year 2015, 1608 cases of microcephaly were reported in Brazil. On 11 November 2015, Brazil declared Public Health Emergency of National Importance, with no mention of duration,³⁰⁰ few months before the WHO declared the virus an emergency of international concern on February 2016.³⁰¹ There is no direct or indirect reference of a “threat to the life of the nation” in the declaration of emergency. However, to justify the declaration, the document mentions that the emergency measures are taken “considering [...] the increase of cases” and their geographical spread.³⁰² Moreover, the statement mentions directly the IHR’s risk assessment of Annex 2 of IHR.³⁰³ The emergency statement provides for the establishment of a “Public Health Emergency Operations Centre (COES)”, in charge of planning, organizing and controlling the measures to respond to Zika.³⁰⁴

Based on a Legal Framework

According the ordinance, the declaration of Public Health Emergency was based on “the powers conferred upon [the Ministry of State of Health] by subparagraphs I and II of Article 87 of the Constitution”.³⁰⁵ Article 87 I and II do not provide for emergency situations nor extraordinary powers; it only provides that the Ministry “exercise guidance, coordination and supervision of the agencies and entities of the federal administration [...]” and “issue instructions for the enforcement of laws, decrees and regulations”.³⁰⁶

²⁹⁹See, for example, ‘Neglected and Unprotected: The Impact of the Zika Outbreak on Women and Girls in Northeastern Brazil’ (Human Rights Watch 2017) <<https://www.hrw.org/report/2017/07/13/neglected-and-unprotected/impact-zika-outbreak-women-and-girls-northeastern>> accessed 16 May 2022.

³⁰⁰Minister of State of Health, Ordinance No. 1.813 (11 November 2015) 2015, Article 1.

³⁰¹Eduardo J Gómez, Fernanda Aguilar Perez and Deisy Ventura, ‘What Explains the Lacklustre Response to Zika in Brazil? Exploring Institutional, Economic and Health System Context’ (2018) 3 BMJ Global Health e000862, 3 <<https://gh.bmj.com/content/3/5/e000862>> accessed 9 October 2022.

³⁰²Minister of State of Health, Ordinance No. 1.813 (11 November 2015) 2015, Introduction.

³⁰³Minister of State of Health, Ordinance No. 1.813 (11 November 2015) 2015, Introduction.

³⁰⁴Minister of State of Health, Ordinance No. 1.813 (11 November 2015) 2015, Article 2.

³⁰⁵Minister of State of Health, Ordinance No. 1.813 (11 November 2015) 2015.

³⁰⁶Constitution of the Federative Republic of Brazil 1988.

“The Public Health Emergency of National Importance [is declared] according to Decree No. 7616, of 17 November 2011”,³⁰⁷ which States that emergency statements can be declared in case of epidemiological situations.³⁰⁸ The declaration of emergency is not based on the usual Title V of the Constitution, which foresee “state of defense” and “state of siege”, as the emergency did not meet the criteria of “public order” or “social peace” (Article 136).³⁰⁹

Moreover, the Law of 27 June 2016, which implements a number of measures, is based on the Law No. 8.080, of September 19 1990, which regulates health related actions and services.³¹⁰

Judicial Remedies and Review

Some contestations have been made to Brazil’s response to the virus. In particular, the National Association of Public Defenders (ANADEP) questioned the constitutionality of Brazil’s policy to fight Zika virus in the Supreme Federal Court.³¹¹ ANADEP issued a recourse regarding Article 18 of Law 13.301/2016 which deals with the adoption of health surveillance measures. They consider the measures inadequate to “responding to an outbreak of considerable magnitude, with catastrophic consequences to the population’s health. First, because many public policies of wide access to health and social security do not reach the poor, they are most at risk of acquiring Zika. And second, because actions are planned without any budgetary allocation for their execution”.³¹² In particular, “the caput of Article 18 of Law 13,301/2016 unconstitutionally restricts its receipt to only three years, benefits only children with microcephaly, and not with other disorders identified as signs of congenital Zika syndrome,

³⁰⁷Minister of State of Health, Ordinance No. 1.813 (11 November 2015) 2015, Article 1; ‘Machine Translation of “Decree No. 7616, Of 17 November 2011” (Brazil)’ <<https://www.global-regulation.com/translation/brazil/2900791/decree-no.-7616%252c-of-17-november-2011.html>> accessed 12 October 2022.

³⁰⁸Machine Translation of “Decree No. 7616, Of 17 November 2011” (Brazil)’ <<https://www.global-regulation.com/translation/brazil/2900791/decree-no.-7616%252c-of-17-november-2011.html>> accessed 12 October 2022.

³⁰⁹Pedro A Villarreal, ‘Public Health Emergencies and Constitutionalism Before COVID-19: Between the National and the International’ in Richard Albert and Yaniv Roznai (eds), *Constitutionalism Under Extreme Conditions: Law, Emergency, Exception* (Springer International Publishing 2020) 233 <https://doi.org/10.1007/978-3-030-49000-3_14> accessed 7 June 2022.

³¹⁰Law No. 13.301 of June 27, 2016 2016 [13.301], Article 1.

³¹¹*Direct action of unconstitutionality 5581- Federal District* [2016] Superior Federal Court No 207.857/2016-AsJConst/SAJ/PGR.

³¹²Quote of Eduardo J Gómez, Fernanda Aguilar Perez and Deisy Ventura, ‘What Explains the Lacklustre Response to Zika in Brazil? Exploring Institutional, Economic and Health System Context’ (2018) 3, 3 *BMJ Global Health* e000862, 3 <<https://gh.bmj.com/content/3/5/e000862>> accessed 9 October 2022. Referring to *Direct action of unconstitutionality 5581- Federal District* [2016] Superior Federal Court No 207.857/2016-AsJConst/SAJ/PGR.

and prevents the receipt of the benefit concomitantly with the maternity salary”.³¹³ While deciding that the claimant was illegitimate,³¹⁴ the Court found 1) the mention of a maximum duration of 3 years of receiving the benefits in case of disability was unconstitutional, based on the precautionary principles on the lack of scientific evidences as for the transmission of the virus and the duration of the effects;³¹⁵ 2) and that the interruption of pregnancy in case of Zika virus infection must be recognized, based on (amongst others) General Comment No 22 and WHO's Constitution mental health article.³¹⁶

In addition to this, on 19 September 2016, the Attorney general of the Republic filed a Direct Action of Unconstitutionality to the Federal Supreme Court regarding the provision of Law 13.301/2016 which allows the aerial dispersion of chemical products to fight the mosquito.³¹⁷ The Court decided to suspend the effectiveness of the rule contested.

Based on Scientific Evidence

No mention of any sort of basing decision on scientific evidence is made in the emergency declaration or the Law implementing health surveillance measures. The only vague reference to it could be the mention of “technical support” that the newly established Public Health Emergency Operations Centre (COES) will forward to the Minister of Health “regularly or upon request”.³¹⁸

³¹³Ascom/STF, ‘Public Defenders Question Law on Combating Diseases Transmitted by *Aedes Aegypti*’ (ANADEP, 26 August 2016) <<https://www.anadep.org.br/wtk/pagina/materia?id=29554>> accessed 13 October 2022. In 2020, Law 13,985 has abrogated the Article 18. See Law No. 13.985, of April 7, 2020 [No. 13,985].

³¹⁴*Direct action of unconstitutionality 5581- Federal District* [2016] Superior Federal Court No 207.857/2016-AsJConst/SAJ/PGR, 14.

³¹⁵*Direct action of unconstitutionality 5581- Federal District* [2016] Superior Federal Court No 207.857/2016-AsJConst/SAJ/PGR, part 3, 14-26.

³¹⁶*Direct action of unconstitutionality 5581- Federal District* [2016] Superior Federal Court No 207.857/2016-AsJConst/SAJ/PGR, part 4, especially p.40.

³¹⁷*Direct action of unconstitutionality Art 1§3, IV, of Law 13301/2016 Measures to combat the *Aedes aegypti* mosquito Aerial dispersion of chemicals* Supremo Tribunal Federal No 217.187/2016-AsJConst/SAJ/PGR; Bruno C Dias, ‘Procuradoria Geral Da República Ingressa Com ADIs Em Defesa Da Saúde Da População’ (ABRASCO, 25 September 2016) <https://www.abrasco.org.br/site/noticias/movimentos-sociais/pgr_agrotoxicos_orcamento_impositivo/20521/> accessed 13 October 2022. Eduardo J Gómez, Fernanda Aguilar Perez and Deisy Ventura, ‘What Explains the Lacklustre Response to Zika in Brazil? Exploring Institutional, Economic and Health System Context’ (2018) 3 *BMJ Global Health* e000862, 3 <<https://gh.bmj.com/content/3/5/e000862>> accessed 9 October 2022.

³¹⁸Minister of State of Health, Ordinance No. 1.813 (11 November 2015) 2015, Article 3(III).

4.12 MALAWI (MALARIA)

Key policies: Malaria Strategic Plan 2011-2015 (2010);³¹⁹ National Malaria Control Programme 2018 Mass Distribution Campaign of Long Lasting Insecticidal Treated Mosquito Nets in Malawi Implementation Strategy (January 2017);³²⁰ U.S. President's Malaria Initiative Malawi Malaria Operational Plan FY 2022.³²¹

Introduction and Overview of the Measures

Malawi is considered an endemic country for malaria and has been combating the disease in its policies starting with a National Malaria Control Programme in 1984 continuing into the present.³²² As Malaria remains the third highest cause of death in Malawi the efforts made for the prevention and treatment of the illness remains a high priority.³²³ The measures are characterized by strategic plans of action to reach specific rates of treatment or prevention and lack any particular regulations or requirements for the population. This more reserved approach may be based on transmission of malaria largely occurring by mosquito rather than human interaction, the length of time malaria has been a prevalent issue in the country, and the lack of emergency declaration indicating a less severe approach.

Additionally, though a more recent strategic plan could not be found to showcase the general efforts of Malawi, the *Malaria Strategic Plan 2011-2015 (2010)* should be representative of the current strategies if not the same precise numerical goals. The strategies in this plan included increasing rates of prompt access to artemisinin-based combination therapy,

³¹⁹Malaria Strategic Plan 2011 – 2015 Towards Universal Access (2010) <<https://endmalaria.org/sites/default/files/malawi2011-2015.pdf>>

³²⁰ 2018 Mass Distribution Campaign of Long Lasting Insecticidal Treated Mosquito Nets in Malawi (January 2017) <https://files.givewell.org/files/DWDA%202009/AMF/AMF_Malawi2018_Distribution_Plan_verJan18.pdf>

³²¹U.S. President's Malaria Initiative Malawi Malaria Operational Plan FY (2022) <<https://d1u4sg1s9ptc4z.cloudfront.net/uploads/2022/01/FY-2022-Malawi-MOP.pdf>>

³²² Chikondi A. Mwendera et al., 'Challenges to the Implementation of Malaria Policies in Malawi - BMC Health Services Research' (March 27, 2019) BioMedCentral <<https://bmchealthservres.biomedcentral.com/Articles/10.1186/s12913-019-4032-2>>

³²³Cameron Bowie, 'The Burden of Disease in Malawi' (September 2006) Malawi medical journal: the journal of Medical Association of Malawi <<https://www.ncbi.nlm.nih.gov/pmc/Articles/PMC3345623/>>

intermittent preventive treatment during pregnancy, long lasting insecticide treated nets, and indoor spraying with residual insecticides.³²⁴ Each of these strategies is not compulsory or legally required to be carried out by the populations but rather each health treatment is supplied free of charge at all government health facilities, the nets are distributed by aid organizations or government workers for free, and the insecticide is sprayed in area densely populated by mosquitos by government employees as well.³²⁵

Based on Scientific Evidence

The policies of Malawi to combat Malaria are heavily rooted in scientific evidence and are consistently updated in new renditions every five years citing the current rates of infection, the state of the distribution of relevant materials and services and sets specific quantifiable goals for what the next period of strategic action will hope to achieve.³²⁶

³²⁴Malaria Strategic Plan 2011 – 2015 Towards Universal Access (2010) P. 18
<https://endmalaria.org/sites/default/files/malawi2011-2015.pdf>

³²⁵Don P. Mathanga et al., ‘Malaria Control in Malawi: Current Status and Directions for the Future’ (*National Library of Medicine*, March 2012) <<https://www.ncbi.nlm.nih.gov/pmc/Articles/PMC3681411/#R15>>

³²⁶Don P. Mathanga et al., “Malaria Control in Malawi: Current Status and Directions for the Future” (*National Library of Medicine*, March 2012) <<https://www.ncbi.nlm.nih.gov/pmc/Articles/PMC3681411/#R15>> ; Malaria Strategic Plan 2011 – 2015 Towards Universal Access (2010) 12-19
 <<https://endmalaria.org/sites/default/files/malawi2011-2015.pdf>>

5. Analysis of General Trends

5.1 SUMMARY OF THE GENERAL TRENDS

This research has found that human rights have generally been completely marginalized in different PHE responses. Not only international legal instruments, the ICCPR, the Siracusa Principles and the IHR, are barely never mentioned, but “human rights” or civil and political rights are similarly never discussed in declarations of emergencies, emergency laws or statements. This General Analysis aims to highlight some of the general trends drawn from the present State-by-State analysis.

Almost all of the States under review have officially declared a PHE for different health issues. To our knowledge, China and Malawi have not declared a national emergency over, respectively, Covid-19 and Malaria. Some States have not declared an emergency under the terms of their Constitution but have enacted legislation that proclaims a state of emergency. This is the case, for example, for Ireland, which passed an emergency law or for France, which amended the Public Health Code to include a newly created state of health emergency.

Although the terms “threatens the life of the nation”, States usually indirectly refer to the idea under different terms. According to the paragraph 39 of the Siracusa principles, the threat to the life of the nation can be understood as something that affects the “whole population”, the “whole territory”, threatens the “physical integrity of the population” or the “existence of basic functioning of institutions”. Declarations of emergency have almost always referred to these, for example, by stating the number of deaths caused by a virus, by noting the geographical spread, or by mentioning the threats to the public health system, or the consequences. The declaration of the state of emergency is often subject to the condition that a harm is made to the population or the State, as it is the case in the Australian declaration, for example. None of the State studied notified the ICCPR for the derogations that they have made to the Convention during their PHE.

Regarding duration of the public health measures, a few States have completely omitted to mention the duration in their PHE statements or other regulation documents, while many have put time limits ranging from 14 days (Nigeria), 30 days (Guatemala), 90 days (Liberia), 3 months (Australia), 4 months (France), or 45 days (Israel).

Similarly, none of the policy responses studied explicitly mention the “strictly required by the exigency of the situation”-requirement. The term “proportionality” is rather absent from the policy wordings, with the exception of France, which Law mentions the “strictly proportionate” nature of the measures. States did reflect “necessity” more often, as it is often mentioned in the documents. Though, it is unlikely that the mention of “necessity” be made in relation to the Siracusa principles, as the wording does usually not reflect paragraphs 51 and 54 of the Siracusa principles.

Documents reviewed rarely provide for “prompt review [...] by the legislature of the necessity for derogation measures”, as provided in paragraph 55 of the Siracusa principles. In general, the declaration of emergency or the main emergency response law have been reviewed by a legislative body, but documents have, most of the time, not provided for the review of derogations made (i.e., United States Proclamation on Declaring an Emergency, Indonesian Coronavirus Law, Brazil Declaration of Emergency, etc.), nor for future review of the piece of law. Good practices can be drawn from Australia, which explicitly provides for reviews of the emergency declarations and of the Act itself in the Emergency Bill of 2020. France mentions some sort of parliamentary oversight by mentioning the ability of the parliament to “request complementary information to control or evaluate” the measures. If judicial review is barely ever mentioned, States judicial review seems to have been rather active in practice.

If International Law and instruments are never mentioned in the policies studied (except for indirect references, for example Brazil mentions the IHR’s risk assessment in Ordinance No. 1.813; some references have also been found in case law), almost all the document studied mention the domestic law they base the derogations on, as provided by the Article 42(1) of the IHR.

It seems that States have failed to reflect Article 42(2) of the IHR requiring States to base their emergency response on scientific evidence, their policy documents rarely mentioning scientific evidence per se. Some States mention the creation or support of a scientific committee (i.e.,

Brazil, France), or some indirect reference to scientific evidence (for example, Indonesia mentioning the “epidemiological considerations”). In practice, States have often based their regulations on scientific committees (such as Ireland, Australia) or rooted in scientific data (such as Malawi). Many of the documents studied also mention the WHO position, such as the characterization of the epidemic as a “Public Health Emergency of International Concern”.

There are then, naturally, more general perspectives drawn from this analysis as well. The IHRs, particularly Article 42 Implementation of Health Measures and Article 44 Collaboration and Assistance, were largely disregarded when it was most effective for a nation to act in its own interest and though the Siracusa Principle and ICCPR are not binding IHR are. The similar treatment of each document in the domestic policies introduced as a result of PHE appears to indicate that regardless of the legality the nations judged the consequences of violating the laws and agreements to be less than the consequences of failing to pursue their own national interests. This indicates the documents have failed to perform their exact purpose during global PHE.

5.2 CONCLUDING REMARKS AND RECOMMENDATIONS

The reflection of the ICCPR, Siracusa Principles, and IHR within PHE measures have been a product of happenstance most often and occasionally convenience. As explained in *Section 5.1*, reference to any aspects of the international documents relevant to this analysis were most often indirect through similar phrasing and largely occurred outside the policies themselves with developed nations publishing reviews and concerns on the websites of their various human rights offices. Not a single explicit reference to an IHR, Siracusa, or ICCPR Article or paragraph (as identified in the Table in Appendices 3 and 4) was located in any of the policies reviewed from any nation. The legally binding IHRs and the recommendations of the WHO were also only mentioned passively as a consideration in less than half of the State's policy documents. Moreover, there was frequent neglect of many of the core principles of the international laws and documents with international cooperation and coordination being sidelined in favor of nationalistic regulations to protect domestic citizens only in the Covid-19 pandemic. In smaller scale emergencies that affected only small numbers of countries,

international cooperation was more common with humanitarian efforts taking place in Guatemala or coordinated efforts between Malawi and the US to combat Malaria.

What we most clearly find in this analysis is that nations have regarded international law as suggestions and guidelines in their PHE and adhere to them only when it aligns with their objectives. States have generally failed to transcribe the main international law standards in their policies. As such it is the recommendation of this report that the following specific perspectives are the most relevant to consider in future Revisions of the Siracusa Principles and other related work by the ICJ:

- 1) **Definitions:** The Siracusa Principles provided essential clarifications on the terminology and phrasing used within the ICCPR but should further include information on what constitutes an “official proclamation” as per the requirements described in Siracusa II, A, para 42 (Article 4 ICCPR).
- 2) **Procedures:** The Siracusa Principles stipulates in Siracusa II, A, para 43 (Article 4 ICCPR) that a nation should have procedures to declare a state of emergency in advance of the emergency. These conditions are limiting as there are nations that are prevented from declaring a state of emergency in situations related to public health due to the narrow scope of their legislation such as in the case of Ireland or such as in France’s Constitution. Additionally, declarations of States of emergency which are temporary in nature, as per the requirements of Siracusa paragraph 45, require uniformity in application to the whole of an emergency despite nations having regional differences in both the extent of the emergencies and the derogations of certain rights. The legal review of emergency measures indicated by Siracusa, paragraphs 61 and 64 which each describe the measures undertaken in an emergency as being subject to the legal constraints of the nation are additionally restricting as they require normal function of legislature and judicial entities during PHE which may not be possible due to either circumstance or the nature of a country’s emergency powers.
- 3) **Rules:** Siracusa paragraphs 67 and 69 each indicate requirements of court proceedings which could exacerbate PHE such as the “right to be present” at a trial. Digital conferencing was a medium for many trials during the Covid-19 Pandemic and specific provisions to incorporate technology as a compensator for the derogation of similar rights should be incorporated.

The cause of this failure may be a result of several factors such as the general nature, vagueness, low risk of violation, and outdated language. The general nature of each document implies largely that each nation should be similar in terms of procedure, reporting, evidence availability and the presence of relevant laws in advance of unknowable emergencies. This is not the case as seen from the State-by-State analysis. In terms of vagueness, there is the use of criteria across the documents which State to do what is “proportional” or “necessary” and self-monitor themselves to fit those criteria despite that action not being conclusive, according to the Siracusa Principles. The language seems to imply heavy subjectivity on what measures will be proper and when they will be proper, instead leaving only as sentiment rather than an understandable set of checks and balances against the State’s derogation of rights.

The low risk of violation is clear as each State, save for Malawi, has in at least one instance violated international law or neglected the expert principles. The consequences of these actions have been minimal if at all visible, showcasing the authority of each document as equally minimal during PHE. Finally, the outdated language presents an important point of consideration for future revisions. At the time of the creation of the ICCPR and Siracusa Principles technology was nowhere near the scale of integration into society as it is today. The ability of each nation to interact, report, and receive advice from international organizations such as the WHO has been magnified exponentially leaving many implications for the future of human rights in PHE. Data is severely vulnerable in online databases, legal representation and proceedings can occur using web conferencing, surveillance of a population is increasingly easy and invasive, and public opinion is readily available in any nation with widespread internet use.

Each of these conditions should be carefully considered in the work of the ICJ if the updated or newly written documents are to accomplish the ultimate goals of mitigating the derogation of human rights and protecting the global population in PHE.

6. Appendices

6.1 APPENDIX 1: LITERATURE REVIEW AND LEGAL FRAMEWORK

Interlink and Tensions Between Human Rights and Health

The IHRL and the GHF frameworks have been developed as separate frameworks. While IHRL emerged in response to the atrocities committed during World War II with the 1948 Universal Declaration of Human Rights (UDHR) and subsequently with the 1966 ICCPR and the ICESCR; health was firstly addressed by the International Sanitary Regulations of 1903 (the ancestor of the IHR) to respond to globalization and its consequent increase of trans-border spread of diseases. Later, a major landmark of GHF was the establishment of the World Health Organization (WHO) in 1948. However, while the WHO revised at many instances the IHR, it was only in 2005 that the IHR integrated human rights concerns.

In fact, though the human rights and global health frameworks appear separate, a strong relationship or interlinkage has been largely recognized between the two. Indeed, it is widely acknowledged that the respect of human rights, such as freedom from torture or freedom of assembly, is a guarantee of health.³²⁷ Similarly, policies and measures to respond to health emergencies have a direct impact on the enjoyment – or lack thereof- of human rights.³²⁸ This relationship is only poorly reflected in GHF and IHRL, though the right to the “highest attainable standard of health” is a fundamental part of the IHRL, and the last revision of the IHR in 2005 integrated human rights concerns in the regulation of PHE.

³²⁷JM Mann, ‘Health and Human Rights.’ (1996) 312 *BMJ: British Medical Journal* 924, 924 <<https://www.ncbi.nlm.nih.gov/pmc/Articles/PMC2350785/>> accessed 17 June 2022; ‘25 Questions & Answers on Health & Human Rights’ <<https://www.opensocietyfoundations.org/publications/25-questions-answers-health-human-rights>> accessed 13 June 2022.

³²⁸‘25 Questions & Answers on Health & Human Rights’ <<https://www.opensocietyfoundations.org/publications/25-questions-answers-health-human-rights>> accessed 13 June 2022; Lisa Oldring and Scott Jerbi, ‘Advancing a Human Rights Approach on the Global Health Agenda’ [2009] *Realizing the Right to Health*. Edited by Zurich Uo.

Under international law, States have a duty to adopt measures to combat health-related emergencies.³²⁹ Article 31(3)(c) of the VCLT more generally requires a "systemic" and "holistic" approach to interpreting international law standards emanating from different bodies of international law. Health measures can, depending on necessity and when adequately proportional, range from immunization programs, to testing, quarantines or isolation measures.³³⁰ Acknowledging the threat that emergencies can pose on a nation, the IHRL framework recognizes that human rights can be limited in such circumstances, as long as States comply with the defined requirements (See 3.2 Current legal framework). Yet, a number of scholars and non-governmental organizations (NGO) have criticized the overwhelming marginalization of human rights in PHE measures.³³¹ Examining the operationalization of human rights in public health policy across the 20th and 21st centuries in various emergency health events and the responses by national and international governing bodies, we see lines drawn between what can be done, what must be done, what should never be done, and the differing opinions at every boundary.³³²

In fact, some have explained this lack of human rights consideration by States as explained by the “securitization” of health emergency responses. The mid-21st century and the increasing spread of new transmissible and virulent diseases³³³ has witnessed a shift towards a “security”-centered perspective of public health, which opened the gate to “politics of fear and an assumed lowering of applicable standards of human rights protection”.³³⁴ Some argue that this

³²⁹International Covenant on Economic, Social and Cultural Rights 1966 [993 UNTS 3] Article 12; WHO, International Health Regulations 2005 [ISBN 9789241580496].

³³⁰Gian Luca Burci, ‘Human Rights Implications of Governance Responses to Public Health Emergencies: The Case of Major Infectious Disease Outbreaks’, *Realizing the right to health* (2009) 349.

³³¹See for example: Benjamin Mason Meier, Dabney P Evans and Alexandra Phelan, ‘Rights-Based Approaches to Preventing, Detecting, and Responding to Infectious Disease’ (2020) 82 *Infectious Diseases in the New Millennium* 217, 217 <<https://www.ncbi.nlm.nih.gov/pmc/Articles/PMC7226904/>> accessed 20 June 2022; Eric Richardson and Colleen Devine, ‘Emergencies End Eventually: How to Better Analyze Human Rights Restrictions Sparked by the COVID-19 Pandemic Under the International Covenant on Civil and Political Rights’ (2021) 42 *Michigan Journal of International Law* 105, 105 <<https://repository.law.umich.edu/mjil/vol42/iss1/4>>.

³³²Benjamin Mason Meier, Dabney P Evans and Alexandra Phelan, ‘Rights-Based Approaches to Preventing, Detecting, and Responding to Infectious Disease’ (2020) 86 *Infectious Diseases in the New Millennium* 217, 217 <<https://www.ncbi.nlm.nih.gov/pmc/Articles/PMC7226904/>> accessed 20 June 2022

³³³ Some of the explanations of the security lens adopted in relation to public health have been suggested by Fidler and Zacher. They have been summarized by Fournie and O’Manique; they include the fear of bioweapons, the spread of diseases such as HIV/AIDS, SARS or H5N1, the virulence of pandemic diseases, the increasing participation of civil society actors and private actors, the better ability to detect disease through surveillance, etc. See Colleen O’ Manique and Pieter Fournie, ‘Security and Health in the Twenty-First Century’, *The Routledge Handbook of Security Studies* (Routledge 2009) 246.

³³⁴Patrycja Dąbrowska-Kłosińska, ‘The Protection of Human Rights in Pandemics—Reflections on the Past, Present, and Future’ (2021) 22 *German Law Journal* 1028, 1029

securitization of health responses emerged particularly while addressing the HIV pandemic,³³⁵ for example, when the UN Security Council discussed the impact of AIDS on security issues.³³⁶ Lately, this securitization has been reflected in Covid-19 responses, for example, when the French President declared the country “at war” against the virus,³³⁷ when China engaged to win a “People’s War”,³³⁸ or when the United States President labeled himself “a wartime president”.³³⁹

Current Legal Framework: Public Health Emergency Responses in the ICCPR, Siracusa Principles, and IHR

To balance the protection of global health and the enjoyment of human rights, the international community has sought to regulate the circumstances in which States could limit or derogate from their human rights obligations. This section will provide an overview of the international instruments that will form the basis of this report: (1) the ICCPR, which is composed of an Article 4 on derogations and of specific limitation clauses contained in certain human rights provisions; (2) the Siracusa principles, and (3) the IHR.

First, the ICCPR forms one of the main treaties of IHRL. It is a binding instrument which is widely ratified as, to date, 173 States have ratified it. It seeks to protect civil and political rights, including the right to life, freedom of religion, peaceful assembly or physical integrity. Its Article 4 anticipates *derogations* to human rights obligations in case of Public Health Emergency. To derogate from its obligations under the Convention, the situation must meet certain criteria: (a) it is a “time of emergency that threaten the life of the nation”; (b) the State has “officially proclaimed” a state of emergency; (c) the derogations are “strictly required by

<<https://www.cambridge.org/core/journals/german-law-journal/article/protection-of-human-rights-in-pandemicsreflections-on-the-past-present-and-future/DA037B13FD060CEF8511E77FB2DFA1E5>> accessed 16 May 2022.

³³⁵Colleen O’ Manique and Pieter Fournie, ‘Security and Health in the Twenty-First Century’, *The Routledge Handbook of Security Studies* (Routledge 2009) 246.

³³⁶‘Security Council Holds Debate on Impact of AIDS on Peace and Security in Africa’ *UN Press* (10 January 2000) <<https://press.un.org/en/2000/20000110.sc6781.doc.html>> accessed 28 October 2022. See also Colin McInnes and Simon Rushton, ‘HIV/AIDS and Securitization Theory’ (2013) 19 *European Journal of International Relations* 115, 115 <<https://doi.org/10.1177/1354066111425258>> accessed 28 October 2022.

³³⁷‘Macron: “We Are at War”’ *BBC News* <<https://www.bbc.com/news/av/51917380>> accessed 30 June 2022.

³³⁸‘In “People’s War” on Coronavirus, Chinese Propaganda Faces Pushback’ *Reuters* (13 March 2020) <<https://www.reuters.com/article/us-health-coronavirus-china-propaganda-a-idUSKBN2100NA>> accessed 28 October 2022.

³³⁹‘Trump Labels Himself “a Wartime President” Combating Coronavirus’ *POLITICO* (18 March 2020) <<https://www.politico.com/news/2020/03/18/trump-administration-self-swab-coronavirus-tests-135590>> accessed 28 October 2022.

the exigency of the situation”; (d) the measures are “not inconsistent with their obligations under international law”; (e) they do not involve discrimination; (f) certain rights cannot be subject to derogation ; (g) and finally, the State implementing derogative measures must inform the other State parties to the Convention.

Outside of a proclaimed state of emergency, the ICCPR authorizes States to *limit* the enjoyment of certain human rights under particular conditions, including for public health reasons. The main difference with the derogation provided by Article 4 remains in the fact that States do not need to declare a PHE, nor notify other States to limit human rights, which allows it to escape scrutiny and duration limits.³⁴⁰ It is the case, for example, for the freedom of movement, which can be restricted if restrictions are “provided by the law, [...] necessary to protect [...] public health [...] and are consistent with the other rights recognized in the [...] Convention.” (Art 12(3)). Other limitations for public health reasons are provided in relation to the freedom of manifesting religion (Article 18), the freedom of expression and information (Article 19); the right to peaceful assembly (Article 21), and the right to freedom of association (Article 22). In addition to this, although the Article 17 on the right to privacy does not expressly provide for limitations for public health reasons, it does only protect “arbitrary interference” rather than “any” interference.³⁴¹

Over the years, General Comments developed by the Human Rights Committee, though not legally binding, have supported States in the interpretation of ICCPR derogations and limitations. The General Comment No 29 on derogations during States of emergency provides some additional guidance on the implementation of Article 4, and in particular, emphasizes the “temporary nature” and “strictly required by the exigencies of the emergency”-character of derogations.³⁴² The General Comments No 16 on the right to respect privacy, No 22 on freedom of thoughts, conscience or religion, No 27 on freedom of movement, No 34 on freedom of opinion and expression, General Comment 36 regarding the right to life, and No 37 on peaceful

³⁴⁰Eric Richardson and Colleen Devine, ‘Emergencies End Eventually: How to Better Analyze Human Rights Restrictions Sparked by the COVID-19 Pandemic Under the International Covenant on Civil and Political Rights’ (2021) 42 Michigan Journal of International Law 105, 110 <<https://repository.law.umich.edu/mjil/vol42/iss1/4>>.

³⁴¹Eric Richardson and Colleen Devine, ‘Emergencies End Eventually: How to Better Analyze Human Rights Restrictions Sparked by the COVID-19 Pandemic Under the International Covenant on Civil and Political Rights’ (2021) 42 Michigan Journal of International Law 105, 113 <<https://repository.law.umich.edu/mjil/vol42/iss1/4>>.

³⁴²CCPR General Comment No. 29: Article 4: Derogations during a State of Emergency 2001 [CCPR/C/21/Rev.1/Add.11] paras 2 and 4.

assembly similarly address the implementation of limitation clauses or further solidify the connections between health, human rights, and the obligations of States.

Secondly, in 1985, the “abuse of applicable provisions allowing governments to limit and derogate from certain rights contained in the ICCPR” affected the creation of the Siracusa Principles, which sought to further examine the conditions and grounds to *limit* (Part I) and *derogate* (part II) from ICCPR human rights.³⁴³ Although the Siracusa Principles are non-binding, they provide a useful soft law instrument to interpret the ICCPR. It is also important to note that they are integrated within international law standards over time, including in the General Comments of the Human Rights Committee such as General Comment 29, which have also been applied in courts around the world.³⁴⁴

Finally, as an effort to address and guide States in their responses to infectious disease, the WHO issued IHR. It seeks to address States’ cooperation to prevent, protect and control the spread of diseases. The IHR were revised for the last time in 2005, to address the Severe Acute Respiratory Syndrome (SARS), and included for the first time provisions aiming at ensuring the consistency of responses to the human rights framework.³⁴⁵ While the Article 3 stipulates that the implementation of the Regulations should be made “with full respect for the dignity, human rights and fundamental freedoms”,³⁴⁶ Part VIII specifically addresses the grounds and requirements for the implementation of public health measures. In brief, this Part provides that measures shall be transparent, implemented in a non-discriminatory manner, based on scientific principles, reviewed every 3 months and be mindful of data protection (Articles 42-45).

Limits of the Current Framework

The present Covid-19 Pandemic has exposed and emphasized the weaknesses of the current legal framework regulating human rights derogation in times of PHE. Although Covid-19

³⁴³The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights 1984 [E/CN.4/1985/4] Introductory note.

³⁴⁴ Diego Silva and Maxwell Smith, ‘Commentary: Limiting Rights and Freedoms in the Context of Ebola and Other Public Health Emergencies: How the Principle of Reciprocity Can Enrich the Application of the Siracusa Principles’ (11 June, 2015) Health and Human Rights 17/1, <https://www.hhrjournal.org/2015/06/commentary-limiting-rights-and-freedoms-in-the-context-of-ebola-and-other-public-health-emergencies-how-the-principle-of-reciprocity-can-enrich-the-application-of-the-siracusa-principles/>

³⁴⁵Gian Luca Burci, ‘Human Rights Implications of Governance Responses to Public Health Emergencies: The Case of Major Infectious Disease Outbreaks’, *Realizing the right to health* (2009) 351.

³⁴⁶WHO, International Health Regulations 2005 [ISBN 9789241580496], Article 3.

undoubtedly reaches the threshold to derogate from or limit certain human rights, the worldwide documented abuses of governmental powers, the limitations of the liberty of movement through quarantines or isolation measures, or the extensive surveillance put in place raise questions about the efficiency of the current framework.³⁴⁷

In addition to the overall lack of compliance of States with international law requirements,³⁴⁸ the Siracusa Principles are criticized for broadly applying to all public emergencies rather than solely addressing the specificity of PHE.³⁴⁹ They additionally pertained only to the ICCPR and were written at a time that could not account for furthered complexities and policy behaviors of the 21st century brought on by modern technology and culture such as in the case of data privacy, geolocation tracing, and insecure digital publishing of disease testing results.³⁵⁰ Similarly, the IHR have come under criticism for being a conservative instrument constraining rapid action and for being largely ignored by States in the implementation of health responses.³⁵¹ For example, while the instrument encourage international cooperation and prohibits restriction on international traffic, States have largely contravened these indications during the Covid-19 Pandemic.³⁵² Finally, the IHRs have been revised or updated in a few instances to address certain criticism.³⁵³

³⁴⁷Laurence R Helfer, 'Rethinking Derogations from Human Rights Treaties' (2021) 115 *American Journal of International Law* 20 <<https://www.cambridge.org/core/journals/american-journal-of-international-law/article/rethinking-derogations-from-human-rights-treaties/9B1B3B3B304C7045C9F03FB9250D30B9>> accessed 30 June 2022.

³⁴⁸See for example Eric Richardson and Colleen Devine, 'Emergencies End Eventually: How to Better Analyze Human Rights Restrictions Sparked by the COVID-19 Pandemic Under the International Covenant on Civil and Political Rights' (2021) 42 *Michigan Journal of International Law* 105, 112 <<https://repository.law.umich.edu/mjil/vol42/iss1/4>>; Johnathan H Duff and others, 'A Global Public Health Convention for the 21st Century' (2021) 6 *The Lancet Public Health* 428.

³⁴⁹"Public Health" is only mentioned in the Limitation Clauses Part of the Siracusa principles, in its paragraph iv. No mention of "Health" is made in the Derogation Part, which means they apply to all "public emergencies". See also Nina Sun, 'Applying Siracusa' (2020) 22 *Health and Human Rights* 387, 387 <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7348455/>> accessed 29 May 2022.

³⁵⁰Carter, Karen and others, 'Digital Contact Tracing and Surveillance During COVID-19: General and Child-Specific Ethical Issues' (2020) Innocenti report brief no 2020-11 <<https://www.unicef-irc.org/publications/1098-digital-contact-tracing-surveillance-Covid-19-response-child-specific-issues-irb.html>> accessed 30 June 2022.

³⁵¹Preben Aavitsland and others, 'Functioning of the International Health Regulations during the COVID-19 Pandemic' (2021) 398 *Lancet* (London, England) 1283, 1283 <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8497022/>> accessed 30 June 2022.

³⁵²Lawrence O. Gostin, Benjamin Mason Meier, and Roojin Habibi, 'Has Global Health Law Risen to Meet the COVID-19 Challenge? Revisiting the International Health Regulations to Prepare for Future Threats' (2020) <<https://journals.sagepub.com/doi/10.1177/1073110520935354>> accessed 17 June 2022.

³⁵³WHO, 'International Health Regulations (IHR) Background' (*World Health Organization*, 2022) <<https://www.emro.who.int/international-health-regulations/about/background.html#:~:text=The%20IHR%20were%20first%20adopted,cholera%2C%20yellow%20fever%20and%20plague>> accessed 30 November 2022

The Covid-19 Pandemic has also encouraged States to agree, in December 2021, to strengthen pandemic prevention, preparedness and response with the establishment of a Pandemic Treaty.³⁵⁴ A number of NGOs and scholars have warned of the risk of the reproduction of the marginalization of human rights in the new GHIL framework.³⁵⁵

³⁵⁴ WHO, 'World Health Assembly Agrees to Launch Process to Develop Historic Global Accord on Pandemic Prevention, Preparedness and Response' (*World Health Organization*, 1 December 2021) <<https://www.who.int/news/item/01-12-2021-world-health-assembly-agrees-to-launch-process-to-develop-historic-global-accord-on-pandemic-prevention-preparedness-and-response>> accessed 30 June 2022.

³⁵⁵Tim Hodgson and others, 'Human Rights Must Guide a Pandemic Treaty' (*Opinio Juris*, 22 November 2021) <<http://opiniojuris.org/2021/11/22/human-rights-must-guide-a-pandemic-treaty/>> accessed 15 June 2022; Sara (Meg) Davis, 'An International Pandemic Treaty Must Centre on Human Rights' (*The BMJ*, 10 May 2021) <<https://blogs.bmj.com/bmj/2021/05/10/an-international-pandemic-treaty-must-centre-on-human-rights/>> accessed 15 June 2022; Article 19, 'International: Pandemic Treaty Must Prioritise Human Rights' (*Article 19*, 3 December 2021) 19 <<https://www.Article19.org/resources/open-letter-pandemic-treaty-must-prioritise-a-human-rights-approach/>> accessed 15 June 2022.

6.2 APPENDIX 2: STATE SELECTION

State	Lead	Emergency	Why has this State been picked?	Region	Declaration of emergency?	Overview of measures taken
Indonesia	Maëlle Lécurveuil	Covid-19	A number of human rights violations reported	Asia-Pacific	Yes, 31 March 2020	School closure, curfew, travel restrictions, tracking, etc.
United States	Henry Boone	Covid-19	Highly criticized and location of the largest death toll. Large restriction with little enforcement	North America	Yes, 31 January 2020	Partial closure of schools, gathering restrictions, tracking, partial travel ban, etc.
Ireland	Henry Boone	Covid-19	Basic measures and very limited enforcement (good European representation in social programs)	Western Europe	No	Partial closure of schools, gathering restrictions, tracking, partial travel ban, etc.
France	Maëlle Lécurveuil	Covid-19	Strong measures	Western Europe	Yes, 23 March 2020	Partial school closure, gathering restrictions, closure of coffee and restaurants, travel restrictions, tracking, etc.

China	Maëlle Lécurveuil	Covid-19	First lockdown, extreme measures	Asia-Pacific	No	Restrictions of freedom of movement, privacy violation, surveillance, lack of access to information, etc.
Israel	Maëlle Lécurveuil	Covid-19	Highly modernized policy response for a small nation	Middle East	Yes, 18 March 2020	Curfew, trackings, travel restrictions
Nigeria	Henry Boone	Covid-19	Large population and reports of civilian abuse	Africa	Yes 30 March 2020	Curfew, travel bans.
Australia	Henry Boone	Covid-19	Emphasis on human rights and highly criticized surveillance measures	Oceania	Yes, Biosecurity Emergency, 18 March 2020	Vaccine production and distribution, border closure, quarantines, stay at home, etc.
Liberia	Maëlle Lécurveuil	Ebola	Most affected country	Africa	Yes, August 2014	Quarantine zones, curfews, and lockdowns, forced medical tests on individuals, tracking, etc.
Guatemala	Henry Boone	Natural Disaster Caused Health Emergency	Largest population in Central America; natural disaster	Latin America	Yes, State of Calamity, 31 October 2020	External medical care provided. Donation of nutritional and emergency resources.

Mali	Henry Boone	Malaria	Has comparatively large amount of info on the health emergency and policies	Africa	No	Malaria Control Program. Medication supply increase, elimination of mosquito breeding grounds, and providing mosquito netting.
Brazil	Maëlle Lécureuil	Zika	Important Zika outbreak	Latin America	Yes, November 2015	Reproductive rights policy

6.3 APPENDIX 3: STATE-BY-STATE ANALYSIS TABLE

Excel table filled with State-by-State analysis downloadable via the link below:

[State-by-State Analysis Excel Table](#)

6.4 APPENDIX 4: ANALYSIS FRAMEWORK TABLE

Reference to international standards
Key policies
1. Derogation clauses
It is a “time of emergency that threatens the life of the nation” (ICCPR, Art 4) ; it is a "threat to the life of the nation" if it "(a) affects the whole of the population and either the whole or part of the territory of the state; and (b) threatens the physical integrity of the population, the political independence or the territorial integrity of the state or the existence of basic functioning of institutions". (Siracusa II, A, para 39)
The State has “officially proclaimed” a state of emergency (Art 4, ICCPR)
State shall notify the other States party to the Convention of derogations (ICCPR, Article 4 and Siracusa, para 44)
The "duration shall be mentioned in the notification" and the declaration should mention "the effective date of the imposition of the state of emergency and the period for which it has been proclaimed" (Siracusa para 45 and GC29, para 2)
The derogations are “strictly required by the exigency of the situation” (ICCPR, Art 4). "The severity, duration, and geographic scope of any derogation measure shall be such only as are strictly necessary to deal with the threat to the life of the nation and are proportionate to its nature and extent." (Siracusa, para 51) A measure is not strictly required by the exigencies of the situation where ordinary measures permissible under the specific limitations clauses of the Covenant would be adequate to deal with the threat to the life of the nation. (Siracusa, para 53) The principle of strict necessity shall be applied in an objective manner. Each measure shall be directed to an actual, clear, present, or imminent danger and may not be imposed merely because of an apprehension of potential danger. (Siracusa, para 54)
"The national constitution and laws governing states of emergency shall provide for prompt and periodic independent review by the legislature of the necessity for derogation measures." (Siracusa, para 55) and shall ensure available remedies (Siracusa, para 56)
The measures are “not inconsistent with their obligations under international law” (ICCPR, Art 4)
They do not involve discrimination (ICCPR, Art 4)
Certain rights cannot be subject to derogation (ICCPR, Art 4) No state party shall, even in time of emergency threatening the life of the nation, derogate from the Covenant’s guarantees of the right to life; freedom from torture, cruel, inhuman or degrading treatment or punishment, and from medical or scientific experimentation without free consent; freedom from slavery or involuntary servitude; the right not be imprisoned for contractual debt; the right not to be convicted or sentenced to a heavier penalty by virtue of retroactive criminal legislation; the right to recognition as a person before the law; and freedom of thought, conscience and religion. (Siracusa, para 58)

<p>The derogations must in accordance with the international and national law.</p> <p>"Derogation from rights recognized under international law in order to respond to a threat to the life of the nation is not exercised in a legal vacuum. It is authorized by the law and as such it is subject to several legal principles of general application" (Siracusa, para 61). See also IHR, Art 41.1.</p>
<p>2. Limitation clauses</p>
<p>Key measures out of the state of emergency</p>
<p>Rights subject to limitation under ICCPR: freedom of movement(Article 12(3)); freedom of manifesting religion (Article 18), the freedom of expression and information (Article 19); the right to peaceful assembly (Article 21), and the right to freedom of association (Article 22); the right to privacy (Article 17) only protect “arbitrary interference” rather than “any” interference.</p>
<p>Provided by the law (Siracusa, para 5)</p>
<p>No limitation shall be applied in an arbitrary manner (Siracusa, para 7)</p>
<p>Every limitation shall be subject to challenges & remedies (Siracusa, para 8)</p>
<p>No limitation shall discriminate (Siracusa, para 9)</p>
<p>Limitation must be necessary (legitimate and proportionate) (Siracusa, para 10)</p> <p>Whenever a limitation is required in the terms of the Covenant to be “necessary,” this term implies that the limitation:</p> <ul style="list-style-type: none"> (a) is based on one of the grounds justifying limitations recognized by the relevant article of the Covenant; (b) responds to a pressing public or social need; (c) pursues a legitimate aim; and (d) is proportionate to that aim.
<p>In applying a limitation, a state shall use no more restrictive means than are required for the achievement of the purpose of the limitation. (Siracusa, para 11)</p>
<p>3. IHR-specific requirements</p>
<p>The Public Health Emergency measures follow the principles of transparency (IHR, Art 42.1)</p>
<p>Non-discrimination (IHR, Art 42.1)</p>
<p>The measures are in accordance with national law and international law obligations (IHR, Art 41.1)</p>
<p>The measures are not restrictive of international traffic (IHR, Art 41.1)</p> <p>If measure significantly interfere with international traffic (refusal of entry, departure of international travelers, etc), the State shall provide WHO with public health rationale and relevant scientific information (Art 41.3)</p>
<p>The measures are not more invasive or intrusive to persons than reasonably available alternatives that would achieve an appropriate level of health protection; (IHR, Art 41.1)</p>
<p>The implementation of the measures shall be based on scientific principles and available scientific evidence; if not from guidance from the WHO or other IOs (IHR, Art 41.2)</p>
<p>Health measures shall be reviewed within 3 months to take into account WHO advise and precedent requirements (IHR, Art 41.6)</p>
<p>Data protection: shall be confidential but might disclose them if processed fairly and lawfully, not kept longer than necessary, etc. (IHR, Art 45).</p>

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7.1 STATE-BY-STATE ANALYSIS

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