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Human Rights during Public Health Crises

Legal Committee

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Introduction

The ongoing global public health crisis caused by the coronavirus disease 2019 (COVID-19), which was recognized as a “Public Health Emergency of International Concern” by the World Health Organization (WHO) in January of 2020 and as a pandemic in March of the same year, is probably the most serious public health crisis humanity has had to face in recent history. In an effort to manage the pandemic and its effects, most States around the world have enacted some form of emergency measures, which often resulted in derogations of personal, social and civil rights. Due to this situation, certain questions have arisen: How do we negotiate the balance between individual rights and necessary measures to protect public health? What are states’ obligations to protect their citizens’ health and provide healthcare? How do we ensure the preservation of the rule of law and the protection of civil and political rights during health emergencies? How has the socioeconomic impact of the pandemic affected the situation of human rights worldwide?

The Sixth Committee is *the primary forum for the consideration of legal questions in the General Assembly*, thus rendering the topic of “Human Rights during Public Health Crises” highly relevant to its Agenda. For the purposes of this study guide, we have reinterpreted the above questions and summarized them in the form of a legal question: how can existing human rights laws be observed and human rights be protected during a public health emergency?

Interest in Knowledge

Although there have been many major public healthcare crises in the 20th and 21st century (the most impactful of which have been the Spanish Flu outbreak of 1918-1920 and the HIV/AIDS epidemic), this paper will focus on the implications of the current ongoing global health crisis caused by the COVID-19 pandemic on human rights across the globe. Naturally, a debate on the issue of human rights during the current public health crisis is not only relevant to the present, but offers an opportunity for reflection on existing structures and human rights issues, as well as a chance to propose lasting solutions and best practices for similar crises in the future.

The unprecedented nature of the COVID-19 pandemic has abruptly brought a wide range of issues tangential to human rights into sharp focus. It has posed a novel challenge to the globalized, fundamentally interconnected world of the 21st century, drawing attention to our common humanity and vulnerability but also highlighting deeply entrenched inequalities and different approaches. In this paper, we will examine various kinds of human rights violations. Some of the issues that have arisen concern the state of civil and political rights across the globe and the erosion of the rule of law in the current state of emergency: some leaders have used the pandemic as an opportunity to expand their powers and unlawfully infringe on the civil and political rights of citizens, while the pandemic itself is a major threat to the rule of



law, as it poses a practical challenge for procedures such as elections and court hearings. At the same time, some of the most serious human rights crises unfolding on the planet right now are affecting already vulnerable populations, who suffer not only from the impact of COVID-19 on their health, but also from severe economic instability and discrimination.

Bear in mind that this is the Legal Committee (GA6) one of the main six committees of the General Assembly of the United Nations (UN). It focuses on legal matters and is the primary organization for the consideration of international law. It also aims to promote justice and international law. Therefore, the topic of human rights during public healthcare crises needs to be examined from a legal point of view¹. This study guide will provide you with necessary information regarding this topic, its subtopics as well as useful sources that will help you further understand this issue. However, you are strongly advised to not rely solely on this study guide, which should serve as an outline for your own research.

Methodological and Theoretical Background

The present study guide draws information from United Nations (UN) sources and resolutions as well as verified independent reports and papers, in order to present the situation of the ongoing Covid-19 Pandemic and its effects on the status of Human Rights globally. In the context of the Legal Committee's (UNGA6) mandate and from the perspective of International Law and International Human Rights Law, we will examine how Human Rights have been observed and promoted or violated since the pandemic was declared on March 11th 2020.

The present global Health Crisis has brought the question of the extent of human rights limitations to the forefront. As national governments strive for efficient management of this unforeseen circumstance, the need for adequate social distancing and the observance of sanitary measures led to significant restrictions of human rights for the purpose of safeguarding public health.

How can States fairly and effectively balance the restrictions? - The legal context for Human rights restrictions

Human Rights² can be divided into two main categories in relation to restrictions:

- 1. Absolute Human Rights** are non derogable fundamental rights and freedoms that every human innately has, which are protected by international law. For instance, the right to life, freedom from torture, protection from slavery and forced labour are absolute and cannot be restricted under any circumstance.
- 2. Non-absolute Human Rights.** Most human rights are not absolute; thus, it is permitted for them to be *limited by temporary restrictions such as reservations, limitations and*

¹ "Sixth Committee, Legal, United Nations, Main Body, Main Organs, General Assembly." *United Nations*, United Nations, www.un.org/en/ga/sixth/index.shtml.

²www.amnesty.org.uk/your-human-rights.



*derogations*³. Such rights that are also relevant to our topic are : Freedom of movement, freedom of assembly, the right to a fair trial etc.

The core of the issue at hand is the “collision” of rights/ individual freedoms. In this section, we will present the legal context in which derogations and restrictions can become justified (here: for the sake of public health) in accordance with International Law.

Under exceptional circumstances, such as armed conflict and natural disasters or -specifically- a pandemic, certain human rights can be restricted under conditions cited in a *non-exhaustive way* in Article 4 of the International Covenant on Civil and Political Rights (ICCPR)⁴ as well as Article 4 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR)⁵.

Official proclamation of a national state of emergency *which threatens the life of the nation* is necessary⁶. In this case, *governments may take measures derogating from their human rights obligations*⁷. If derogations from an international treaty are to take place, they ought to be announced to competent organizations or other State members. The extent of the derogations should be appropriate to the challenging situation that renders them essential and are to be lifted as soon as the circumstance elapses.

Principle of proportionality

As mentioned above, when a restriction of human rights occurs, the effects that arise from it must be balanced and proportionate to the *purpose* of the restriction. In international law, the concept of proportionality is a legality index for actions⁸. For example, a self-defense act is only legal to the extent that it leads to the avoidance of imminent harm, and does not cause any detriment beyond that⁹. In the context of human rights during health crises, states have been called upon to manage the pandemic and its effects whilst protecting public health, which led to personal and civil liberties’ restrictions. Proportionality is key in determining if a government body/ State acted in a way that infringed on human rights.

³ . www.ohchr.org/Documents/Publications/HandbookParliamentarians.pdf . , pg 47

⁴www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx .

⁵ “International Covenant on Economic, Social and Cultural Rights.” *OHCHR*, www.ohchr.org/en/professionalinterest/pages/cescr.aspx.

⁶ “Article 4: Derogation in Times of Officially Proclaimed Public Emergency Threatening the Life of the Nation. In *A Commentary on the International Covenant on Civil and Political Rights: The UN Human Rights Committee’s Monitoring of ICCPR Rights*” (pp. 106-128) Taylor, P. (2020). . Cambridge: Cambridge University Press.

⁷ www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx . , pg 48

⁸ “The Practical Guide to Humanitarian Law.” *Doctors without Borders | The Practical Guide to Humanitarian Law*, guide-humanitarian-law.org/content/article/3/proportionality/ .

⁹ “Self-Defense.” *The Free Dictionary*, Farlex, legal-dictionary.thefreedictionary.com/Self-Defense.



Specifically, it is a state's obligation to avoid measures that are disproportionate in regards to the appropriate timeframe they are in effect as well as their necessity and effectiveness. The Human Rights Committee in its General Comment on Article 12 ICCPR (freedom of movement)¹⁰ holds that a measure that is meant to protect a right and consequently infringes on another (as long as it is derogable under international law) should be necessary as well as proportionate. This means that the desired result should be effectively reached and the restriction cannot be avoided by taking other actions which are non-derogatory to human rights. The rights to liberty and freedom of movement should be limited only as a *last resort*, in order to contain infectious diseases (in the case of COVID-19, effective testing, tracing and individual quarantines should be tried before lockdowns).

The Siracusa Principles

In paragraph 70 of the Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights (Siracusa Principles) it is stated that *"the denial of certain rights fundamental to human dignity can never be strictly necessary in any conceivable emergency. Respect for these fundamental rights is essential in order to ensure enjoyment of non-derogable rights."*¹¹, concisely expressing the strict parameters for derogation and providing a useful barometer for the legality of measures that restrict human rights.

Restrictions should, at a minimum, be:

- *provided for and carried out in accordance with the law;*
- *directed toward a legitimate objective of general interest;*
- *strictly necessary in a democratic society to achieve the objective;*
- *the least intrusive and restrictive available to reach the objective;*
- *based on scientific evidence and neither arbitrary nor discriminatory in application; and*
- *of limited duration, respectful of human dignity, and subject to review*¹² (This is particularly controversial, as the effects of rapid decision making during a public health crisis cannot always be assessed accurately and in real time).

¹⁰ www.ohchr.org/documents/issues/privacy/electronicfrontierfoundation.pdf.

¹¹ www.icj.org/wp-content/uploads/1984/07/Siracusa-principles-ICCPR-legal-submission-1985-eng.pdf, paragraph 70

¹² www.osce.org/files/f/documents/5/5/469170.pdf, pg. 7



Definition of Key Terms

- **Pandemic¹³**

An outbreak of a disease that occurs over a wide geographic area (such as multiple countries or continents) and typically affects a significant proportion of the population: a pandemic outbreak of a disease.

- **Health Crisis¹⁴**

Health crisis means any crisis or serious incident arising from a threat of human, animal, plant, food or environment origin which has a health dimension and requires urgent action by authorities.

- **Human Rights¹⁵**

Human rights are rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status. Human rights include the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education, and many more. Everyone is entitled to these rights without discrimination.

- **Derogation¹⁶**

(Law) the partial taking away of the effectiveness of a law; a partial repeal or abolition of a law.

¹³ "Pandemic." *Merriam-Webster*, Merriam-Webster, www.merriam-webster.com/dictionary/pandemic .

¹⁴ "Health Crisis Definition." *Law Insider*, www.lawinsider.com/dictionary/health-crisis .

¹⁵ "Human Rights." Un.org, "Human Rights." *United Nations*, United Nations, www.un.org/en/global-issues/human-rights.

¹⁶ "Derogation - Dictionary Definition." *Vocabulary.com*, www.vocabulary.com/dictionary/derogation .



I. Civil and Political Rights during Public Health Crises

During a public health crisis, governments may declare a state of emergency in order to quickly and efficiently enact measures to resolve the situation and protect the lives and health of individuals. However, this cannot be done in an arbitrary fashion: even justified derogations from established legal provisions about human rights, legal and political procedures and other norms are subject to restrictions and review in order to prevent abuse of power by governments. There needs to be a clear distinction between measures that are backed by scientific data for their efficacy in protecting public health and restrictive measures that impede on human rights and have other incentives: for example, on March 30th 2020, Hungary's parliament passed a "coronavirus law" that allowed the prime minister, Viktor Orbán, to rule by decree without a clear time limit and foresaw the suspension of elections¹⁷ (this "state of danger" was repeatedly reaffirmed and was last extended on May 18, 2021¹⁸)¹⁹. In Azerbaijan, the government used emergency measures against COVID-19 to ruthlessly crack down on critics and opposition²⁰.

In the following section, we will analyze certain widely accepted theoretical conditions that ensure these derogations during times of emergency do not lead to abuse of power and the erosion of the rule of law. Keep in mind that the current public health crisis is still unfolding: it is up to the delegates to inspect and negotiate in which cases the measures undertaken by governments to curb the negative effects of the COVID-19 pandemic are in compliance with these norms, and can therefore be characterized as justified, as well as whether there have been clear human rights violations and a governmental overreach. Furthermore, it is still difficult to draw conclusions about the correct balance between the efficacy of measures in protecting human lives and their compliance with the standards that will be analyzed. In short: much is still up for debate!

A. States of emergency: executive and legislative powers

If a state of emergency is declared, the executive branch of government has the authority to enact special measures and simplify certain decision-making procedures in order to implement measures quickly and efficiently. However, these emergency measures have to

¹⁷ "The Guardian View on HUNGARY'S Coronavirus LAW: Orbán's Power GRAB | Editorial." *The Guardian*, Guardian News and Media, 29 Mar. 2020, www.theguardian.com/commentisfree/2020/mar/29/the-guardian-view-on-hungarys-coronavirus-law-orbans-power-grab .

¹⁸ec.europa.eu/info/sites/default/files/2021_rplr_country_chapter_hungary_en.pdf .,pg. 21

¹⁹ Similar situations raised concerns in China, Cambodia, Serbia and Togo: "Would-Be Autocrats Are Using Covid-19 as an Excuse to Grab More Power." *The Economist*, The Economist Newspaper, www.economist.com/international/2020/04/23/would-be-autocrats-are-using-covid-19-as-an-excuse-to-grab-more-power.

²⁰"World Report 2021: RIGHTS Trends in Azerbaijan." *Human Rights Watch*, 13 Jan. 2021, www.hrw.org/world-report/2021/country-chapters/azerbaijan.



fulfill certain provisions, as outlined in the Siracusa Principles and in the “Methodological and Theoretical Background” section of this study guide.

The separation of powers (executive, legislative, judicative) and legitimization through the constitution are essential elements of modern-day democracy. Therefore, emergency decrees issued during a public health crisis must have a constitutional basis. Decrees issued by the executive branch during an emergency often have the force of law, even though they have not been adopted by the legislative branch through a vote in parliament, as is done under normal circumstances. Because of this, they should be limited in duration and their goal should be the soonest possible return to normality. Furthermore, the general exceptional powers of the executive power during a state of emergency cannot be perpetuated indefinitely and democratic rules and procedures should be affected as little as possible by the implementation of emergency measures²¹. Meaning: emergency powers should be ceded when the emergency is over and are not exempt from checks and balances. Therefore, democratic rule of law is not de facto threatened by emergency decrees in countries where safeguards are already strong; however, states of emergency certainly present an opportunity for abuse of power and human rights violations in states where checks and balances are weak or non-existent²². Governments may also take advantage of the shift in public attention caused by a health crisis to push through fundamental legal reforms without the necessary deliberation²³. At the same time, the necessary suspension of legislative activities during health crises has an adverse effect on democracy, public deliberation and the rule of law²⁴.

Country	What happened
Hungary	Parliament gives prime minister Viktor Orban almost unlimited powers, with no expiry date
Cambodia	Emergency law allows government to take any “appropriate” measures to fight covid-19, including seizing property and imposing martial law. Penalties include ten years in prison
Serbia	Emergency law in effect puts president in sole charge. New powers include imposing curfews
Turkey	Up to 90,000 prisoners to be released to avoid spreading covid-19 in jails. Political prisoners pointedly excluded
China	Prominent pro-democracy activists arrested in Hong Kong. Government creates gaping hole in the territory’s Basic Law, which protects Hong Kong’s freedoms
India	Ruling party blames Muslims for spread of covid-19. Government slow to quash rumours about Muslims spitting in food. Muslims beaten up
El Salvador	2,000+ people locked up for violating social-distancing rules. Supreme Court orders government to stop arbitrarily putting them in overcrowded detention centres. President Nayib Bukele refuses
Uganda	Police raid a shelter housing 20 gay and transgender people. They are accused of violating social-distancing rules
Togo	President can rule by decree. Relief money goes to those with voter ID cards, which opposition supporters lack after boycotting recent rigged election
Azerbaijan	President vows to use social distancing to “isolate” the opposition, saying it may become a “historical necessity”

Source: *The Economist*

The Economist

²¹ [rm.coe.int/sg-inf-2020-11-respecting-democracy-rule-of-law-and-human-rights-in-th/16809e1f40](https://www.rm.coe.int/sg-inf-2020-11-respecting-democracy-rule-of-law-and-human-rights-in-th/16809e1f40) , pg. 4

²² For example, Turkey’s Recep Tayyip Erdogan used the 2016 attempted coup to seize powers through a state of emergency.

²³ “As a general rule, fundamental legal reforms should be put on hold during the state of emergency”, [rm.coe.int/sg-inf-2020-11-respecting-democracy-rule-of-law-and-human-rights-in-th/16809e1f40](https://www.rm.coe.int/sg-inf-2020-11-respecting-democracy-rule-of-law-and-human-rights-in-th/16809e1f40).

²⁴ *ibid.*



Another issue that arises during public health crises and contributes to the erosion of democratic norms, rules and procedures is the postponement and/or cancellation of elections. States of emergency, such as states during public healthcare crises, create general confusion, expand the authority of governments and legitimize quick and exceptional actions. However, political leaders may use these circumstances as excuses to prolong their stay in power and temporarily bypass normal electoral procedures, as was the case in e.g. Guinea, Bolivia, Ethiopia²⁵ and even Poland²⁶. Aside from presenting an opportunity for illegitimate power-grabbing schemes, the pandemic also created massive practical problems for electoral procedures across the globe, as states were called to balance health and safety measures with the smooth and unimpeded execution of elections necessary for any democratic regime. You can find more information about electoral procedures across the globe during the pandemic in the International Foundation for Electoral Systems' (IFES) [Global Impact of COVID-19 on Elections | IFES](#) analysis.

B. Freedom of assembly and freedom of expression (suppression of dissent)

Social distancing has often been cited as a cause to impose restrictions on the freedom of assembly²⁷ (e.g. maximum numbers of people in a group etc). This is warranted, as epidemiological evidence clearly shows that large concentrations of people highly increase the risk of virus transmission. However, in some cases, this may only have been used as a pretext to suppress legitimate dissent: for example, in Hong Kong COVID-19 was used as a justification for restrictions on demonstrations that predated the pandemic²⁸. Furthermore, many cases of excessive police violence under the guise of protecting public health have been recorded during the pandemic, with some of the most violent incidents reported in Argentina, Mexico and Nigeria²⁹. Police and leader accountability during the pandemic was especially low in illiberal regimes such as the Philippines, where the imposition of nationwide lockdown measures was assigned to the military and the president threatened to shoot slum dwellers protesting lack of food³⁰. Furthermore, healthcare workers who protested unsafe and unfair

²⁵ www.amnesty.org/download/Documents/POL1032022021ENGLISH.PDF.

²⁶ "World Report 2021: RIGHTS Trends in Poland." *Human Rights Watch*, 13 Jan. 2021, www.hrw.org/world-report/2021/country-chapters/poland.

²⁷ "International Covenant on Civil and Political Rights." *OHCHR*, www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx, Article 21

²⁸ Hathaway, Oona, et al. "COVID-19 and International Law SERIES: Human Rights Law – Civil and Political Rights." *Just Security*, 19 Apr. 2021, www.justsecurity.org/73520/covid-19-and-international-law-series-human-rights-law-civil-and-political-rights/.

²⁹ In Mexico, a 30-year old man was beaten to death by police for allegedly not wearing a mask. Other violent incidents have been recorded in Guinea, Cameroon, Burkina Faso, Algeria, India, Russia, Azerbaijan, Thailand, Turkey and Bolivia, as well as in Israel, where peaceful protests against former Prime Minister Benjamin Netanyahu were repeatedly dispersed with water cannons and tear gas.

³⁰ Al Jazeera. "Shoot Them Dead!: Duterte Warns against Violating Lockdown." *Coronavirus Pandemic News | Al Jazeera*, Al Jazeera, 2 Apr. 2020, www.aljazeera.com/news/2020/4/2/shoot-them-dead-duterte-warns-against-violating-lockdown.



working conditions or criticized the government's handling of the pandemic were often intimidated, arrested or fired, as was the case in Zimbabwe, the Honduras, Nicaragua and Venezuela³¹. Such suppression of legitimate dissent may backfire, leading to further unrest and undermining the pandemic response itself.

C. Freedom of the press and freedom of information

During a public healthcare crisis, the spread of misinformation has a direct impact on people's health and livelihoods and prolongs the crisis. This is why transparent reporting and effective communication to the public by governments are crucial for mitigating human rights violations and ensuring the public's compliance with health and safety regulations. Governments are obliged to provide accurate and up-to-date information about the health crisis to the public in an accessible manner, but this has not always been the case: information mismanagement or the deliberate spread of misinformation by members of the government were observed across the globe, with the most prominent examples being Brazil, the US and Iran.

However, the most serious threat posed to the freedom of information during public healthcare crises is the suppression of dissent, criticism and general opposition to the ruling parties under the guise of combating the spread of pandemic-related misinformation. For example, in Hungary, the bill passed on March 30th 2020 with the purpose of implementing measures against the COVID-19 pandemic imposed prison sentences of up to five years for "intentionally spreading misinformation that hinders the government response to the pandemic"³², which, as the Office of the United Nations High Commissioner for Human Rights indicates, is "not compatible with the requirements of legality and proportionality"³³. Journalists and activists are often denied access to vital information and have been silenced directly through such laws, or indirectly through harassment on social media and other threats, especially when reporting on government failures during the pandemic, but also when voicing general opposition³⁴. Furthermore, authoritarian and illiberal regimes have been known to silence "whistleblowers", e.g. healthcare workers that have drawn attention to problems within the healthcare system, as was the case with a doctor in Wuhan who tried

³¹ www.amnesty.org/download/Documents/POL1032022021ENGLISH.PDF. : "In several Honduran hospitals, health workers were asked to sign confidentiality agreements prohibiting them from speaking publicly about their concerns. In Nicaragua, at least 31 health workers were dismissed after expressing concerns about working conditions, lack of PPE and the state response to the pandemic. Venezuelan health workers who made critical public statements about the government's response to the pandemic faced short-term detention and subsequent restrictions."

³² www.theguardian.com/world/2020/mar/30/hungary-jail-for-coronavirus-misinformation-viktor-orban.

³³ www.ohchr.org/Documents/Issues/CivicSpace/CivicSpaceandCovid.pdf.

³⁴ Twitter, Charlotte Tobitt. "Covid-19 Has Impact on World Press Freedom Index 2021." *Press Gazette*, 20 Apr. 2021, pressgazette.co.uk/world-press-freedom-index-2021-reporters-without-borders-covid/.



to warn the world about the novel coronavirus³⁵. This distortion or obstruction of crucial information flows leads to inaccurate reporting and is especially dire during public healthcare crises, as government sources often have the only accurate information about the ongoing situation (e.g. transmission, hospitalization and vaccination rates).

D. The issue of mandatory vaccinations

Vaccinations highlight another serious issue: Can governments impose mandatory vaccinations or would that be considered a human rights violation? “The above suggests governments are free to use economic sanctions and incentives to encourage vaccination against COVID-19. However, caution is required. Whether mandatory means are necessary to achieve sufficient vaccination coverage is essentially an empirical question which can only be answered in relation to a specific context, taking the expected effectiveness of various approaches and level of vaccination hesitancy in the country in question into account.” (source: [Is Mandatory Vaccination Against COVID-19 Justifiable Under the European Convention on Human Rights?](#))

Two recent examples of jurisprudence have provided some answers in regards to vaccination that can guide the discourse on Covid-19 vaccines; on the case of VAVŘIČKA AND OTHERS v. THE CZECH REPUBLIC³⁶, the ECHR stated that even though vaccination obligations are indeed an infringement of personality rights, as long as the infringement is necessary and proportionate with the objective of protecting public health, it is justified³⁷. The court also recently rejected the request of 672 French firefighters for suspension of their vaccination obligations.³⁸

[1] <https://rm.coe.int/sg-inf-2020-11-respecting-democracy-rule-of-law-and-human-rights-in-th/16809e1f40>

Par. 2.3

³⁵“Coronavirus: Wuhan Doctor Speaks out against Authorities.” *The Guardian*, Guardian News and Media, 11 Mar. 2020, www.theguardian.com/world/2020/mar/11/coronavirus-wuhan-doctor-ai-fen-speaks-out-against-authorities. , “‘Hero Who Told The Truth’: Chinese Rage OVER Coronavirus Death of WHISTLEBLOWER DOCTOR.” *The Guardian*, Guardian News and Media, 7 Feb. 2020, www.theguardian.com/global-development/2020/feb/07/coronavirus-chinese-rage-death-whistleblower-doctor-li-wenliang.

³⁶ VAVŘIČKA AND OTHERS v. THE CZECH REPUBLIC, European Court of Human Rights Judgment, 8 April 2021 <https://hudoc.echr.coe.int/fre#%22itemid%22:%22001-209039%22>}}

³⁷ European Court of Human Rights: Mandatory Vaccinations are Allowed, Erasmus University Rotterdam, 22 Jul. 2021, <https://www.eur.nl/en/news/european-court-human-rights-mandatory-vaccinations-are-allowed>

³⁸ Requests for interim measures from 672 members of the French fire service concerning the Law on the management of the public health crisis, European Court of Human Rights Press Release, 25 Aug. 2021, <https://hudoc.echr.coe.int/eng-press#%22itemid%22:%22003-7100478-9611768%22>}}



II. Social, Economic and Cultural Rights during Public Health Crises

A. Right to life and health

The WHO Constitution (1946) envisages “...the highest attainable standard of health as a fundamental right of every human being.” Moreover, the third UN Sustainable Development Goal reads: “Ensure healthy lives and promote well-being for all at all ages”. The pandemic has posed a considerable challenge to the realization of these goals, as the right to health of all citizens is directly endangered. However, the virus isn’t solely to blame: the rights to life and health during public health emergencies have consistently been interpreted as entailing positive obligations of the state to protect all members of society from disease and suffering and provide adequate healthcare. Therefore, it is the obligation of states to provide healthcare to citizens during public healthcare crises, as well as to enact measures for the curtailment of the infectious disease through testing, tracing and quarantines. In some states, the measures themselves constitute the human rights violations, as in the case of governmental quarantine centers in El Salvador and Paraguay with inadequate sanitary conditions³⁹. More often, states fail to fulfill their obligations to the general public and especially to vulnerable groups such as persons with disabilities, older people who are more at risk from the virus and healthcare workers who are endangered from higher exposure to the virus. Furthermore, the right to life and livelihood is also endangered by the severe economic crisis brought about by the pandemic. Governments have an obligation to protect the livelihoods of citizens in times of unprecedented crisis through social relief checks and other social support mechanisms.

B. Protection of vulnerable groups

*[...]The poor and the vulnerable in our societies are not only at greater risk from the virus itself, they are most severely affected by the negative impacts of measures to control it. Those employed in the informal sector, disproportionately women, have little recourse to social protection or unemployment assistance, for example. [...]*⁴⁰

In some states, lack of access to relevant resources is turning the COVID-19 pandemic into a humanitarian crisis or exacerbating existing humanitarian crises. The right to equitable access to health care and the prohibition of discrimination means that special measures must be taken to protect religious and ethnic minorities, vulnerable groups that do not have access to state-provided healthcare (e.g. refugees or displaced persons with pending asylum status) and people deprived of their liberty (in prisons, immigration detention centers, social care homes etc). However, the opposite is usually observed: refugees, displaced persons, ethnic

³⁹ www.amnesty.org/download/Documents/POL1032022021ENGLISH.PDF.

⁴⁰ www.un.org/victimsofterrorism/sites/www.un.org.victimsofterrorism/files/un_-_human_rights_and_covid_april_2020.pdf, pg 7



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and religious minorities, prisoners and women have suffered the worst consequences of the health and economic crisis caused by the pandemic.

The situation has been especially dire in prisons and detention centers, where overcrowding and poor sanitary conditions have led to very high rates of infection. Authorities have often refused to release prisoners from overcrowded facilities to protect them from the virus (e.g. in the US). This has also led to prisoner riots protesting conditions, which were violently suppressed and have even led to the deaths of 73 detainees (50 in Venezuela and 23 in Colombia)⁴¹. Women deprived of their liberty are also reported to be in increased risk of being subjected to sexual violence as measures against COVID-19 often lead to a decrease in prison security.⁴² The subject of pregnant prisoners and children born in detention facilities is especially relevant in the context of the pandemic⁴³, with calls⁴⁴ for release being both an effort to limit overcrowding and safeguarding the health of these high-risk groups.

In another serious incident in the US, the refusal of US Immigration and Customs Enforcement to release detained persons led to 8,000 COVID-19 infections among them. Governments have also often failed to provide the necessary Personal Protective Equipment (PPE) to prisoners and have often excluded asylum seekers and refugees in immigration facilities from the necessary social relief programs. The pandemic has marked a spike in forced returns of refugees under the guise of protecting public health, as well as increased rates of prohibition of entry for refugees and asylum seekers (e.g. in Canada, Peru, the USA and Greece)⁴⁵. A majority of states closed their borders as a response to the pandemic, with 57 refusing to make an exception for refugees⁴⁶.

The staff of detainment facilities as well as healthcare and other emergency workers face disproportionate risks from the pandemic due to higher chances of exposure to the virus. Healthcare and emergency workers face even higher risks in Less Economically Developed Countries (LEDCs), where access to personal protective equipment (PPE) and hygiene are often limited due to a lack of funding. Healthcare and emergency workers have rarely been compensated for the increased workload they have taken on and the disproportionately high risks they have been exposed to.

Poorer health outcomes have been observed in already vulnerable and marginalized communities (e.g. indigenous peoples) due to existing inequalities. For those living in highly

⁴¹ www.amnesty.org/download/Documents/POL1032022021ENGLISH.PDF.

⁴² "Covid-19 Prison Decongestion Measures Peacekeeping." *United Nations*, United Nations, peacekeeping.un.org/en/covid-19-prison-decongestion-measures.

⁴³ www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2020/justice-for-women-amidst-covid-19-en.pdf?la=en&vs=5442.

⁴⁴ "The Spread of Covid-19 Requires Urgent and Immediate Measures to Be Taken to Protect the Rights of Detainees in Africa." *ASF*, 12 May 2020, www.asf.be/blog/2020/03/24/the-spread-of-covid-19-requires-to-take-urgent-and-immediate-measures-to-protect-the-rights-of-detainees-in-africa/.

⁴⁵ www.amnesty.org/download/Documents/POL1032022021ENGLISH.PDF.

⁴⁶ www.un.org/victimsofterrorism/sites/www.un.org.victimsofterrorism/files/un_-_human_rights_and_covid_april_2020.pdf, pg.11



crowded quarters with multi-generational housing, without access to safe housing and clean water (e.g. the residents of slums or homeless people), maintaining hygiene and social distancing or self-isolation in cases of infection is nearly impossible. These communities are also plagued by exclusion from healthcare provision and stigmatization and many such marginalized groups have no reliable access to vaccines and a lack of access to personal hygiene measures. If there is an existing lack of financial security, the global recession and the massive spikes in unemployment caused by the pandemic drives people further into poverty and hunger⁴⁷. Especially in the African and South American continents, the already precarious economic situation was worsened considerably by the imposition of lock-downs: “In October [2020], the UN Economic Commission for Latin America and the Caribbean forecast that the region’s economies would contract by 9.1%, with 37.3% of the population living in poverty by the end of the year: the worst figure since 2006”⁴⁸. Furthermore, lockdowns have had a particularly negative impact on workers of the informal sector, which comprise about 71% of workers in the African continent⁴⁹.

Increased cases of domestic violence against women and children during lockdown brings to the forefront the need to protect the rights of these groups⁵⁰. Not only did the pandemic exacerbate violence against women, but the exceptional circumstances also meant that victims often faced difficulties when trying to access legal aid⁵¹, find justice⁵², receive counselling and relevant healthcare (many of these programs were deemed “non-essential” and suffered from funding cuts during the pandemic). Women also comprise 70% of the world’s workforce in the health and social sectors and are therefore exposed to increased risk of infection⁵³. They also comprise the majority of workers in the informal economy and were therefore disproportionately affected from the loss of income and lack of social security characteristic of that sector during the pandemic. Finally, women largely bear the brunt of unpaid labor at home, which increased exponentially during lockdowns (e.g. homeschooling, taking care of the sick etc.). As with the case for women, COVID-19 disproportionately affected LGBTQ+ people: financial focus shifted to the pandemic and services necessary to them, such as sexual and mental health counselling, as well as testing for HIV, were deemed “non-essential” and faced funding cuts and suspensions.

⁴⁷ “UN Report: PANDEMIC Year Marked BY Spike in World Hunger.” *World Health Organization*, World Health Organization, www.who.int/news/item/12-07-2021-un-report-pandemic-year-marked-by-spike-in-world-hunger.

⁴⁸ www.amnesty.org/download/Documents/POL1032022021ENGLISH.PDF.

⁴⁹ *ibid.*

⁵⁰ www.who.int/reproductivehealth/publications/emergencies/COVID-19-VAW-full-text.pdf?ua=1.

⁵¹ Melissaann.evans. “The State of Women's Access to Justice in the Covid-19 Pandemic.” *The State of Women's Access to Justice in the COVID-19 Pandemic*, www.unodc.org/dohadeclaration/en/news/2021/02/the-state-of-womens-access-to-justice-in-the-covid19-pandemic.html.

⁵² www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2020/justice-for-women-amidst-covid-19-en.pdf?la=en&vs=5442.

⁵³ www.amnesty.org/download/Documents/POL1032022021ENGLISH.PDF.



Moreover, marginalized groups and minorities are often scapegoated and disproportionately blamed for spreading the virus, often as part of an effort by governments to deflect blame for mishandling the pandemic. For example, Muslims in India were unfairly targeted by the government and media after a Muslim religious gathering was identified as a super spreader event, which sparked harassment and misinformation incidents nationwide⁵⁴.

C. Other human rights issues raised by the pandemic

There is the issue of the collective responsibility of the international community, as COVID-19 is a *global* health and human rights crisis. The COVID-19 pandemic, as other health crises before it, has had a disproportionate negative impact on the world's poorest populations. Less Economically Developed Countries (LEDCs) are still being plagued by COVID-19, with pressure on already fragile healthcare systems mounting and more developed countries hoarding the medical equipment they produce. Furthermore, the concept of progressive realization of rights⁵⁵, as elaborated in General Comment 14 of the Committee on Social, Economic and Cultural Rights, implies that "the particular circumstances and capacity of each State must be taken into account in assessing whether that State has violated its human rights obligations"⁵⁶. This means that the healthcare systems of less developed states cannot be held up to the same standard as those of more developed states when assessing whether the former have committed human rights violations related to the right to health. A more poignant assessment would be the evaluation of the role of developed nations in the global failure to distribute COVID-19 vaccines and related equipment fairly across nations, e.g., the blocking by developed nations of the World Trade Organization's (WTO) proposal to temporarily waive intellectual property rights for COVID-19 related medical products⁵⁷ or the failure of the Covax Vaccine Program⁵⁸. The World Health Organization (WHO) has even called for a moratorium on booster shots in countries with high vaccination rates, in order to distribute more vaccines in the developing world⁵⁹.

⁵⁴(www.dw.com), Deutsche Welle. "Indian Muslims Face Renewed STIGMA amid COVID-19 Crisis: DW: 14.05.2020." *DW.COM*, www.dw.com/en/indian-muslims-face-renewed-stigma-amid-covid-19-crisis/a-53436462.

⁵⁵ www.ohchr.org/Documents/Publications/HandbookParliamentarians.pdf.

⁵⁶ www.refworld.org/pdfid/4538838d0.pdf, point 9

⁵⁷ www.amnesty.org/download/Documents/POL1032022021ENGLISH.PDF.

⁵⁸Mueller, Benjamin, and Rebecca Robbins. "Where a Vast Global Vaccination Program Went Wrong." *The New York Times*, The New York Times, 2 Aug. 2021, www.nytimes.com/2021/08/02/world/europe/covax-covid-vaccine-problems-africa.html.

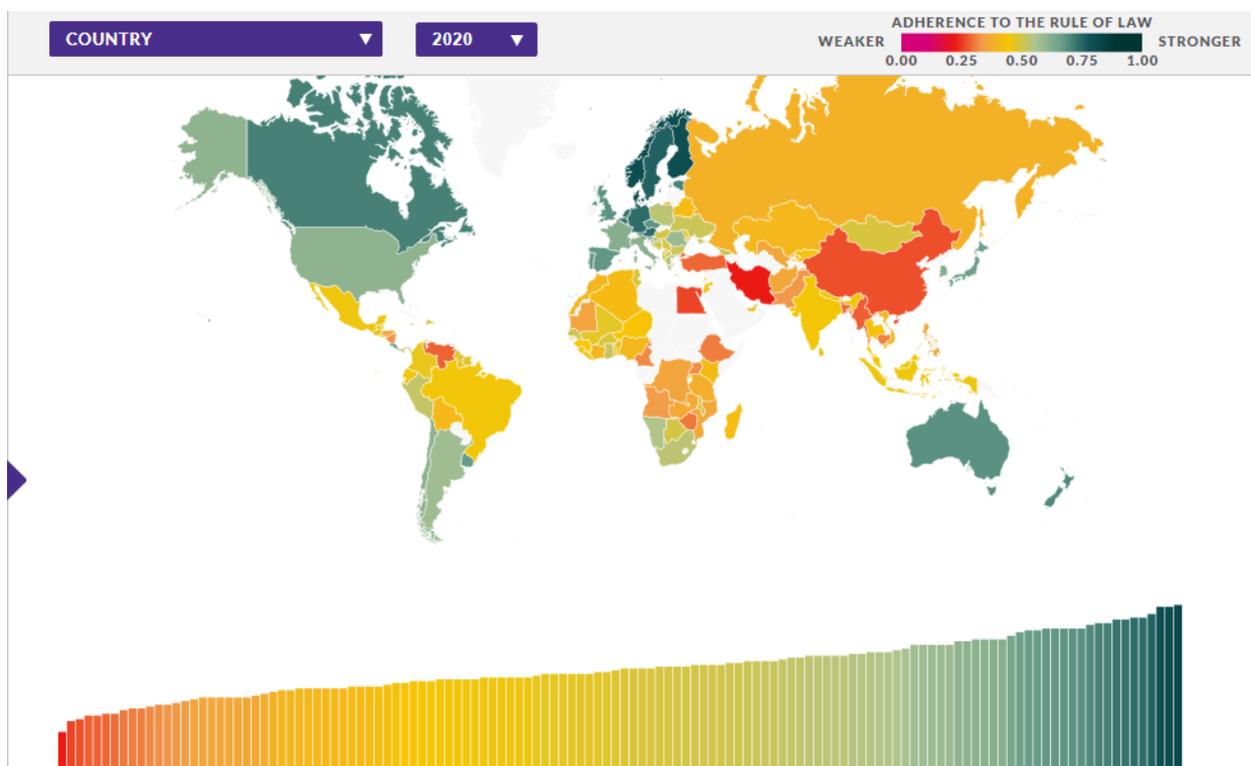
⁵⁹ Thomas, Naomi. "WHO Calls for a Moratorium on Booster Shots until at Least the End of September." *CNN*, Cable News Network, 4 Aug. 2021, edition.cnn.com/2021/08/04/health/who-coronavirus-booster-shots/index.html.



III. The Rule of Law - Justice during public health crises

For the United Nations, the Rule of Law is defined as *“a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires measures to ensure adherence to the principles of supremacy of the law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness, and procedural and legal transparency.”*⁶⁰

The inherent link between upholding the rule of law and the protection of human rights is what makes it relevant to our topic. In General comment No. 29 (2001) of the Human Rights Committee on Derogations during a State of Emergency it is declared that *“the principles of legality and the rule of law require that fundamental requirements of fair trial must be respected during a state of emergency”*. Thus, in the midst of statewide emergency proclamations during the COVID-19 pandemic, it is important to examine the legality of measures taken that might erode the rule of law and the rights to accessible justice and a fair trial.



Adherence to the rule of Law Map , World Justice Project, accessed 15/08/2021, [WJP Rule of Law Index](#)

⁶⁰ “What Is the Rule of Law - United Nations and the Rule of Law.” *United Nations*, United Nations, www.un.org/ruleoflaw/what-is-the-rule-of-law/.



A. Access to Justice

Access to justice is a key principle of the rule of law, which gives persons protection against arbitrary government actions and the chance to exercise their rights. Article 26 of the ICCPR⁶¹ clearly mentions that *“all persons are equal before the law and are entitled without any discrimination to the equal protection of the law”*, whilst similar provisions are established in a regional level, in article 3 of the African Charter on Human and Peoples’ Rights and in article 24 of the American Convention on Human Rights.⁶² The Declaration of the High-level Meeting on the Rule of Law⁶³ holds the overarching principle of Equality before the Law in order to affirm the imperative for equity in justice accessibility.⁶⁴

In paragraphs 14 and 15, the right to equal access to justice for all is emphasized. The Declaration highlights the importance of widespread inclusion for vulnerable population groups and raising awareness of legal rights as a cornerstone for the provision of services for fair and non-discriminatory access to justice.

B. The Right to a Fair Trial

The International Covenant on Civil and Political Rights recognizes the Right to a Fair Trial in Article 14 of the document. Procedural fairness is ensured by affirming equality of all individuals in the face of courts and tribunals, entitlement to a fair and public hearing by a competent, independent and impartial tribunal established by law and referencing the open court principle. Moreover, article 14 proclaims the presumption of innocence in criminal proceedings, the right to a speedy trial, the right to counsel and the right to call and examine witnesses.

Having presented the legal basis that ensures the accessibility of justice and just trial proceedings, it is worth considering how States’ policies have dealt with balancing the protection of these aforementioned rights with the pandemic.

⁶¹“International Covenant on Civil and Political Rights.” *OHCHR*, www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx.

⁶²Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers, THE RIGHT TO A FAIR TRIAL: PART I – FROM INVESTIGATION TO TRIAL, OHCHR, pg.5 www.ohchr.org/Documents/Publications/training9chapter6en.pdf.

⁶³ Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels, *UNGA, 30 November 2012*, www.un.org/ruleoflaw/files/A-RES-67-1.pdf.

⁶⁴ “Access to Justice - United Nations and the Rule of Law.” *United Nations*, United Nations, www.un.org/ruleoflaw/thematic-areas/access-to-justice-and-rule-of-law-institutions/access-to-justice/.



C. The functioning of courts

As mentioned before in this study guide, the COVID-19 pandemic has led to derogations of rights as states have tried to manage this public health crisis. Most importantly, these derogations came into force for the sake of proclaimed national emergencies. As more challenges to the Rule of Law arose, the question of the functioning of courts during lockdowns and states of emergency has become prevalent.

Moreover, as surmised from Article 9 par. 3 of the ICCPR, any detained or arrested person is entitled to promptly be taken before a competent judge or other authorized administrator of justice. In its General Comment No. 35, Article 9 (Liberty and Security of Person)⁶⁵, the United Nations High Commissioner for Refugees states that such hearings ought to be “*in person*”. The obstruction of in person hearings due to the need for social distancing constitutes a derogation from the right to fair trial and its legality needs to be closely examined on a case-to-case basis.

From the start of the COVID-19 pandemic, courthouse functions have differed in both worldwide and regional levels and social distancing has been rendered a public health imperative. Judicial systems have had to face the challenge of remote proceedings whilst observing the right to a fair trial.⁶⁶

In May of 2020, it was reported that Croatia, Cyprus, Denmark, France and Greece closed their courts completely, dealing exclusively with “urgent cases”⁶⁷. Gradual reopening has since taken place in most states in varying degrees, as many European states publish recovery/exit plans⁶⁸. In the UK, reports of grave delays of trials came to the surface, even after the establishment of remote proceedings for some of the caseload. Trials have been backlogged ever since the start of the pandemic, raising major “concerns for justice”⁶⁹. In India, the Delhi High Court has resumed with experimental in-person proceedings since August 16th 2021,

⁶⁵ United Nations High Commissioner for Refugees. “General Comment No. 35, Article 9 (Liberty and Security of Person).” *Refworld*, www.refworld.org/docid/553e0f984.html. , Section IV

⁶⁶ “*The functioning of courts in the Covid-19 pandemic*”, Primer , OSCE, October 2020, www.osce.org/files/f/documents/5/5/469170.pdf.

⁶⁷ “Coronavirus Pandemic in the EU - Fundamental Rights Implications - BULLETIN 2.” *European Union Agency for Fundamental Rights*, 18 June 2021, fra.europa.eu/en/publication/2020/covid19-rights-impact-may-1. , pg.28

⁶⁸ “Management of the Judiciary - Compilation of Comments and Comments by Country.” *European Commission for the Efficiency of Justice (CEPEJ)*, www.coe.int/en/web/cepej/compilation-comments.

⁶⁹ Casciani, Dominic. “Covid and the Courts: 'Grave Concerns' for Justice, Warn Watchdogs.” *BBC News*, BBC, 19 Jan. 2021, www.bbc.com/news/uk-55712106. , “Short Update: Criminal Trials Now Listed for 2022 as Crown Court And Magistrates' Court Backlog Continues to Increase.” *Fair Trials*, 23 Oct. 2020, www.fairtrials.org/news/short-update-criminal-trials-now-listed-2022-crown-court-and-magistrates-court-backlog.



after months of videoconferencing-only and restriction to “urgent only” cases⁷⁰. In the USA, Federal Courts have adopted remote justice proceedings and intend to reopen with in person proceedings with strict sanitary measures⁷¹.

Issues that consequently arise when considering the administration of justice during a pandemic, such as the health and safety of jurors and the parties involved in civil and criminal procedures, have persisted while the legality and good practices for remote hearings are examined.⁷² In a July 2020 resolution, the UNHRC notes that states are responsible for ensuring *due process* and *the continuity of judicial activities* whilst observing the right to a fair trial and encourages the use of telecommunication technologies in finding solutions to guarantee access to justice and other procedural rights during crises such as the COVID-19 pandemic.⁷³

However, justified concerns under international human rights law and rule of law standards are raised when it comes to fully informed and free prior consent to video conferencing, especially when it comes to vulnerable groups, minors or persons deprived of their liberty. Moreover, issues of accessibility are prevalent, with almost half of the worlds’ population lacking internet access⁷⁴: as socioeconomic disparities deprive many from access to necessary technology, the digital divide has become more apparent than ever.

D. Judicial Review of emergency Measures

This worldwide instance of the COVID-19 Pandemic has been characterized by constantly changing conditions. In order to cope with these exceptional circumstances, lawmakers are called to adopt measures in concrete, considering the specific needs of their states depending on the phase of the pandemic they are going through. What fulfills the requirements of urgency, necessity and proportionality for a derogation may rapidly change. In order to preserve the legality of human rights restrictions, we must ensure emergency measures undergo judicial scrutiny. Review of emergency legislation is the only way to prevent and remedy excessive human rights infringement.

The reduced functionality of courts during the pandemic creates circumstances of legal uncertainty, as lawmakers resort to speedy legislative procedures in response to the rapidly

⁷⁰ Pti. “COVID-19: Delhi High Court to RESUME Physical Functioning from August 16 on Experimental Basis.” *The Hindu*, The Hindu, 22 July 2021, www.thehindu.com/news/cities/Delhi/covid-19-delhi-high-court-to-resume-physical-functioning-from-august-16-on-experimental-basis/article35465664.ece.

⁷¹ “Coronavirus (COVID-19): Response and Recovery.” *United States Courts*, www.uscourts.gov/news/2020/07/02/coronavirus-covid-19-response-and-recovery.

⁷² www.unodc.org/res/ji/import/guide/icj_videoconferencing/icj_videoconferencing.pdf.

⁷³ A/HRC/RES/44/9 - e - A/HRC/RES/44/9 - Desktop, undocs.org/en/A/HRC/RES/44/9.

⁷⁴ Written by Douglas Broom, Senior Writer. “Coronavirus Has Exposed the Digital Divide like Never Before.” *World Economic Forum*, www.weforum.org/agenda/2020/04/coronavirus-covid-19-pandemic-digital-divide-internet-data-broadband-mobbile/.



changing circumstances, creating a risk of absence of judicial scrutiny for emergency measures. Moreover, *“in times of emergency, power tends to shift towards the executive, upending the separation of powers and the independence of the judiciary”*⁷⁵. Thus, lockdowns that led to the reduced functioning of courts and parliaments exacerbate the imbalance that undermines judicial power, and pose a danger of *“normalization”* of emergency measures. The OHCHR underlines the importance of *“meaningful judicial oversight of exceptional measures of a state of emergency, to ensure that they comply with the limitations”*.⁷⁶

Finally, it is important to note that global crises, such as the COVID-19 Pandemic, put the resilience of institutions to the ultimate test. If States are committed to upholding the Rule of Law, they must consider what the dysfunctionalities of their justice systems during this ongoing pandemic tell us about current judicial resilience. Looking forward, the lessons learnt from this time of uncertainty can become a compass for creating the *“unshakable”* justice systems needed for protecting the Rule of Law.

Countries & Organisations Involved

China

Almost one year after the beginning of the pandemic, China seems to have the disease under control, while being the only major economy worldwide that is expected to report growth for 2020. However, the price behind these achievements is the imposition of extremely restrictive measures (especially during the start of the pandemic), some of which could qualify as serious human rights violations. For example, officials were sealing apartment doors to prevent people from exiting their homes, the government obstructed the release of vital information regarding the first stages of COVID-19 in Wuhan⁷⁷ and journalists, citizens and health workers were prevented from sharing information about the outbreak. In April, the government restricted the publishing of academic papers about tracing the origins of COVID-19 and ordered their submission to the State Council for approval. Posts of disagreement and hashtags related to the disease and freedom of speech were immediately deleted and authorities ordered citizens to delete their social media accounts and posts because they were *“spreading rumors”*. China has signed the ICCPR but has yet to ratify it, while the dominant rhetoric in China as well as Hong Kong usually brands the pandemic as a national

⁷⁵ www.osce.org/files/f/documents/5/5/469170.pdf , pg 9.

⁷⁶ *“Emergency Measures and COVID-19: Guidance”*, OHCHR, 27 April 2020, pg. 3., www.ohchr.org/Documents/Events/EmergencyMeasures_Covid19.pdf.

⁷⁷ *“A study by the University of Southampton found that if interventions in China had started three weeks earlier, the number of coronavirus cases would have been 95% lower at the end of February, ‘significantly limiting the geographical spread of the disease.’”*

From: *“Would-Be Autocrats Are Using Covid-19 as an Excuse to Grab More Power.”* *The Economist*, The Economist Newspaper, www.economist.com/international/2020/04/23/would-be-autocrats-are-using-covid-19-as-an-excuse-to-grab-more-power.



security crisis⁷⁸, which gives authorities a much wider margin for enacting restrictions (bans on protests, citizen surveillance, online censorship and restriction on the freedom of movement) than is usually justified during public health crises. However, Chinese authorities point to their relative success in initially curbing the virus and reopening the economy as justification for these harshest of measures.

United States of America (USA)

The United States of America has handled the pandemic in ways both good and bad. Those most affected by the pandemic are low-income classes, the African-American community, the incarcerated and the Hispanic community. Low-income communities are more likely to suffer from COVID-19 and its financial implications. Workers in health care, law enforcement, transportation etc. faced enormous challenges because the government did not adequately protect them during the pandemic. Some health workers both in the public and the private sector faced reprisals, such as harassment and dismissal, if they spoke out about the inadequate protection. The situation in US prisons in particular drew the attention of the world, with the Office of the High Commissioner for Human Rights calling upon the US government to increase efforts to prevent major outbreaks of COVID-19 in detention centers⁷⁹.

However, the government proposed or passed some measures aiming to protect human rights during the pandemic. The US House of Representatives and the Senate have passed, for example, the Families First Coronavirus Response Act, which is intended to address the effects of the pandemic and provide a safety net for families and workers whose livelihoods are affected. Furthermore, president Biden signed the American Rescue Plan which protects thousands of jobs, gives immediate relief to families suffering financially from the pandemic, reduces the poverty rate and lowers health care costs. President Biden has also supported the proposal to the World Trade Organization (WTO) to waive patents (intellectual property protections) on COVID-19 vaccines in order to speed up vaccinations in the developing world⁸⁰. The proposal was drafted by India and South Africa but does not have the support of the European Union.

European Union (EU)

Since the beginning of the pandemic, questions have been raised regarding the way the European Union is helping to tackle COVID-19. On the one hand, the Union has financially supported its Member States and their health systems and provided them with vaccines. The European Commission and the Member States have adopted a common approach to secure supplies and facilitate vaccine distribution. Moreover, the Council of the European Union approved conclusions on a human-rights-based post-COVID-19 recovery in February 2021,

⁷⁸ [Xi Sees Threats to China's Security Everywhere Heading Into 2021](#)

⁷⁹ <https://ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25912&LangID=E>

⁸⁰ <https://www.nytimes.com/2021/05/05/us/politics/biden-covid-vaccine-patents.html>



1st International Model United Nations Conference Leirion

which reaffirm the Union's commitment to human rights in the face of COVID-19. It recognizes, among others, that:

"The ongoing COVID-19 pandemic and its socio-economic consequences have a growing negative impact on human rights, democracy and the rule of law, including on civic space. It further deepens pre-existing inequalities and increases pressure on persons in vulnerable situations."

The Council also underlines that;

- "Human rights, democracy and the rule of law will remain at the heart of the EU's response to and recovery from the COVID-19 pandemic as stated in the Council Conclusions on the EU Action Plan for Human Rights and Democracy 2020-2024."
- "The EU undertakes to ensure that our response upholds the dignity and human rights of all without discrimination of any kind. No one should be left behind, no human right ignored"⁸¹

Furthermore, the Secretary General of the Council of Europe has created a toolkit for governments on respecting democracy, the rule of law and human rights in the framework of the COVID-19 crisis. The document aims to ensure that measures taken by the Member States during the pandemic remain proportional to the threat posed by the spread of the virus and are limited in time.⁸²

On the other hand, it is important to note that while the EU has a common strategy to battle COVID-19, every Member State has imposed different measures in different phases of the pandemic. Some countries have adopted more lax measures which have resulted in big outbreaks, while others have imposed very strict measures which might infringe on human rights. Even in cases of governments breaching their citizens' rights, the Union has limited capacity to react, aside from remarks and suggestions, as sanctions need to be decided upon unanimously. This, amongst other reasons such as delayed vaccine distribution, is why the Union has been criticized for being ineffective in times of need.

World Health Organization (WHO)

The World Health Organization, founded in 1948, is the United Nations Agency that connects nations, partners and people to promote health, keep the world safe and serve the vulnerable.⁸³ It coordinates the world's response to health crises and aims to ensure that people have universal health coverage. Regarding the latest healthcare crisis, COVID-19, the WHO issues the Strategic Preparedness and Response Plan (SPRP) for 2021 and is

⁸¹data.consilium.europa.eu/doc/document/ST-6324-2021-INIT/en/pdf.

⁸² Council of Europe. "Coronavirus: Guidance to Governments on Respecting Human Rights, Democracy and the Rule of Law." *Coronavirus: Guidance to Governments on Respecting Human Rights, Democracy and the Rule of Law*, Council of Europe, 4 Nov. 2020, www.coe.int/en/web/portal/-/coronavirus-guidance-to-governments-on-respecting-human-rights-democracy-and-the-rule-of-law.

⁸³"About Who." *World Health Organization*, World Health Organization, www.who.int/about.



coordinating the actions that must be taken at national and global levels to tackle the pandemic.

United Nations Human Rights Council (UNHRC)

The Human Rights Council is an inter-governmental body within the United Nations system responsible for strengthening the promotion and protection of human rights around the globe and for addressing situations of human rights violations and making recommendations on them. It has the ability to discuss all thematic human rights issues and situations that require its attention throughout the year.⁸⁴ The Council has submitted many resolutions regarding the human rights implications of the pandemic. For example, in June 2020 the president of the Council made a submission in which he called upon all states to ensure that human rights are respected while tackling the pandemic and that their responses to COVID-19 are in full compliance with their human rights obligations and commitments. Moreover, in March 2021 the Council adopted a resolution on human rights, democracy and the rule of law in which it urges states to promote good governance, to develop accountable and effective institutions etc.

Amnesty International

Amnesty International (also referred to as Amnesty or AI) is an international non-governmental organization focused on human rights.⁸⁵ The organization says it has more than ten million members and supporters around the world. Amnesty's experts conduct accurate research into human rights violations by governments and others worldwide. They use their analysis to influence governments, companies and decision-makers to do the right thing. Lastly, through petitions, letters and protests, campaigners worldwide press for action from people and institutions who can make change happen. Regarding the recent healthcare crisis, Amnesty International has called out numerous human rights violations globally and is trying to get more attention to these matters.

Human Rights Watch (HRW)

The Human Rights Watch (HRW) is an international non-governmental organization that conducts research and advocacy on human rights.^[2] The group pressures governments, policy makers, companies, and individual human rights abusers to denounce abuse and respect human rights. This Organization often works on behalf of refugees, children, migrants, and political prisoners.⁸⁶ Since the beginning of the pandemic, HRW has pressed governments around the world to respect people's rights to life and the highest attainable standard of health. They have pushed governments to ensure access to water, soap, and personal

⁸⁴ "Welcome to the Human Rights Council." *OHCHR*, www.ohchr.org/EN/HRBodies/HRC/Pages/AboutCouncil.aspx.

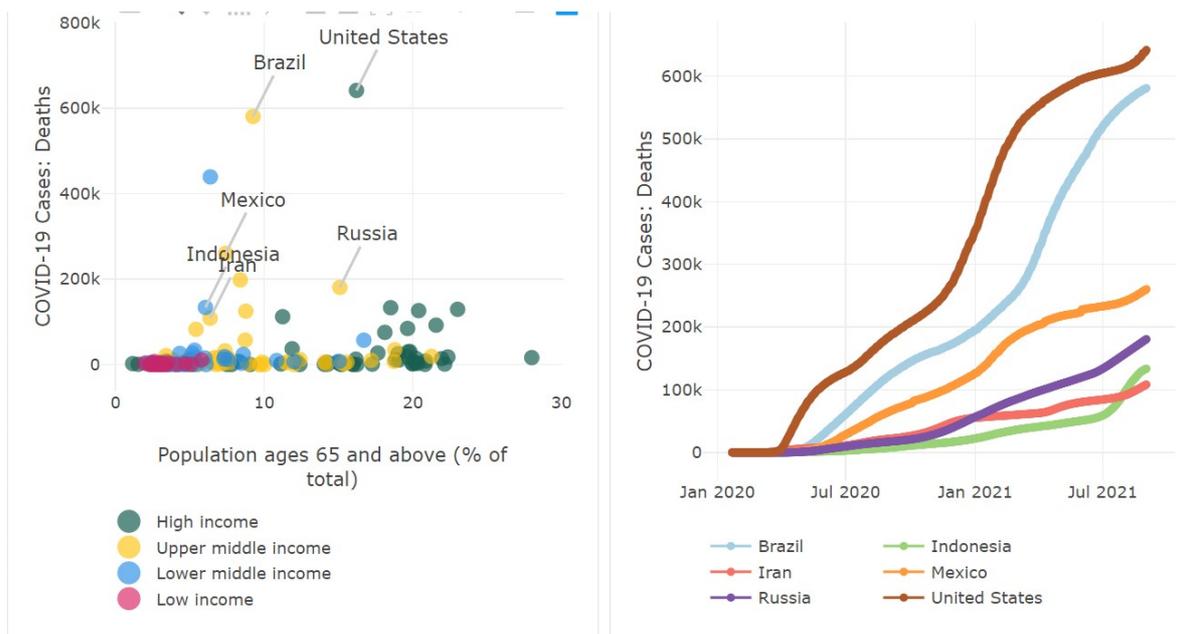
⁸⁵ "Amnesty International." *Wikipedia*, Wikimedia Foundation, 23 July 2021, en.wikipedia.org/wiki/Amnesty_International.

⁸⁶ "Human Rights Watch." *Wikipedia*, Wikimedia Foundation, 30 July 2021, en.wikipedia.org/wiki/Human_Rights_Watch.



protective equipment, to goals such as providing everyone access to affordable health care and an adequate standard of living.⁸⁷

Source: "Understanding the Coronavirus (COVID-19) Pandemic THROUGH DATA: Universal Health Coverage Data: World Bank." *Understanding the Coronavirus (COVID-19) Pandemic through Data | Universal Health Coverage Data | World Bank*, datatopics.worldbank.org/universal-health-coverage/coronavirus/. Last accessed: 03/09/2021



Country Alliances

The issue of human rights during public healthcare crises is an issue that affects the entire world. However, every country has different policies, laws and regulations which have resulted in different approaches to tackling the pandemic. Broadly speaking, one set of countries has chosen to heavily prioritize quickly and effectively combating the pandemic through a top-down approach that includes highly restrictive measures, potentially disregarding human rights and abusing power in the process. Most are States where executive power is largely unchecked and checks and balances such as judicial review of executive actions are weakened or nonexistent. These states have had varying degrees of success in protecting their citizens from the pandemic, with some succeeding in curbing the virus through strict lockdowns, policing and surveillance, but others failing due to serious mismanagement⁸⁸. Some examples include China, the Russian Federation, Iran, Brazil etc.

The other set of countries includes those which have imposed more liberal measures, for example the USA, most EU Member States, Canada, Australia, South Korea etc. In these

⁸⁷"Progress Protecting Rights While Combatting Covid-19." *Human Rights Watch*, 28 Oct. 2020, www.hrw.org/news/2020/10/27/progress-protecting-rights-while-combatting-covid-19.

⁸⁸ See for example: [Coughing into the Crowd: Bolsonaro's Botched COVID-19 Response](#)



states, measures to curb the pandemic have been implemented with consideration for existing human rights frameworks, again with varying degrees of success. Of course, it is up to the delegates to review which of these measures are in agreement with the principle of proportionality and the other legal criteria outlined in this study guide and which constitute possible human rights violations. Furthermore, it is up to the delegates to discuss which approach is more successful: Are larger infringements on civil and political rights justified if the right to life and health is more efficiently protected? Which states have failed to fulfill their obligations towards their citizens and which have actively infringed on their rights?

Addressing the Challenge

What has been done so far?

Global and regional efforts have been made in response to the pandemic including (but not limited to) the following:

United Nations

- ◇ Human Rights Council Resolution A/HRC/46/L.25/Rev.1: on ensuring equitable, affordable, timely and universal access for all countries to vaccines in response to the coronavirus disease (COVID-19) pandemic. [A/HRC/46/L.25/Rev.1](https://undocs.org/en/A/HRC/46/L.25/Rev.1)
- ◇ Report of the Human Rights Council A/75/53/Add.1, which calls out human rights violations in relation to COVID-19 and urges Member States to respect them. <https://undocs.org/en/A/75/53/Add.1>
- ◇ United Nations General Assembly Resolution A/RES/74/274: on International cooperation to ensure global access to medicines, vaccines and medical equipment to face COVID-19. <https://undocs.org/en/A/RES/74/274>
- ◇ United Nations General Assembly Resolution A/74/L.92: on Comprehensive and coordinated response to the coronavirus disease (COVID-19) pandemic. <https://undocs.org/A/74/L.92>
- ◇ United Nations Human Rights Council, [A/HRC/RES/44/9](https://undocs.org/en/A/HRC/RES/44/9) , on *Independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers* , preamble and paragraphs 17 and 18
- ◇ Human Rights Council, Presidential Statement 43/1 (29 May 2020), “Human rights implications of the COVID-19 pandemic” [A/HRC/PRST/43/1](https://undocs.org/en/A/HRC/PRST/43/1)
- ◇ United Nations General Assembly Resolution [A/RES/75/157](https://undocs.org/en/A/RES/75/157) , on *Women and girls and the response to the coronavirus disease (COVID-19)*
- ◇ <https://www.ohchr.org/Documents/Issues/CivicSpace/CivicSpaceandCovid.pdf>
- ◇ <https://www.ohchr.org/Documents/HRBodies/CCPR/COVIDstatementEN.pdf>
- ◇ United Nations Development Programme , Guidance Note on [Ensuring Access to Justice in the Context of COVID-19](https://www.un.org/development/dpnp/education/ensuring-access-to-justice-in-the-context-of-covid-19)



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Europe

- ◇ Council of the European Union conclusions: on a human-rights-based post-COVID-19 recovery. <https://data.consilium.europa.eu/doc/document/ST-6324-2021-INIT/en/pdf>
- ◇ Joint Statement of Supreme Eurasian Economic Council Members on COVID-19 pandemic

Asia

The creation of the Association of Southeast Asian Nations (A SEAN) Portal for Public Health Emergencies <https://aseanphe.org/>

Africa

The creation of the African Union (AU) COVID-19 Response Fund <https://au.int/en/aucovid19responsefund>

Possible Solutions

As is often the case with human rights, but especially concerning an issue as global as the COVID-19 pandemic, it is difficult to enforce practical solutions with the limited power of the UN, whose committees can only make recommendations and draft reports and whose enforcement mechanisms can rarely breach national sovereignty. We will describe some general guidelines for best practices concerning the protection of rights during the pandemic, which delegates can use to write recommendations in the form of clauses. However, you should not limit your efforts to the solutions proposed in this study guide, but expand upon them and do further research on issues not covered here.

A. Protecting Civil and Political Rights

As a general guideline, all emergency powers and derogations of civil and political rights during public health crises should take place within the framework and provisions of the ICCPR⁸⁹ and the aforementioned Siracusa Principles (See: [EMERGENCY MEASURES AND COVID-19: GUIDANCE RESTRICTIONS ON HUMAN RIGHTS AS A RESULT OF EMERGENCY MEASURES](#) , the OHCHR's guideline).

- ◇ **Access to information:** In order to protect freedom of expression, censorship should not be the first reaction of governments in the fight against disinformation concerning the pandemic. To combat misinformation about the pandemic, data needs to be collected and analyzed correctly and communicated accurately by official sources to the public and journalists in order to boost trust and cooperation. Some governments have chosen to hold daily press briefings, in which experts and members of relevant institutions inform the public about the situation and present scientific facts and evidence. In cases where the decision is made to take down pandemic-related

⁸⁹ "Understanding the Coronavirus (COVID-19) Pandemic THROUGH DATA: Universal Health Coverage Data: World Bank." *Understanding the Coronavirus (COVID-19) Pandemic through Data | Universal Health Coverage Data | World Bank*, [datatopics.worldbank.org/universal-health-coverage/coronavirus/.](https://datatopics.worldbank.org/universal-health-coverage/coronavirus/), pg. 1



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information, there needs to be a clear and valid justification (which should be made public), as well as the possibility for appeal. Furthermore, governments should not withhold vital information from the public and journalists, or make it artificially difficult for members of the press to access and evaluate this information.

- ◇ Concerning the **issue of unchecked executive power**, not much can be done in states where checks and balances (legislative scrutiny and judicial oversight) are already weak. Generally, best practices include forming an “independent or opposition-led parliamentary committee, which meets publicly online, to scrutinize executive action during the crisis.”⁹⁰ This is an effective way to credibly assess emergency action taken by the executive. Furthermore, the state of emergency itself, as well as related measures, should be subject to review by parliament and should always include so-called “sunset clauses”: this means that there should be a timeframe provision within the law for when the state of emergency and the special powers granted to the executive will expire, or a timeframe for designated review periods of the situation by parliament, which will assess whether the emergency powers are still necessary based on the state of the public health crisis. The provisions of such sunset clauses should be made known to the public in an accessible manner.
- ◇ **States of Emergency** need to be declared publicly and State Parties of the ICCPR must notify the Secretary General, as outlined in article 4.3.
- ◇ The **implementation of emergency measures** must also take place with respect to human rights: this means that excessive force should not be used to enforce lockdowns⁹¹, the powers of the police and the military should not remain unchecked and penalties for violations of the measures in question should not be disproportionate. This includes the imposition of fines, which should take into consideration the potential special circumstances of those violating measures, e.g. women fleeing from domestic violence, and not be disproportionately high for the unemployed and those who have lost income due to the pandemic.
- ◇ Delegates should consider possibilities for **international oversight of human rights violations** during public health crises: Could an existing UN body, such as the Human Rights Council, draft reports on the state of the world’s human rights during the pandemic (like the ones created by NGOs such as HRW and Amnesty International) to put pressure on states? What mechanisms can be put in place to face similar crises in the future?

For more information about the state of civil and political rights in the regions you are interested in, you can use the [COVID-19 Civic Freedom Tracker](#) as well as the [The Global](#)

⁹⁰ www.un.org/victimsofterrorism/sites/www.un.org.victimsofterrorism/files/un_-_human_rights_and_covid_april_2020.pdf, pg. 14

⁹¹ See: [United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement - The Geneva Academy of International Humanitarian Law and Human Rights](#)



[State of Democracy initiative](#) and/or watch an enlightening expert online discussion about the issue of states of emergency: [COVID-19: States of Emergency and Government Powers in and After the Pandemic](#). Furthermore, we suggest having a look at Just Security's [Assessing Emergency Powers During #COVID-19](#) series of expert articles for case studies of prominent examples (such as Hungary, Brasil, Mexico etc.)

B. Protecting Economic, Social and Cultural Rights

- ◇ Under human rights law, governments are legally obliged to establish social protection systems. This duty to provide social protection flows directly from the right to social security, which is mentioned in Article 25 of the United Declaration of Human Rights (UDHR) and in Article 9 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR). Examples of social protection measures include cash transfer schemes, unemployment or disability benefits, social pensions, food assistance, or subsidized services. Therefore, countries must ensure that social protection is equally available to everyone without exceptions.
- ◇ Governments have minimal obligations that they must fulfill, as set out by the UN treaty bodies. These obligations include ensuring access to nutrition, basic shelter, housing, sanitation, and an adequate supply of safe drinking water. Even in times of crisis, governments are obliged to try to fulfill these obligations with existing resources, including international assistance, and allocate them in the way that respects human rights.
- ◇ Additionally, according to Article 11 (1) of the ICESCR, governments are obliged to ensure for everyone the “continuous improvement of living conditions.”, while Article 2 of the ICESCR requires governments to use the maximum available resources to progressively achieve the “full realization” of all the rights in the covenant.
- ◇ Governments should ensure that any testing, treatment or vaccines developed for Covid-19 are accessible to everyone, while also ensuring that hospitals and healthcare providers have adequate resources to provide care.⁹²

When it comes to refugees, governments should provide access to social services for them. Also, governments should promote the legalization of migrants coming to their country, their inclusion in the workforce and in economic recovery policies. Countries should consider the temporary suspension of deportations and enforced returns during the pandemic.⁹³

⁹² “Protecting Economic and Social Rights during AND POST-COVID-19.” *Human Rights Watch*, 25 Jan. 2021, www.hrw.org/news/2020/06/29/protecting-economic-and-social-rights-during-and-post-covid-19.

⁹³ “ACNUDH: COVID-19: Governments Must Protect the Rights of Migrants during the Pandemic and beyond, UN EXPERTS Urge.” *ACNUDH | COVID-19: Governments Must Protect the Rights of Migrants during the Pandemic and beyond, UN Experts Urge*, www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?LangID=E&NewsID=25904.



C. Protecting the Rule of Law and building resilient Justice Systems

As expressed by Sustainable Development Goal number 16, the need for building resilience for the world's institutions is deeply connected with upholding the Rule of Law. The challenge of COVID-19 has laid bare all the inadequacies of justice systems and institutions worldwide, leaving the international community to seek better ways of ensuring access to justice during Public Health Crises.⁹⁴

- ◇ In addressing this particular issue, a holistic approach which includes both proactive and responsive measures is necessary. States need to create emergency strategies to ensure the continued function of the justice sector as well as recovery plans for the problems the COVID-19 pandemic has created. Specifically, in regards to court function and the right to a fair trial, states need to consider issues of management for the remote functioning of the justice system. This might mean creating a framework for remote procedural matters, ensuring the safety of the software used and guaranteeing accessibility for all. A clear guide for case prioritization is imperative in order to manage case backlogs due to reduced court function and avoid infringement of due process. Awareness of legal rights is deemed important and access to State provided legal aid services can be effective in strengthening the justice sector.⁹⁵
- ◇ In regards to the issue of judicial oversight of emergency measures; judges and prosecutors play a key role in safeguarding the rule of law and reviewing the legality of emergency laws, thus should be supported in this work⁹⁶.
- ◇ The socioeconomic impact of the pandemic has also affected the justice sector raising issues of funding, accessibility and equality of representation with millions being placed below the poverty line due to the recession caused by Covid-19⁹⁷. In conclusion, as States remain legally obligated to observe Human rights and offer remedies for Human Rights Violations, multidimensional policies and laws that strengthen justice institutions and uphold the Rule of Law, strengthen Human Rights.

⁹⁴ "To help spread and protect the rule of law, we need the Global Judicial Integrity Network" UNODC, <https://www.unodc.org/dohadeclaration/en/news/2018/04/to-help-spread-and-protect-the-rule-of-law--we-need-the-global-judicial-integrity-network.html>

⁹⁵ "Guidance Note Ensuring Access to Justice in the Context of COVID-19", UNODC, May 2020, https://www.undp.org/sites/g/files/zskgke326/files/publications/undp-bpps-rol-Access_to_Justice_and_COVID19.pdf

⁹⁶ "Role of Judges and Lawyers in Defending the Rule of Law", Adama Dieng, *Fordham International Law Journal* Volume 21, Issue 2 1997 Article 27, <https://core.ac.uk/download/pdf/144226178.pdf>

⁹⁷ COVID-19 to Add as Many as 150 Million Extreme Poor by 2021, World Bank Press Release, October 7 2021, <https://www.worldbank.org/en/news/press-release/2020/10/07/covid-19-to-add-as-many-as-150-million-extreme-poor-by-2021>



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