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Regulating government restrictions on civil liberties during a pandemic

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Introduction

In December 2019, just over 10 years after the 2009 H1N1 Influenza pandemic, the world was on the verge of facing a new pandemic. A group of Chinese citizens, in the city of Wuhan, began to experience the symptoms of an unusual pneumonia-like illness. Within three months of this occurrence, the World Health Organisation (WHO) declared the COVID-19 pandemic. People worldwide faced the consequences of this virus. Not only did they face the virus by its symptoms, they were also met with numerous government restrictions. These government restrictions ranged from mandatory social distancing and face masks to curfews and limited access to public spaces, impeding the civil liberties these people enjoyed prior to the pandemic.

Covid-19 is the primal, but not the only example of how governments may impinge the civil rights we enjoy on a daily basis. While such limitations are mostly imposed for the public good, they may also be enforced unlawfully. As pandemics have been happening more often in the past decades, and we may expect the next pandemic sooner than we would hope, it is therefore crucial to open the discussion on the regulation of government restrictions on civil liberties during such pandemics.

General Overview

During a pandemic, the government has the right to impede civil liberties to secure public health. Although the limitation of these civil liberties tend to violate a range of human rights, such as, but not limited to, the freedom of movement and the freedom of peaceful assembly, many legal frameworks account for situations like these. The most important frameworks when it comes to human rights, and thus civil liberties, including the International Covenant on Civil and Political Rights (ICCPR) and its complementary Siracusa Principles, the Constitution of the World Health

Organisation, and the Charter of the United Nations. In the section below, you can find an overview of these key articles within these legal frameworks documents.

Besides causing major harm to human health, pandemics also negatively affect economies and social and cultural life at every scale. Therefore, it is of utmost importance to discuss how governments are expected to protect the population while preserving civil rights and limiting the damages done to the economy.

Overview of key articles of the legal frameworks

International Covenant on Civil and Political Rights (ICCPR)

The International Covenant on Civil and Political Rights, for short the ICCPR, is one of the nine core treaties on human rights. The treaty was adopted by the United Nations General Assembly on December 16, 1996 and is one of the most prominent pieces of legislation when it comes to civilian liberties and the potential restrictions that governments may impose on these liberties. Relevant articles for the topic include articles 4(1), 6(1), 9(1), 12(1, 3), and 21. Article 4 states that governments (referred to as 'States Parties') are allowed to take measures in the case of a public emergency that threatens the nation. However, articles 6(1), 9(1), 12(1) and article 21, discuss that every human being has the right to civil liberties, such as the right to liberty, the right to life, and the right to peaceful assembly. That is where article 12.3 comes into play, this article allows governments to restrict these liberties under certain circumstances, including the case of a pandemic. Due to a number of violations of the ICCPR, mainly under articles 4 and 12.3, the International Commission of Jurists (ICJ) has established the Siracusa principles. These principles highlight when it should and should not be allowed to restrict civil liberties under a suggested threat to the nation.

The Constitution of the World Health Organization

Seeing that the World Health Organisation (WHO) is one of the most essential actors when it comes to pandemics and the provision and protection of human health around the world, it is key to understand the constitution on which this organisation is built. The WHO's constitution opens with an emphasis on the responsibilities of governments when it comes to providing "adequate health and social measures" for their peoples. The constitution continues by building on the organisation's objective (article 1) and what it will be doing to reach this objective (article 2). We highly recommend taking a look at The Constitution of the World Health Organization to get an understanding of how the organisation functions and, above all, to see what it can and cannot do in the case of a pandemic and possible government restrictions during pandemics.

Major Parties Involved

Since major parties are divided into the two levels of national and global governance, introducing the involved international organisations, rather than national governments, would provide a more general picture of the actors involved in the issue.

1. World Health Organisation (WHO)

The World Health Organisation is a specialised agency of the United Nations that focuses on international public health. The Organisation consists of 194 member states and was founded in 1948 to connect "nations, partners and people to promote health, keep the world safe and serve the vulnerable" and ultimately "attain the highest level of health". The WHO is seen as the leader of global efforts when it comes to expanding universal health coverage, directing and coordinating the world's response to health emergencies, and promoting healthier lives. As it is the main global institution on health security, the organisation holds a central role in the discussion of pandemic based restrictions.

2. Office of the High Commissioner for Human Rights (OHCHR)

The Office of the High Commissioner for Human Rights, also known as the UN Human Rights Office, is the leading entity of the United Nations in the field of human rights. The Office is mandated to promote and protect all human rights for all people. The OHCHR was established in 1993 and is currently led by Volker Türk. Since the Office's mandate focuses solely on human rights, it holds a key position when it comes to the restrictions of civil liberties.

3. United Nations Human Rights Council (UNHRC)

The United Nations Human Rights Council is an intergovernmental body within the UN established in 2006. The Council consists of 47 States that are responsible for the promotion and protection of all human rights around the world. Given that it is the UNHRC's obligation to monitor, promote, and maintain the respect for human rights, it holds a crucial position regarding the possible restrictions and thus violations of human rights during pandemics.

4. International Commission of Jurists (ICJ)

The International Commission of Jurists, established in 1952, is made up of 60 judges, lawyers and legal academics. The Commission's vision is "a just society governed by the rule of law where all people equally enjoy their human rights." By supporting the development of international human rights law and standards, promoting their adoption and implementation, and by defending and preserving these laws and standards, the Commission wishes to work towards this vision. The ICJ's purpose is to ensure that people benefit equally from the role of law and enjoy their human rights. Seeing that the ICJ also protects both human rights and the rule of law, it holds major accountability powers when it comes to judicial cases including human rights.

Possible Solutions

- ➔ Further strengthening the role of the World Health Organisation (WHO), especially when it comes to prevention, research, regulation and recommendation of safety measures in the case of pandemics;

- ➔ Specifying international human rights standards for pandemics: discussing the intensity and legality of government restrictions on civil liberties and establishing an achievable, common standard of human rights that governments should meet in the case of a pandemic;

- ➔ Revisiting the Siracusa principles and considering what governmental restrictions are seen as unlawful;

- ➔ Intensifying the international monitoring of human rights by the Office of the High Commissioner for Human Rights (OHCHR) and the UN Human Rights Council (UNHRC), as well as any other potentially relevant UN bodies;

- ➔ Suggesting the support of independent human rights organisations, such as, but not limited to, Amnesty International, Human Rights Watch, and Oxfam International.

References

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