



Global Health Law Groningen

COVID-19 outbreak is a matter of international law and human rights

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The outbreak of the COVID-19 virus is a matter of international law and human rights. The World Health Organization (WHO) should have more legal and financial capacity to act in the event of such an outbreak. It is too early to assess whether countries act proportionately in the light of human rights. A human rights based approach should be a standard component of interventions aimed at combating infectious diseases.

Countries have been working together for a century and a half when it comes to fighting infectious diseases. Since the 19th century, international "sanitary" regulations have been in place to combat infectious diseases. The coronavirus outbreak (COVID-19) is regulated by the recent International Health Regulations ([IHR](#)) of the World Health Organization (WHO), which have been binding on all countries in the world since 2007.

The new Regulations are innovative because of their open formulation: the instrument covers all threats to public health, not just a limited list of diseases. Thus, even a terrorist attack with anthrax, or the leakage of chemicals, could fall within it if there is a threat to public health. Such a situation has occurred six times since the adoption of the revised IHR: influenza in Mexico (2009); Ebola in West Africa (2014); polio in Pakistan, Afghanistan and Nigeria (2014); zika in South America (2016); Ebola in Congo (2018); and now COVID-19 in China.

Both China and the WHO have responded fairly promptly to the outbreak, as required under the IHR. China informed the WHO about the outbreak within a few weeks, and the WHO announced the presence of an international emergency threatening public health at the end



The WHO subsequently made [recommendations](#) on how to deal with the crisis in accordance with the Regulations. Subsequent consultations with China seemed to be taking place satisfactorily. It is important to note that the IHR do not allow for the imposition of coercive measures to enforce these recommendations. It is quite possible that in future scenarios more coercive action will have to be taken, i.e. when countries refuse to follow up on the recommendations. This is where the [compromise](#) that the IHR reflect is avenged. The WHO should have more legal and financial resources to take more compelling steps. As long as the IHR are a compromise text and the WHO receives insufficient funding, with a large part of the donated money earmarked for specific purposes, its scope for maneuver remains limited. In fact, the WHO has the expertise to be the major player when it comes to such outbreaks, but it [lacks the means and the resources](#).

In addition, one big question is whether countries choose the right interventions themselves in response to the outbreak. It is premature to draw firm conclusions about the drastic quarantine measures that China and other countries have imposed on the population. It is also appropriate to understand that every outbreak is different, therefore, states' responses always need to be improvised. China has made a serious effort to save the world's population from a serious virus outbreak. Indeed, sometimes individual freedoms have to be sacrificed for the benefit of global public health.

From an international human rights law perspective, it must be questioned whether quarantines and other restrictions are proportional. It should be stated that quarantines are, in principle, permitted under the IHR and that Member States have freedom in their form and scope. However, quarantines and other interventions must relate to international human rights. Yet, what these rights and freedoms exactly are is not made explicit by the IHR. As far as I am concerned, here the IHR fall short.

Nevertheless, international human rights treaties also apply. The question here is how far you can go to protect public health at the expense of individual rights such as privacy, physical integrity and freedom of movement. In fact, restrictions on these rights and freedoms must have a legal basis and be proportionate and subsidiary: does the public health interest require the infringement and is there no lighter measure available? Medical scientific evidence about the nature and infectiousness of the disease plays a major role here. Therefore, the containment should be informed by the seriousness of the danger.

Yet, countries also have the discretion to temporarily put aside rights such as privacy and freedom of movement in the event of a general emergency. A number of countries have made use of the possibility to temporarily (derogate) from human rights. However, a number



China is not a formal party to the International Covenant on Civil and Political Rights (ICCPR), which is the main treaty expressing the above rights. It is no news that China regularly violates the rights under this Convention. There have also been rumors that the restrictions go too far. For instance, [Human Rights Watch](#) reported that whistleblowers have been silenced. This while it is essential to be transparent and provide information so as to maintain the confidence of the population, especially when imposing such drastic measures. But we also have to consider that China has had to respond very quickly to a new emergency.

In other countries we see a range of scenarios, ranging from a total lockdown, as in China, to a set of measures that drastically or less drastically restrict the freedom of movement of the individual. To complicate matters from a human rights perspective, these governmental measures may also be at tension with economic and social rights such as the rights to education, employment and social security. Indeed, if you cannot enjoy education and cannot work, those rights will come under pressure. There is still a lot of uncertainty about how governments can limit those rights.

It seems premature to pass a harsh judgment on the different approaches countries are taking now. In time, we will be able to make a better estimate of how these interventions relate to international human rights standards. Such a human rights analysis will teach us a lot about how to respond in future scenarios. In conclusion, a human rights-based approach should be a standard component of interventions aimed at combating infectious diseases.

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About this blog

We are witnessing a number of serious challenges in relation to health including a change in disease patterns, some of which are lifestyle-related as well as increasing health inequalities within and between states. Additionally, many countries are struggling with the detrimental health effects of environmental degradation, climate change, international migration, urbanization and internal conflicts. This is affecting the health and wellbeing of individuals worldwide, especially those who are marginalised and disadvantaged.

International law can play an important role in addressing the above-mentioned concerns. However contrary to, for example, international trade law and international humanitarian law, international or global health law is not a coherent field of international law. The health-related standards are very fragmented and there is no overall international recognition of international or global health law as a distinct branch of international law. Moreover, these standards insufficiently emphasise equal access to and distribution of health services and the establishment of overall fairness in health.

The Global Health Law Research Centre of the University of Groningen (**GHLG**) focuses on these challenges through the lens of international law. It focuses in particular on issues such as global and domestic health inequalities, infectious and chronic diseases, access to medicines, reproductive health, accountability in the health system, and migrant health.



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