

# Human Rights Perspective Amid Coronavirus Disease 2019 Outbreak

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The novel disease known as Severe Acute Respiratory Syndrome coronavirus 2 (SARS-CoV-2) or better known as Coronavirus Disease 2019 (COVID-19) has taken on pandemic proportions that can cause infected people to experience mild to moderate respiratory illness while the older people and those with underlying medical issues are at a greater likelihood to develop serious illness or even death. Following Human Immunodeficiency Viruses (HIV) / Acquired Immunodeficiency Syndrome (AIDS) outbreak, the nexus between public health–human rights became more significant and has driven public health away from the conventional, state-centred Westphalian methods to contagious diseases toward an approach that placed people and their rights instead of states and their sovereignty, at the centre of interest. This article aims to discuss whether actions taken by states to diminish the potential spread of COVID-19 by imposing travel bans, isolation and quarantine are regarded as threats to human rights brought by both civil and political rights as well as economic, social, and cultural rights. Therefore, to assess whether these measures are reasonable, there is a need to observe responses of World Health Organisation (WHO) as an intergovernmental organisation established by member states in facilitating their interactions on public health matters under the purview of International Health Regulations. This qualitative research utilises the secondary data gained from scientific database analysis and library research including documents and precedents on public health–human rights linkage articles, WHO reports on COVID-19, etc and these data were analysed by legal interpretation. The finding shows that the necessary measures taken by governments are in fact aligned within legal and human rights' framework.

**Key words:** *HIV/AIDS, SARS, westphalian, WHO, human rights, isolation, travel bans.*

## Introduction

Coronavirus Disease 2019 (COVID-19) was known prior to the outbreak in Wuhan, China at the end of December 2019 when people were reporting mystery illness while the others claim it was pneumonia disease before they eventually realised that this was in fact a novel virus (Chaolin Huang et al, 2020). The disease that has been characterised as a pandemic by the World Health Organization (WHO) in 11 March 2020 is a respiratory disease which affects breathing and people who are infected can be asymptomatic or can result in mild to severe symptomatic disease such as dry cough, tiredness, fatigue and fever (Lauer Stephen et al, 2020). However, most infected people experience mild to moderate respiratory illness (WHO, 2020). This disease is highly contagious as it spreads through droplets that are in a patient's mouth and nose and it happens when they cough or sneeze, leading these droplets to end up on surfaces and once people touch the surfaces and then touch their eyes, they can be infected (WHO, 2020b). Hence, there is a paramount need to wash hands regularly with soap and water or alcohol-based hand rub as well as cover nose and mouth with a disposable tissue, mask or flexed elbow when coughing or sneezing.

World metre (2020) stated that, as of 30 April 2020, 3,222,392 people worldwide has been infected and according to WHO (2020b), some of them often do not know they even have it which makes the virus even more deadly if it is spread and infected to those who are more susceptible to the virus such as the elderly and those who have existing underlying conditions such as cancer, pre-existing respiratory issues and other critical diseases. Within 4 months alone, more than 228,270 deaths globally were registered with Italy, Spain and United States of America recording the most worrisome number (Worldometer, 2020). However, it should also be pointed out that there have been nearly 1,005,449 people who have recovered which also means that the overwhelming majority of cases do not result in death.

COVID-19 pandemic is changing by minute as this is a very fluid situation. Governments around the world have taken aggressive actions by issuing new restrictions which include lockdowns, movement restriction orders, circuit breakers as well as prohibiting any public gathering activities which includes Friday prayer or any religious ceremony. Further, sport bodies and organisers also have cancelled or postponed major events including sports and concerts because when there are large numbers of people all together, the odds of transmission can go up significantly. Some countries went even further by imposing travel restrictions on visitors from affected countries. As many countries step up containment, the concern on human rights disruptions is rising. Thus, this article aims to discuss whether actions taken by states to diminish the potential spread by imposing travel bans, isolation and quarantine, are regarded as threats to human rights brought by both civil and political rights as well as economic, social, and cultural rights. Prior to the discussion, this article will first elaborate on the relation between public health and human rights by observing the

evolvement of the Westphalian system. This qualitative research utilises the secondary data gained from a scientific database analysis and library research including documents and precedents on public health–human rights linkage articles, WHO reports on COVID-19, etc and these data were analysed by legal interpretation.

### ***Strengthening Public Health–Human Rights Linkage***

Generally, states or international societies incorporated sovereign state entities enjoying control or exclusiveness of force within their mutually recognised territories (Harding and Lim, 1999). This system is called a Westphalian state system that is used in the international relations system. The same applied in public health system where under the Westphalian state system, human rights are not in any way deemed as an interest, in view of the fact that countries were regarded the solely lawful actors through the eyes of governance (Fidler, 2004). The association between human rights and public health took a while to get noticed, even though it was based on the preamble of WHO Constitution; it clearly stated that the one of the primary rights of every individual is the enjoyment of the highest achievable of standard of health (WHO, 1948). Nevertheless, it still caught someone’s eye through the Declaration of Alma Ata in 1978 which voiced the need for crucial action by all states, health and development workers as well as the world community to safeguard and support the health of all people (Declaration of Alma Ata, 1978). The linkages become eminent following HIV/AIDS outbreak on the world which set off public health communities to shift to International Human Rights (IHR) law in order to assist a guiding policy on the epidemic since conventional methods of contagious disease administration ran out (Fidler, 2004).

Likewise, the Human Rights Watch (2003) pointed out that the capability of state entities and various organisations around the world to reach and share details (core to freedom of expression) in dealing with the HIV/AIDS plague throughout the years; it became completely vital for rights and progress in an effort to cure individuals with the illness in addition to any prosperous prevention program. In other words, this disease has driven public health away from the conventional, state-centred Westphalian methods to contagious diseases toward an approach that placed people and their rights instead of states and their sovereignty, at the centre of interest.

The fruitful outcome can be seen when the world succeeded in controlling and eradicating SARS disease in 2002-2004. Even though more than 8,000 individuals were infected and killed nearly 800 of people worldwide, it did not lead to the disastrous health effect that many feared (Gumel, A.B, 2004). This success indicates that despite the differences of governing system the countries practice, be it a democratic government by the people or a dictatorship of the proletariat, they still able to put their differences aside and practise good governance by providing authorisation to free circulation of data and knowledge, as well as greater

participation of the world community and individuals concerned in the decision making processes concerning prevention of disease and care. In other words, the concept of good governance infiltrates sovereignty or supremacy for the purpose of giving attention to internal approaches of tackling contagious disease problems. The global health governance impression contends that the increasing quality and quantity of global supervision demands honesty, clarity, as well as extensive involvement in public health within and between states in the gathering, examination, and distribution of epidemiological data. It calls for political acknowledgement of, and promptness to, an ‘open public health society’ in which:

- (1) Residents are entitled to obtain and distribute information crucial to safeguard and support their health; and
- (2) Non-state actors can hold governments answerable for their administration of the public’s health (Fidler, 2004).

Still, the government of any country can respond independently without having to take any instructions from any organisation in dealing with infectious disease like COVID-19. Some countries opted to introduce a new set of laws to prevent and control infectious disease. Malaysia for example has issued Prevention and Control of Infectious Diseases (PACID) (Measures Within The Infected Local Areas) Regulations (2020) particularly for COVID-19 which commands citizens to abide with a national movement restriction order and punish those who breach it to be jailed up to 6 months, MYR1,000 fined or both (Regulation 2 PACID 2020). Strictest measures including complete lockdown, travel bans, compulsory isolation and quarantine has also been implemented by many states to the extent of affecting billions of people and disrupting human rights. The participation of non-governmental actors has never been important as their roles are not only limited to help people in need, but to amend the Westphalian relation of sovereignty with formal governments and renders sovereignty more inclusive and answerable under the concept of global health governance.

### **Travel Ban**

Amid COVID-19, several countries decided to impose a travel ban on visitors from affected countries. The United States for example has imposed entry ban for most European countries for 30 days beginning 15 March 2020. Two (2) days later, the European Council did the same towards incoming travel other than citizens from countries in the European Union and United Kingdom while a day after, Russia closed their borders to foreigners with some exceptions effective until May 1<sup>st</sup>. It is worth noting that although IHR allows WHO member states to impose trade and travel actions specified for each disease (Article 23 IHR 1969), the same regulation restrains the steps countries can implement to measures that are only endorsed by science, in conformity with the risks involved and mainstay in human rights (Article 43 IHR 1969). It could be seen under article 43.2 IHR states that countries shall not enforce further

health actions solely as a precaution, nonetheless must fairly ground their ruling based on scientific evidence, principles and counsel from WHO. The purpose behind it is to prevent countries to take superfluous measures that harm individuals or that disincentives states from reporting new hazards to international public health authorities. Further, article 43.1 of IHR calls for countries which implement any further health actions to be reasonable and utilise other options instead of being prohibitive to the international traffic and intrusive to individuals. In other words, instead of imposing travel restrictions which may or may not be working, there are still so many effective efforts that can be taken to protect their citizens, which include but not limited to surveillance, risk communication, patient management, and screening at ports of entry and exit. Nevertheless, for the purpose of precautions, this legally binding instrument have provisions that impede the departure of infected individuals by means of transportation and that restrain actions taken against vessels and airplanes en route between ports of departure and arrival, against persons and means of transport upon arrival, and against cargo, goods, baggage, and mail moving in international transport (Articles 30–49 IHR 1969).

However, when it comes to the COVID-19 initial outbreak, it is argued that numerous travel prohibitions being enforced by most states throughout initial outbreak are not backed by science or WHO and were contested by public health researchers. According to the WHO Director-General, Tedros Adhanom Ghebreyesus, “there is no reason for measures that unnecessarily interfere with international travel and trade” (Stephanie Nebehay, 2020), meaning, WHO recommended that the travel industry maintained the status quo. Indeed, some studies argues that there is evidence suggests that illegal travel bans do not make countries more secure. Besides delaying the response of international public health, travel bans hinder supplies from getting into areas concern. Plus, to some extent, it stigmatises whole populations. Reactions that are based on disinformation, fear, discrimination, and xenophobia will definitely not spare us from outbreak. Thus, upholding the rule of international law has never been more important.

While some states justify that it is better to be safe than sorry, the others question the competency of WHO on handling public health crises. This argument is not without basis as WHO is seen too slow to contain COVID-19 in its infancy especially when WHO rely too much on China’s preliminary information that is not accurate especially when Chinese authorities have discovered no compelling evidence of person-to-person transmission of the virus (WHO, 2020c). Taiwan has warned WHO that it suspected the virus was spreading through human-to-human transmission (Lin Chia-nan, 2020), even though Taiwan was prevented from joining WHO as member state in 2015 by China, which refuses to acknowledge its independence, Taiwan has one of the lowest rates of COVID-19 infections per capita among countries impacted by the virus (Michelle Yun, 2020). Once the official statement released on January 20 stating that the virus can in fact be passed from human-to-

human, China locked down Wuhan several days later but it was a little bit too late as millions of Chinese citizens were already travelling around the world during the Lunar New Year period. To add insult to injury, it took another week for WHO to announce the spread of the virus a global health emergency—during which time the director-general visited China and credited the state’s management for establishing a new standard for outbreak response and proclaimed that there was no need for any countries to impose travel bans. Another week went by before WHO declared COVID-19 as a pandemic; at that moment the virus had claimed the lives thousands of people, and had infected 118,000 people globally.

In view of abiding international law, it becomes vital to quickly impose necessary measures that protect citizen from the virus. Achieving such a balance has its challenges. On the one hand, abiding international laws that requires scientific evidence or advice from WHO for the purpose of upholding the rule may detriment the life of citizen. On the other hand, having measures to aggressively respond and targeted at the protection of citizens, potentially make them fail to uphold the rules and defeats the purpose of having an international regulation. In short, it is easy to skew the balance towards one side or the other. Hence, the role of WHO to respond to the outbreak, is extremely crucial as they need to be quick, accurate, transparent and above all, apolitical.

Unfortunately, WHO failed to response in timely manner, resulting in millions of people globally to be infected. As a result, a petition was created to call for Tedros Adhanom’s resignation as Director General and as of 16 April 2020, almost 1 million had signed the petition (Change.org, 2020). In fact, he was compared to his predecessor, Gro Harlem who took proactive and effective measures on handling SARS by establishing a significant number of supplemental websites by diverse bodies to distribute details broadly and in a timely manner (Larkin, 2003), despite the fact that they faced a similar problem when the Chinese government was in denial in first five-month period of the outbreak (Smith, 2003). Nonetheless, within two weeks of the SARS outbreak in Hong Kong, a global health alarm concerning cases of atypical pneumonia on 12 March 2003 was issued by WHO (WHO, 2003) and 5 days later, the organisation set up cooperative multi-centre research initiative on the SARS diagnosis to detect the causal agent and create a diagnostic test. The project assembled more than ten laboratories in ten states utilising electronic communications to examine specimens from a patient simultaneously in various laboratories, with the results shared in timely manner (WHO, 2003b).

As the virus is suspected to be originated from Wuhan, China, it worth mentioning that there is unreasonable fear directed to all Chinese people, which led to the most crucial point. As stipulated under Article 3.1 of IHR, enforcement of extra health actions must be done with full respect for the dignity, human rights and basic freedoms of persons, which in turn must take into account the international law principles of legality, necessity and proportionality

that govern constraints to and exemptions from rights and freedoms. Therefore, by no means, the decisions taken by public health or foreign policy should not be grounded on xenophobia and racism.

### **Isolation and Quarantine**

Emanuel et al (2020) emphasised that up until mid-April 2020, there was no adequate anti-viral therapies available to manage the disease progression. According to Spinney (2020), a vaccine is still at least 12-18 months away. Therefore, efforts are focused on detection and containment. These efforts can be categorised into two (2) ways. First, droplet precautions. Since the virus can be spread to others through droplets by sneezing, coughing and speaking, there is a paramount need for people to always wear a mask and to keep hands clean all the time especially after using public facilities (M.W Wang, 2020). Secondly, Hellewell et al (2020) proposed the need to reduce contact between infectious and susceptible people, which includes measures as discussed above such as travel restrictions (Dunford, D et al, 2020). However, the easiest and most effective ways are to emulate the ancient and typical way countries deal with outbreaks, which are instituting quarantine and isolation towards individuals with a contagious disease (Wilder Smith & Freedman, 2020).

With respect to the exercise of quarantine or isolation, the repercussion succumbed by the citizens is beyond doubt that they will be deprived of their rights of movement which ultimately deny their economic liberties in order to earn a living. As a consequence, they will face hardship to pay for their basic living expenses such as meals, house rent, transport, healthcare, and education for themselves and their family as well. Government may pass the largest fiscal stimulus package to mitigate the economic fallout of COVID-19. Like other countries, Singapore has taken an approach to strike the balance between right concerns and health security by unveiling stimulus package amounting to SGD59.9 billion which among others cover wage subsidies for all companies, rental reliefs and cash handouts for all adult citizens (Yen Nee Lee, 2020). Nevertheless, the same could not be applied by poor countries, thus resulting them to fail in balancing between right concerns and health security.

To add insult to injury, the enforcement of property rights is too good to be true as the link between this right to the other economic liberties such as the right to earn from trades or the right to initiate a business is feeble even though Article 17 of the Universal Declaration of Human Rights (UDHR) safeguards the right to hold property and in jointly with the other. This happened because the provision is not backed by the other two (2) International Covenants which are Civil and Political Covenant (ICCPR) and the International Covenant on Economic, Social and Cultural. Jahel Queralt & Bas van der Vossen (2020) revealed that the Human Rights' Committee did not treat the right to property directly as they only considered to do so if the claims were connected to violation of other rights that gave rise to

questions of ownership, specifically related the right to no discrimination (Article 16) and minority rights (Article 27). Consequently, it provided frail defences in a practical sense; thus the resulting grievance pertaining to property rights have normally been dismissed in light of the absence of such a right in the ICCPR and, therefore, possible contraventions of it are beyond the jurisdiction of the Committee (*Armand Anton v. Algeria*, Communication).

Thus, it is vital to examine a variety of issues regarding linkage between containment and human freedoms before taking isolation and quarantine as measures to curb infectious disease outbreaks. For instance, the transparency level needs to be taken into account with which such policies are adopted and implemented, symmetry in the imposition of these policies in comparison to the advantages they provide and the guarantee of a secure and liveable environment for persons subject to these measures. Nonetheless, interference with freedom of movement may be necessary to protect the public and this can be justified under Siracusa Principles on the Limitations and Derogation Provisions in the International Covenant on Civil and Political Rights (Siracusa, 1985) which lists four criteria that must be met after all voluntary steps to isolate such a patient have failed. Firstly, it must be:

- (1) Carried out in accordance with the law;
- (2) Applied in a non-discriminatory manner;
- (3) Associated to a persuasive public interest by way of substantial risk to the public's health;  
and
- (4) Required to accomplish the safeguard of the public, implying that the steps taken must be:
  - (a) In accordance with scientific and public health intelligence and principles;
  - (b) Proportionate to its impact on a person's rights to the danger posed; and
  - (c) The least prohibitive action possible to accomplish safeguarding against the contagious disease risk.

With regard to determine whether a person with an contagious disease poses a substantial risk to the public's health, four (4) factors need to be taken into consideration:

- (1) The nature of the contagious disease risk, including the transmission mode of the contagious agent;
- (2) The duration of the contagious disease risk, including how long the individual is capable of transmitting the contagious agent;
- (3) The probability that the person will transmit the disease, which involves evaluating how the contagious disease is transmitted and how often such transmission acts are likely to occur; and
- (4) The severity of the consequences if the person does transmit the contagious disease.

Unquestionably, the government is obliged to provide their citizens the right to the highest feasible standard of health as stipulated under Article 21-23 UDHR. Amid COVID-19, their roles become more eminent as the disease outbreak certainly hindered all types of human rights such as civil, political, cultural and economic which are perceived as intertwining and inseparable from each other. Additionally, related rights to education, decent living and working conditions need to be taken into consideration as well. Systematic focus is given to this scope of rights by the medical field capable of providing a cohesive system for concentrating on circumstances that may constrain individuals capability to attain ideal health and to obtain medical services.

Hence, isolation and quarantine steps for a patient diagnosed with COVID-19 should not be looked on as a violation of human rights since it is relating to a convincing public interest in the form of a substantial contagious disease threat. It is worth emphasising that COVID-19 is caused by a new type of virus which spreads through human-to-human contact. The infected persons can be asymptomatic carriers who continues transmitting the virus to the surroundings without realising it (Zhiliang Hu et al, 2020). The exercise of isolation and quarantine to slow down the spread of COVID-19 may be regarded to be grounded on scientific and public health information and principles, symmetrical in its consequences on people rights to the threat COVID-19 poses to public health, and the least prohibitive actions possible to attain protection against the spread of the disease. These conclusions are reached in accordance with the significant threat that COVID-19 poses as an infectious disease and the absence of any diagnostic, therapeutic, and prevention technologies that could be utilised to alleviate the violation of civil and political rights. Therefore, since COVID-19 entitles as a major risk to public health under the International Human Rights law, necessary measures such as isolation and quarantine taken by the government in any affected countries should not be regarded as a discriminatory application.

## **Conclusion**

In a nutshell, despite the success of combating SARS almost two (2) decades ago, the post-Westphalian public health is certainly still unprepared to this the new killer pandemic. The failure of the Chinese authority to be transparent and open in the initial stage, coupled with the slow response from WHO and relying on inaccurate information, are among the contributing factors hampering the efforts to flatten the COVID-19 curve worldwide. Definitely, WHO is not up to the challenge of handling the globalisation of the disease. As the virus continued spreading across Europe, Asia and reached America to the extent killing hundreds of thousands of people, drastic approaches such as travel restrictions, isolation and quarantine seems to be the most logical and sensible steps to be taken by many countries. Still, there is a need to observe the approaches taken by each country during COVID-19 outbreak as it differs between one country and another. This is to ensure that every measure



taken to curb the spread of disease is in alignment within a legal and human rights' framework.

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