

A REPORT FROM PARTNERS OF QATAR UNIVERSITY LAW CLINIC IN ADDRESSING THE LEGAL IMPLICATIONS OF THE CORONAVIRUS CRISIS

A RESEARCH PROJECT
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Here is a list of our valuable partners:

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Thank you.

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COVID-19 AND DEVELOPMENTS IN THE INTERPRETATION OF THE FREE EXERCISE CLAUSE

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INTRODUCTION

This Report discusses how state regulations designed to protect the public health during the COVID-19 pandemic impact the right to freely exercise one’s religion, as guaranteed by the First Amendment to the U.S. Constitution.

I. FEDERALISM: THE POLITICAL STRUCTURE OF THE UNITED STATES

Federalism, as set forth by the Tenth Amendment,¹ is the principle of law that “distinguishes between the limited . . . powers of the federal government and the broad sovereign powers” of the states.² In addition to setting the boundary between powers granted to the federal government and powers reserved for the states,³ federalism serves two political functions: Firstly, by giving the federal government only limited powers, it “preserves the integrity, dignity, and residual sovereignty of the States.”⁴ Secondly, federalism “protects the liberty of all persons” by “denying any one government complete jurisdiction over all the concerns of public life.”⁵

The Tenth Amendment states that all powers not granted to the federal government by the Constitution are exclusively reserved to the states or to the people.⁶ The federal government’s powers, frequently called enumerated powers,⁷ find their

¹ U.S. CONST. amend. X (“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people”).

² James G. Hodge, Jr., *The Role of New Federalism and Public Health Law*, 12 J.L. & HEALTH 309, 311 (1998).

³ *Bond v. United States*, 564 U.S. 211, 221 (2011).

⁴ *Id.*

⁵ *Id.* at 222.

⁶ See U.S. CONST. amend. X.

⁷ *M’Culloch v. Maryland*, 17 U.S. 316, 402 (1819) (“This government is acknowledged by all, to be one of enumerated powers”).

sources from Article I, § 8 of the Constitution,⁸ in certain amendments,⁹ and in areas of governance where sovereign national governments “inherently” have the power to govern. The result of this framework is that a valid exercise of federal power must have an explicit Constitutional basis. These federal powers are, therefore, limited when compared to the states’ plenary powers, who are not required to have such express bases for the exercise of their powers. However, the Supremacy Clause of the Constitution ensures that the states’ plenary powers do not intrude upon the federal government’s limited powers.¹⁰ Under the doctrine of preemption, set forth by the Supremacy Clause, “federal laws and regulations override conflicting state laws.”¹¹

Under the Tenth Amendment, the states are reserved the powers that are not expressly granted to the federal government by the Constitution.¹² These state powers are plenary (compared to the federal government’s enumerated powers) and are frequently called “police powers.”¹³ Generally, subject to the federal government’s enumerated powers and the Supremacy Clause, states have the exclusive power to enact regulations and enforce those regulations to protect their citizens’ health, safety, morals, and general welfare.¹⁴ State legislatures delegate their police powers to local governments (cities, counties), who then may also enact and enforce regulations on

⁸ *See, e.g.*, the Commerce Clause, Article I, § 8, Clause 3 of the Constitution, which gives Congress the power “to regulate commerce with foreign nations, and among several states, and with the Indian Tribes”

⁹ *See, e.g.*, the Sixteenth Amendment, which grants Congress the power to “lay and collect taxes on incomes. From whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.”

¹⁰ U.S. CONST. art. VI, cl. 2 (“This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any thing in the Constitution or Laws of any State to the Contrary notwithstanding.”).

¹¹ Hodge, *supra* note 2, at 315.

¹² U.S. CONST. amend. X.

¹³ *Lochner v. New York*, 198 U.S. 45, 53 (1905) (“There are, however, certain powers, existing in the sovereignty of each state in the Union, somewhat vaguely termed police powers”).

¹⁴ *See, e.g., id.* (“Those [police] powers, broadly stated, and without, at present, any attempt at a more specific limitation, relate to the safety, health, morals, and general welfare of the public.”).

those same bases.¹⁵ Exercises of police powers can come in the form of legislative action¹⁶ or executive action.¹⁷

II. The Free Exercise Clause

*“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”*¹⁸

The First Amendment to the United States Constitution guarantees the people five freedoms: the freedom of religion, the freedom of speech, the freedom of the press, the freedom to assemble, and the freedom to petition their government. The First Amendment bars both the federal government and the state governments from interfering with these rights,¹⁹ though the protections these rights offer are far from absolute and many cases since its drafting have sketched their outer limits.²⁰

A. The Free Exercise Clause

¹⁵ State legislatures delegate their powers to local governments under two forms of delegation: home rule and Dillon’s Rule. In states that utilize home rule, local governments are free to exercise the same broad authority as the state government, so long as doing so does not violate the state constitution or the Federal Constitution, and does not violate any laws enacted by the state legislature. In Dillon’s Rule states, local governments may only exercise powers that have been expressly delegated to them, or powers that are necessary to exercise those expressly delegated powers. Hugh Spitzer, *“Home Rule” vs. “Dillon’s Rule” for Washington Cities*, 38 SEATTLE U. L. REV. 809, 810, 813–14 (2015).

¹⁶ Statutes enacted by state legislatures or ordinances enacted by city councils are legislative actions. *See, e.g.,* *Lochner*, 198 U.S. at XX (analyzing whether a state statute regulating the maximum number of hours a baker may work was a valid exercise of the state’s police powers; *see generally* *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104 (1978) (analyzing whether a city ordinance designating historic landmarks and districts was a valid exercise of its police powers).

¹⁷ Executive Orders issued by state governors or Emergency Orders issued by city managers are executive actions. *See, e.g.,*

Or. Exec. Order 20-12 (Mar. 23, 2020) (closing certain non-essential businesses); The City Manager of the City of Bend, Oregon, Second Amended Administrative Order Date March 26, 2020 and Extension of Order Through Completion of Phase I of the Phased Reopening Plan for Deschutes County (May 18, 2020) (“highly discouraging” travelers from visiting Bend, Oregon).

¹⁸ U.S. CONST. amend. I (emphasis added).

¹⁹ *See, e.g.,* *Cantwell v. Connecticut*, 310 U.S. 296 (1940) (incorporating the Free Exercise Clause against the states).

²⁰ *See, e.g.,* *Employment Division v. Smith*, 494 U.S. 872 (1990) (holding that governments may constitutionally burden the free exercise of religion through neutral and generally applicable laws.)

The First Amendment’s Free Exercise Clause protects individuals’ right to religious beliefs, to profess their beliefs, and to engage in conduct according to those beliefs. Cases involving three categories are treated differently from each other by the Supreme Court.

1. The Free Exercise Clause’s Protection of Religious Belief

The Free Exercise Clause’s protection of religious belief is absolute:²¹ The government may not “compel affirmation of a religious belief, punish the expression of religious doctrines it believes to be false, impose special disabilities on the basis of religious views or religious status, or lend its power to one or the other side in controversies over religious authority or dogma.”²² In *West Virginia State Board of Education v. Barnette*,²³ the Supreme Court found that the state of West Virginia’s Board of Education, a government entity, had violated Jehovah’s Witnesses’ freedom of belief by requiring that all students participate in a daily pledge of allegiance to the United States while at school.²⁴ Reciting the pledge of allegiance violates the Jehovah’s Witnesses’ faith.²⁵ The Supreme Court decided that the School Board requiring students recite the pledge was the same as “compelling affirmation of a religious belief”²⁶ that they did not possess, and decided that the School Board’s mandate was unconstitutional.²⁷

2. The Free Exercise Clause’s Protection of Professing Religious Belief

The Free Exercise’s protection of an individual’s right to profess their religious beliefs is not as absolute. Professing a religious belief involves speech, therefore a law that regulates an individual’s right to profess religious beliefs is evaluated as a potential

²¹ “[T]he [First] Amendment embraces two conceptions—the freedom to believe and the freedom to act. The first is absolute but, in the nature of things, the second cannot be.” *Cantwell v. Connecticut*, 310 U.S. 296, 303–04 (1940).

²² *Smith*, 494 U.S. at 877.

²³ 319 U.S. 624 (1943).

²⁴ “If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us.” *Id.* at 643.

²⁵ *Id.* at 629.

²⁶ *Smith*, 494 U.S. at 877.

²⁷ *Barnette*, 319 U.S. at 643.

violation of an individual's First Amendment right to free speech.²⁸ In *Cantwell v. Connecticut*, a Jehovah's Witness stood on a public street and played a recording that attacked other religions.²⁹ The record angered members of the public and the Jehovah's Witness was convicted of a Connecticut law that criminalized inciting a breach of the peace.³⁰ The Court analyzed this case under the First Amendment's "clear and present danger" test:³¹ The government can regulate an individual's speech, including profession of religious belief, if the speech would breach the peace by inciting riot, danger, and disorder.³² However, the danger of such things must be "clear and present."³³ The Court found that, even though members of the public found the Jehovah's Witness's record offensive, it did not create a clear and present danger of riot, danger, and disorder, and held that the criminal charges violated his constitutional right to freely profess his religious beliefs.³⁴

3. The Free Exercise Clause's Protection of Religious Conduct

The Free Exercise's protection of religious conduct, however, is far from absolute. Twenty years ago, the Supreme Court decided the controversial case *Employment Division v. Smith*. This case involved two individuals who consumed peyote, a plant with psychotropic properties, as a sacramental practice of their Native American Church.³⁵ However, the state of Oregon had a law that classified peyote as an illegal drug and prohibited its possession or use.³⁶ The two individuals were fired from their jobs for consuming peyote, then were denied government unemployment benefits on the same grounds.³⁷ The individuals said that the law violated their constitutional right

²⁸ See, e.g., *Cantwell*, 310 U.S. at 296.

²⁹ *Id.* at 300–01.

³⁰ *Id.*

³¹ *Id.* at 311.

³² *Id.* at 308.

³³ *Id.*

³⁴ *Id.* at 310–11.

³⁵ *Unemployment Division v. Smith*, 494 U.S. 872, 874 (1990).

³⁶ *Id.*

³⁷ *Id.*

to engage in conduct pursuant to their religious beliefs, guaranteed by the Free Exercise Clause, because it criminalized their religious conduct.³⁸

The Supreme Court did not agree. It stated that if law criminalizing peyote had been created to intentionally suppress religious ceremonies, it would be unconstitutional.³⁹ But because this was a neutral law that was “not specifically directed” at religious conduct and was generally applicable to all, the Court only evaluated whether the law was rationally related to a legitimate government purpose. The Court found that the law was rationally related to furthering a legitimate government interest, and therefore was not unconstitutional.⁴⁰ The Court also decided that that the government is not required to offer exemptions to neutral laws of general applicability to individuals on the basis of their religious beliefs.⁴¹ The reasoning behind these new rules was that, in a pluralistic society comprised of many different religious beliefs and practices, “we cannot afford the luxury of deeming presumptively invalid, as applied to the religious objector, every regulation of conduct that does not protect a [religious] interest of the highest order.”⁴²

B. Regulation of Religious Conduct after *Smith*

Smith was a radical reinterpretation of the law. Prior to this decision, if a neutral and generally applicable law incidentally burdened an individual’s free exercise of their religion, then the law was evaluated under heightened scrutiny to determine if it was constitutional.⁴³ This required the government to justify the burdening with a compelling interest and prove that the law was narrowly tailored to achieve that interest.⁴⁴ This scrutiny—called strict scrutiny—is the highest level of scrutiny the

³⁸ *Id.* at 875.

³⁹ *Id.* at 877–78.

⁴⁰ *Id.* at 878.

⁴¹ *Id.* at 890.

⁴² *Smith*, 494 U.S. at 888 (emphasis in original omitted).

⁴³ *See, e.g., Sherbert v. Verner*, 374 U.S. 398 (1963) (holding that if an individual’s exercise of religion does not constitute a substantial threat to public safety, peace, or order, then the government may only regulate that exercise if the regulation passes strict scrutiny).

⁴⁴ *Id.* at 404.

courts undertake when reviewing laws.⁴⁵ After *Smith*, neutral and generally applicable laws that burden religious conduct do not raise a constitutional claim so long as they are rationally related to furthering a legitimate state interest. The rational relationship review is the lowest form of scrutiny and it is generally easy for laws to pass this scrutiny: “This rational basis test provides the states with wide latitude in directing social and economic policy because “even improvident decisions will eventually be rectified by the democratic processes.”⁴⁶

Laws that purposefully target religious conduct are presumed to be unconstitutional and will only be sustained if they pass strict scrutiny. In *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*,⁴⁷ the Court found that a city ordinance unconstitutionally targeted religious conduct. The ordinance forbade ritualistic animal sacrifices, which are a core practice of Santeria, the religion practiced by the Church of the Lukumi Babalu Aye.⁴⁸ Though the texts of ordinances were neutral in that they did not mention the Church or Santeria, the Court found that the ordinances were themselves were not neutral because there was evidence that they were enacted as a result of the City’s fears and animosity towards Santeria.⁴⁹ The Court also found that the ordinances were not generally applicability because “almost the only conduct subject to [the ordinances] is the religious exercise of Santeria church members.”⁵⁰ Because the ordinances were not neutral laws of general applicability, they were subjected to strict scrutiny. The Court found that the ordinances failed strict scrutiny because they did not advance a

⁴⁵ See Richard H. Fallon, Jr., *Strict Judicial Scrutiny*, 54 UCLA L. REV. 1267, 1270 (discussing the formation and application of strict scrutiny).

⁴⁶ Miles O. Indest, *Walking Dead: The Fifth Circuit Resurrects Rational Basis Review*, 88 Tul. L. Rev. 993, 995 (2014).

⁴⁷ 508 U.S. 520 (1993).

⁴⁸ *Id.* at 524–26.

⁴⁹ “The record in this case compels the conclusion that suppression of the central element of the Santeria worship service was the object of the ordinances” *Id.* at 434.

⁵⁰ *Id.* at 535–36.

compelling government interest⁵¹ and because they were not narrowly tailored to achieve that interest.⁵² For those reasons, the ordinances were unconstitutional.

C. Legislative Reactions to *Smith*: RFRA and RLUIPA

The Supreme Court's decision in *Smith* was not popular. It sparked a massive backlash from the legal community, all sides of the political spectrum, and from the public at large.⁵³ They feared that *Smith* had reduced the Free Exercise Clause's protection of religious conduct to an almost negligible level, with minority religions at the greatest risk of becoming overrun by majority religions, who would receive more consideration in laws.⁵⁴

The federal Congress acted quickly in response to *Smith* and the general outcry it caused. In 1993, it passed the Religious Freedom Restoration Act (RFRA)⁵⁵ in order to return to Free Exercise protections as they existed before *Smith*. RFRA prohibits governments from substantially burdening an individual's religious conduct, even if the burden is the result of a neutral law of general applicability (like the law in *Smith*), unless the government can pass strict scrutiny by proving that the law advances a compelling interest and the law is the least restrictive means of doing so.⁵⁶ Soon after, the Supreme Court found RFRA to be unconstitutional as it applied to state government actions,⁵⁷ but it is still valid law for the federal government.

21 states out of 50 have chosen to enact their own, state-level, versions of RFRA.⁵⁸ Most of these state RFRA mirror the federal RFRA by requiring any laws that

⁵¹ *Id.* at 547.

⁵² *Id.* at 546 (holding that the ordinances were “overbroad or underinclusive” because they did not apply to similar secular conduct and could have been drafted to burden religious conduct less).

⁵³ Daniel A. Crane, *Beyond RFRA: Free Exercise of Religion Comes of Age in the State Courts*, 10 ST. THOMAS L. REV. 235, 236 (1998)

⁵⁴ *Id.*

⁵⁵ Pub. L. No. 103-141, 107 Stat. 1488 (codified at 42 U.S.C. § 2000bb et seq.). The acronym RFRA is commonly pronounced “riff-ra”.

⁵⁶ 42 U.S.C § 2000bb-1(a)–(b).

⁵⁷ *City of Boerne v. Flores*, 521 U.S. 507, 534–35 (1997).

⁵⁸ *State Religious Freedom Restoration Acts*, NATIONAL CONFERENCE OF STATE LEGISLATURES, <https://www.ncsl.org/research/civil-and-criminal-justice/state-rfra-statutes.aspx> (last updated May 4, 2017).

substantially burden an individual’s free exercise of religion pass strict scrutiny.⁵⁹ However, a few state RFRAs protect religious conduct even more strongly by omitting the “substantially burden” requirement.⁶⁰ Under these state RFRAs, even laws that lightly burden religious conduct will be subjected to strict scrutiny.⁶¹

In 2000, the federal Congress passed the Religious Land Use and Institutionalized Persons Act (RLUIPA).⁶² RLUIPA was designed to correct the RFRA’s shortcomings by protecting the religious freedoms of prisoners and by preventing state governments from substantially burdening religious exercise through land use regulations.⁶³ Its protections in these two contexts echo RFRA: In order to substantially burden a prisoner’s religious exercise or in order to impose a land use regulation that substantially burdens an individual’s religious exercise, the government must prove that the burden furthers a compelling government interest and does so by the least restrictive means.⁶⁴ The Supreme Court has found RLUIPA constitutional as it applies to prisoners.⁶⁵ Whether RLUIPA is constitutional as applied to land use regulations is an ongoing debate that has not been resolved.⁶⁶

D. Conclusion

The Free Exercise Clause of the First Amendment protects three religious freedoms: the freedom to have religious beliefs, the freedom to exercise those religious beliefs, and the freedom to engage in conduct pursuant to those religious beliefs. The Supreme Court has determined that each of these three freedoms differ in scope: The freedom to have religious beliefs is absolute, but the freedom to express religious beliefs can be

⁵⁹ Brian L. Porto, Annotation, *Validity, Construction, and Operation of State Religion Freedom Restoration Acts*, 116 A.L.R. 5th 233 (2020).

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Pub. L. No. 106-274, 114 Stat. 803 (codified at 42 U.S.C. § 2000cc et seq.).

⁶³ Land use regulations, typically enacted at the local government level, are regulations that govern the development and uses of land.

⁶⁴ 42 U.S.C. 2000cc-1(a)(1)–(2); 42 U.S.C. 2000cc(a)(1).

⁶⁵ *Cutter v. Wilkinson*, 544 U.S. 709, 720 (2005);

⁶⁶ Cristina Finetti, *Limiting the Scope of the Religious Land Use and Institutionalized Persons Act: Why RLUIPA Should Not Be Amended to Regulate Eminent Domain Actions Against Religious Property*, 38 SETON HALL L. REV. 667, 673 (2018).

burdened by law so long as those laws pass strict scrutiny. The freedom to engage in religious conduct may also be burdened: Laws that specifically target religious conduct must pass strict scrutiny, however, under *Smith*, if laws are neutral and of general applicability, they only need to pass rational relationship review, which is the most lenient of judicial reviews.

The *Smith* decision decreased the Free Exercise Clause's protections of religious conduct. This was unpopular and the federal Congress passed RFRA and RLUIPA to address the new rule. RFRA and RLUIPA raise the standard of review from rational relationship review to strict scrutiny for laws that fall within a category covered by them. Individual states have also passed their own, state-level, versions of RFRA. Most of the state versions of RFRA mirror the federal RFRA, though some have created even more protective versions of RFRA by removing the "substantially burdened" requirement.

II. COVID-19 AND THE FREE EXERCISE CLAUSE

The COVID-19 pandemic has drastically altered our world and the way we relate to it. This was the year in which shaking hands, going out to restaurants, and hosting parties have become strange, alarming, and bordering on taboo. We have been forced inside, away from each other and away from the outside world. As a result, we have had to reorient our relationships with all the things that we were once familiar with: each other, previously every-day activities, and our government. This reorienting takes place on a personal level, as we encounter new situations with friends, family, and business. It also takes place on the governmental levels, as our governments navigate the complexities of whether and what to regulate to protect the public health.

Because the United States' federalist political structure, there has not been a unified, national-level government response to promote public health during the pandemic. All regulations that have regulated behavior in the interest of public health—by mandating mask-wearing, closing restaurants for in-person dining, or enforcing

quarantines, for example⁶⁷—have been enacted by state or local governments, typically through executive orders issued by state governors⁶⁸ or through ordinances issued by local governments.⁶⁹ For this reason, the American response to COVID-19 has ranged from shutting down all but a few essential businesses and requiring residents to stay at home⁷⁰ to almost no regulations at all.⁷¹

A. COVID-19 and Religious Gatherings

The COVID-19 virus is transmitted from person to person via droplets exhaled through the mouth or nose.⁷² States have enacted regulations designed to prevent the transmission of COVID-19 by reducing the number of individuals who can gather in one indoor space, or preventing them from gathering entirely.⁷³ In some cases, these regulations apply to religious gatherings as well as secular gatherings.⁷⁴ Religious gatherings are particularly at risk of transmitting COVID-19 because they commonly include singing, chanting, handshaking, and sitting in close proximity to others for long periods of time.⁷⁵ These activities cause individuals to produce higher quantities of virus-carrying droplets while sitting closely to one another.⁷⁶

⁶⁷ See, e.g., Or. Exec. Order No. 20-27 (June 5, 2020) (requiring individuals in the state of Oregon to wear masks as directed by the Oregon Health Authority); Ind. Exec. Order No. 20-50 (Dec. 10, 2020) (restricting dining at restaurants for the state of Indiana); R.I. Exec. Order No. 20-104 (Dec. 10, 2020) (setting quarantine requirements for individuals in the state of Rhode Island).

⁶⁸ Each state has a governor, who is the chief executive officer of the state. State governors are analogous to the President of the United States. State governors have the power to issue executive orders, which can trigger emergency powers during public crises that require immediate attention. *Governors' Powers and Authority*, NATIONAL GOVERNORS ASSOCIATION, <https://www.nga.org/governors/powers-and-authority/> (last visited Dec. 8, 2020).

⁶⁹ Ordinances are typically enacted by local-level governments. They serve much the same function as executive orders. *What is an Ordinance?* TOWN OF CASTLE ROCK, COLORADO, <https://www.crgov.com/2761/What-is-an-Ordinance> (last visited Dec. 8, 2020). Ordinances used by city managers, mayors or city councils when acting under emergency powers.

⁷⁰ See, e.g., Or. Exec. Order No. 20-12 (Mar. 23, 2020) (prohibiting the operation of non-essential businesses and urging individuals in Oregon to “stay home” and “save lives”).

⁷¹ “The worst outbreaks in the [United States] now are in places where policymakers did the least to prevent transmission” Lauren Leatherby & Rich Harris, *States that Imposed Few Restrictions Now Have the Worst Outbreaks*, THE NEW YORK TIMES, (Nov. 18, 2020) <https://www.nytimes.com/interactive/2020/11/18/us/covid-state-restrictions.html>.

⁷² COVID-10 (Coronavirus Disease), *Frequently Asked Questions*, CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/coronavirus/2019ncov/faq.html#:~:text=The%20virus%20that%20causes%20COVID,many%20affected%20geographic%20areas> (last updated Dec. 11, 2020).

⁷³ See Or. Exec. Order No. 20-12, *supra* note 73.

⁷⁴ *Id.*

⁷⁵ *Indoor Church Services are COVID-19 Hot Spots: Here's Why*, HEALTHLINE, <https://www.healthline.com/health-news/indoor-church-services-are-covid-19-hot-spots-heres-why#Church-outbreaks> (last visited Dec. 2, 2020).

⁷⁶ *Id.*

Public health experts have urged individuals who participate in these religious gatherings to find alternative ways to gather—outdoors, over video conferencing—due to the extreme risk they present.⁷⁷ However, for many individuals, gathering in a church or a temple with fellow believers is a core practice of their religious beliefs and, in some cases, they have been unwilling to comply with the experts’ recommendations⁷⁸ or even with state regulations.⁷⁹

Gatherings of religious believers, headed by religious leaders who speak on their behalf, often compare their gatherings with secular businesses and activities that regulations allow to continue, and ask the question, “how are we different?”; they feel as though they are treated unfairly.⁸⁰ However, the fact that indoor religious gatherings have been proven to be “hot spots” for COVID-19⁸¹ gives state and local governments strong support for enacting regulations to prevent the spread of COVID-19.⁸²

B. COVID-19 and the Free Exercise Clause

COVID-19 regulations that restrict religious gatherings impact individuals’ right to engage in religious conduct under the Free Exercise clause. The question presented here is whether those regulations unconstitutionally restrict religious gatherings. Many religious believers believe that the answer is yes, these regulations do unconstitutionally restrict religious gatherings. Some religious organizations, like Christian churches and Jewish synagogues, have filed lawsuits to vindicate these

⁷⁷ Sarah McCammon, *Evangelical Doctors’ Group Pleads with Churches to Stay Home*, NATIONAL PUBLIC RADIO (Nov. 19, 2020), <https://www.npr.org/sections/coronavirus-live-updates/2020/11/19/936857525/evangelical-doctors-group-pleads-with-churches-to-stay-home>.

⁷⁸ *See id.*

⁷⁹ Michelle Boorstein, *The Church that Won’t Close its Doors over the Coronavirus*, THE WASHINGTON POST (Mar. 20, 2020), <https://www.washingtonpost.com/religion/2020/03/20/church-tony-spell-coronavirus-life-tabernacle/> (discussing the case of a church in Louisiana that would not stop holding religious gatherings in compliance with a state regulation limiting gatherings to 50 people, despite police intervention and general public outcry);

⁸⁰ *Id.* (“We feel we are being persecuted for the faith by being told to close our doors . . . there is a real virus, but we’re not closing [secular businesses]”).

⁸¹ A religious gathering of 92 people resulted in 35 cases of COVID-19. One of the religious gatherers died. Allisom James et al., *High COVID-19 Attack Rate Among Attendees at Events at a Church – Arkansas, March 2020*, CENTERS FOR DISEASE CONTROL AND PREVENTION (May 22, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6920e2.htm>.

⁸² *See* Lindsay F. Wiley, *Public Health Law and Science in the Community Mitigation Strategy for Covid-19*, J. OF LAW AND THE BIOSCIENCES January-June 2020, at 1, 4.

beliefs. These lawsuits can involve claims that the regulations violate the federal Constitution’s Free Exercise Clause, state versions of the Free Exercise Clause, federal RFRA or RLUIPA, or a state version of RFRA, if the state has enacted one. At the time of this writing, only three cases involving COVID-19 regulations and the Free Exercise Clause have made it to the Supreme Court. These cases are discussed in Part II.D. All three involve claims that state regulations violated the federal Constitution’s Free Exercise Clause.

C. Historical Challenges to State Regulations: Precedence for COVID-19 Cases

Courts have historically given state and local governments great deference to regulations they have crafted in response to public health emergencies on the grounds that state governors and legislatures are better equipped to “determine . . . what ought to be done.”⁸³ In *Compagnie Francaise de Navigation a Vapeur v. Board of Health of State of Louisiana*,⁸⁴ the Supreme Court stated that the state of Louisiana had the power, pursuant to its police powers, to enact laws to “provid[e] for the general sanitation of the states”⁸⁵ and creating and enforcing quarantine zones are a constitutional exercise of their police powers.⁸⁶ The Court’s decision in *Compagnie Francaise* has been cited in other cases to support state governments’ powers to create regulations in the face of public health dangers.⁸⁷

In *Jacobson v. Massachusetts*, the Court upheld a state of Massachusetts law that authorized cities to require their residents to be vaccinated against smallpox or be fined for failing to do so.⁸⁸ The plaintiff refused to be vaccinated, was found guilty, and fined.⁸⁹ The plaintiff sued, claiming that the Massachusetts law was unreasonable,

⁸³ *Jacobson v. Massachusetts*, 197 U.S. 11, 27 (1905).

⁸⁴ 186 U.S. 380 (1902).

⁸⁵ *Id.* at 381.

⁸⁶ *Id.* at 391 (stating that “health and quarantine laws of the several states are not repugnant to the Constitution”).

⁸⁷ *See, e.g.*, *Hickox v. Christie*, 205 F. Supp. 3d 579, 590, 593 (D.N.J. 2016) (citing *Compagnie Francaise* in upholding the state of New Jersey governor’s executive order that created mandatory quarantines for individuals who returned from travel in regions with Ebola outbreaks).

⁸⁸ *Jacobson*, 197. U.S. at 38.

⁸⁹ *Id.* at 13.

arbitrary, and oppressive.⁹⁰ The Supreme Court found otherwise, stating that state have the police power to “protect the public health and the public safety” through “reasonable regulations.”⁹¹ It found that smallpox was a disease that was “prevalent” and “increasing” in Massachusetts and the state had the right to “protect itself against an epidemic of disease which threaten[ed] the safety of its members.”⁹² The Massachusetts legislature’s determination that mandatory vaccinations were the best method for protecting the state was entitled to deference because it is no “function of a court . . . to determine [what method] was likely to be most effective for the protection of the public against disease.”⁹³ For those reasons, the Supreme Court decided that the law was not unconstitutional and instead a valid exercise of the state’s police powers.⁹⁴ *Jacobson* has been cited by many subsequent cases to support the states’ power to regulate in the face of public health crises.⁹⁵

D. COVID-19 Free Exercise Cases

As stated earlier, at the time of writing, only three cases involving COVID-19 regulations and religious gatherings have been heard by the Supreme Court. The claimants—religious organizations— brought their claims under the federal Constitution’s Free Exercise Clause. However, these three cases were heard on a procedural posture called interlocutory appeal. Interlocutory appeals occur when a party to a case appeals a specific ruling by the trial court to a higher-level court while the rest of the case is still proceeding with the trial court. A higher-level court’s decision on an interlocutory appeal does not resolve the case: After the higher-level court’s decision is made, the case continues with the trial court.

The specific rulings that generated the interlocutory appeals in these three cases were the trial courts’ rulings that denied the religious organizations an injunction

⁹⁰ *Id.* at 26.

⁹¹ *Id.* at 25.

⁹² *Id.* at 28.

⁹³ *Id.* at 30.

⁹⁴ *Id.* at 38.

⁹⁵ *See, e.g.,*

against the state regulations that they claimed were burdening their Free Exercise rights. An injunction is an order that a court gives in order to compel a party to do something or compel a party to stop or refrain from doing something. In these cases, the claimants asked the trial courts to grant an injunction to compel the governors of their states to stop enforcing the regulations that allegedly burdened their Free Exercise Clause claims while their cases were still being considered. When the trial courts refused to grant the injunctions, the claimants appealed and those appeals eventually reached the Supreme Court.

When considering whether to grant an injunction, courts evaluate whether the party asking for the injunction is likely to ultimately win their case on the merits, whether the party asking for the injunction would suffer irreparable harm if the injunction was not granted, and whether granting the injunction would harm the public interest. If the court finds that the party asking for the injunction is likely to win on the merits, that the party would suffer irreparable harm if the injunction is not granted, and that the public interest would not be harmed by granting the injunction, then it will grant the injunction.

1. South Bay United Pentecostal Church v. Newsom

On May 25, 2020, Governor Newsom issued an Executive Order that regulated how and when religious gatherings could be resumed, as they had been suspended by a previous Executive Order that required all Californians to stay home and closed non-essential businesses.⁹⁶ The new guidelines stated that, in the interest of reducing COVID-19 transmissions, places of religious gatherings like churches and synagogues could resume hosting religious gatherings at 25% of their regular capacity, up to a maximum of 100 persons.⁹⁷

⁹⁶ Emergency Application for Writ of Injunction Relief Requested by Sunday, May 24, 2020 at 6, South Bay United Pentecostal Church v. Newsom, 140 S.Ct. 1613 (2020) (No. 20-55533).

⁹⁷ *Id.*

United Bay Pentecostal Church sued on the basis that the Executive Order not neutral and generally applicable as the law in *Smith* was, but, rather, targeted religious gatherings due to their religious nature, as prohibited by *Lukumi*.⁹⁸ The Church argued that the Governor had subjected certain businesses and gatherings to conditions of closure and reopening because of the societal value those businesses and gatherings gave to California as a whole.⁹⁹ Because the Governor’s Executive Order allowed some secular businesses to reopen sooner and at capacities greater than were allowed for religious gatherings, the Governor was, in effect, making a determination that religious gatherings were of a lower value than secular businesses.¹⁰⁰ The Church also argued that if the Governor was truly concerned with the transmission risk that large gatherings pose, then he would have banned all large gatherings, religious and secular, without providing exceptions to some secular businesses.¹⁰¹ Because he did not do this, the Church stated, he was intentionally targeting and burdening religious gatherings due to their perceived lower societal value.¹⁰²

The Church also argued that the Executive Order was not generally applicable, as required by *Smith*, because it contained many exceptions for secular businesses that resulted in the regulation only burdening religious gatherings, like the law in *Lukumi*. The Church pointed to the fact that “medical cannabis dispensaries, liquor stores, retail stores, manufacturing, offices, and restaurants” were exempted from certain parts of the Executive Order that religious gatherings were subjected to.¹⁰³ The Church argued that it is unconstitutional that a regulation should provide exemptions to secular businesses and not to religious gatherings when the religious gatherings could “practice the same or similar degree of preventative measures” and stated that failing to give

⁹⁸ *Id.* at 17.

⁹⁹ *Id.* at 17–18.

¹⁰⁰ *Id.*

¹⁰¹ *Id.* at 18–19.

¹⁰² *Id.* at 19.

¹⁰³ *Id.* at 20.

religious gatherings exemptions indicated that the Executive Order impermissibly favored secular activities.¹⁰⁴

Because the Executive order was neither neutral nor generally applicable, the Church argued that, under *Smith*, strict scrutiny should apply.¹⁰⁵ The Church acknowledge that the Governor had a compelling interest in “curbing the novel coronavirus” and that the Governor’s Order furthered that interest.¹⁰⁶ However, according to the Church, the Executive Order was not narrowly tailored to achieve that interest. The Executive Order was under inclusive by failing to regulate secular businesses that “endanger[ed] its interests in a similar or greater degree.”¹⁰⁷ For that reason, the Governor’s Order failed strict scrutiny and was therefore unconstitutional.

The Governor argued that his Order was intentionally drafted to respond to religious gatherings’ unique abilities to spread COVID-19.¹⁰⁸ The Governor also claimed that most secular activities comparable to religious gatherings (“concerts, lectures, theatrical performances, or choir practices, in which groups of people gather for extended periods”) were still closed, so religious gatherings were not being targeted due to their religious nature.¹⁰⁹ The Governor then pointed to differences between religious gatherings that were regulated under his Order and secular businesses that excepted from the Order: The excepted secular businesses did not involve “large numbers of people singing or reading aloud together in the same place, in close proximity to each other, for an extended duration” and were also subject to additional, labor-related regulations that made the transmission of COVID-19 even less likely.¹¹⁰ The Governor then reiterated that his Order was the result of and based upon the best

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at 22; As a reminder, strict scrutiny requires the government to prove that its regulation further a compelling governmental interest and that the regulation is narrowly tailored to achieve that interest.

¹⁰⁶ *Id.* at 23.

¹⁰⁷ *Id.* at 24, quoting *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 543 (1993).

¹⁰⁸ *Opposition of State Respondents to Emergency Application for Writ of Injunction at 18, South Bay United Pentecostal Church v. Newsom*, 140 S.Ct. 1613 (2020) (No. 20-55533).

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at 21-22.

science available at the time and had the approval of public health experts who deemed it an effective way to reduce and prevent COVID-19 transmissions.¹¹¹

In a 5-4 decision,¹¹² Court found in favor of the Governor and denied the Church its request for an injunction. Only Chief Justice Roberts wrote a concurring opinion on the matter.¹¹³ Chief Justice Roberts explained that he believed the Church was not likely to ultimately win on the merits because he believed that the Governor’s Executive Order was “consistent with the Free Exercise Clause of the First Amendment” even though it placed restrictions on religious exercise by regulating religious gatherings.¹¹⁴ He stated that “similar or more severe restrictions apply to comparable secular gatherings” and that the Governor’s Order only exempts “or treats more leniently . . . dissimilar activities . . . in which people neither congregate in large groups nor remain in close proximity for extended periods.”¹¹⁵

Chief Justice Roberts then emphasized that crafting regulations to address the COVID-19 public health crisis is a “dynamic and fact intensive matter subject to reasonable disagreement” and so the Constitution “entrusts the safety and the health of the people” to the states.¹¹⁶ For this reason, the Justice emphasized, state officials’ regulations were entitled to judicial deference, which must be “especially broad” when they act in areas “fraught with medical and scientific uncertainties” and should not be subjected to “second guessing” by the judiciary, “which lacks the background, competence, and expertise to assess public health”¹¹⁷

¹¹¹ *Id.* at 19-20.

¹¹² There are nine Justices on the Supreme Court and they each cast a vote for how a case should be resolved. A 5-4 decision is the closest margin with which a case may prevail. The closer the margin, the more controversial a case is deemed to be.

¹¹³ Supreme Court Justices often write opinions that explain why they voted the way they did. Typically, the majority writes a majority opinion, which becomes binding law. Justices who concur with the result but disagree with the reasoning the majority Justices used to come to that result may also write concurring opinions, or concurrences, that explain their differences. Justices who vote against the majority may write opinions to explain how and why they would have decided the case differently. These are called dissenting opinions, or dissents.

¹¹⁴ *South Bay United Pentecostal Church v. Newsom*, 140 S.Ct. 1613, 1613 (Roberts, C.J., concurring).

¹¹⁵ *Id.*

¹¹⁶ *Id.*, citing *Jacobson v. Massachusetts*, 19 U.S. 11, 38 (1905).

¹¹⁷ *Id.* at 1613-14.

Justice Kavanaugh wrote a dissenting opinion, which was joined by Justices Thomas and Gorsuch. These justices would have granted the Church an injunction because they found that the Church was likely to prevail on the merits, the Church would suffer irreparable injury from not being able to hold its religious gatherings, and the public interest would not have been harmed by granting the injunction.¹¹⁸ Justice Kavanaugh stated Governor's Order discriminated against the Church because of religious nature of its gatherings and should have been evaluated under strict scrutiny.¹¹⁹ He then found that Governor had a compelling governmental interest in preventing the spread of COVID-19, but his Order was not narrowly tailored because it burdened religious gatherings but failed to burden comparable secular businesses.¹²⁰ For those reasons, he would have granted the Church an injunction.

2. Calvary Chapel Dayton Valley v. Sisolak

In July, a less than two months after the *South Bay* decision, Calvary Chapel Dayton Valley Church (Calvary Chapel) in the state of Nevada sued Governor Sisolak of Nevada for unconstitutionally burdening their Free Exercise right to religious conduct through an executive directive¹²¹ that restricted the capacity and frequency of religious gatherings.¹²² Like in *South Bay*, the Church asked for a preliminary injunction, was denied, and appealed the decision to the Supreme Court.

Governor Newsom's and Governor Sisolak's regulations were similar. Governor Sisolak's directive required that religious organizations reduce their gatherings to no more than 50 persons and that they hold gatherings far enough apart that there would be no overlap between people departing from the earlier gathering and people arriving for the later gathering.¹²³

¹¹⁸ *Id.* at 1614–15.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ Another term for an executive order.

¹²² Emergency Application for an Injunction Pending Appellate Review at 8, *Calvary Chapel Dayton Valley v. Sisolak*, 140 S.Ct. 2603 (2020) (No. 20-16169).

¹²³ *Id.* at 6.

Calvary Chapel argued that the Governor’s directive treated secular businesses and activities more favorably than it treated religious organizations who held similar religious gatherings. This was an argument that the Church in *South Bay* made as well, but the justices in that case did not agree with the Church and held that the secular businesses in question were not comparable to religious gatherings and so could be regulated differently without the regulation being unconstitutional.

Calvary Chapel distinguished its situation from *South Bay* by arguing that here, unlike *South Bay*, secular businesses and activities¹²⁴ that had characteristics similar to religious gatherings (“congregat[ing] in large groups and remain[ing] in close proximity for extended periods”) were regulated more leniently than religious activities.¹²⁵ According to Calvary Chapel, there was no rational basis for treating these secular activities and businesses differently than the similarly situated religious gatherings,¹²⁶ and doing so meant that the Governor valued secular, commercial businesses activities over religious activities.¹²⁷

Likely as a result of Chief Justice Robert’s reliance on *Jacobson* in his *South Bay* concurrence, Calvary Chapel also argued that *Jacobson* did not change the outcome of its argument because *Jacobson* only stood for the proposition that “evenhanded” public health regulations are constitutional.¹²⁸ Here, Calvary Chapel argued, the Governor’s directive was not evenhanded and therefore not similar to the Massachusetts vaccination law in *Jacobson*.¹²⁹

Calvary Chapel concluded that the Governor’s directive must undergo strict scrutiny per *Smith* because it was not a neutral or generally applicable regulation.¹³⁰ Calvary Chapel argued that the Governor could have had no compelling interest in

¹²⁴ These businesses are casinos, restaurants and bars, gyms and fitness centers, and mass protests. *Id.* at 13–18.

¹²⁵ *Id.* at 18.

¹²⁶ *Id.* at 20–24.

¹²⁷ *Id.* at 18–20.

¹²⁸ *Id.* at 24.

¹²⁹ *Id.* at 25.

¹³⁰ *Id.* at 26.

preventing the spread of COVID-19 if he limited religious gatherings but failed to limit similar secular businesses and activities that would encourage the spread of COVID-19 just as much as religious gatherings would.¹³¹ For the same reason, Calvary argued that the Governor’s directive was not narrowly tailored because it was, ultimately, underinclusive.¹³²

The Governor responded first by arguing that, under *Compagnie* and *Jacobson*, its regulations are entitled to great judicial deference: “It is no part of the function of the court . . . to determine which of two modes was likely to be the most effective for the protection of the public against disease.”¹³³

The Governor then argued that his directive was a neutral and generally applicable law under *Smith*, “rationally based on the State’s goals of mitigating the spread and contraction of COVID-19, because the directive’s regulations upon religious also restricted comparable secular gatherings.”¹³⁴ The Governor also likened the *Calvary Chapel* situation to the situation in *South Bay*¹³⁵ and argued that Calvary Chapel had erroneously focused its analysis on incomparable secular businesses like casino and activities that were less regulated than religious gatherings, and failed to acknowledge that comparable secular activities and businesses were regulated just like religious gatherings.¹³⁶ As long as the directive did not treat secular activities and businesses differently than similarly situated religious activities, then it was constitutional.

The Supreme Court, in another 5-4 decision, agreed with the Governor and refused to grant the injunction. This time, only the dissenting Justices wrote opinions, but it can be assumed that the majority refused the injunction on the same grounds it did in *South*

¹³¹ *Id.*

¹³² *Id.* at 27.

¹³³ Respondents Steve Sisolak and Aaron D. Ford’s Response to Emergency Application for an Injunction and Respondent Frank Hunewill’s Limited Joinder Thereto at 11, *Calvary Chapel Dayton Valley v. Sisolak*, 140 S.Ct. 2603 (2020) (No. 20-16169) (citing *Jacobson v. Massachusetts*, 197 U.S. 11, 30 (1905)).

¹³⁴ *Id.* at 14.

¹³⁵ *Id.* at 15.

¹³⁶ *Id.* at 17–20.

Bay. Justice Alito, Justice Gorsuch, and Justice Kavanaugh all wrote dissents explaining their decisions, however.

Justice Alito began his dissent by stating that it was “understandable” for states to “impos[e] unprecedented restrictions on personal liberty” in the early days of the pandemic when many things were unknown and the crisis was “evolving” and “uncertain.”¹³⁷ But, he stated, “a public health emergency does not give . . . public officials *carte blanche* to disregard the Constitution for as long as the medical problem persists.”¹³⁸ Therefore, he characterized the Governor’s directive as not “one of exigency, but one of considered yet discriminatory treatment of places of worship.”¹³⁹

The directive was discriminatory, according to Justice Alito, because it treated religious gatherings “differently from other activities that involve extended, indoor gatherings of large groups of people.”¹⁴⁰ In other words, Justice Alito did not believe the Governor’s argument distinguishing religious gatherings from, for example, casinos. For this reason, Justice Alito stated that the directive must pass strict scrutiny and held that it failed to do so.¹⁴¹ Justice Gorsuch joined Justice Alito’s dissent fully and added additional comments to emphasize the discriminatory nature of the directive.¹⁴²

Justice Kavanaugh’s dissent echoed Justices Alito’s and Gorsuch’s, with one interesting addition. Justice Kavanaugh, in explaining the Court’s precedence in Free Exercise cases, stated that the Free Exercise Clause “requires that religious organizations be treated *equally* to the favored or exempt secular organizations”¹⁴³ He characterized this analysis as a two-step inquiry: “First does the law create a favored or exempt class of organizations and, if so, do religious organizations fall outside of

¹³⁷ *Calvary Chapel Dayton Valley v. Sisolak*, 140 S.Ct. 2603, 2605–06 (2020).

¹³⁸ *Id.* at 2606.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.* at 2609.

¹⁴² *Id.*

¹⁴³ *Id.* at 2613.

that class?”¹⁴⁴ If a religious organization falls outside of that class, then the law must pass strict scrutiny.¹⁴⁵ This articulation is a departure from *Smith*, which held that governments are not required to grant religious exemptions to neutral and generally applicable laws, and neutral and generally applicable rules are only subjected to strict scrutiny. However, because Justice Kavanaugh was a dissenter in this opinion, his analysis did not have the force of law.

3. Roman Catholic Diocese of Brooklyn v. Cuomo

Just few weeks ago, on November 25th, the Supreme Court decided another case requesting an injunction against COVID-19 regulations that impacted religious gatherings. A Catholic church and two Jewish synagogues sued the Governor of New York for enacting an Executive Order that placed capacity limits on religious gatherings. This time, however, the Supreme Court granted the religious organizations’ injunction.

The Court composition appears to have played an important role in reversing the Court’s opinion on these kinds of cases. Between July and November of this year, Justice Ruth Bader Ginsburg, a “liberal” member of the Court, passed away and was replaced by Justice Amy Coney Barrett, who is now a “conservative” member of the Court. This has changed the Court from having five liberal justices to and four conservative to now having five conservative justices and four liberal.

Justice Barrett quickly demonstrated her impact on the Court composition by joining the previous four dissenters in *South Bay* and *Calvary Chapel* and giving them the majority votes to grant the injunction in *Roman Catholic Diocese*.¹⁴⁶ In this case, the Court found that the Governor’s order, which restricted religious and other gatherings on scale based on how many COVID-19 cases were reported in each area, was unconstitutional because it was highly restrictive for areas that had greater numbers

¹⁴⁴ *Id.*

¹⁴⁵ *See id.*

¹⁴⁶ *Roman Catholic Diocese v. Cuomo*, WL 6948354 (2020).

of COVID-19 cases.¹⁴⁷ The order was not neutral, the Court found, because it had the effect of “singling out houses of worship for especially harsh treatment.”¹⁴⁸ The religious gatherings could be restricted to as few as 10 participants in some areas, while essential businesses—which the justices did not view as actually essential—had no restrictions upon their participants.¹⁴⁹

For that reason, the Court held that the order would have to pass strict scrutiny to be constitutional. The order failed strict scrutiny on the same grounds as *South Bay* and *Calvary Chapel*: It was not narrowly tailored as required by the test because it included too many activities in its regulations.¹⁵⁰

¹⁴⁷ *Id.* at 2.

¹⁴⁸ *Id.* at 3.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* at 4.

Social Responsibility and the Culture of Voluntarism:

A Role for Civil Society and the Private Sector

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Abstract:

“Voluntarism” is the idea that volunteering contributes towards any purposeful act. Within the U.S., volunteering is a way our society organizes and allocates social responsibility, and represents how much engagement and participation is expected from our citizens.¹⁵¹ The COVID-19 pandemic has impacted our country and volunteering with social responsibility has created roles within our civil society and the private sector. This paper explains how the COVID-19 has impacted volunteerism in the U.S. and what roles volunteers face amidst the complex issues within the country’s civil society. Finally, it considers new roles for private sector disaster and emergency responses in light of corporate citizenship, social responsibility, and voluntarism.

I. INTRODUCTION

“Social responsibility,” as two separate words defines instances where persons are obligated for their interactions made within a group¹⁵² or towards the general welfare of society.¹⁵³ “Social responsibility” obligates people for their societal interactions. “Voluntarism” is defined as “the principle or system of doing something

¹⁵¹ Helmut K. Anheier and Lester M. Salamon, *Volunteering in Cross-National Perspective: Initial Comparisons* 62 LAW & CONTEMPORARY PROBS. 43, 43 (1992).

¹⁵² See, MERRIAM-WEBSTER.COM DICTIONARY, <https://www.merriam-webster.com/dictionary/voluntarism> (last visited Dec. 13, 2020) (“Definition of *responsibility*: (1) the quality or state of being responsible: such as (a) moral, legal, or mental accountability, (b) RELIABILITY, TRUSTWORTHINESS”); see also *Responsible*, MERRIAM-WEBSTER.COM DICTIONARY, <https://www.merriam-webster.com/dictionary/voluntarism> (last visited Dec. 13, 2020) (“Definition of *responsible* ... 2(a): able to answer for one’s conduct and obligations...”).

¹⁵³ See, *Social*, MERRIAM-WEBSTER.COM DICTIONARY, <https://www.merriam-webster.com/dictionary/voluntarism> (last visited Dec. 13, 2020) (“Definition of *social* ... (3): of or relating to human society, the interaction of the individual and the group, or the welfare of human beings as members of society // *social* institutions...”).

by or relying on voluntary action or volunteers[.]”¹⁵⁴ Through “voluntarism,” countries such as the U.S. may rely on voluntary actions made by individual volunteers. Thus, “voluntarism” and “social responsibility” together explain how volunteers better the general welfare of their community by contributing voluntary actions.

A. Social Responsibility vs. Personal Responsibility

“Social responsibility” is better understood when contrasted with “personal responsibility.” In the U.S., our former President Bill Clinton introduced “personal responsibility” in the 1990’s during his Presidential Address to motivate the American people towards seeking welfare reform.¹⁵⁵ After this Presidential Address, the U.S. began welfare reform as our Congress enacted the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA).¹⁵⁶ PRWORA reshaped “cash and food welfare programs...[by] affecting Aid to Families with Dependent Children (AFDC), Food Stamps, Supplemental Security Income (SSI), child support enforcement, child care, child nutrition, and Title XX social services.”¹⁵⁷ The AFDC program, which existed in the U.S. for sixty-one years, was replaced by the PRWORA’s Temporary Assistance to Needy Families (TANF) program.¹⁵⁸ TANF imposed a “general [five]-year time limit on duration of family cash welfare, require[d] work in order to receive benefits after [two] years, establishe[d] a new work requirement for Food Stamps,” and made more changes for AFDC recipients.¹⁵⁹

Amidst this welfare reform, “personal responsibility” for U.S. citizens now meant that each person is responsible for working towards “subsistence rather than

¹⁵⁴ *Voluntarism*, MERRIAM-WEBSTER.COM DICTIONARY, <https://www.merriam-webster.com/dictionary/voluntarism> (last visited Dec. 13, 2020) (“Definition of *voluntarism*: (1) the principle or system of doing something by or relying on voluntary actions or volunteers; (2) a theory that conceives will be the dominant factor in experience or in the world”).

¹⁵⁵ See IRIS MARION YOUNG, RESPONSIBILITY FOR JUSTICE 10 (2011) (citing Presidential Address, September 16, 1995 (“Last week I spoke with you about what I believe must be done to reform our nation’s broken welfare system. I said that real welfare reform should reflect the values all of us American share—work, personal responsibility, and family”) (*emphasis added*)).

¹⁵⁶ EDUC. & PUB. WELFARE DIVISION, 96-687 EPW, NEW WELFARE LAW: THE PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996 1 (1996).

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

depend[ing] on others or on state largesse.”¹⁶⁰ “Personal responsibility” made each person responsible for applying to the new welfare programs to seek a job and receiving funds to pay for food and support their families. “Each person lives within a sphere of action that delimits the range of his or her personal responsibility.”¹⁶¹ Thus, “personal responsibility” *internalized* a person’s consequences, leaving each person to self-sufficiently bear the costs of their choices.¹⁶² “Personal responsibility” in the U.S. meant persons were accountable for their own choices by bearing associated costs and consequences against themselves or their families. In contrast, “social responsibility” entails each person’s actions and obligations within their community.¹⁶³ “Social responsibility” focuses on an enlarged sphere of action associated with how people bear responsibility within their community for their interactions with others.

B. *Volunteering in the U.S.*

Volunteers in the U.S. are generally unpaid, part-time, and formal.¹⁶⁴ Our volunteers work less than forty hours a week and are committed for set time periods. However, Congress learned that volunteers may be less willing to offer voluntary services if they are concerned with facing potential liabilities.¹⁶⁵ This is problematic as reduced volunteers cause public organizations, private organizations, and government entities to lose a valuable part of their workforce, which leads to various increased costs¹⁶⁶ and reduced community interactions.¹⁶⁷ Thus, Congress passed the Federal Volunteer Protection Act of 1997 (“the Act”) to grant volunteers immunity against specific liabilities.¹⁶⁸ Under the Act, volunteers are immune against harms emerged when a volunteer acts within the scope of a volunteering activity

¹⁶⁰ YOUNG, *supra* note 155, at 10.

¹⁶¹ *Id.*

¹⁶² *Id.* (emphasis added). Also, see generally.

¹⁶³ See social & responsibility, *supra* note 152.

¹⁶⁴ Anheier & Salamon, *supra* note 151, at 41.

¹⁶⁵ 42 U.S.C.A. § 14501(a)(1) (“the willingness of volunteers to offer their services is deterred by the potential for liability actions against them...”).

¹⁶⁶ § 14501(a)(4).

¹⁶⁷ §§ 14501(a)(2) – (3).

¹⁶⁸ § 14501(a)(7)(D)(ii).

“caused by no more than ordinary negligence” and not caused by a volunteer’s operation of a motor vehicle.¹⁶⁹ Volunteers can seek licenses, certificates and insurance to cover more liabilities than what is protected under the Act.¹⁷⁰ Volunteers facing liability under the Act are restricted to limited punitive damages, and these volunteers neither face joint nor several liability for economic losses.¹⁷¹

II. COVID-19 IN THE UNITED STATES

As of December 13th, 2020, there have been 15,932,116 million cases of COVID-19 and 296,818 people have lost their lives within the United States of America.¹⁷² The United States began seeing sweeping effects of COVID-19 in March of 2020. As of July, the United States had 4% of the global population with 26% of the COVID-19 cases and 24% of COVID-19 deaths.¹⁷³

A. Federalism

The constitutional principle of Federalism underlies the United States' response to the pandemic. The Tenth Amendment of the Constitution of the United States of America prescribes that “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”¹⁷⁴ Thus, the United States governmental structure relies heavily on federalism. The tenth amendment implicitly provides that federalism gives each state within the United States of America sovereignty and the ability to regulate public health, safety, and morality of state residents.¹⁷⁵ Permitting each state to have varying policies and regulations relating to public health, safety, and morality allows for

¹⁶⁹ § 14503(a).

¹⁷⁰ *Id.*

¹⁷¹ § 14503(a)(4)(e).

¹⁷² CTR. FOR DISEASE CONTROL & PREVENTION, *United States COVID-19 Cases and Deaths by State*, https://covid.cdc.gov/covid-data-tracker/#cases_casesper100klast7days (last updated Dec. 13, 2020).

¹⁷³ David Blumenthal, et al., *COVID-19 — Implications for the Health Care System* 383 *NEW ENGLAND J MED.* 1483, 1484 (2020); Johns Hopkins Coronavirus Resource Center, *COVID-19 Map - Johns Hopkins Coronavirus Resource Center*, <https://coronavirus.jhu.edu/map.html>, (last visited Dec. 13, 2020)

¹⁷⁴ U.S. CONST. amend. X.

¹⁷⁵ Law.jrank.org, *Tenth Amendment*, (2020) <https://law.jrank.org/pages/10730/Tenth-Amendment.html>

laboratories of democracy.¹⁷⁶ The concept of states as laboratories of democracy was strongly prevalent in the United States during the COVID-19 presence throughout 2020. The freedom which the tenth amendment offers states has created diversity in the handling of the current pandemic. While some states decided to implement strict regulations early on, others decided to leave pandemic response to individual people.

B. Differing State Reactions

Allowed by the principles of federalism, the United States on the federal level, did not implement any widespread regulations within the United States. In late March, however, the federal government “issued social distancing recommendations but left to the states the most difficult and consequential decisions restricting behavior, such as canceling events, closing schools and businesses, and issuing stay-at-home orders.”¹⁷⁷ As of November 19th, 2020, only 30 out of 50 States have adopted or enacted public health legislation in response to the COVID-19 pandemic.¹⁷⁸

Below, is a map of the United States provided by the National Conference of State Legislatures website. The States, which are shaded blue, have adopted, or enacted public health legislation relating to the COVID-19 pandemic. The States in grey have not adopted or enacted Public Health legislation relating to COVID-19. This leaves an opportunity, in many places, for social responsibility of citizens. For example, since there is not a federal mask or social distancing mandate, it becomes a choice and responsibility of individuals to act and wear a mask to protect themselves and their community members.

¹⁷⁶ Donald F. Kettl, *States Divided: The Implications of American Federalism for COVID-19* 80 PUB. ADMIN. REV., 595, 600 (2020).

¹⁷⁷ Adolph, C., Amano, K., Bang-Jensen, B., Fullman, N. and Wilkerson, J., *Pandemic Politics: Timing State-Level Social Distancing Responses to COVID-19*, (March 28, 2020), <https://www.medrxiv.org/content/medrxiv/early/2020/03/31/2020.03.30.20046326.full.pdf>.

¹⁷⁸ National Conference of State Legislatures. 2020. *COVID-19 Legislation*, <https://app.powerbi.com/view?r=eyJrIjoiaZDA5ODUyNmItNGFIMC00YzNhLWI2NjctMmJiMDMzMzQ3ZjVlIiwidCI6IjM4MmZiOGIwLTRkYzMtNDEwNy04MGJkLTM1OTViMjQzMmZhZSIsImMiOjZ9>, (last visited Nov. 19, 2020).

unrest amongst protesters, counter protesters, state officers and federal officers.¹⁸² While the potential for COVID-19 transmission among large gatherings of protestors has shifted how protests look in 2020, it has not stopped United States citizens from expressing themselves in the form of protest.¹⁸³ Asian Americans have also faced increased discrimination because of the COVID-19 Pandemic and its origins.¹⁸⁴ Additionally, this year has been an extremely influential year in terms of governmental elections. Voters throughout the United States have felt the impact of COVID-19 on the 2020 presidential election. Along with postponements in at least 18 states of runoff and primary elections, there has been difficulty for voters to vote safely.¹⁸⁵ This has amplified the continued issues relating to voter suppression within the United States.¹⁸⁶

III.A ROLE FOR CIVIL SOCIETY

Throughout the year of 2020, communities faced hardships and shortages in several different areas. This paper focuses on two categories: 1) shortages of healthcare professionals and personal protective equipment in the healthcare community and 2) community access to supplies and essentials.

A. Issues Addressed by Volunteers

1. Limitations Facing the Healthcare Community

After the United States was confronted with the devastation of September 11, 2001, a Federal volunteer system was put into place which is maintained by the United States Department of Health and Human Services.¹⁸⁷ This system is intended to be used in

¹⁸² Ebrahimji, A. and Andrew, S., *The Three Reasons Black Lives Matter Marchers Refuse To Quit*. CNN, <https://www.cnn.com/2020/07/24/us/black-lives-matter-why-i-march-trnd/index.html>.

¹⁸³ Dave, D., Friedson, A., Matsuzawa, K., Sabia, J. and Safford, S., 2020. *Black Lives Matter Protests, Social Distancing, And COVID-19*. Cato Institute, (July 24, 2020), <https://www.cato.org/publications/research-briefs-economic-policy/black-lives-matter-protests-social-distancing-covid-19>

¹⁸⁴ Human Rights Watch. 2020. *Covid-19 Fueling Anti-Asian Racism And Xenophobia Worldwide*, (May 12, 2020), <https://www.hrw.org/news/2020/05/12/covid-19-fueling-anti-asian-racism-and-xenophobia-worldwide#>

¹⁸⁵ Ncsl.org. *COVID-19: How's It Changing Elections*, (June 2020), <https://www.ncsl.org/research/elections-and-campaigns/covid-19-how-s-it-changing-elections.aspx>

¹⁸⁶ Chakrabarti, M. and Chang, J., *Election 2020'S Voter Suppression Reality*, Wbur.org, (Oct. 19, 2020), <https://www.wbur.org/onpoint/2020/10/19/voter-suppression-democracy-threat>

¹⁸⁷ Whyte, L., *THE CORONAVIRUS CRISIS: There's A Federal System For Signing Up Medical Volunteers — But It's Neglected*. Npr.org, (March 21, 2020), <https://www.npr.org/sections/health-shots/2020/03/21/819172512/theres-a-federal-system-for-signing-up-medical-volunteers-but-it-s-neglected>

times of need to recruit healthcare professionals such as doctors and nurses who are willing to volunteer during disasters. Unfortunately, this system is being neglected during the COVID-19 pandemic and has left third party systems and individual hospitals to fill the gaps presented by the lack of uniformity and support in recruiting volunteers.^{188 189}

In the United States there seems to be shortages across the country for healthcare workers and supplies.¹⁹⁰ Not only is there an overflow of patients leading to far more patients than healthcare professionals, but healthcare workers are at a higher risk of contracting COVID-19.¹⁹¹ The shortage of healthcare personnel has even prompted state leaders to urge retired physicians to come out of retirement and volunteer at understaffed hospitals.¹⁹² This dire need for assistance has prompted healthcare professionals to volunteer their services while risking their own health and safety. One example of which has been nurses and doctors traveling across state lines to volunteer their services in hospitals that are severely understaffed and flooding with patients.¹⁹³

This need for and nobility of healthcare volunteers has left room for error. Due to the unprecedented issues facing the healthcare system in the United States, there has

¹⁸⁸ Asante.org. *Recruitment During COVID-19 – Asante*, <https://www.asante.org/careers/how-to-apply/covid-19/>

¹⁸⁹ American Medical Association, *COVID-19 Volunteer Guide For Health Care Professionals*, <https://www.ama-assn.org/delivering-care/public-health/covid-19-volunteer-guide-health-care-professionals> (last visited Dec. 13, 2020)

¹⁹⁰ Center for Infectious Disease Research and Policy, *COVID-Related Nursing Shortages Hit Hospitals Nationwide*, (Nov. 30, 2020), <https://www.cidrap.umn.edu/news-perspective/2020/11/covid-related-nursing-shortages-hit-hospitals-nationwide>

¹⁹¹ Nguyen, L., Drew, D., Graham, M., Joshi, A., Guo, C., Ma, W., Mehta, R., Warner, E., Sikavi, D., Lo, C., Kwon, S., Song, M., Mucci, L., Stampfer, M., Willett, W., Eliassen, A., Hart, J., Chavarro, J., Rich-Edwards, J., Davies, R., Capdevila, J., Lee, K., Lochlainn, M., Varsavsky, T., Sudre, C., Cardoso, M., Wolf, J., Spector, T., Ourselin, S., Steves, C., Chan, A., Albert, C., Andreotti, G., Bala, B., Balasubramanian, B., Beane-Freeman, L., Brownstein, J., Bruinsma, F., Coresh, J., Costa, R., Cowan, A., Deka, A., Deming-Halverson, S., Elena Martinez, M., Ernst, M., Figueiredo, J., Fortuna, P., Franks, P., Freeman, L., Gardner, C., Ghobrial, I., Haiman, C., Hall, J., Kang, J., Kirpach, B., Koenen, K., Kubzansky, L., Lacey, Jr, J., Le Marchand, L., Lin, X., Lutsey, P., Marinac, C., Martinez, M., Milne, R., Murray, A., Nash, D., Palmer, J., Patel, A., Pierce, E., Robertson, M., Rosenberg, L., Sandler, D., Schurman, S., Sewalk, K., Sharma, S., Sidey-Gibbons, C., Slevin, L., Smoller, J., Steves, C., Tiirikainen, M., Weiss, S., Wilkens, L. and Zhang, F., 2020. Risk of COVID-19 among front-line health-care workers and the general community: a prospective cohort study. *The Lancet Public Health*, 5(9), pp 475-e483, (Sept. 2020), <https://www.sciencedirect.com/science/article/pii/S246826672030164X>

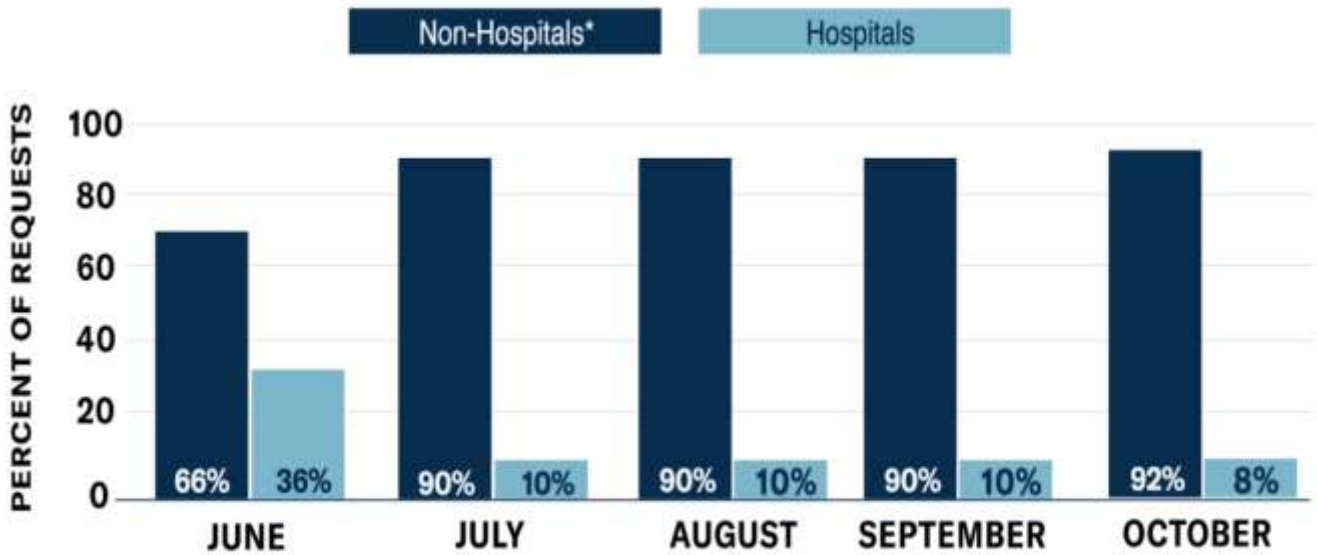
¹⁹² Lemon, J., *New York Governor Asks Retired Doctors And Nurses To Sign Up And Be On Call Amid Coronavirus Crisis*. Newsweek, (March 17, 2020), <https://www.newsweek.com/new-york-governor-asks-retired-doctors-nurses-sign-call-amid-coronavirus-crisis-1492825>

¹⁹³ Hong, N., *Volunteers Rushed To Help New York Hospitals. They Found A Bottleneck*. Nytimes.com, (April 8, 2020), <https://www.nytimes.com/2020/04/08/nyregion/coronavirus-new-york-volunteers.html>

been protection offered to volunteer healthcare workers by the federal government in the form of an act. To promote continued voluntary practices, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) offers protection for volunteers. “Section 3215 of the CARES Act provides immunity for health care provided by a volunteer in good faith and within the scope of the volunteer's licensure. Exceptions to this liability protection exist, including for harm caused by willful misconduct or gross negligence.”¹⁹⁴ This allows volunteer healthcare workers to volunteer in these unsavory conditions without the fear of liability.

Below is a graph displaying the percent of requests Get Us PPE, a grassroots movement providing PPE to those in need, receives per month by non-hospitals and hospitals.

¹⁹⁴ Hinshaw law, *CARES Act Limits Liability For Volunteer Health Care Providers While Illinois Limits Liability For Health Care Facilities, Providers, And Volunteers Responding To COVID-19*, (April 3, 2020), <https://www.hinshawlaw.com/newsroom-updates-cares-act-limits-volunteer-health-care-providers-liability-illinois-limits-facilities-providers-volunteers-liability-responding-to-covid-19.html>



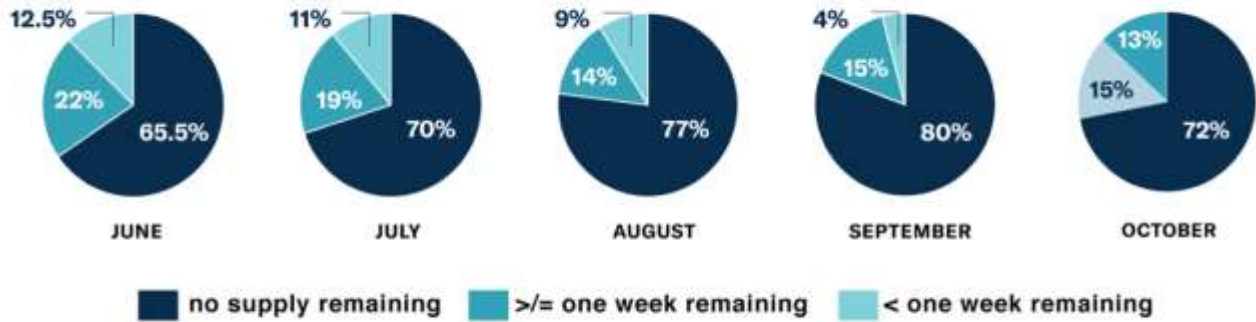
*Such facilities include homeless shelters, dental clinics, nursing homes, social services, and more. Some facilities fall into more than one category, and are therefore counted once in each category.

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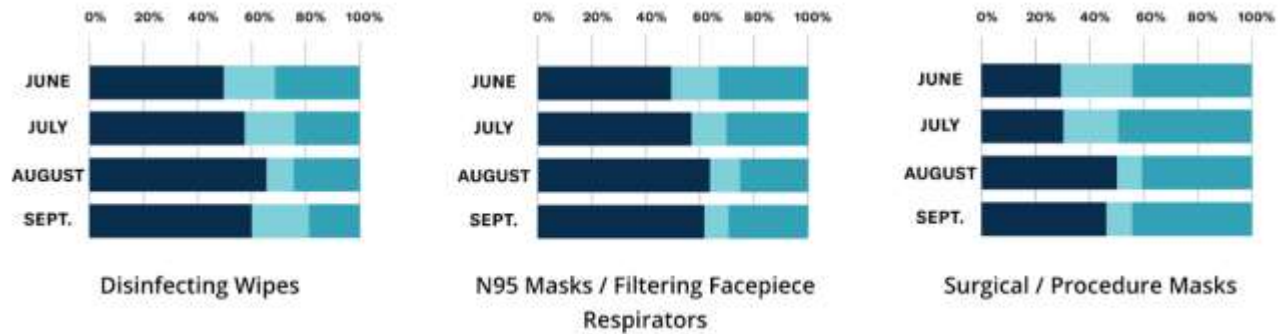
Shortages continue in every state. Specifically, there have been continued shortages of protective masks and disinfectant supplies. Below are several graphs depicting the general overview of PPE supplies remaining and the supply remaining of the three most critical PPE types.

¹⁹⁵ Get Us PPE. 2020. *PPE Shortage Data Index Compiled By Get Us PPE*, <https://getusppe.org/data/> (last visited Dec. 13, 2020)

PPE supply remaining data indicates urgent need



Supply remaining of three most critical PPE types



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2. Community Access to Supplies

Along with shortages within the healthcare community, there have also been challenges relating to community access to necessities and supplies. Not only have grocery stores shown scarcity of essentials like toilet paper and foods, but people have found it difficult to find protective gear like masks and hand sanitizer. It is especially challenging for those in our communities who are at a higher risk to contract COVID-19, such as elderly individuals or individuals with medical conditions.¹⁹⁷ Volunteers have also addressed this. Individuals have volunteered their time to go grocery shopping for high risk and elderly populations to limit exposure for higher risk

¹⁹⁶ *Id.*

¹⁹⁷ Centers for Disease Control and Prevention, *COVID-19 And Your Health*, (Sept. 11, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/essential-goods-services.html>

individuals while ensuring they maintain access to essentials.¹⁹⁸ People from different areas of the country have come together to support one another in various ways. Some of these ways include donations of money, donations of electronics to help families stay connected, and donations of food.¹⁹⁹ Individuals, businesses, and grassroots organizations have continued to share the responsibility to provide necessities which are out of reach for many. Breweries across the United States have made antibacterial sanitizers and distributed to places facing scarcity.²⁰⁰ ²⁰¹ ²⁰² Restaurants have donated food to healthcare workers.²⁰³ Individuals and organizations have made and distributed masks for those lacking protective equipment. Overall, the societal response to COVID-19 within the United States has been helpful and heavily relied upon.

IV. A ROLE FOR THE PRIVATE SECTOR

The private sector has a strong history of participation in disaster and emergency relief — a trend that is only growing in recent years. The biggest benefit of such participation is the private sector’s ability to move faster than public entities can and the greater availability of resources that the private sector can leverage, especially during the initial recovery and response periods.²⁰⁴ Appropriately leveraging these comparative

¹⁹⁸ Lee, L., *This Student Created A Network Of 'Shopping Angels' To Help The Elderly Get Groceries During The Coronavirus Pandemic*. CNN, (March 30, 2020), <https://www.cnn.com/2020/03/17/us/coronavirus-student-volunteers-grocery-shop-elderly-iyw-trnd/index.html>

¹⁹⁹ Joint Economic Committee, U., *America's Volunteer Spirit Continues In The Face Of The Pandemic - America's Volunteer Spirit Continues In The Face Of The Pandemic - United States Joint Economic Committee*. Jec.senate.gov, (May 19, 2020), <https://www.jec.senate.gov/public/index.cfm/republicans/analysis?ID=61A912D3-8641-4F5C-9A23-34E6AA3AF619>

²⁰⁰ Noel, J., *Forget Bourbon And Gin — In The Era Of Coronavirus, Distilleries (And Even Some Breweries) Go All In On Hand Sanitizer*. chicagotribune.com, (March 24, 2020) <https://www.chicagotribune.com/coronavirus/ct-hand-sanitizer-distilleries-breweries-koval-anheuser-busch-20200324-bxcmuwnrjcbpe2thduyjscqxq-story.html>

²⁰¹ Snouwaert, J., *The Maker Of Coors Beer Is Joining Other Breweries And Distilleries Across The Country In Producing Hand Sanitizer*, Business Insider, (March 26, 2020), <https://www.businessinsider.com/coors-beer-company-makes-hand-sanitizer-amid-coronavirus-pandemic-2020-3>

²⁰² Infante, J., *Breweries, Distilleries Partner To Create Hand Sanitizer During COVID-19 Outbreak | Brewbound*. Brewbound, April 8, 2020), <https://www.brewbound.com/news/113468/>

²⁰³ Raum, M., *These Organizations Are Feeding Healthcare Workers And First Responders Across The Country*, PEOPLE.com, (April 7, 2020), <https://people.com/food/where-to-donate-food-healthcare-workers-coronavirus/>

²⁰⁴ One example of this advantageous posture was seen in the immediate aftermath of the 9/11 terror attacks in New York City where private transport companies that operated in the area, went ahead and evacuated over 200,000 people from central Manhattan. CTR. FOR SEC. STUDIES, VOLUNTEERISM IN DISASTER MANAGEMENT: OPPORTUNITIES, CHALLENGES AND INSTRUMENTS FOR IMPROVEMENT 7 (Jul. 2019) [hereinafter *Volunteerism in Disaster*].

advantages can help communities and societies to “build back better.”²⁰⁵ Large businesses, especially global, multinational ones, bring in and interact with hundreds, even thousands of small and medium enterprises, which are less able to withstand emergency and disaster situations and thus a large firm’s decision-making can play a key role in ensuring these smaller entities’ continued health and survival. The private sector and large corporations thus can be said to play a key role in crisis response situations especially in those instances where government is unable to fully or adequately respond to support community and individual needs.²⁰⁶ This is especially true in the U.S., where the private sector owns and operates roughly 85% of critical infrastructure within the country and thus are necessary stakeholders in any wide-spread emergency response and are necessary partners for engagement to ensure or rebuild local and community resilience without disruption.²⁰⁷ Research into major disasters between 2002 and 2013 found corporate provided aid, when compared with aid from traditional providers like the public sector or individual volunteering, was more socially beneficial, efficient, and effective.²⁰⁸

The impacts of the current pandemic are so wide-ranging that no single sector, public or private, or industry, is able to fully manage its consequences.²⁰⁹ More recently, private companies’ voluntarism and volunteer activities beyond traditional philanthropy has been paid increased attention particularly given the business world’s

²⁰⁵ GLOBAL FAC. FOR DISASTER REDUCTION & RECOVERY, *DISASTER RECOVERY GUIDANCE SERIES: PRIVATE SECTOR PARTICIPATION IN DISASTER RECOVERY AND MITIGATION* 12–13 (2020).

²⁰⁶ Olivier Delbard, *Corporate Social Responsibility Beyond Philanthropy? Sustainable and Responsible Business in Times of COVID-19* (ESCP Impact Paper No. 2020-57-EN, 2020) (manuscript at page 1), IP 2020-57-EN.pdf (escpeurope.eu).

²⁰⁷ Private Sector Participation in Disaster Recovery and Mitigation, 15.

²⁰⁸ *Id.*

²⁰⁹ Ami J. Abou-bakr, *Managing Disasters Through Public-Private Partnerships*, at 44 (*Public Management and Change Series*) (Georgetown University, 2013),

<http://liverpool.idm.oclc.org/login?url=https://www.jstor.org/stable/10.2307/j.ctt4cg8rg> (“...beyond the capacity of any single government, sector, industry, or organization to address and mitigate.”); See also, Employee Volunteerism, 23 (“Governments alone cannot address the challenges arising from [COVID-19]. Governments must focus on the healthcare sector and must manage economics. The competitive sector must protect its employees and stabilize its business activities.”).

growing emphasis on the concept of ‘corporate social responsibility’ (CSR).²¹⁰ This has resulted in increased attention in the ways in which the business world can contribute to rebuilding a more just, equal society and rebuild the economy better. Examination of the various ways in which corporations have responded to protect and safeguard their workers and communities in light of the pandemic has resulted in calls to harness “the best values that have been demonstrated during [the] crisis” in order “to accelerate [overall societal] progress” – all of this building off of approaches and debates that pre-date the pandemic but have been kicked into overdrive in light of the ways in which COVID-19 has exacerbated these issues.²¹¹

Today, the private sector’s potential to address gaps in what the public sector is able to accomplish and cover is well-accepted. Private sector funding and equity is now increasingly seen as a potential funding or grant source for communities with limited assets, administrative manpower, and risk-bearing capabilities; in addition to the provision of aid and funding, the private sector’s potential in servicing these communities in the form of assistance in securing and managing post-disaster public funding and grants is increasingly being seen as an expectation for private companies with community presence.²¹² No industry or company of any size has been fully immune to the impacts of COVID-19 but those that have responded to these challenges with clear public statements of purpose and social responsible commitments including supporting employees and vendors, have been viewed favorably. Commentators, consumers, and current/potential employees have looked for companies that put employee, customer, and partner protection at the core of their responses rather than those that seek solely to maximize short-term profit.²¹³ These positive examples, whose

²¹⁰ See Volunteerism in Disaster, *supra* note 204, at 7.

²¹¹ Zahid Torres-Rahman & Jane Nelson, *From Response to Rebuilding Better: Creating a More Inclusive and Resilient Future for Those Most Impacted by COVID-19*, BUS. FIGHTS POVERTY 1 (May 2020), [df748236f8e54d7f8ba8c7960b7bee93.phpelpzmh](https://ontraport.com/df748236f8e54d7f8ba8c7960b7bee93.phpelpzmh) (ontraport.com).

²¹² Anita Chandra, et al., *What Role Does the Private Sector Have in Supporting Disaster Recovery, and What Challenges Does It Face in Doing So?*, at 4.

²¹³ Torres-Rahman & Nelson, *supra* note 211, at 4.

purpose and values are seen as being more than “mere puffery” stand in contrast with ones whose statements and theoretical commitments have been seen as superficial and wanting attempts at reputation building.²¹⁴

While corporate participation in the response, recovery, and rebuilding post-pandemic is seen as necessary to avoid the worst of the pandemic’s impacts, there is a distinction between private, for-profit corporate entities compared with small and medium sized enterprises. Employers’ ethical and moral obligations to workers, clients, customers, and consumers are generally accepted without question²¹⁵ but the scope of society’s beliefs will account for the contextual impacts faced by various private sector entities. The need for large corporations to recognize and support more vulnerable suppliers, vendors, and partners is folded into societal vies of corporate responsibility during a pandemic while smaller and medium sized enterprises are afforded, implicitly, a sentiment more akin to personal responsibility. The smaller businesses get more leeway to act based on their own self interest and need to eke out a living but larger corporations acting with the same level of self-interest, is universally negative. This section will begin with an explanation of the unique struggles faced by small business employers and employees, and then finally look specifically at large corporations’ finishing off with consideration of ‘pandemic profiteers’ and the need for a pandemics profit tax.

A. Impacts Faced by Small Business Employers and Employees

Small businesses encompass a large portion of employers and employees working within the U.S. The Small Business Profile published by the Small Business Administration showed 30.2 billion small businesses existed in 2018.²¹⁶ These small

²¹⁴ *Id.* For a deeper discussion of the impacts of COVID-19 and the pandemic on corporations’ marketing particularly as it relates to their purported CSR programs, see Hongwei He & Lloyd Harris, *The Impact of COVID-19 Pandemic on Corporate Social Responsibility and Marketing Philosophy*, 116 J. BUS. RESEARCH 176 (2020). See also, Mark R. Kramer, *Coronavirus is Putting Corporate Social Responsibility to the Test*, HARV. BUS. REV. (Apr. 1, 2020), <https://hbr.org/2020/04/coronavirus-is-putting-corporate-social-responsibility-to-the-test>.

²¹⁵ See e.g., Torres-Rahman & Nelson, *supra* note 211, at 1–2; Delbard, *supra* note 206, at 1.

²¹⁶ U.S. SMALL BUS. ADMIN., OFFICE OF MGMT. & BUDGET, 2018 SMALL BUSINESS PROFILE (2018).

businesses employed 58.9 billion employees who represented 47.5% of U.S. employees at the time.²¹⁷ However, the COVID-19 pandemic has devastated many small businesses and thus impacted employers and employees nationwide. As of August 31, 2020, reports show that many small businesses have closed either permanently or temporarily.²¹⁸ Both employers and employees face newfound debt as they lose their businesses, positions, hours, and livelihood due to the COVID-19 pandemic.

Employers remain burdened with paying for remaining, or at times increased, expenses even though their revenue has decreased. One of the many expenses some employers need to consider is making rental payments as commercial lease tenants. In Oregon, commercial tenants lost protections against evictions on September 30, 2020.²¹⁹ Employers doing business in Oregon, and in other States within the U.S. that have passed similar moratoriums, may be evicted if they cannot pay off their accrued late payments during a six-month grace period.²²⁰ This means that employers who are commercial lease tenants not only need to make rental payments but also need to plan for paying off any late payments accrued during the COVID-19 pandemic by the end of a six-month grace period.

Some employers also now need to pay for maintaining temporary workplace standards mandated by their communities. Oregon’s Occupational Safety and Health Administration (“OSHA”) passed statewide provisions temporarily invoking workplace standards that became effective on November 16, 2020.²²¹ These temporary standards mandate employers and employees to practice good personal hygiene,

²¹⁷ *Id.*

²¹⁸ *See*, Carl Bialik & Daniel Gole, *Yelp: Local Economic Impact Report—September 2020*, YELP (2020), <https://www.yelpeconomicaverage.com/business-closures-update-sep-2020> (As of August 31, 2020, 65,769 businesses closed temporarily and 97,966 businesses closed permanently. Of the 97,966 businesses that have closed permanently, 19,590 businesses were in the restaurant industry, and 17,503 businesses were in retail and shopping).

²¹⁹ (*See* OR Governor’s Executive Order 20-13; *see also* House Bill 4213).

²²⁰ *Id.* (which one?)

²²¹ *Oregon OSHA’s COVID-19 Temporary Standard for All Workplaces*, Oregon OSHA (2020), <https://osha.oregon.gov/OSHAPubs/factsheets/5513-fs86.pdf>.

physical distancing, wearing masks or face shields, and regularly cleaning workstations.²²² Businesses that do not practice these standards face civil penalties through citations.²²³ To practice good hygiene and have the gear to prevent COVID-19 from spreading, employers need to pay for the proper tools needed. Employers remain burdened with paying for past, present and new expenses amidst the COVID-19 pandemic with limited funds.²²⁴

Employers also are required to provide paid sick leave to their employees. Many employees have lost significant work hours or their entire jobs due to how the COVID-19 pandemic has impacted the businesses they work for. Employees who still have a job may receive paid sick leave for two weeks pursuant the enactment of the Families First Coronavirus Response Act (“FFCRA”) on March 18, 2020.²²⁵ The FFCRA amended the Family and Medical Leave Act of 1993 by adding that the Emergency Family and Medical Leave Expansion Act ends on December 31, 2020 and that paid sick leave is to include new accommodations for those contracting symptoms of the COVID-19 virus.²²⁶ The FFCRA states that covered employers, which include public employers and private employers with fewer than five hundred employees, are eligible for paid sick leave with conditions.²²⁷ However, employers are expected to provide paid sick leave while simultaneously facing burdens to pay various expenses amidst reduced revenue.

²²² *Id.*

²²³ *Id.*

²²⁴ See generally, *COVID-19 Resources for Oregon Business, Employers, Workers, and Job Seekers*, STATE OF OREGON EMPLOYMENT DEPARTMENT (2020), <https://www.oregon.gov/employ/Documents/COVID-19%20Resources%20for%20Businesss%20Employers%20Workers%20%20Job%20Seekers%203-23-20.pdf>.

²²⁵ Families First Coronavirus Response Act, PL 116-127, 134 Stat 178 (2020).

²²⁶ *Id.*

²²⁷ *Families First Coronavirus Response Act: Employee Paid Leave Rights*, U.S. Department of Labor: Wage and Hour Division (2020), <https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave> (Employees of covered employees are eligible for two-weeks of paid sick leave for regular pay rates when facing quarantine or COVID-19 symptoms with up to ten weeks of paid expanded family and medical leave for two-thirds of their regular pay rate if the covered employee has worked at least thirty calendar days for the employers and needs to care for a child whose school or childcare provider closed or is unavailable due to COVID-19. Employees of covered employers are also eligible for two-weeks of paid sick leave for two-thirds their regular pay rate when there is a need to care for a child or quarantined person with up to ten weeks of paid expanded family and medical leave).

B. *Large Corporations*

Immediately upon the start of the pandemic, some of the largest, most recognizable corporations took public steps to try and stem the consequences and impacts of the pandemic.²²⁸ Auto companies offered their facilities in order to produce needed ventilators, scores of individual companies retooled their factories in order to produce PPE to try and make up for some of the gaps.²²⁹ However, the actual authenticity of such moves went hand in hand with decisions like lay-offs and executive compensation.²³⁰ Some corporations did in fact have altruistic motives for jumping into the ring and working on socially beneficial services and others were contacted by needy stakeholders.²³¹ For some it was a purely business decision as in recent years, the business case for CSR and employee volunteerism has been a key part of the discourse.²³² The companies that were most successful were those with strong statements of purpose and who went about taking steps as part of longstanding CSR commitments rather than those that were ad hoc and philanthropic in nature.²³³ A discussion of all the ways in which corporations did take socially beneficial actions either for their larger communities or to otherwise protect their stakeholders remains beyond the purview of this paper but what is important is the why and whether the public statements have truly been taken in lockstep with actions.

C. *Pandemic Profiteers*

While it is true that most everyone has been struggling in response to the pandemic, 17 of the U.S.'s largest firms have actually seen record profits during this pandemic,

²²⁸ For example, Facebook launched a fund to support small businesses and Netflix created a fund directed towards individuals left unemployed in the arts, with a focus on film and television actors, who lacked the social safety net of healthcare provided

²²⁹ One comprehensive collection of the steps taken to respond immediately can be found in a collection by Forbes. Coronavirus Business Tracker: How The Private Sector Is Fighting The Covid-19 Pandemic (forbes.com).

²³⁰ For a good discussion of the ways in which corporate boards had to retool their decision-making in response to COVID, see Lynn S. Paine, *Covid-19 is Rewriting the Rules of Corporate Governance*, HARV. BUS. REV. (Oct. 06, 2020), <https://hbr.org/2020/10/covid-19-is-rewriting-the-rules-of-corporate-governance>.

²³¹ Lisa Dreier & Jane Nelson, *Why Some Companies Leapt to Support the COVID-19 Response*, World Econ. Forum (Jul. 06, 2020), <https://www.weforum.org/agenda/2020/07/companies-action-support-covid-19-response/>.

²³² See Kramer, *supra* note 64.

²³³ See Delbard, *supra* note 56.

chief among them technology companies.²³⁴ In a report by Oxfam America, these profits have been shown to remain concentrated amongst chief, white, wealthy shareholders and have not been used to protect employees, the workforce, or the supply chain.²³⁵ What is more troubling though is the racial dimension of this issue, with barely a few cents on the dollar of either these profits, or pandemic assistance money provided by the government in the paycheck protection program, made its way to Black and Latinx individuals, who have been the most impacted and harmed by the pandemic.²³⁶ Several of the companies either outright exploited their workers in order to continue making profits²³⁷ or used their COVID responses to ‘wash’ their reputations without actually committing to protecting their workforce.²³⁸ One potential fix for this would be a pandemics profit tax, which would be modeled on a WWII era profit tax to ensure no entity or individual benefits and even if providing a socially beneficial service, like delivery during a pandemic, such a tax would ensure that these funds are fully utilized in favor of the most vulnerable, not given to those that already had reaped an outsized share of profits prior to the pandemic’s start.²³⁹

V. CONCLUSION

There are several elements for policymakers to consider in the future as we work to rebuild after the pandemic and to mitigate the harm of future ones. The first is the need to memorialize stronger labor safety standards. Corporations and businesses will need to prioritize survival and that will come with profits over people. Making strong labor standards a requirement would take a way a level of choice and force all actors

²³⁴ OXFAM, PANDEMIC PROFITS EXPOSED (JULY 22, 2020).

²³⁵ *Id.*

²³⁶ *Id.*

²³⁷ The case of Tyson Foods, outlined in a separate report is especially instructive here, as Tyson removed sick and healthcare protections in place for workers in its plants and refused to close its chicken plants even when 22% of their workforce was testing positive. KKS ADVISORS, COVID-19 AND INEQUALITY: A TEST OF CORPORATE PURPOSE 49 (2020).

²³⁸ Amazon’s zero contracts and extensive use of contract labor is a key example of this. When employees began voicing fears over their health, Amazon fired the ‘instigators’ and insisted that its labor practices were safe. Employees publicly disagreed. *Id.*

²³⁹ OXFAM, *supra* note 80.

to be socially beneficial to slowing the spread. Secondly, the need to force corporations to return profits into their workforce and the greater community rather than to shareholders should be a legislative priority. Third, as we move forward, there is a need to maintain the values and benefits from voluntary responses at the individual and corporate levels, yet the public sector must step into a greater oversight role to protect the volunteers themselves and to ensure that funds are properly getting where they are needed.



COVID-19 and Domestic Violence in Massachusetts
A Project of the BU Law Immigrants' Rights and Human
Trafficking Program

Christy Salzman

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First Published in 2021

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Introduction

As the world progresses into one year of the COVID-19 pandemic, individuals and society have yet to fully discover the complete repercussions of the pandemic. One area where the pandemic has had dramatic consequences is on victims of domestic violence. Victims have been hindered from accessing valuable support systems or obtaining important legal protections. In this report, we sought to understand the consequences in our own community firsthand through interviews with key stakeholders, such as service providers and legal advocates in Massachusetts²⁴⁰ to get a better understanding and make recommendations to improve responses to domestic violence. We conducted four interviews for this report. Given the limited number of interviews, it is recommended that future research be conducted to interview a broader range of organizations and court actors.

²⁴⁰ For the purposes of this report, “service provider” refers to lawyers, legal advocates, and direct-service providers, who have been working directly with survivors during the COVID-19 pandemic.

For this report, we analyzed how COVID-19 has affected victims and survivors of domestic violence in Massachusetts and their access to legal services during the pandemic. First, we sought to understand how COVID-19 has affected victims²⁴¹ of domestic violence in Massachusetts. Second, we wanted to know how COVID-19 has affected service providers working with domestic violence victims. Third, we made recommendations, informed by the perspectives of service providers and legal advocates, to improve responses for victims as we continue through the pandemic and beyond.

Framework

This report focuses on domestic violence within Massachusetts. For the purposes of this Report, we are defining “domestic violence” as violent, abusive, and/or controlling behavior directed towards a domestic partner.²⁴² This conduct includes psychological, sexual, and physical acts of violence.²⁴³ Domestic violence can exhibit in a cyclical nature, known as the “cycle of abuse,” that comes in three phases: tension-building, acute battering, and the honeymoon phase.²⁴⁴ Lenore Walker introduced the concept, “cycle of abuse,” and although some scholars have critiqued this model, it remains a prevailing model in describing how domestic abuse presents.²⁴⁵ During the first phase of the cycle, a batterer often shifts from charming to irritable behavior and

²⁴¹ Although we support the use of the term “survivor,” the law uses the term “victim,” so we have used this term throughout this report.

²⁴² Not everyone who suffers from domestic violence is a romantic partner. Domestic violence can also extend to family members or cohabitants.

²⁴³ See Mary Pezzulla, *The Dynamics of Domestic Violence*, MD. STATE BAR ASSOC. (2017) (explaining the “coercive and manipulative behaviors” that batterers often use in addition to acts of physical violence).

²⁴⁴ See, e.g., Lisa Marie De Sanctis, *Bridging the Gap Between Rules of Evidence and Justice for Victims of Domestic Violence*, 8 YALE J.L. & FEMINISM 359, 369 (1996) (explaining Walker’s theory of domestic violence and elaborating on each phase); Pamela Vartabedian, *The Need to Hold Batterers Accountable: Admitting Prior Acts of Abuse in Cases of Domestic Violence*, 47 SANTA CLARA L. REV. 157, 159-160 (2007) (describing gradually increasing levels of violence throughout phases).

²⁴⁵ See Erin R. Collins, *The Evidentiary Rules of Engagement in the War Against Domestic Violence*, 90 N.Y.U. L. REV. 397, 448 (2015) (pointing out that some, but not all, domestic violence victims experience these same cycles and that there is no “universal pattern”).

begins verbally abusing his victim, causing her to attempt to protect herself by seeking to console her abuser.²⁴⁶ The abuse then increases in severity.²⁴⁷ During the second phase, the batterer exhibits extremely violent behavior towards his victim.²⁴⁸ During the final phase, the batterer seeks his victim's forgiveness through apologies, promises to change, acts of love and devotion, and other psychological tactics to convince the victim to stay with him.²⁴⁹ This cycle can continue and increase in severity until the victim is able to leave her batterer, a third party intervenes, or the batterer causes severe physical injury to his victim.²⁵⁰

In the United States, state law, not federal law, generally applies to domestic violence. In Massachusetts, for example, state criminal and civil law define domestic violence-related conduct. Under criminal law, a prosecutor may bring criminal charges against the abuser for domestic violence-related crimes.²⁵¹ Massachusetts criminal law thus defines a number of related crimes, including assault/assault and battery on a family or household member, aggravated assault and battery, assault and battery by a dangerous weapon, strangulation, and assault and battery upon an elderly or disabled person.²⁵² Additionally, other crimes relate to domestic violence, such as the violation of a restraining order, stalking, intimidation of a witness, and kidnapping.

Victims also have a number of civil remedies in Massachusetts. They can file for an abuse prevention order with the district or family court. To obtain a civil restraining order, the victim must show that the abuser was “attempting to cause or causing physical harm; placing another in fear of imminent serious physical harm;

²⁴⁶ See De Sanctis, *supra* note 5; Vartabedian, *supra* note 5, at 159.

²⁴⁷ See Vartabedian, *supra* note 5, at 159.

²⁴⁸ See De Sanctis, *supra* note 5; Vartabedian, *supra* note 5, at 159-160.

²⁴⁹ See De Sanctis, *supra* note 5; Vartabedian, *supra* note 5, at 160.

²⁵⁰ See Vartabedian, *supra* note 5, at 160.

²⁵¹ MASS. GEN. LAWS ch. 265 § 13A.

²⁵² See generally COMMONWEALTH OF MASS. EXEC. OFFICE OF PUB. SAFETY & SEC., DOMESTIC VIOLENCE L. ENF'T GUIDELINES (2017) (describing adopted definitions and state statutes pertaining to domestic violence in Massachusetts).

causing another to engage involuntarily in sexual relations by force, threat or duress,” among other requirements.²⁵³ If granted, the order can require that the abuser stay away from them, relinquish any firearms, or face other legal consequences.²⁵⁴

Additionally, victims have a variety of other remedies. For example, they can seek relief in family court for matters including divorce, paternity, custody, visitation, and child support.²⁵⁵ Victims can also bring a civil claim against the abuser under tort law.²⁵⁶ Victims are further eligible for a range of benefits, including, but not limited to, victim compensation, priorities for public housing, and immigration relief.

Background

Victims of domestic violence often find it difficult to report or leave their abusers for a place of safety. Victims are commonly fearful of their abusers due to violent or coercive personal experiences. They frequently doubt law enforcement’s ability to protect them long-term.¹⁸ Victims often fear for their family’s safety, especially if they have children together and the abuser has made threats.²⁵⁷ There can be financial dependency, as many victims are not financially equipped to leave their abusers and live independently.²⁵⁸ Victims of color and LGBTQ+ victims may have even more fear and distrust of law enforcement officers.²⁵⁹ Research has shown that law enforcement is less likely to believe such survivors and they are more likely to be targeted with criminal penalties.²⁶⁰

²⁵³ MASS. GEN. LAWS ch. 209A; MASS. GEN. LAWS ch. 209A, § 1 (defining the term “Family or household member” for purposes of this report).

²⁵⁴ MASS. GEN. LAWS ch. 209A § 3.

²⁵⁵ See MASS. R. DOM. REL. P.

²⁵⁶ See Camille Carey, *Domestic Violence Torts: Righting a Civil Wrong*, 62 KANSAS L. REV. 695, 696 (2014). ¹⁸ See De Sanctis, *supra* note 5, at 368.

²⁵⁷ See *id.*

²⁵⁸ See *id.*

²⁵⁹ See *id.* at 369.

²⁶⁰ See, e.g., Deborah Epstein & Lisa Goodman, *Discounting Women: Doubting Domestic Violence Survivors’ Credibility and Dismissing Their Experiences*, 167 U. PA. L. REV. 399, 402 (2019) (citing Deborah Tuerkheimer, *Incredible Women: Sexual Violence and the Credibility Discount*, 166 U. PA. L. REV. 1, 3 (2017)).

All of these issues are exacerbated by the pandemic, as victims are forced to stay indoors for longer periods of time with their abusers during lockdown, making it harder for them to leave to call for help.²⁶¹ The accompanying recession also makes it more likely that both abuser and victim are suffering financially. This economic instability can lead to higher amounts of stress that exacerbate rates of domestic violence. It also makes it more difficult for a victim to leave due to a potential lack of financial means to support themselves and possible children without the abuser's added income.²⁶²

Key Findings

Service providers noted at the beginning of the pandemic, especially during the lockdowns of March 2020, that they were extremely concerned. There was a significant drop in the number of calls to legal services, service providers, and advocates.²⁶³ This was likely due to the fact that during the lockdown victims were stuck inside their homes with their abusers.

Whereas previously a survivor could call an advocate or services during a trip to the store, now they had few ways to reach out for help.²⁶⁴ Aside from a few essential businesses, such as pharmacies and doctor's offices, most businesses were closed. Thus, a victim, who could previously leave the house without their abuser to make calls, had fewer options to leave because no one was going anywhere. Staying at home also negatively impacted the mental health of victims, as they were removed from critical social networks and support.²⁶⁵ According to social service providers, victims

²⁶¹ See Jeffrey Kluger, *Domestic Violence Is a Pandemic Within the COVID-19 Pandemic*, TIME (Feb. 3, 2021) (highlighting many issues specific to domestic violence victims, including inability to escape abusers during lockdown).

²⁶² See *id.*

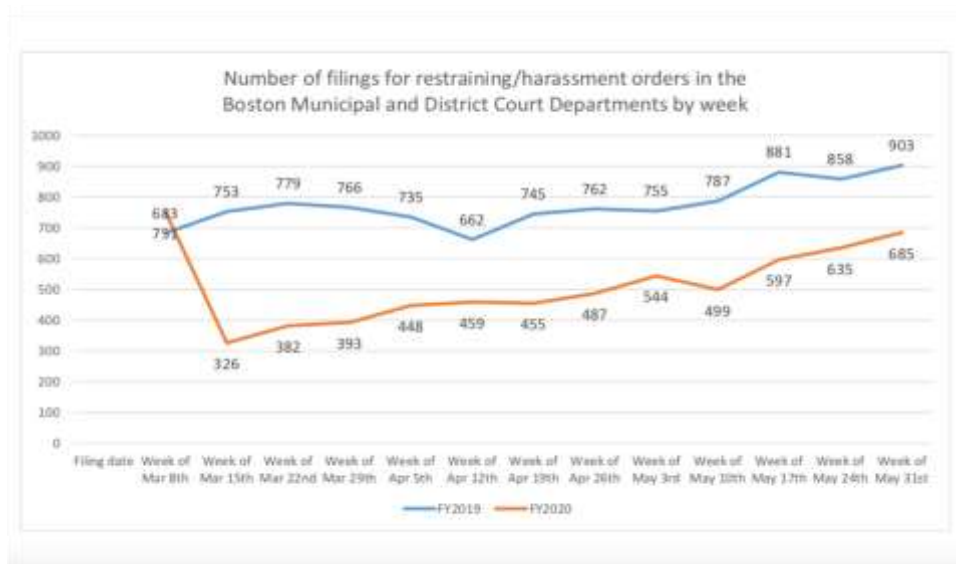
²⁶³ See Zoom Interview with member of Massachusetts domestic violence organization (Oct. 8, 2020) (notes on file with author).

²⁶⁴ See *id.*

²⁶⁵ See Letter from Jane Doe Inc. to House Committee Ways and Means Chair (Oct. 7, 2020) (on file with author).

waited longer to call for assistance, causing the violence to escalate, and therefore, the severity of the violence eventually reported increased.²⁶⁶

Below is a graph from the Boston Municipal and District Court Departments in Boston, Massachusetts.²⁶⁷ The blue line represents the number of filings for abuse and harassment prevention orders in 2019. The orange line shows the number in 2020. As the graph illustrates, when the lockdown started during the second week of March 2020, there was a significant drop in the number of filings. Throughout the rest of the month, those numbers slowly began to rise. Service providers explained that in early Fall 2020, they started to reach the same levels of reporting as it compared to November 2019. According to advocates, these heightened reporting levels resulted from courts developing remote procedures, and survivors and service providers figuring out how to navigate this “new normal.”²⁶⁸



²⁶⁶ See *id.*

²⁶⁷ Press Release, Executive Office of the Trial Court, Massachusetts Court System (June 12, 2020) (on file with author).

²⁶⁸ See Zoom Interview with member of Massachusetts domestic violence organization, *supra* note 25; Zoom Interview with staff member of Massachusetts non-profit organization (Oct. 16, 2020) (notes on file with author).

The two charts on the following page highlight similar trends, using data about criminal filings for domestic violence-related charges in Boston Municipal or District Court.²⁶⁹ **Chart A** shows domestic violence-related filings in Massachusetts in 2019 compared to 2020. **Chart B** shows the number of domestic violence-related law enforcement incidents from February to July of 2020. Chart B displays that same drop and rise pattern as the graph above, demonstrating a significant decline in criminal charges related to domestic violence when the pandemic began.

Chart A: Number of Criminal Domestic Violence-related Cases Charged in Massachusetts (2019-2020), Data from the Massachusetts Trial Courts

²⁶⁹ Chart A and B were created by the authors with the assistance of Boston University Spark!, a technology incubator and experiential learning lab. The data was made available by the Massachusetts Trial Courts.

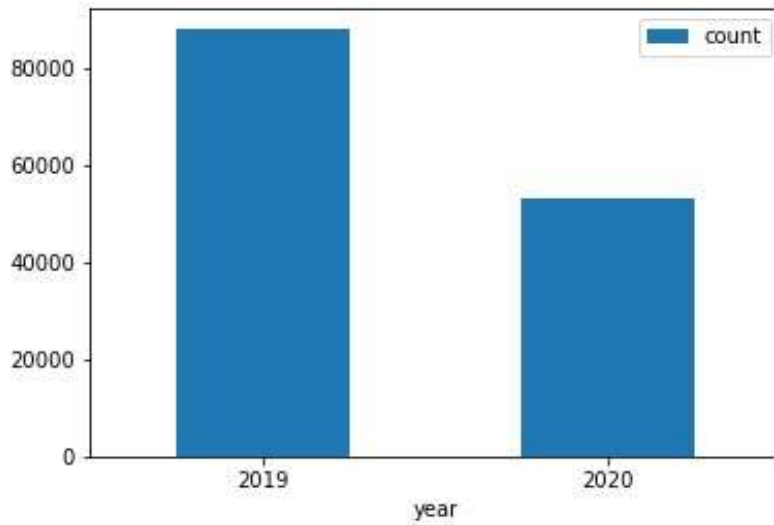
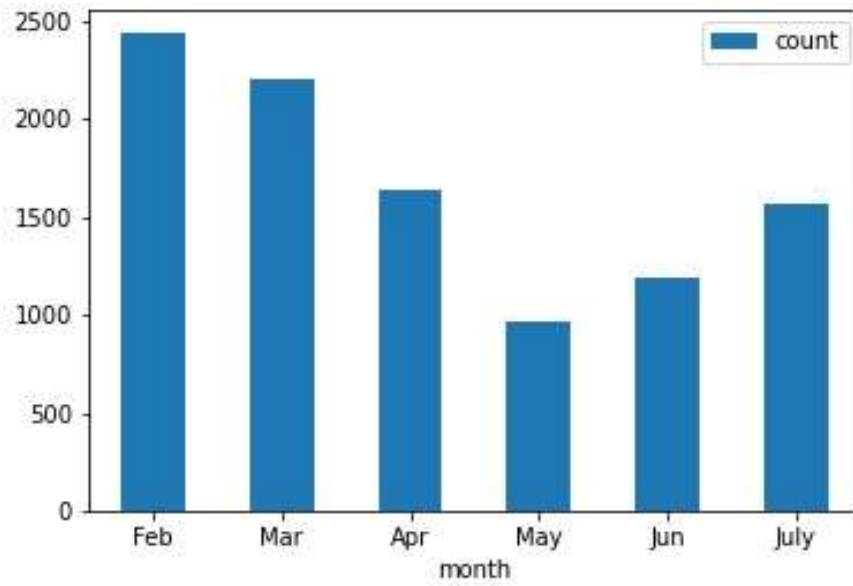


Chart B: Number of Domestic Violence Incidents in Massachusetts (February 2020 to July 2020), Data from the Massachusetts Trial Courts



Non-profit domestic violence shelters, which are essential for housing victims who have made the brave and difficult decision to leave or escape their abusers, also had to reduce their bed capacity at the inception of the pandemic.²⁷⁰ Providers worked to develop creative alternatives, funding fund hotel rooms instead to offer victims emergency housing.²⁷¹ Non-profit organizations provided full personal protective equipment for their staff members working with victims in-person.²⁷² As programs adapted, however, funding for domestic violence services remained an issue. Massachusetts currently lacks a confirmed state budget for these important services, and federal funding is also at risk.²⁷³ Decreased funding would mean fewer employees for service providers and less resources available for victims.²⁷⁴

The death of George Floyd and protests about racial injustice coincided in the United States with the pandemic. Such protests highlighted the reluctance of Black, indigenous, people of color (“BIPOC”), and LGBTQI+ individuals to reach out to call the police in situations of violence or to access emergency protections within the court system.²⁷⁵ Providers also highlighted that as racial justice concerns took centerstage nationally, they lacked training about anti-racism and struggled to identify alternative ways to safety that did not require intervention by the police and criminal legal system.²⁷⁶

²⁷⁰ See Zoom Interview with member of Massachusetts domestic violence organization, *supra* note 25; Zoom Interview with staff member of Massachusetts non-profit organization, *supra* note 30; Interview with staff member from victim assistance organization (Nov. 3, 2020) (notes on file with author).

²⁷¹ See Zoom Interview with staff member from victim assistance organization, *supra* note 32.

²⁷² See Zoom Interview with staff member from victim assistance organization, *supra* note 32.

²⁷³ See Zoom Interview with staff member from victim assistance organization, *supra* note 32.

²⁷⁴ See Zoom Interview with staff member from victim assistance organization, *supra* note 32.

²⁷⁵ See Zoom Interview with member of Massachusetts domestic violence organization, *supra* note 25.

²⁷⁶ Zoom Interview with staff member from victim assistance organization, *supra* note 32.

See

The pandemic has also significantly affected the economy in the United States. Some victims were already afraid to leave their abuser for economic reasons.²⁷⁷ However, the economic recession made victims more vulnerable to abuse. Some victims were more afraid of losing their job, paying rent, or affording basic needs, like food or clothing.²⁷⁸ Additionally, some abusers lost their jobs, which meant even greater amounts of time spent at home, more social isolation for victims, and greater potential for violence.²⁷⁹

Service providers, moreover, reported that their jobs were made more difficult during the pandemic and ultimately this affected victims. Fewer victims reached out to non-profit hotlines and assistance.²⁸⁰ Service providers' jobs were also made more difficult because of the inability to engage in-person to build trust. Victim service providers had to switch to video formatting instead of face-to-face contact, as well as change their entire service model so that they could help victims remotely.²⁸¹ Advocates were also unsure about confidentiality when working from home.²⁸² Service providers, over time, learned to engage in creative problem solving to better support their clients. For example, they have used funding to provide people with Uber or taxi rides to get to court and have even used funding to provide devices to continue to communicate with their clients.⁴⁵ However, this was a long learning process.

²⁷⁷ See Zoom Interview with member of Massachusetts domestic violence organization, *supra* note 25; Zoom Interview with staff member of Massachusetts non-profit organization, *supra* note 30.

²⁷⁸ See Zoom Interview with staff member of Massachusetts non-profit organization, *supra* note 30.

²⁷⁹ See Zoom Interview with staff member from victim assistance organization, *supra* note 32.

²⁸⁰ See Zoom Interview with staff member of Massachusetts non-profit organization, *supra* note 30; Zoom Interview with staff member from victim assistance organization, *supra* note 32.

²⁸¹ See Zoom Interview with member of Massachusetts domestic violence organization, *supra* note 25; Zoom Interview with staff member from victim assistance organization, *supra* note 32.

²⁸² See Zoom Interview with staff member from victim assistance organization, *supra* note 32.

⁴⁵ Zoom Interview with staff member from victim assistance organization, *supra* note 32.

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Having to go remote also affected the courts in an unprecedented way. Many courts now conducted restraining order hearings over the phone or over zoom.²⁸³ The remote format presented challenges for people who lacked access to stable internet or internet at all. Providers also reported that victims who lacked unlimited minutes or data had difficulty waiting on the phone for several hours for their hearing.²⁸⁴ Some legal parties, such as judges and attorneys, were also resistant to zoom because they were unfamiliar with the platform or worried about the lack of security protections.²⁸⁵ Courts also lacked a coordinated and uniform response to the pandemic and remote practice. Despite some uniform standing orders, some courts in Massachusetts made certain decisions on an individual basis. This meant that while some courts offered remote hearings early on in the pandemic, others did not, and every court went at a different pace.²⁸⁶

Recommendations

Service providers offered recommendations for the legal community moving forward. One important recommendation was a need for increased access to *pro bono* (free) legal services. Access to free legal services is even more important now given the effects of COVID-19 on the United States economy. These legal services are vital, and many victims have limited financial means and cannot afford an

²⁸³ See Zoom Interview with staff member of Massachusetts non-profit organization, *supra* note 30; Zoom Interview with staff member from victim assistance organization, *supra* note 32.

²⁸⁴ See Zoom Interview with staff member from victim assistance organization, *supra* note 32.

²⁸⁵ See generally Shalini Langia et al., *Pros and Cons of Zoom Court Hearings*, NAT'L L. REV. (May 20, 2020), <https://www.natlawreview.com/article/pros-and-cons-zoom-court-hearings>.

²⁸⁶ Zoom Interview with staff member of Massachusetts non-profit organization, *supra* note 30.

See

attorney.²⁸⁷ Without an attorney, victims found it hard to access emergency restraining orders, the family courts, and important protections.

Interviewees also noted the need for increased access to language services in the courts.⁵¹ For example, individuals with limited English proficiency pre-pandemic could easily request an interpreter for a hearing. Due to the pandemic, fewer staff were allowed in the courthouse at one time, and access issues made it difficult for interpreters to be present for all hearings.²⁸⁸ Although interpreter services during remote hearings were sometimes available, they are often difficult to navigate and unpredictable. For example, if a victim called into a hearing and lacked three-way calling capability, she, at times, could not have access to an interpreter.²⁸⁹

Courts can also make better use of technology to allow victims to access the legal services they need. Although many hearings were remote, often litigants still must physically file pleadings in-person, as opposed to e-signing, faxing, or emailing them to the court.²⁹⁰ Before the pandemic, litigants could access free printing at the library or through various community services; however, when all of those closed, individuals without access to a printer missed important filing dates.⁵⁵ Childcare remained a barrier, but it was exacerbated as parents

²⁸⁷ See Zoom Interview with staff member of Massachusetts non-profit organization, *supra* note 30. ⁵¹ See Zoom Interview with member of Massachusetts domestic violence organization, *supra* note 25; Zoom Interview with staff member from victim assistance organization, *supra* note 32.

²⁸⁸ See Zoom Interview with staff member from victim assistance organization, *supra* note 32.

²⁸⁹ See Zoom Interview with staff member from victim assistance organization, *supra* note 32.

²⁹⁰ See Zoom Interview with staff member of Massachusetts non-profit organization, *supra* note 30.

⁵⁵ Zoom Interview with staff member of Massachusetts non-profit organization, *supra* note 30.

See

help their children navigate online schooling.²⁹¹ Now, if a family only has one computer, parents must choose between attending hearings or causing their child to miss school.

Service providers have also noted that increased trainings are necessary.²⁹² Training topics could include: how to work with clients remotely, how to reach victims during a time of physical and social isolation, and how to be an anti-racist advocate.²⁹³ Finally, there is a need to hire more diverse advocates that are reflective of the communities they serve.²⁹⁴ Out of one organization's 49 member programs, for example, 61% said they faced challenges in meeting the needs of immigrants and non-English speaking populations.²⁹⁵ 100% of the member programs said there is a need for increased services for Black women, the LGBTQ+ community, immigrants, deaf and hard of hearing, those with limited English proficiency, and individuals with an intellectual and/or developmental disabilities.⁶¹

In the midst of all of the challenges, there have been some positive changes that have come out of the COVID-19 pandemic. Access to remote hearings has increased accessibility for some victims, especially those in rural areas.²⁹⁶ It has also pushed courts to adopt new technologies. The courts can be extremely slow to make technological changes, and the pandemic has quickened their pace.²⁹⁷ Remote hearings also allowed victims to save time and resources, as they did not have to request as much time off work or seek childcare.²⁹⁸

²⁹¹ See Zoom Interview with member of Massachusetts domestic violence organization, *supra* note 25; Zoom Interview with staff member of Massachusetts non-profit organization, *supra* note 30; Zoom Interview with staff member from victim assistance organization, *supra* note 32.

²⁹² See Zoom Interview with staff member from victim assistance organization, *supra* note 32.

²⁹³ See Zoom Interview with staff member from victim assistance organization, *supra* note 32.

²⁹⁴ See Zoom Interview with staff member from victim assistance organization, *supra* note 32.

²⁹⁵ Jane Doe Inc., *Sexual and Domestic Violence Survivors in Massachusetts Must be Prioritized* (2020) (on file with author). ⁶¹ See *id.*

²⁹⁶ See Shalini Langia et al., *supra* note 48 (noting increased accessibility and convenience resulting from Zoom hearings).

²⁹⁷ See Zoom Interview with staff member of Massachusetts non-profit organization, *supra* note 30.

²⁹⁸ See Shalini Langia et al., *supra* note 48 (describing greater convenience and time saved as result of remote hearings).

Conclusion

The COVID-19 pandemic has created waves in people's lives and throughout systems in society. One such wave has been in the lives of victims of domestic violence. Another wave has been in the many organizations and institutions with which they interact, including the legal court system and service providers. The COVID-19 pandemic has exposed many of the barriers and inequalities within these systems for victims of domestic violence. However, it has also highlighted areas of reform, and inspired new and creative solutions to tackling these issues. Moving forward, we hope that legal advocates and leaders throughout Massachusetts will consider implementing these solutions. We hope they will provide victims with greater protection and access to important resources during a time that amplifies already existing inequities.



*Research report for the International Project
organised by the College of Law – Qatar University*

Human Rights during the Lockdown **in England & Wales**

December 2020

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Introduction

This research was undertaken by the International Pandemic Clinic, which is part of the LJMU Legal Advice Centre (**LAC**), and LJMU School of Law. We also worked with the Freedom Law Clinic (**FLC**) and their volunteer students from several universities.

The LAC provides free legal advice and education to members of the public in a variety of legal areas. In 2020 the LAC established its policy clinic work, to undertake research on behalf of organisations and charities. The purpose of the Policy Clinic is to provide research and evidence, aiming to influence policy and law reform. All work in the Policy Clinic is overseen by experienced solicitors and academics.

This research has involved our students conducting desk-based research to track the impact of the pandemic on human rights in England and Wales, in relation to a number of key elements:

- The Covid-19 legislation in England & Wales
- Equality and Dignity
- Liberty and Justice
- Freedom of Movement, Expression and Assembly

We would like to thank Professor Celia Kitinger of the Open Justice Initiative and Tristan Kirk of the London Evening Standard for generously giving of their time to discuss their important work with our students. Their insights into the impact of the lockdown have been extremely valuable.

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Background and aims of the study

We responded to the invitation sent by Qatar University's College of Law to the Global Alliance for Justice Initiative mailing list. Whilst the sudden pivot to digital working due to reasons of public health has been difficult and worrying, it also brought with it a unique opportunity for our students to witness and analyse the development and application of the law in a novel and fast-moving situation, and to work as part of an international community.

Clinical legal education (**CLE**) is a vital tool for helping students to develop their critical analysis of the law and reflective capabilities. Policy research clinics usually have one stakeholder, often a community or third sector group. This project is unique in that the stakeholder is the wider population in England & Wales who are subject to the coronavirus legislation. Our research has found that certain sectors of the population have been disproportionately affected by the pandemic and the measures put in place to monitor public health.

This research is both a snapshot of a moment in time and the beginning of a strand of work for our clinics relating to human rights which, in times of constitutional change, are becoming more important than ever.

*Rachel Stalker, MA (Oxon.), Solicitor,
Clinical Legal Education Programme Leader,
LJMU School of Law*

Research method

Students conducted desk-based research, focusing primarily on secondary sources and news reports between October and December 2020. Students worked in separate groups of four to six, focused on one specific topic connected with human rights.

Had we had more time, we would have reached out to local third sector and community groups to discuss their experiences during the lockdown. However, given the brevity of the project timescale we decided to take a doctrinal approach.

The Legality of the Coronavirus Lockdown 2020

The government's legis-lative response to the public health crisis of coronavirus or Covid-19 illustrated the tension between implementing life saving measures, civil liberties and the law. On the 23rd of March 2020, the United Kingdom entered into lockdown. In the days that followed Boris Johnson's address to the nation, the lockdown acquired statutory footing and a legal framework. These measures interfered and encroached on the lives of the nation in the name of public health. The Covid-19 measures are the strictest measures that have been implemented in the United Kingdom since the second world war. Legality will be examined through the use of secondary legislation, parliamentary scrutiny and the rule of law.

Secondary Legislation & Statutory Instruments

The United Kingdom enacts and creates law through primary and secondary legislative processes. Primary legislation is made by parliament which involves a lengthy process implicating both the House of Commons and the House of Lords. Once a piece of legislation is introduced, it is subject to a reading, debate and scrutiny process before it is accepted by the legislature.^[1] After this procedure, legislation will go through a process of scrutiny described as ping pong until both the House of Lords and House of Commons are satisfied with the bill, then it is presented for royal assent.^[2] Due to the complexity and importance of this law-making procedure, the process can be quite lengthy. There has been less of a reliance on primary law-making powers, with the increase of the use of delegated legislation. There has been an increase of the use of delegated legislation to avoid the lengthy process involved in primary legislation.

Secondary legislation is law that is made by ministers under the powers conferred to them by primary legislation.^[3] Secondary legislation can only be made if there is an explicit provision detailing the transfer of law-making power.^[4] The government must have the legal vires in order to delegate secondary legislation.^[5] This practice of delegation is used practically to prevent the overload of parliament or in this case the dire need to save as many lives as possible. Secondary legislation can take many forms, the majority is made in the form of a statutory instrument.^[6] The majority of secondary legislation is subject to the application of negative resolution procedure, where the legislation will take effect unless either house states its disapproval within a time period.^[7] The most important pieces of secondary legislation are subject to affirmation resolution. Where pieces of legislation cannot come into effect until both houses have expressed their approval.^[8] All pieces of secondary legislation are subject to technical scrutiny by the two-house *Joint Committee on Statutory Instruments*. The committee is comprised of members of both houses and it examines whether the statutory instrument complies with the legal requirements of the parent act.^[9] Unlike primary legislation, members of parliament cannot suggest improvements and most pieces of secondary legislation are not debated.^[10] There is a significant imbalance of volume between primary and secondary legislation, which in turn has highlighted the relative discrepancy of scrutiny provided to both forms of law-making processes.

The need to implement life saving measures as soon as possible, meant that the Covid-19 measures were implemented as a form of secondary legislation. The government's secondary legislative response, the Health Protection (Coronavirus, Restrictions) (En-gland) Regulations 2020, was

enacted on the 26th of March 2020. The regulations were made in exercise of the powers conferred by the Public Health (Control of Diseases) Act 1984 (PHA 1984). The difficulty with a response that relies on non-emergency laws, include the stretching and deployment of laws in unintended ways, which can lead to reduced protections for individuals.^[11] The governments use of the Public Health (Control of Diseases) Act 1984 (PHA 1984) has allowed for a lack of clear and legal basis for criminal law under the act and has been unsuitable for the proper scrutiny and parliamentary oversight.^[12] It is essential to note that the laws were created at the height of the pandemic when the virus was at its worse in the United Kingdom, but it is crucial to question about the appropriate legal regime for the future of the pandemic. The virus is likely to be a threat to public health for the near future and it is vital to critically examine the design and creation of emergency laws. The UK government has made over 100 statutory instruments related to coronavirus since January 2020.^[13] This approach allowed the government to have the needed flexibility, to implement shifts of policy throughout the pandemic.^[14] The reliance on secondary legislation additionally threatens constitutional principles in the United Kingdom.

Concerns with the use of the powers granted under Public Health (Control of Diseases) Act 1984 (PHA 1984) was raise by several members in the later debate of the Coronavirus Act and many argued that the Civil Contingencies Act 2004 should have been used instead. The Civil Contingencies Act 2004 is suggested to have given a greater degree of parliament insight and greater judicial supervision. Under the Civil Contingencies Act 2004 the emergency legislation has to be laid before parliament as soon as reasonably practicable. The Civil Contingencies Act

2004 requires regulations to be approved by parliament within seven days and renewed by parliament every thirty days (ss.26(1)(a), 27(1)(b)). Moreover, parliament would have been able to amend the regulations (s.27(3)). This is far different than the process in place under the Public Health (Control of Diseases) Act 1984 (PHA 1984). Currently, the provisions in the Coronavirus Act 2020 allow the government to suspend and revive provisions and additionally alter the expiry date set at 2 years.^[15]

Lack of Scrutiny

The primary response to Covid-19 came before the house of commons on 19th March 2020 and the contents of the bill were not subject to debate. The lack clarity in the bill illustrates the importance of parliamentary scrutiny in order to refine the way the law is created and enforced. There was no parliament scrutiny when creating the Coronavirus Act 2020, which empowered the executive to implement powers that interfered with daily life on an unprecedented scale. The use of emergency measures at the beginning of the lockdown were justified during the novel circumstances, but as the lockdown progressed, it was harder to justify those measures. The governments control over parliaments time, meant that any parliament scrutiny was allowed without the possibility of rejecting or amending the legislation.^[16]

The government has continued to introduce new measures by secondary legislation. The Health Protection (Coronavirus, International Secondary International Travel) (England) Regulations 2020, were introduced on 8 June 2020. These measures introduced a 14-day quarantine for

international arrivals into England. This supports the trend of increased use of secondary legislation. Reliance on secondary legislation results in executive law making which in turn limits parliamentary scrutiny and undermines constitutional principles of parliamentary supremacy. It limits parliament scrutiny and public involvement when implementing unprecedented interventions on public life.

Rule of Law

The rule of law is a fundamental principle of the English constitution. A.V Dicey's formalist conception of the rule of law has two meanings relevant to the government's legis-lative response to the public health crisis of coronavirus. First individuals should not be subject to arbitrary uses of power, power must be authorized.^[17] His second meaning is that every individual is equally subjected to the law.^[18] The adherence to the rule of law provides legitimacy and justification for the actions of the state and it provides transparency in constitutional relationships.^[19] Parliament upholds the rule of law by legislating in accordance with fundamental rights and it is protected through legislative scrutiny.^[20] Secondary legislation, including the Health Protection (Coronavirus, Restrictions) (En-gland) Regulations 2020 should adhere to the rule of law and it should be protected and monitored through parliamentary scrutiny or through the judiciary. His

The use of both soft and hard instruments created uncertainty amongst individuals throughout the lockdown. Statements of policy during minister lead press briefings were often inconsistent with legal position. This allowed for uncertainty amongst the public, as to what was required by law and what was simply government advice. This led to the development of

inconsistencies when interpreting and enforcing the regulations. Additionally, uncertainty was felt when rapid changes were made to the government's position over the time of the lockdown. This left businesses and individuals struggling to differentiate what the current law is and challenges for law enforcement to understand and enforce the correct law.

According to Dicey, secondary legislation, including the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 should adhere to the rule of law. Throughout the pandemic, legislation has not upheld the rule of law. Due to large amounts of uncertainty and inconsistencies, individuals were not equally subjected to the Coronavirus Act 2020. This was illustrated the discrepancies in enforcing the law throughout different police forces and different areas of the country. This created issues of arguably arbitrary uses of power by police forces throughout the country.

English Lawyer, David Allen Green discussed his experience of talking to police officers while engaging in his daily exercise on the Better Human podcast with Adam Wagner. He illustrated that many police officers were not clear on the regulations they were enforcing while out on the beat.^[21] Officers believed they were enforcing the guidance given in the ministerial press conferences instead of the regulations. Additionally, Lord Sumption stated that what the police are supporting in terms of regulations are not what the black letter law states.^[22] This has a huge impact on individuals as it implicates a criminal offence which will have a lasting impact on the lives of individuals. This is extremely problematic if an officer interprets the black letter law in accordance to the government legislation which is not law.

Conclusion

In conclusion, the government's legislative response to the public health crisis of coronavirus or Covid-19 illustrated the tension between implementing life saving measures, civil liberties and the law. These measures continue to interfere and encroach on the lives of the nation in the name of public health. The legality of the lockdown must be examined critically. The use of secondary legislation, the restriction of parliamentary scrutiny and lack of adherence to the rule of law threaten constitutional and legal principles in the United Kingdom. Leaving a strict lockdown measures in the United Kingdom without a satisfactory legal framework. As the emergency period has passed it is important that the United Kingdom learn from the first lockdown as they confront the ongoing crisis.

[1] Keith Syrett, *The Foundations of Public Law* (2nd edition, Red Globe Press 2014) 81.

[2] Andrew Le Sueur, Maurice Sunkin, Jo Eric Khushal Murkens, *Public Law Text, Cases, and Materials* (3rd edition, Oxford University Press 2016) 449.

[3] Keith Syrett, *The Foundations of Public Law* (2nd edition, Red Globe Press 2014) 79.

[4] Ibid

[5] Edward C Page, *Governing by Numbers Delegated Legislation and Everyday Policy – Making*. (Hart Publishing 2001) 20.

[6] House of Commons Library Note, 'Acts and Statutory Instruments: Volume of UK legislation 1950 to 2016' (2017) 3.

[7] Ibid

[8] Ibid

[9] House of Lords Briefing, *Looking at the Small Print: Delegated Legislation* (2011) 2.

[10] Andrew Le Sueur, Maurice Sunkin, Jo Eric Khushal Murkens, *Public Law Text, Cases, and Materials* (3rd edition, Oxford University Press 2016) 464.

^[11] Tom Hickman QC “Responding to the Covid-19 Crisis: The Case for Primary Legislation”. 30 November 2020. 2

^[12] *ibid*

^[13] Lexology, The legacy of Lockdown: Making law and policy post COVID-19 (July 28 2020)

^[14] *ibid*

^[15] Coronavirus Act 2020. Section 88-90

^[16] Tom Hickman QC “Responding to the Covid-19 Crisis: The Case for Primary Legislation”. 30 November 2020. 17

^[17] Jeffery Jowel, ‘The Rule of Law’ in J. Jowell et al (eds), *The Changing Constitution* (8th edn, OUP 2015) 15.

^[18] *Ibid*

^[19] *Ibid*

^[20] *Ibid*

^[21] Better Human Podcast “The Covid-19 lockdown and the law (part 1). April 1 2020

^[22] *Ibid*

Equality and Dignity

Zaafir Hasan, Amy Snow & Violet Taruwona

“We’re all in this together” appeared to be the phrase of choice when the full force of the public health crisis of SARS CoV-2 (“COVID-19”) was first felt across the world. Government figures and celebrities alike treated this pandemic as a great equaliser, with the UK Government (“Government”) suggesting that the pandemic was a ‘great leveller’ hitting rich and poor alike. [\[1\]](#)

All countries were being affected, regardless of wealth or world standing, making it appear that COVID-19 did not discriminate. However, although we have seen that the virus does not discriminate in the sense that no-one is immune; it appears to be clear that its impact is being felt very differently by different groups of people within our society. [\[2\]](#)

Before the pandemic hit, there was already an inequality crisis across many domains such as income, wealth, living standards, labour market participation, health, education and life chances. As the pandemic has unfolded, it appears that its impact is not being felt in equal ways across society. This is both in terms of who is most at risk of the disease, but also who is more likely to feel a lasting financial and social impact as a result. [\[3\]](#) Equality under the law is the principle that each independent being must be treated equally by the law, and that all are subject to the same law of justice. All laws and regulations put into place by governing bodies must have

regards to reducing socio-economic inequalities and protecting those with certain person characteristics, and ensuring that no one person or group of persons are being impacted negatively by the measures that are being put into place.

The Equality Act 2010 provides Britain with a discrimination law which protects individuals from unfair treatment and promotes a fair and more equal society. Under the Act, the following are protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation. It is imperative, therefore, that any laws or regulations that are put into place treat all persons equally and with dignity, and no one group of persons is suffering more than another. This includes emergency measures, with human rights law dictating that it must be necessary, proportionate and non-discriminatory.[\[4\]](#)

Race & Gender Issues

The pandemic has affected everyone across the world in one way or another. It has led to loss of employment, family separation and even the death of loved ones. It has resulted in questions on equality and dignity of race and gender, and how these underlying problems have been brought to light. The pandemic has deepened pre-existing inequalities, exposing vulnerabilities in social, political, and economic systems which have in turn amplified its impacts.

“The long-term ramifications of how we, as a nation, respond to this crisis will be wide-ranging, and experts are already worried that ethnic minority communities could be hardest hit when the dust settles”[\[5\]](#). When the pandemic first started, it resulted in people showing racial enmity towards

Asians; there was racial discrimination towards Chinese owned businesses. The fact that the former US President, Donald Trump, had already labelled the virus as the ‘Chinese Virus’ did not make it any easier for the Asian community.

“The term ‘racial and ethnic minority group’ includes people of colour with a wide variety of backgrounds and experiences. But some experiences are common to many people within these groups, and [social determinants of health](#) have historically prevented them from having fair opportunities for economic, physical, and emotional health”[\[6\]](#). These ethnic groups are known as ‘BAME’ (Black, Asian and Minority Ethnic). Those of ethnic minorities are the group that will be most affected by this pandemic with long-term implications.

Under international human rights law, “...States must prohibit and eliminate racial discrimination in all its forms and guarantee the right of everyone, without distinction on the grounds of race, colour, descent, or national or ethnic origin. States must also guarantee the right of everyone to equality before the law”[\[7\]](#).

Many factors have contributed to the increased risk of COVID-19 affecting BAME groups. These factors include discrimination, healthcare and utilization, occupation, education, income and wealth gaps, and housing. Discrimination cannot be avoided in any system, and it is unfortunate that systems that were supposed to protect the well-being of individuals are now failing to do so. An example of such discrimination is racism. Racism can be a potential cause for chronic and cyanogenic stress and has an impact on social and economic factors; resulting in situations that BAME groups experience thereby increasing their risk for COVID-19.

“In the UK, of the first 2,249 patients with confirmed COVID-19, [35%](#) were non-white. This is much higher than the proportion of non-white people in England and Wales – [14%](#), according to the most recent census”[\[8\]](#). Knowing the history when it comes to inequality in the health system in the UK the figures above are not shocking. Those who are of a better financial status and not of BAME groups are given a treatment that is different to those of BAME groups. Access to healthcare may be restricted for BAME groups due to things like having no mode of transportation, not being able to afford childcare, not having the opportunity to get days off work, communication and cultural barriers between the patients and the service providers. In some cases, they may be in a situation where they are reluctant to seek medical assistance due to the treatment and discrimination BAME groups have experienced before. This pandemic has simply highlighted these inequalities and just because it is here does not mean that they will stop after the state of emergency is over. As a result of these inequities, many from ethnic minority groups have been put at a higher risk of contracting and succumbing to COVID-19.

When it comes to occupations, people from BAME groups are at the front line in a lot of the jobs and services considered essential. A good example of these essential services is healthcare facilities, farms, grocery stores, factories, and public transportation. “Some people who work in these settings have more chances to be exposed to the virus that causes COVID-19 due to several factors, such as close contact with the public or other workers, not being able to work from home, and not having paid sick days”[\[9\]](#).

Moreover, those that have money have privileges regardless of their race, but this is not the same for BAME groups. This affects the quality of education that they receive, which then has an effect on their future jobs as

they only have opportunities to work for minimum wage and not rise through the ranks normally. They are limited to jobs that do not offer them flexibility but instead lead to slavery and abuse in the workplace whilst also being at high risk of exposure to the virus. As a result of these low paying jobs, they cannot afford to miss work as they need to survive and to maintain their standard of living.

When it comes to housing, unlike those that are well off, BAME groups may have difficult living conditions. Many live in crowded places that make it difficult for them to implement things like social distancing. In some cultures, people live together with many generations in one household. However due to the high rise of unemployment because of the pandemic, they are at a greater risk of being evicted from their homes and becoming homeless.

The pandemic in the UK has highlighted the role of gender in our society in many ways; it has had a drastic effect on equality. The most affected gender, women, have been affected by the pandemic in the areas of employment and domestic violence. “During the coronavirus crisis to date, women in the UK are more likely to have lost work, seen a decrease in their earnings and been working while looking after children”[\[10\]](#).

Research done by Universities of Oxford and Cambridge revealed that due to the pandemic, more women than men have lost their jobs and lost out financially since March. Women as a result of the pandemic, have also lost work due to the lack of childcare. As a result, their jobs suffer as they are forced to stay home and take care of the children because there is no childcare available. This has especially affected women who do not have university degrees, as their manual jobs require them to be at work physically and do not allow them to work from home.

The pandemic has caused gender-based violence to increase exponentially, as women are forced to stay home with their abusers. Gender-based violence is believed to be an epidemic inside another, as it has always been a problem before the virus broke out but become more highlighted. This has further enabled abusers, resulting in victims' inability to escape the violence and fear being homeless. "...three weeks into the UK's lockdown calls to the National Domestic Abuse helpline were 49 per cent higher than normal"[11].

The pandemic has had an impact on human rights in the UK, especially on race and gender. It has brought to light issues that were already facing ethnic minority groups and issues such as gender-based violence have been amplified.

Age Discrimination

Age is classed as a protected characteristic under the Equality Act 2010. This means that discrimination or unfair treatment on the basis of someone's age, whether they be young or old, is now against the law in almost all cases. The treatment could be a one-off action, or as a result of a rule or policy based on age.

COVID-19 is not an older person's disease.[12] The World Health Organisation ("WHO") made it clear from the outset that people of all ages can be infected by the virus, and picturing older persons as the only group at a serious risk overshadows all others suffering. Although the statistics have shown that those who were 80 or older were seventy times more likely to die from the virus than those under 40[13], early evidence indicates that young people have been worse affected by the economic impact than older people.[14] It can therefore be seen that society is not just being negatively

affected by the health implications of the virus, but the impact it is having on all areas of our society.

It is important, therefore, to discuss how the COVID-19 pandemic and measures taken by the Government affect the human rights of older and younger persons alike. Measures taken as a response must not undermine people's autonomy, dignity and equal worth as human beings.[\[15\]](#) Their livelihood and security must be respected on an equal basis with others. In some instances, however, this appears to have not been the case.

When considering the older generation, those living in care homes and institutional settings appear to have been affected by the pandemic more than most. Care home residents accounted for 50% of all COVID-19 related deaths in Scotland, 39% of COVID-19 related deaths in England and 34% of COVID-19 related deaths in Wales.[\[16\]](#) However, in addition to the increased number of deaths resulting from COVID-19, there has been an increase in overall mortality in care homes, indicating an increase in deaths from other causes. In England, there has been a 79% increase, in Scotland a 62% increase and in Wales a 66% increase.[\[17\]](#) It appears, therefore, that those in care homes are not only dying from the virus itself, but as a result of other implications the virus is having on our society.

With the Government announcing that the UK would be in a 'lockdown' from 16th March 2020, those in care homes were suddenly closed off from the rest of the world. Prolonged periods of isolation could have a serious effect on the mental health of older persons, with care home residents being unable to have visits from family members and friends. This alone could result in deterioration in mental and physical health; particularly those with Dementia and Alzheimer's disease. Unlike the rest of society, older persons living in care homes were confined in close quarters with other residents, meaning that they had the inability to isolate unless they stayed within the

confines of their private bedroom. Many believe that the current situation is bringing to light the failings of large institutional settings for the long-term care of older persons, where they are confined in close quarters. Even without the threat of a deadly virus, such institutions often generate numerous human rights violations, including abuse and ill-treatment, notably due to the failure to use a human rights-based approach in the design and delivery of long-term care and a chronic lack of resources.[\[18\]](#) Not only was the Government criticized for delays in supplying PPE and testing to care homes,[\[19\]](#) but there has also been evidence where some care home providers have passed on the cost of PPE to residents after the Government failed to deliver all of the promised funding during the pandemic.[\[20\]](#) PPE and testing were not the only lacking resources when looking at care homes. Many members of staff were unable to attend work due to being vulnerable and having to isolate themselves, or having caught the virus. This could mean that the residents were also not receiving the correct care that they should have been on a regular basis.

Care home residents were further put to risk when patients that were known or suspected to have COVID-19 were being released from hospitals directly to care homes. This policy is currently the subject of a judicial review application by the daughter of a man who died of COVID-19 in a care home.[\[21\]](#) There have been further news stories of people in care homes having “do not attempt resuscitation” (“DNR”) notices applied to their care plans without proper consultation with them or their families.[\[22\]](#) Putting undue pressure to older people to sign such agreements breaches their human rights and their right to life. Everyone’s human dignity must be respected without putting into question the fundamental equality of every person’s life.[\[23\]](#) However, these are not the only health implications that have been reported. There is an urgent question as to whether patients in

care homes who are not given hospital treatment for suspected or confirmed COVID-19 are experiencing right to health violations.[\[24\]](#) Refusal of such treatment can be seen as a violation of their human rights as everyone – regardless of age – has an equal right to the highest attainable standard of health.[\[25\]](#)

Older persons living in care homes were not the only people to suffer age related discrimination when it came to COVID-19. Older people in general felt a wide range of negative effects from the lockdown restrictions including cancelled medical treatment, non-acceptance of cash payments and social services closure. The postponement of, probably, hundreds of thousands of non-urgent operations will hit older groups the hardest,[\[26\]](#) and the lack of social meetings with family and friends is strongly impacting their standard of living.

The lockdown restrictions and social distancing measures have led to a rapid transfer of a wide range of services online. Statistics show that one in five older people still did not have access to the internet.[\[27\]](#) Older people are therefore potentially further excluded from accessing key services, whether that be public services or online shopping for essential goods. Additionally, drastic reductions in public transport services could further impact older people. This alone would affect their independence and access to groceries, medication and essential items. Those without family would have to find other means of obtaining their essentials such as relying on neighbours or having to venture out themselves which would of course put them at risk.

Although older persons are classed as a vulnerable group during the pandemic, stigmatizing them as frail, passive or a burden is a breach of their inherent dignity.[\[28\]](#) Older persons are valued members of our societies contributing in numerous ways to their families and their

communities. Using older people as an excuse for further lockdowns and restrictions can be offensive and discriminatory. It has also unfortunately caused tension and division in society with almost a quarter of twitter posts concerning older people and COVID-19 having been classified as ageist.[29] A proposal to impose a corona tax on older persons has been suggested ‘because younger people are doing sacrifices for them’ in the current crisis.[30] By generalising older people as burdensome, we risk creating a perception that their lives are less valuable, or even expendable,[31] and are creating a larger division than before the pandemic in terms of equality.

Having seen clear implications of discrimination against older people in the restrictions the Government has placed on the UK during this pandemic, it has been said that the groups most likely to be affected by the expected rise in poverty include younger people.[32] As the economy suffers the effects of the Government imposed lockdown, other groups in society will begin to feel the ramifications in other areas of life.

Young people leaving school or graduating from university this summer are likely to be affected more than others. They will be entering the labour market in the middle of a severe recession and we know from previous experience that this not only will lower their chances of getting a job immediately, and will lower their wages substantially if they do, but also that those effects will persist for several years.[33] This unfortunately does not end with employment for the younger generation. Children and young people who are still in education have seen long periods of school closures meaning high levels of missed education and socialising with friends. Mental health has become a strong talking point in regards the pandemic due to social isolation and the younger generation could be impacted by this just as much as the older generation.

Domestic abuse has a disproportionate impact on younger people[\[34\]](#) and with the Government imposing the lockdown on society as a whole, this puts younger people more at risk of suffering and/or witnessing domestic abuse and less likely to be able to obtain help and support due to closures. There is a real danger of a lost ‘COVID generation’ as young people miss out on education and are likely to be hardest hit by job losses.[\[35\]](#)

Disability Discrimination

Another protected group that has been severely impacted by COVID-19 is the disabled. Disability discrimination, just like age discrimination, is when you are treated less well or put at a disadvantage for a reason that relates to your disability. The treatment could be a one-off action, the application of a rule or policy or the existence of physical communication barriers which makes accessing something difficult or impossible. Under the Equality Act 2010, a person has a disability if they have a physical or mental impairment, and the impairment has a substantial and long-term adverse effect on the person’s ability to carry out normal day to day activities. This can therefore range from someone with a physical disability, to someone with a long-term illness such as cancer or dementia.

While the Equality Act 2010 stipulates that a person should not be unfairly disadvantaged by reason of disability, the current COVID-19 pandemic has further highlighted the fact that people with disabilities are still actively discriminated against and are not offered the same opportunities as those without disabilities.[\[36\]](#)

While the WHO made it clear that everyone can be infected by COVID-19, in a lot of situations disabled people can be seen as more vulnerable due to underlying health conditions or greater susceptibility. Data from England and Wales suggests that disabled people, particularly disabled women are

experiencing higher death rates from COVID-19.[\[37\]](#) Tidball et al reported in July 2020 that 22,500 disabled people of all ages had died from COVID-19, with the death rates for disabled girls and women aged 9-64 being 11.3 times higher than that for non-disabled females; while the death rate for disabled males aged 9-64 was 6.5 times higher.[\[38\]](#) Looking at these statistics, can we say that the protective methods the Government have put into place are of a positive nature, or have we seen a negative impact?

Disabled people appear to have been affected in all areas of society due to the laws and regulations being implemented by the Government, such as healthcare, the court system, employment and education. They are therefore not just going to be affected by the long-term health implications, but also financially.

Persons with disabilities are often wrongly perceived to be inherently vulnerable, when it is attitudinal, environmental and institutional barriers that result in situations of vulnerability.[\[39\]](#) The lives of disabled people are already filled with barriers in going about their day to day, therefore responses to the COVID-19 pandemic taken by the Government such as ‘stay at home’ restrictions create further disruptions and new risks to their autonomy, health and lives. These ‘stay at home’ restrictions also discriminate against those disabled people who need to exercise more than once-a-day[\[40\]](#), or those with psychosocial disabilities and autistic persons, who need short and careful outings throughout the day which is key for them to cope with situations.[\[41\]](#) The aspects of a disabled persons life should have been taken into consideration when the Government was implementing the lockdown measures.

Society as a whole will be suffering the mental health impacts of the restrictions put into place due to isolation and general worry. However disabled people who were already suffering from mental health issues

could feel this impact even more, especially if the social care they were receiving before the pandemic has now been taken away from them. Measures to contain the spread of COVID-19 have resulted in significant disruptions to services, support systems and informal networks, such as personal assistance, sign language and tactile interpretation, and psychosocial support,[\[42\]](#) and those who will feel this impact most will be older and disabled persons.

Disabled people are 42% more likely to have poor health and are, therefore, extremely vulnerable to the virus.[\[43\]](#) Yet recurrent rhetoric on ‘vulnerable groups’ and ‘shielding’, which fails to acknowledge disabled people’s and older adults’ rights to life and health, and which assumes they are recipients of services rather than individuals with full spectrum human rights,[\[44\]](#) creates an idea that disabled people must be protected and need to be looked after or ‘shielded’. This takes the option of choice and the right to decide for themselves away. The inability to use public transport to go and get their own essentials such as groceries can have a huge impact on their day where this was their only means of human contact. This has further been affected by the lockdown restrictions and social distancing measures leading to a rapid transfer of a wide range of services online. It has been observed that one in five disabled people and older people still did not access the internet. These groups are therefore potentially further excluded from accessing key services, whether that be public services or online shopping for essential goods.[\[45\]](#)

Not only have some of the guidelines provided on the COVID-19 restrictions been confusing and at sometimes contradictory, the Government failed to provide a British Sign Language interpreter during its daily televised COVID-19 briefings.[\[46\]](#) The most important aspect of our law is that it is known and understood by society at large. If disabled

people are not able to understand what they are being told due to no sign language representatives being provided, how are they supposed to feel like a part of this society and abide by the rules and regulations being put into place?

Delays in testing social care staff led to thousands of disabled people in care homes becoming infected with COVID-19 and losing their lives.[\[47\]](#) As we have seen with older people, disabled people in nursing homes, social care homes and psychiatric facilities, have been disproportionately impacted by the pandemic. It appears that they are experiencing significant barriers to implement basic hygiene measures and physical distance and have limited access to COVID-19 related information, testing and healthcare.[\[48\]](#) The percentage of COVID-19 related deaths in care homes—where older persons with disabilities are overrepresented—ranges from 19% to 72% in countries in which official data is available.[\[49\]](#)

Our court system has also been affected by the COVID-19 pandemic, and defendants with learning disabilities and hearing or vision impairments might be disproportionately affected by the provisions for remote court hearings.[\[50\]](#) The use of remote and virtual hearings to address the delays risks reducing access to justice for people who share protected characteristics, particularly disabled people.[\[51\]](#) Systems should have been put into place to ensure that all defendants had equal rights in regards their access to the court system. Those defendants who had specific needs should have been respected and had their needs taken care of with the court system making specific arrangements for them to attend.

COVID-19 appears to have taken charge when it comes to healthcare, with all other ailments being put on the back pedal. The pandemic has had a significant impact on securing timely access to healthcare for other life-threatening conditions, such as cancer and heart disease. Referral rates have

decreased and waiting times have increased considerably and are likely to lead to reverses in survival rates and life expectancy.[\[52\]](#) These delays, as well as challenges in accessing healthcare for wider chronic conditions, have the potential to widen further the existing health inequalities,[\[53\]](#) and the human rights provided to all equally. This not only means that people with new or worsening health problems are not receiving the treatment they require, but that there will be long-term impacts for many as the wait list for treatment continues to rise.

Unemployment has been another devastating impact of the pandemic due to country-wide closure of certain businesses. The unemployment rate for disabled people (aged 16 to 64) in April – June 2020 was 6.5% compared with 3.5% for non-disabled people. This compared with equivalent rates of 8.8% and 3.3% in April-June 2018.[\[54\]](#) The Equality and Human Rights Commission (**EHRC**) has warned that employers may face a raft of discrimination claims if they unfairly treat disabled members of staff during, or as a result of, the COVID-19 crisis. The EHRC has issued new guides, which give details of organisations' duties to make reasonable adjustments for disabled employees. The guides also set out their legal responsibilities to help them make correct and lawful decisions around dismissing and furloughing disabled staff in the current climate.[\[55\]](#)

Rising Unemployment

Working is good for our health and wellbeing. It contributes to our happiness, helps us to build confidence and self-esteem, and rewards us financially. Being in work challenges us and gives us the means to develop; gives us dignity and pride; gives us a sense of identity and personal achievement; enables us to socialise, build contacts and find support; provides us with money to support ourselves and explore our interests.

According to a recent study by the Department of Work and Pensions, people in work tend to enjoy happier and healthier lives than those who are not in work.

Being out of work has a negative impact on our health and wellbeing. People who are unemployed have higher rates of physical and mental health problems, take more medication and use more medical services, and have a shorter life expectancy. This is particularly concerning in the ongoing COVID-19 pandemic. The latest official figures (according to the Office of National Statistics) show that the [UK unemployment rate rose to 4.8% in the three months to September](#) 2020, up from 4.1% in the previous quarter[56]. **Data released on 12/11/20 by HM Courts and Tribunal Service (HMCTS) shows outstanding employment tribunal claims have increased by more than a third since start of pandemic in March and has reached 50,000 cases.**[57]

The UK economy was regionally imbalanced prior to the pandemic, which left weaker local economies less able to withstand its economic impacts. Places already with the highest unemployment before COVID-19 suffered the greatest rises. Heavy dependence on the most ‘locked down’ sectors such as tourism and hospitality was damaging for some places, particularly remoter areas on Britain’s west coast. The full ‘lockdown’ across the UK to control the pandemic in spring 2020 led immediately to an unprecedented rise in unemployment.[58]

While many parts of the country went into lockdown to combat the spread of the virus, unemployment numbers have been rising sharply - overall UK unemployment is expected to reach 7.5% next year. If that figure is reached, up to three million people in the UK could be unemployed. Although all demographics are affected by unemployment caused by the pandemic, one of the hardest-hit groups has been young people. The figures show that

174,000 fewer 16- to 24-year-olds were employed in July to September, compared to the previous three months.[\[59\]](#) This rate is three times the unemployment national average.

According to the ONS, this is because young people are more likely to be working in areas such as hotels, restaurants and tourism. Jobs like these have been particularly hard-hit by lockdown, and quarantine restrictions have reduced the number of tourists. The UK's large service sector, although contributing to employment growth, comprises many sectors characterised by low productivity and businesses with few financial reserves with which to weather a storm such as a pandemic.

Speaking on Channel 4 News, the Bank of England's chief economist, Andy Haldane, said he was concerned that soaring rates of unemployment would increase the gap between the generations and widen regional disparities.[\[60\]](#)

An increasing number of large UK employers have been forced to make staff redundant in order to remain financially viable. According to Insolvency Service data, some 842 British employers told the Government of plans to cut 20 or more jobs in October 2020, as growing uncertainty about the pandemic hit business confidence – more than any month on record before the pandemic began, and almost two-and-a-half times the level seen in October 2019, which places a further 51,000 jobs at risk.[\[61\]](#)

The Government has been trying to protect jobs through a number of measures; the largest is the furlough scheme, where the Government pays most (up to 80%) of the wages for workers when their employers cannot - this has prevented many people becoming unemployed. The chancellor of the exchequer, Rishi Sunak, stated that the Government's decision to [extend the furlough scheme](#) until March in response to the re-imposition of

lockdown restrictions in England would “protect millions of jobs across the UK and support people to continue to provide for their families”.

However, it would appear that the Government’s furlough scheme and a recovering economy failed to prevent record redundancies in the period before tougher lockdown restrictions were imposed.[\[62\]](#) Analysis by the House of Commons Library shows that almost every part of the country has seen benefits claims surge as people have lost their jobs. Dozens of the worst affected areas recorded increases in the number of people claiming unemployment-related benefits of more than 200%.[\[63\]](#) The numbers demonstrate that the hammer blow dealt to the economy by the pandemic continues to reverberate across the UK despite Government bailouts.

The "economic emergency" caused by COVID-19 has only just begun, according to Chancellor Rishi Sunak, as he warned the pandemic would deal lasting damage to growth and jobs. Official forecasts now predict the biggest economic decline in 300 years. The UK economy is expected to shrink by 11.3% this year and not return to its pre-crisis size until the end of 2022. Government borrowing will rise to its highest outside of wartime to deal with the economic impact.[\[64\]](#)

A full prediction of the impact of the 2020 recession on equality and human rights is impossible, particularly since data on employment, unemployment and redundancies have limited breakdowns by protected characteristics. However, the available data provide insights into which groups are at greatest risk.[\[65\]](#) In May–July 2020, the employment rate for women of working age was the same as in January–March 2020, whereas the rate for men was 0.2 percentage points lower. Redundancy rates remained higher for men, although increased more for women, rising from 4.3 to 5.7 for men and from 3.4 to 5.5 for women (ONS, 2020). Unemployment rates indicated a more severe impact on younger people 16-24 years of age. Citizens

Advice Bureaux research suggests that disabled people, parents and carers are most at risk of being made redundant. Unemployment rates were higher for ethnic minorities including Pakistani, Bangladeshi and Black African / Caribbean people aged 16 and over in April–June 2020 at 8%, compared with a rate of 3.5% for White people (ONS, 2020). Data on redundancy by ethnicity are unavailable. Respondents who identified as Black, Asian and Minority Ethnic (BAME) were 13 percentage points less likely to be furloughed, and 14 percentage points more likely to have been unemployed than non-BAME respondents, according to Benzeval et al., 2020: 27 [cited in an October 2020 report by the Equality and Human Rights Commission UK].

This EHRC report stated, “The evidence to date suggests the main impact of coronavirus has been on hours of work, indicating increasing underemployment, rather than on employment or unemployment so far”, and “The current data do not allow for an examination of the direct impact of coronavirus by ethnicity and disability, although some analysis has shown greater impacts for some ethnicities. We are particularly concerned about the treatment of people from ethnic minority communities in low paid, insecure and precarious employment that the pandemic has exposed.”[\[66\]](#)

People from Black and Asian backgrounds are at substantially greater risk of contracting COVID-19 than white people, according to a study that highlights the disproportionate impact of the disease on different groups in society. Black people are twice as likely to become infected with COVID-19 as white people, and people from Asian backgrounds are one and a half times as likely, researchers found after analysing 50 studies that reported on the medical records of nearly 19 million COVID-19 patients.[\[67\]](#) Although making this information public helps raise awareness and

increases the possibility of preventative measures being taken by those affected, it could also lead to prejudice and direct / indirect discrimination in the workplace.

As working from home looks set to continue as ‘the new normal’ following the pandemic, a UK research institute has warned that this could also lead to increased prejudice. The Woolf Institute found in its study of diversity in England and Wales; that friendships in the workplace were key to breaking down prejudices. The study, published on 16/11/2020, surveyed 11,701 adults in England and Wales. It was undertaken by a market research agency on behalf of the Woolf Institute. With more people likely to continue working remotely in the future, “the workplace as a meeting point for those of different backgrounds is set to be significantly diminished,” the Woolf Institute study warned.[\[68\]](#) “Without the creation of alternative opportunities for social mixing, this ... will lead directly to an increase in prejudice,” it concluded.

The EHRC’s October 2020 report[\[69\]](#) made the following recommendations for the UK, Scottish and Welsh Governments to ensure equality and human rights considerations are integrated into the policy response to the COVID-19 pandemic:

- The Government should introduce mandatory monitoring and reporting on the recruitment, retention and progression of disabled people and ethnic minority groups for private sector employers across Britain with over 250 staff by April 2022.
- The Government should require those same employers to publish time-bound, target driven action plans to address the factors creating pay and employment gaps.
- The Government should implement similar provisions for public sector employers in England with over 250 staff.

- The Scottish and Welsh Governments should address inequalities in employment in the public sector through the forthcoming reviews of the Public Sector Equality Duty specific duties.
- The Government should implement as a matter of urgency its earlier commitment to extend pregnancy and maternity redundancy protections by a further six months.
- The Government should demonstrate its commitment to inclusive ways of working by extending the right to request flexible working to everyone from day one in all jobs, requiring employers to offer and advertise all jobs, including the most senior roles, on a flexible and part-time basis unless there is a genuine business reason that means this is not possible.[\[70\]](#)

The British Institute of Human Rights states that human rights must be at the heart of our practical responses to the pandemic; ensuring that health and care for everyone; highlighting that some people and groups may be more at risk and need support; flagging the potential for discriminatory access to, and responses by, public services; the potential of some communities being targeted for hate speech and crime; the danger of a public health emergency leading to arbitrary, un-scrutinised restrictions through emergency laws and heavy handed responses by officials, including criminal justice agencies.[\[71\]](#)

According to the Office for National Statistics[\[72\]](#), 64% of businesses across all industries were [at risk of insolvency](#) in October 2020, with 43% of companies running on less than six months' cash reserves. The latest Business Impact of [Coronavirus](#) Survey from the ONS found that the accommodation and food service industries and the administrative and business support industries had the highest percentages of firms at severe risk of insolvency, at 17% and 9% respectively. A separate report by the insolvency practitioners Begbies Traynor found that more than half a

million UK businesses were in “significant distress” due to the impact of the pandemic; “A combination of grim economic data, and very poor trading conditions, particularly in the most vulnerable sectors, such as hospitality, will take its toll and this is expected to feed through to next year’s first quarter, particularly when the Government ends its high-profile corporate life-support measures.”[\[73\]](#)

In this time of crisis, it is important for us to come together as a people and provide practical assistance and emotional support to each other, to ensure that those of us most in need get through this situation without having to compromise on personal respect and dignity, while we attempt to keep our jobs, to work from home, to find alternative employment or seek a change of career to remain relevant and adapt to this fast-changing environment, in the backdrop of the COVID-19 pandemic.

In a [recent survey](#) by the Royal Institute of British Architects, many people stated that working from home had made them more stressed than when they were at the office - this is relevant as many people may never return to the office full time even after the COVID-19 vaccines have been administered. Some practical suggestions to improve individual workspaces within homes include working in rooms with the most natural light, reducing background noise, de-cluttering, ensuring that some physical activity is undertaken, keeping plants and maintaining social contact.[\[74\]](#)

Recently there has been a positive development in the fight towards saving lives and returning to normality - the UK is the first western country to approve a COVID-19 vaccine; deliveries of the vaccine developed by BioNTech and Pfizer begin soon, and injections could take place from as soon as December 7, 2020.[\[75\]](#)

The foreseeable future is going to be amongst the most challenging times ever for our economy, our society, and many of us individually. It is likely that we will encounter problems of unemployment, low productivity, declining competitiveness and low innovation. The geographical imbalance in the impact of this crisis requires Government expenditure on local and regional economies and infrastructure development to increase, despite the ongoing strain on public funds.

As we come out of the COVID-19 crisis, the Government must take local concentrations of unemployment seriously and formulate a recovery strategy focused on getting people back to work, into jobs that are skilled and sustainable, in sectors we want to grow. This may need changes to the benefits system, to better local economic planning and steps towards reducing regional dependence on the visitor economy to reduce vulnerability to future shocks that severely restrict people from travelling. A successful economic recovery to increase employment levels requires coordinated policies and action both nationally and locally. Most of all, it needs to focus on people and skills, without discrimination.

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Free Movement, Expression and Assembly

Tom Feeny, Suzanne Jones, Ledelle Muktarr & Jack Porter

Freedom of Movement

Tom Feeney

‘Desperate times call for desperate measures’

“For extreme diseases, extreme methods of cure, as to restriction, are most suitable.”

Hippocrates (460- 370 bce), Amorphisms

The phrase ‘desperate times call for desperate measures’ is thought to have been derived from the Hippocrates, the ancient Greek ‘Father of Medicine’ who lived through the plague of Athens. Since the onset of the coronavirus pandemic governments around the world have sought to impose ‘extreme methods of cure’ to restrict the spread of the virus by depriving their citizens of individual liberties.

The research undertaken in this paper has focused upon curtailing of the right of the freedom of movement of citizens of England by the Westminster government. This right is granted to all citizens of the United Kingdom by Article 5 of the European Convention on Human Rights, the provisions of the Convention enshrined in domestic law by the Human Rights Act 1998.

Aims and limitations of research

The research undertaken here into the curtailing of the right to freedom of movement by the government of the United Kingdom has focused only on the restrictions imposed by the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020, from 26 March to 4 July 2020. The reasons being that since the repeal of the initial Regulations on 4 July,

the UK government first lifted what has become known as ‘lockdown’ nationwide (England) while imposing various regional lockdowns, before creating a national tiered system in October, followed by a national ‘circuit breaker’ or, second lockdown, in November with a subsequent yet different regional tiered system being introduced at the beginning of December. As this later piecemeal approach taken by the Government, at times varied and often confusing, means that the period of 26 March to 4 July under which the Regulations restricting freedom of movement were uniform across the country has been the logical time frame for a coherent and focused analysis of this topic. Further, the Regulations of this period applied only to England, and as such this research has only focused upon England. Restrictions upon freedom of movement have been imposed upon citizens of all corners of the United Kingdom, however as these have been imposed for the reason of public health. This is a matter of governance to be exercised by the devolved administrations, accordingly the Westminster government of the United Kingdom has only implemented the Regulations in England.

While the Coronavirus Act 2020 came into force on 26 March 2020, and also severely restricted freedom of movement for certain individuals, the Act’s chief concern is with the restriction of individuals rights of those who are infected or suspected of being infected with the virus. This has not been examined here for two reasons. Firstly, the restricting of the freedom of movement for individuals infected with the highly infectious and dangerous virus is less controversial, and indeed more logical, than restricting the movement of uninfected individuals. Secondly, highly creditable research and argument has been made on this matter regarding the restriction of freedom of movement, by Jonathan Pugh in the *Journal*

of *Law and Biosciences*.²⁹⁹ For the reasons above the parameters of this research are strictly the coronavirus Regulations of 26 March to 4 July 2020; the legislation, its enforcement by police and affect upon the public.

Legislation

The legislation that has been used by the government of the United Kingdom to restrict individual liberties has been the topic of much controversial debate amongst legal professionals and academics. This debate focused on the Government's choice to enforce the Regulations under the Public Health (Control of Disease) Act 1984, which allowed for statutory instruments without parliamentary scrutiny while allowing judicial review as the only potential remedy; as opposed to the Civil Contingencies Act 2004, which would allow for the same regulations to be put in place with proper parliamentary scrutiny and an expanded role for the courts.³⁰⁰ For perhaps obvious reasons the Government chose the former and on 26 March the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 came into force in England with a set expiry of six months. These regulations were implemented via statutory instrument by the Secretary of State for Health and Social Care under the authority of instrument's parent act, the Public Health (Control of Disease) Act 1984 (as amended by the Health and Social Care Act 2008). During an

²⁹⁹ See Jonathan Pugh, 'The United Kingdom's Coronavirus Act, deprivations of liberty, and the right to liberty and security of the person' (2020) 7 J Law Biosci (1): 1-14

³⁰⁰ While parliamentary sovereignty and the judicial role of the courts is, in this instance, not the focus of this research the Government's choice of legislation has had a profound impact on the fundamental rights of UK citizens and the use of the 2004 Act would to many legal minds, been preferable. For views on this debate, see, David Allen Green, 'Ultra-Virus the Constitutionality and Legality of the Coronavirus Regulations' (*The Law and Policy Blog*, 8 April, 2020) accessed 6 November 2020. <https://davidallengreen.com/2020/04/ultra-virus-the-constitutionality-and-legality-of-the-coronavirus-regulations/> and Andrew Blick, Clive Walker, 'Why did the Government not use the Civil Contingencies Act?' (*The Law Society Gazette*, 2 April, 2020) accessed 15 November 2020. <https://www.lawgazette.co.uk/legal-updates/why-did-government-not-use-the-civil-contingencies-act/5103742.article>

‘emergency period’ the Regulations enabled various restrictions to be imposed upon individuals’ liberties, such as freedom of movement.

Regulation 6, ‘Restrictions on movement’ stated that ‘During the emergency period, no person may leave the place where they are living without reasonable excuse.’³⁰¹ A ‘reasonable excuse’ was not defined but a non-exhaustive list of 13 examples was provided which specified their ‘need’ and thus necessity.³⁰² A ‘place where they are living’ was defined as the premises of where they live as well as their garden, etc.³⁰³ Homeless persons were excluded from subsection 1.³⁰⁴

Under the Regulations the police forces of England were empowered ‘to take such as action’ as was necessary to enforce compliance with Regulation 6. Section 9 of the Regulations deals with ‘Offences and Penalties’, subsection 1(b) stating that a person who contravenes a requirement of regulation 6 commits an offence. Being found guilty of such an offence would result in a fine issued by the magistrates’ court.³⁰⁵ Regulation 10 offered the potential to mitigate a criminal offence by issue of a fixed penalty notice, this would amount to £60 (£30 if paid within 14 days) for a first-time offence to be paid within 28 days; £120 for a second offence, doubling with each subsequent offence to a maximum of £960.³⁰⁶ However, Regulation 10 stated that an authorised person ‘may’ issue a penalty notice, meaning there was no obligation the potential offender would be offered this as opposed to criminal prosecution.³⁰⁷

³⁰¹ Health Protection (Coronavirus, Restrictions) (England) Regulations 2020, s 6 (1)

³⁰² Ibid, s 6 (2)

³⁰³ Ibid, s 6 (3)

³⁰⁴ Ibid, s 6 (4)

³⁰⁵ Ibid, s 9 (4)

³⁰⁶ Ibid, s 10 (6)-(7)

³⁰⁷ Ibid, s 10 (1)

Regulation 6, taken with the others, which also limit other human rights such as the freedom of assembly, have been described by public law expert David Allen Green as the “most illiberal laws imposed in England since at least the second world war.”³⁰⁸ The Regulations, implemented without parliamentary debate, severely restricted citizens’ freedom of movement, and gave the police sweeping and discretionary powers as to their enforcement.

There was obviously good reason for these restrictions on individual liberties, namely a novel pandemic which needed to be controlled and which the powers granted to the Government by the 1984 Act envisaged. Green has further criticised the regulations and particularly the exceptions to leave one’s home under ‘reasonable excuses’ as vague, leaving considerable scope for police forces to misuse their powers under which they are the arbiter of what constitutes a ‘reasonable excuse’ or otherwise.³⁰⁹ Baroness Hale, ex-president of the Supreme Court, has also criticised the Government’s communications during the pandemic: “a great deal of what the public was told they could or could not do was not in the Regulations. It was just in Government guidance.”³¹⁰ This amounted to suggesting what Regulations meant, for example permitting the public a ‘reasonable excuse’ to leave the house for exercise only once a day, however Regulation 6 (2) stated no such limit.

³⁰⁸ David Allen Green, ‘The Coronavirus restrictions on freedom of movement – a guided tour’ (*The Law and Policy Blog*, 27 March, 2020) accessed 6 November 2020. <https://davidallengreen.com/2020/03/the-coronavirus-restrictions-on-freedom-of-movement-a-guided-tour/>

³⁰⁹ Ibid

³¹⁰ Baroness Hale, ‘The Pandemic and the Constitution’ in Jessie Brennan, Mandy Groves, Rhona Friedman, Sue James and Simon Mullings (eds), *Justice Matters: Essays from the Pandemic* (LAG Education and Services Trust Limited 2020) 4

Police Enforcement

When the Metropolitan Police was formed in 1829, a key principle underpinning their mandate was that their ability to function ‘is dependent upon public approval of police existence, actions, behaviour and the ability of the police to secure and maintain public respect’; Nicholas Dobson has emphasised that this principle is more vital than ever given the sweeping, draconian and discretionary powers the Police had been granted by the Regulations.³¹¹ However, in various incidents police forces have been criticised for an over-zealous approach to enforcing the Regulations.

One notable incident occurred on March 26, the day the Regulations came into force. Derbyshire Police uploaded a video to their twitter page, filmed by a drone, in which they publicly shamed an elderly couple walking their dog while observing social distancing in the Peak District, officers stating that travelling to remote areas did not count as “essential travel”. UK civil liberties group Big Brother Watch branded the movie “sinister and “counter-productive” while former justice secretary David Gauke described the post as “badly misjudged” emphasising the “need to maintain public support for fundamental behaviour change which requires the authorities to focus on genuinely bad behaviour.”³¹² Further apparent over-zealous behaviour by the Police was seen over the opening weekend of the imposition of the regulations, Lancashire Police issuing 123 fines for

³¹¹ Nicholas Dobson, ‘Police Powers and COVID-19’ (2020) 170 NLJ 11

³¹² BBC Derbyshire, ‘Coronavirus: Peak District drone police criticised for 'lockdown shaming' *BBC* (27, March 2020) accessed on 21 November 2020 <https://www.bbc.co.uk/news/uk-england-derbyshire-52055201>

breaking the new rules while officers in Cleveland issued 16 which were mainly for drivers making unnecessary journeys.³¹³ Although concerning the drone incident, the Derbyshire Chief Constable said he believed his force hadn't gone too far, it should be credited that other senior police officers have accepted criticism, acknowledging the difficult task of officers on the ground in enforcing the Regulations.³¹⁴ Dobson, writing in the *New Law Journal* has called for more acceptance of criticism by the Police and less of the "arrogant" approach taken by some forces such as Derbyshire.³¹⁵

In response to the police action concerning the Regulations that weekend, former Supreme Court justice Lord Sumption stated: "This is what a police state is like. It's a state in which the government can issue orders or express preferences with no legal authority and the police will enforce ministers' wishes." He emphasised that there was no law to stop people taking exercise in open country and police officers were exceeding their powers "simply because ministers have said that they would prefer us not to."³¹⁶ The *Law Society Gazette* has noted the strong support for Sumption's 'police state' warning among the legal community.³¹⁷ However, while there has been widespread criticism and apprehension of the potential long-term impact of these policing measures in legal circles, the public have been largely supportive. A You-Gov poll commissioned in April just after the Regulations had come into force found that 42% of adults fully supported the then current police approach, a further 32% supporting but believing it

³¹³ Nicholas Dobson, 'Police Powers and COVID-19' (2020) 170 NLJ 11

³¹⁴ Ibid

³¹⁵ Ibid

³¹⁶ Michael Cross, 'Lawyers echo Sumption's 'police state' warning' *Law Society Gazette* (31, March 2020) accessed on 21 November 2020 <https://www.lawgazette.co.uk/law/lawyers-echo-sumptions-police-state-warning/5103700.article>

³¹⁷ Ibid

may have, in some cases, gone too far. The poll also found that only 6% of the adults surveyed believed the police at that time had been too heavy handed with an added 14% who in fact wished to see tougher action. Only 2% believed the police should have had no role in enforcing lockdown at all.³¹⁸

While public polling appeared to show strong public support for police enforcement of their powers, there have been numerous accounts of incorrect application of the Regulations. The first publicised arrest for breach of the Regulations took place where Marie Dinou was arrested after she was discovered on her own at a platform at Newcastle railway station. Dinou refused to co-operate with British Transport police who stated that “Having explored all options, Ms Dinou was arrested on suspicion of breaching the restrictions imposed under the Coronavirus Act 2020.”³¹⁹ Dinou was charged, detained in a cell for two nights, subsequently convicted and fined £660. In a matter for concern, *The Independent’s* investigation further discovered that Dinou did not speak to Police officers and as a result “was punished” by being detained in the police cells, resulting in her being convicted in *absentia*; no mental health assessment appeared to have been undertaken nor was an effort made by the court as to whether Dinou spoke English.

Kirsty Brimelow QC investigated her arrest discovering she had wrongly been prosecuted for “failing to provide identity or reasons for travel to

³¹⁸ Joe Calouri, Jon Clements, ‘Policing the COVID-19 lockdown – what the public thinks’ (*Crest Advisory*, 8 April 2020) accessed 15 November <https://www.crestadvisory.com/post/policing-the-covid-19-lockdown-what-the-public-thinks>

³¹⁹ Lizzie Dearden, ‘Coronavirus: How woman ‘loitering’ at train station was wrongfully convicted in shambolic case’ *The Independent* (3 April, 2020) accessed 28 November [s://www.independent.co.uk/news/uk/crime/coronavirus-marie-dinou-lockdown-stay-at-home-loitering-arrest-fine-police-a9444311.html](https://www.independent.co.uk/news/uk/crime/coronavirus-marie-dinou-lockdown-stay-at-home-loitering-arrest-fine-police-a9444311.html)

police and failing to comply with requirements under the Coronavirus Act", while no such offence existed; further Dinou had appeared to have been falsely imprisoned as there is no power of detention under the Corona Virus laws as Dinou was not considered "potentially infectious."³²⁰ British Transport Police apologised and Dinou's conviction was quashed, Deputy head constable Adrian Hanstock stating, "It is highly unusual that a case can pass through a number of controls in the criminal justice process and fail in this way".³²¹ Brimelow however has noted that under the Regulations miscarriage of criminal justice has been far from "highly unusual". On 2 May the Crown Prosecution Service announced a review of all charges and prosecutions under the Regulations which, when published on 15 May, found 28% had been incorrectly charged with 18 of these cases having progressed to a point of been wrongly sentenced.³²²

The most publicised story of a potential breach of the coronavirus Regulations was when an explosive news story broke that the then most high-profile advisor to the Prime Minister, Dominic Cummings, had left London the day after the implementation of the Regulations and travelled to his parent's estate in Durham by car with his child and wife whom the family suspected as having coronavirus. While there, Cummings also contracted the virus, staying at his parents' home for some weeks until he and his wife had recovered. Before journeying back to London, Cummings made the now infamous trip to Barnard Castle with his wife and child on the day of his wife's birthday. Cummings in a televised statement claimed the trip was in order to 'test his eyesight' in preparation for the drive to

³²⁰ Kirsty Brimelow, 'Did Dominic Cummings act "Responsibly and Legally"?' (*Doughty Street Chambers*, 24 May, 2020) accessed on 28 November <https://insights.doughtystreet.co.uk/post/102g80l/did-dominic-cummings-act-responsibly-and-legally>

³²¹ *Ibid*

³²² *Ibid*

London the following day.³²³ In his statement Cummings further stated he acted both legally and responsibly in all his actions concerning the trip to Durham. This incident, apart from its high-profile public nature, is of interest for numerous legal reasons. First, Cummings' initial trip to Durham was legally questionable under Regulation 6 (2). His stated reason of desiring to have his child care for in the event that he and his wife both became severely afflicted by the coronavirus' worst symptoms was not one that appeared under the examples of 'reasonable excuses', although the Secretary of State for Health and Social Care Matt Hancock was satisfied that it was a 'reasonable excuse'.³²⁴

Many legal and indeed political issues arose from this not only as to whether his excuse was 'reasonable' as it highlights the problem of the vague drafting of the Regulations,³²⁵ but more importantly in supporting Cummings' behaviour as being 'reasonable' it has had consequences for the rule of law. The shadow home secretary Nick Thomas-Symonds asserted that the Prime Minister's decision not to sack Cummings sent "a clear message that there is one rule for his closest adviser and another for the British people."³²⁶ A study suggested his and the Prime Minister's subsequent conduct undermined trust not only in politicians but compliance

³²³ Vikram Dodd, 'Dominic Cummings potentially broke lockdown rules, say Durham police' *The Guardian* (28, May 2020) accessed on 25 November <https://www.theguardian.com/politics/2020/may/28/dominic-cummings-potentially-broke-lockdown-rules-say-durham-police>

³²⁴ Kirsty Brimelow, 'Did Dominic Cummings act "Responsibly and Legally"?' (*Doughty Street Chambers*, 24 May, 2020) accessed on 28 November <https://insights.doughtystreet.co.uk/post/102g80l/did-dominic-cummings-act-responsibly-and-legally>

³²⁵ Kirsty Brimelow QC has analysed in depth the legality or otherwise of Cummings' lockdown actions, see *Ibid*

³²⁶ Durham police did not consider whether Cumming's initial trip to Durham broke lockdown rules, see Vikram Dodd, 'Dominic Cummings potentially broke lockdown rules, say Durham police' *The Guardian* (28 May, 2020) accessed on 25 November <https://www.theguardian.com/politics/2020/may/28/dominic-cummings-potentially-broke-lockdown-rules-say-durham-police>

with the lockdown Regulations.³²⁷ The perception that individual liberties such as freedom of movement are granted to those in power but not to the common citizen has as Baroness Hale stated, led to “the outcry that there was one law for those in power and another law for the rest of us”, where in reality “there isn’t” but that laws rightly have to be “nuanced with concepts like ‘reasonable excuse’”.³²⁸

If, as it appears, this incident damaged public trust and potentially compliance with the Regulations, it was an extremely regrettable consequence, especially when public faith in the policing enforcement appeared so high. It is paramount importance that if fundamental rights are to be curtailed during a pandemic that at least these rights must be curtailed in accordance with the Rule of Law as regarding both those in power and those not.

Legality

In contrast to the challenging of the application of the Regulations by police enforcement, there has been legal, academic and professional debate on the issue of whether the Coronavirus Regulations of March, were in fact legal at all. The full details of each argument and their underpinnings are too great to explain fully and fall outside the scope of this research, but it is worth outlining each argument as regards to the Regulations, particularly due to the recent judgement of the Court of Appeal on *R (on the application*

³²⁷ Patrick Butler, ‘Cumplings trips damaged UK lockdown unity, study suggests’ *The Guardian* (30 July, 2020) accessed on 25 November <https://www.theguardian.com/politics/2020/jul/30/cummings-saga-damaged-uk-unity-covid-19-study-suggests>

³²⁸

Baroness Hale, ‘The Pandemic and the Constitution’ in Jessie Brennan, Mandy Groves, Rhona Friedman, Sue James and Simon Mullings (eds), *Justice Matters: Essays from the Pandemic* (LAG Education and Services Trust Limited 2020) 5

of Dolan and others) v the Secretary of State for Health and Social Care and another (2020).³²⁹

There has been a debate between the lawyers and academics, Jeff King and Robert Craig, upon the *vires* legitimacy of the legislation itself based on whether the Regulations' parent act, the Public Health (Control of Disease) Act 1984 (as amended by the Health and Social Care Act 2008), has the necessary clarity of language and wide-ranging provisions that would legally limit the freedom of movement of healthy individuals. In short, King has argued that the scope of the Act indeed had the legal framework necessary to limit freedom of movement in the Regulations, whereas Craig has argued the wording of the delegated powers of the Act was not certain enough to amount to such a curtailing of fundamental freedoms, nor were such curtailing the intention of the Act.³³⁰ The Barrister Francis Hoar has further argued that the Regulations were also a disproportionate interference with rights protected by the European Convention on Human Rights, namely Articles 5, 8, 11, 14 as well as Articles 1 and 2 of Protocol 1.³³¹

³²⁹

R (on the application of Dolan and others) v the Secretary of State for Health and Social Care and another (2020) EWCA Civ 1605 (2020)

³³⁰ For full in-depth debate see Jeff King, 'The Lockdown is Lawful' (*UK Constitutional Law Association*, 1 April, 2020) accessed on 30 November 2020 <https://ukconstitutionallaw.org/2020/04/01/jeff-king-the-lockdown-is-lawful/>, Jeff King, 'The Lockdown is Lawful: Part II' (*UK Constitutional Law Association*, 2 April, 2020) accessed on 30 November 2020 <https://ukconstitutionallaw.org/2020/04/02/jeff-king-the-lockdown-is-lawful-part-ii/>, Robert Craig, 'A Response to Professor King' (*UK Human Rights Blog*, 6 April, 2020) accessed on 30 November 2020 <https://ukhumanrightsblog.com/2020/04/06/lockdown-a-response-to-professor-king-robert-craig/>

³³¹ Francis Hoar, 'A disproportionate interference: the Coronavirus Regulations and the ECHR' (*UK Human Rights Blog*, 21 April, 2020) accessed on 26 November 2020 <https://ukhumanrightsblog.com/2020/04/21/a-disproportionate-interference-the-coronavirus-regulations-and-the-echr-francis-hoar/>

These arguments, which had only been previously aired online, were brought before the Court of Appeal by judicial review recently in an authoritative ruling, where Francis Hoar, one of the representatives for the appellant, was able to put the case forward that the delegated powers under the 1984 Act were *ultra vires* as applied to the coronavirus Regulations, as well the argument against the Regulations on human rights ground.³³² In the unanimous judgement of the Court of Appeal, Lewis J, granted permission to argue the *vires* interpretation of the legislation, however the Court went on to decide that the 1984 Act did indeed grant the Secretary of State such powers to impose the Regulations of March 2020.³³³ Regarding potential breaches of human rights guaranteed by the Convention, the court ruled they were all unarguable.³³⁴ Of particular interest to this research the justices ruled that Regulation 6, restricting freedom of movement, did not amount as the appellants asserted, to a “curfew or house arrest”.³³⁵ The court based this ruling upon the fact that the obligation to stay in one’s home was “subject to numerous, express exceptions, which were non-exhaustive, and the overriding exception of having a reasonable excuse.”³³⁶

As this ruling by the Court of Appeal is only a few days old, there has not been a great deal of academic scrutiny on the judgement, however the initial thoughts of David Allen Green have offered some potentially worrying concerns as regards individual liberties in the time of pandemic. Green has contrasted the “classic model of freedom in a common law jurisdiction”, this model being that “one is free to do what one wishes – unless there is a

³³² For complete grounds for judicial review, see *R (on the application of Dolan and others) v the Secretary of State for Health and Social Care and another* (2020) EWCA Civ 1605 (2020) (43) – (114)

³³³ *Ibid*, (43) – (78)

³³⁴ *Ibid*, (91) – (114)

³³⁵ *Ibid*, (92)

³³⁶ *Ibid*, (93)

specific prohibition.” However, by this ruling in siding with the Government the court has, he argues, inverted this model; the new starting point being that under the Regulations, “everyone is prohibited from doing what they want in respect of freedom of movement and assembly, unless there was a permission,” a ‘reasonable excuse.’ So too of great concern was that it was not the common citizen who decided whether his ‘reasonable excuse’ was valid but the courts or an official who under the Regulations would be the arbiter of whether one’s excuse was ‘reasonable’ or not.³³⁷ As Green has stated it is of paramount importance that during the pandemic individual freedoms should be curtailed,

Conclusion

The blanket, uniform Regulations of 26 March to 4 July 2020 imposed restrictions on the right to freedom of movement on citizens living within England unmatched by those of the Second World War, and perhaps ever imposed by the British state. The wording of the legislation by which the Regulations were enforced, was certainly nuanced, and at times vague. This led not only to a great deal of legal and academic debate, but problems beyond the obvious infringements of individual liberties, in its implementation by the police forces. While the Cummings affair damaged public trust in the Regulations, it also highlighted the nuances necessary for the restrictions to be reasonably enforced.

³³⁷ David Allen Green, ‘Freedoms vs Permissions – a liberal look at the Court of Appeal judgement on the coronavirus regulations’ (*The Law and Policy Blog*, 4 December, 2020) accessed on 4 December 2020 <https://davidallengreen.com/2020/12/freedoms-vs-permissions-a-liberal-look-at-the-court-of-appeal-judgment-on-the-coronavirus-regulation/>

The police forces of England have at times been overzealous in their approach and have certainly made mistakes in their interpretation of the Regulations. However, as Baroness Hale has stated, “It is not surprising that the police were as confused as the public as to what was law and what was not”.³³⁸ Certainly, it was not surprising that in the initial weeks following the implementation of the Regulations that the police made mistakes. Despite their mistakes, and the apparent effect of Cummings scandal, it is of interest to note that the public maintained high levels of trust and support in the police to implement the draconian Regulations. Indeed, more recent polling suggests that the public is in favour of tougher enforcement and restrictions on individual liberties.³³⁹

Lastly, as stated by Lewis J, the judgement of the court in the judicial review case of Dolan, was largely of “academic interest” yet still had merits in terms of “public interest”.³⁴⁰ From a liberal perspective, Green has highlighted concerning aspects of the Courts judgement on the presumed rights to civil liberties in that case. However, one must hope that the Court of Appeal’s ruling on the issue of fundamental rights is one that aligns with the saying that ‘desperate times call for desperate measures’.

Recommendations – Freedom of Movement

The pandemic is still with us and measures taken by the Government to combat it are constantly developing. As such there will, unfortunately,

³³⁸ Baroness Hale, ‘The Pandemic and the Constitution’ in Jessie Brennan, Mandy Groves, Rhona Friedman, Sue James and Simon Mullings (eds), *Justice Matters: Essays from the Pandemic* (LAG Education and Services Trust Limited 2020) 5

³³⁹ Joe Calouri, Jon Clements, ‘Policing the COVID-19 lockdown – what the public thinks’ (*Crest Advisory*, 8 April, 2020) accessed 15 November <https://www.crestadvisory.com/post/policing-the-covid-19-lockdown-what-the-public-thinks>

³⁴⁰ *R (on the application of Dolan and others) v the Secretary of State for Health and Social Care and another* (2020) EWCA Civ 1605 (2020) (35)

likely be a great deal of further research to be undertaken into the restrictions on freedom of movement in the future.

As time passes and more academic debate and analysis is made, further research should be undertaken into the regional tiered system employed by the Government; potential differences in regional measures in terms of potential bias by the Government or police forces would undoubtedly be of value; so too would be detailed studies of the differing approaches of the devolved administrations of the United Kingdom in administering restrictions on freedom of movement.

Finally research should be undertaken upon the impact of differing restrictions of freedom of movement as applied to minority groups within the United Kingdom and the police's implementation of policies on those groups; of particular interest would be the differing measures applied to those citizens designated by the government 'vulnerable' whose own personal lockdown was different to that of the nation, and whose restrictions of freedom of movement have only ever partially, if at all, ended.

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Policing of Public Spaces

Jack Porter

This chapter will discuss three issues relating to the policing of public spaces during the Covid-19 pandemic. Firstly, an introduction to key developments that have arose within the criminal justice system as a result of the Covid-19 pandemic, and a discussion on existing police powers, and new powers that have been granted to them under new Covid-19 legislation. Secondly, whether there has been a demonstrably non-discriminatory application of said powers in the context of protected characteristics of individuals, specifically race. Finally, the criminalisation of everyday activities during both the harsher and softer parts of the lockdown.

Key Developments and Police Powers

The Covid-19 pandemic has placed significant pressure on the UK criminal justice system, with law enforcement agencies, courts and prison systems all needing to adapt their policies and practices in order to maintain health and safety standards to cope with the virus and stay in line with Covid-19 legislation and guidelines set in place by the Government. There have been considerable key developments within the criminal justice system to areas such as investigations, prosecutions, criminal proceedings, prisons and export control.³⁴¹

³⁴¹——, ‘Covid-19: Pressure Points: Impact on UK Criminal Investigations and Justice System (UK)’ (Herbert Smith Freehills, 27 April 2020) < <https://www.herbertsmithfreehills.com/latest-thinking/covid-19-pressure-points-impact-on-uk-criminal-investigations-and-justice-system-uk> > accessed 05 December 2020

In regards to investigations, some key developments brought on by Covid-19 are that the Crown Prosecution Service (CPS) and the National Police Chiefs' Council (NPCC) have, in an attempt to reduce unnecessary in-person interviews, issued interim interview protocols which encourages telephone or video links interviews wherever possible³⁴². The CPS and NPCC have also introduced a new charging protocol for prosecuting individuals. This splits cases into three categories; immediate, high priority and other cases. Cases classed as 'immediate' are those where the investigator is seeking the suspect to be remanded in custody. 'High priority' cases are those where the defendant is not required to be held in custody. Finally, 'other cases' are those where no arrest is required. These changes also saw fraud and cases requiring complex investigations as being low priority, with the thought that these will clog up the court system with numerous interviews.³⁴³ Other key developments include new jury trials being delayed indefinitely, prisoners being found to pose a low risk of harm to the public being considered for early release, and restrictions on the export of PPE.³⁴⁴

The Police and Criminal Evidence Act 1984, often referred to as PACE, outlines the powers and duties that police have when performing stop and searches and when question, investigating, detaining and arresting those they suspect to have committed a crime. PACE also includes the Codes of Practices that must be adhered to when carrying out their duties and exercising their powers. Failure to adhere to the Codes of Practice can lead to evidence in a trial being deemed inadmissible and/or the action taken by

³⁴² *ibid*

³⁴³ *ibid*

³⁴⁴ *ibid*

the officers involved being quashed.³⁴⁵ Officers must always take into account the European Convention on Human Rights, specifically Article 2 – Right to Life, Article 3 – Prohibition of Torture, Article 5 – Right to Liberty and Security, and Article 6 – Right to a Fair Trial. All of these have the possibility to be infringed upon so must be carefully considered by police when exercising their powers.

New Covid-19 legislation does not change police’s existing powers in relation to stopping and searching individuals out in public. Consequently, the same rights that existed beforehand still remain intact for the individual being stopped. Individuals are still entitled to ask questions on what grounds they have been stopped for, what legal power the police are using and what they are looking for, as well as the officer’s ID number and what station they are registered to.³⁴⁶

Police do, however, have new powers to enforce the restrictions and guidelines that have been put in place by the Government and the new Covid-19 legislation. Police can now break up public gatherings of more than 2 people, with some exceptions for those carrying out essential activities such as assistance for a vulnerable individual, moving house, legal proceedings and essential work related purposes, as well as those that live together. Police can now also direct individuals back home who do not have a ‘reasonable excuse’ to be outside with the ability to issue on the spot fixed penalty notices (FPN) for non-compliance.³⁴⁷ The use of stop and

³⁴⁵ Clare De Than, *Law Express: Human Rights* (5th Edn, Pearson Education) 49

³⁴⁶ ———, ‘Covid-19 and the Police: Here’s what you need to know’ (Stop-Watch, April 2020) <
https://www.stop-watch.org/uploads/documents/COVID-19_AND_THE_POLICE_WHAT_YOU_NEED_TO_KNOW_BOOKLET.pdf> accessed 05

December 2020

³⁴⁷ *ibid*

search increased 40% in London between April and June, a time when the country was in a national lockdown. The tactic being used 104,914 times, equating to more than 1,100 stops a day. With only one in five leading to an arrest, FPN or caution. This led to the suggestion that the stops are being carried out not because of a suspicion of criminal activity, but based on an officers pre-existing bias and prejudice.³⁴⁸ This is an issue in itself and will be discussed below.

There was also a big challenge in managing health and safety whilst holding individuals in police custody. The health and safety for the staff, detainees, visitors and legal support all had to be factored in. Operation Talla was the NPCC's national operation to lead the police response to Covid-19.³⁴⁹ Operation Talla made consideration for both pre-arrival of detainees and considerations for while detainees are being held in custody.³⁵⁰ The Pre-arrival considerations included to minimise traffic in the custody environment, the encouragement of out-of-custody options such as voluntary attendance and the use of bail as an alternative. Consideration also given to including Covid-19 related questions onto the risk assessment processes of detainees in order to give a better idea as to who is more likely to have the virus or who is more at risk of it. Through this, detainees' ability to access legal advice as a right remains essential, with consideration given, wherever possible, to providing this using

³⁴⁸ Martin Beckford, 'Stop-and-search use in London rose 40% in lockdown, figures show' (The Guardian, 25 August 2020) < <https://www.theguardian.com/uk-news/2020/aug/25/stop-and-search-use-in-london-rose-40-in-lockdown-figures-show> > accessed 05 December 2020

³⁴⁹ Sherry Traquair, 'Operation Talla Public Strategy' (National Police Chiefs' Council, 09 March 2020) < <https://www.npcc.police.uk/COVID%2019/Operation%20Talla%20Publication%20Strategy%2026052020.pdf> > accessed 05 December 2020

³⁵⁰ Matthew Hardcastle, 'Managing health and risk while in police custody – an update' (Kingsley Napley, 25 March 2020) < <https://www.kingsleynapley.co.uk/insights/blogs/criminal-law-blog/covid-19-managing-health-and-risk-while-in-police-custody-an-update> > accessed 05 December 2020

telephone or by video link.³⁵¹ Changes have also been made for management of detainees who are being held in custody. Where a detainee is suspected of having Covid-19 they should be isolated from others as much as possible. Full Personal Protective Equipment (PPE) is to be provided to officers and staff who are required to interact with detainees. The implementation of hygiene facilities, such as hand sanitising, within stations and their use encouraged, particularly between visits and interviews.³⁵² Many of these considerations are easily implemented into the work carried out in custody and can go a long way in limited the spread of Covid-19, protecting staff, visitors and detainees.

Discriminatory Application of Powers

Several studies have indicated that people of Black, Asian and minority ethnicities are not only more likely to get stopped by police, but also more likely to be issued with FPNs compared to White individuals.

Black Londoners have been found to be four times more likely to be stopped and searched than White Londoners.³⁵³ Stop and searches increased significantly during the most stringent restrictions in lockdown³⁵⁴ and the use of ‘Section 60’ powers also increased. ‘Section 60’ powers allow for police to stop and search individuals for whom they have no grounds for suspicion of criminal activity.³⁵⁵

³⁵¹ *ibid*

³⁵² *ibid*

³⁵³ Unmesh Desai, ‘Policing with Consent’ (London Assembly Labour, October 2020) < https://www.london.gov.uk/sites/default/files/policing_with_consent.pdf > accessed 05 December 2020

³⁵⁴ *ibid*

³⁵⁵ Sarah Marsh, ‘Met police increased use of section 60 stop and search during lockdown’ (The Guardian, 27 July 2020) < <https://www.theguardian.com/uk-news/2020/jul/27/met-police-increased-use-of-section-60-stop-and-search-during-lockdown> > accessed 05 December 2020

Policing with consent is a principle in which UK policing is grounded on, and for this to be effective, there must be public support of the police's actions. In regards to handling of the Covid-19 lockdown and enforcement of guidelines, 68% of Londoners stated they, at least partially, support the police's approach to the lockdown, while 3% stating that the police should have no part in enforcing Covid-19 guidelines and restrictions.³⁵⁶ There is also a disparity in public confidence in the police between Black and White Londoners. Black Londoners are 13% less likely to agree with the statement that 'the police treat everyone fairly regardless of their skin colour'. Furthermore, the percentage of Black Londoners that agreed with the same statement fell from 79% to 63% when compared to 2019.³⁵⁷ This decrease shows that confidence in the police within the Black community is decreasing. During lockdown, there were almost 22,000 stop and searches from police on young black men, which equates to 30% of all young black males in London.³⁵⁸ Of the 21,950 stop and searches on young black men, 80% lead to no further action (e.g.fine, arrest or caution). Nevertheless, Metropolitan Police Commissioner, Cressida Dick, defended the number of stop and searches, stating that black people are eight times more likely to be perpetrators of violent crimes.³⁵⁹

Not only have BAME people been found to be more likely to be stopped and searched, figures also show that they are twice as likely to be issued with FPNs for Covid-19 related offences. Nationwide figures show that people from BAME backgrounds are 1.6x more likely to be fined, with the

³⁵⁶ Unmesh Desai (n 13)

³⁵⁷ *ibid*

³⁵⁸ Jamie Grierson, 'Met carried out 22,000 searches on young black men during lockdown' (The Guardian, 08 July 2020) < <https://www.theguardian.com/law/2020/jul/08/one-in-10-of-londons-young-black-males-stopped-by-police-in-may> > accessed 05 December 2020

³⁵⁹ *ibid*

highest disparity rates in Cumbria at 6.5x more likely, North Yorkshire at 5.6x more likely and Lancashire at 5x more likely.³⁶⁰ A breakdown of the analysis from the NPCC report shows that all BAME backgrounds combined are issued FPNs at a rate of 4.00 per 10,000, compared to 2.5 per 10,000 for White individuals, with the highest being Asian at 4.7 per 10,000.³⁶¹

Criminalisation of Everyday Activities

Under the new Covid-19 legislation, specifically The Health Protection (Coronavirus, Restriction) (England) Regulations 2020, many activities which previously would have been considered standard everyday activities have now become criminalised and punishable by fines in order to limit social interactions and stop the spread of Covid-19. These regulations are in two main parts, firstly, the regulations affecting business and retail premises. Secondly, the regulations affecting individuals movement and gatherings.³⁶² Businesses such as cinemas, nightclubs and bars, betting shops, beauty salons and tattoo parlours are all deemed to be non-essential and therefore required to remain closed throughout lockdown. Whereas businesses deemed essential, such as supermarkets, pharmacies, petrol stations, post offices and banks are allowed to remain open, provided they also adhere to social distancing guidelines set in place by the Government.³⁶³ As has been mentioned previously, the police have new

³⁶⁰ —, ‘Coronavirus: Young ethnic minority men ‘more likely to get Covid fines’’ (BBC, 27 July 2020) < <https://www.bbc.co.uk/news/uk-53556514> > accessed 06 December 2020

³⁶¹ Rosanna Currenti and John Flatley, ‘Policing the Pandemic: Detailed analysis on police enforcement of the Public Health Regulations and as assessment on disproportionality across ethnic groups’ (National Police Chiefs’ Council, 27 July 2020) < <https://news.npcc.police.uk/resources/policing-the-pandemic-4> > accessed 06 December 2020

³⁶² —, ‘COVID-19 – Policing brief in response to Coronavirus Government Legislation’ (College of Policing, 31 March 2020) < <https://www.college.police.uk/Documents/COVID-19-Police-brief-in-response-to-Coronavirus-Government-Legislation.pdf> > accessed 06 December 2020

³⁶³ *ibid*

powers to direct individuals home who are outside without a reasonable excuse. These regulations of movement and gatherings have been brought in under the new Covid-19 legislation which places contravening of the regulations as an offence punishable on summary conviction or a fine. The fines begin at £60, payable within 28 days, reduced to £30 if paid within 14 days. The fines then double for every further offence by the same individual, capped at £960.³⁶⁴ As the restrictions of the full national lockdown began to loosen, and businesses were able to open their doors again, the Government introduced a ‘Rule of 6’ in order to simplify and strengthen the rules on social distancing out in public. Individuals breaking this rule and found in groups larger than six will be dispersed and fined £100 each, doubling up to a maximum of £3,200.³⁶⁵ These new restrictions render an activity as innocent as a child’s birthday party illegal, a situation which only a situation as serious as a global health pandemic could criminalise.³⁶⁶

The police’s enforcement of these guidelines and restrictions has induced much discussion on individuals’ freedoms and rights. The Covid-19 pandemic is unprecedented in modern times, the time from its initial discovery to national lockdowns was only a matter of months. This meant that the legislation and guidelines that were put in place were rushed and there was a lot of room for error. Many individuals at different times were unclear as to what was and wasn’t allowed. Here is where problems arise

³⁶⁴ *ibid*

³⁶⁵ The Rt Hon Priti Patel MP, ‘Rule of comes into effect to tackle coronavirus’ (Gov.uk, 14 September 2020) < <https://www.gov.uk/government/news/rule-of-six-comes-into-effect-to-tackle-coronavirus#:~:text=The%20new%20%E2%80%9Crule%20of%20six,will%20be%20against%20the%20law> > accessed 06 December 2020

³⁶⁶ Laurence Cawley and Phil Shepka, ‘New coronavirus rules: ‘It makes a child’s party an illegal gathering’ (BBC, 09 September 2020) < <https://www.bbc.co.uk/news/uk-england-cambridgeshire-54086248> > accessed 07 December 2020

when the lines between laws and guidance are blurred. Police should be in place to enforce the laws of the country, not guidance with no legislative backing.³⁶⁷ This brings about three main problems, firstly, if police themselves are unaware of where the line is drawn between what actions they are able to punish and what they are not. This could lead to the police acting *ultra vires* and unlawfully infringing on rights and liberty of individuals.³⁶⁸ Secondly, law abiding citizens could be deterred from carrying out essential activities from the language and ambiguity of the guidelines, having them believe they will be breaking the law and will be punished by a fine, despite their having good reasons for their actions.³⁶⁹ Finally, general trust and confidence in the police could be lost for a large portion of society, if they believe they have the ability and willingness to infringe on their liberty. As previously referred to, policing by consent is the bedrock of policing in the UK, this consent will be harder to gain if the police are seen to be a force that has no respect for individuals' rights.³⁷⁰

Conclusion

In conclusion, the unprecedented changes brought on by the Covid-19 pandemic has required the whole world, from regular civilians to the governments overseeing them, to be flexible and adapt to new norms. With a breadth of changes being made to how individuals and organisations are able to behave, those working in the police force and criminal justice system, who are also learning as they go and adapting in ways they never thought they would have to, have been placed in an unusual and heightened

³⁶⁷ Raphael Hogarth, 'The government must draw a clear line between law and guidance during the coronavirus crisis' (Institute for Government, 01 April 2020) < <https://www.instituteforgovernment.org.uk/blog/government-law-and-guidance-coronavirus-crisis> > accessed 07 December 2020

³⁶⁸ *ibid*

³⁶⁹ *ibid*

³⁷⁰ *ibid*

position of power. A position where a fine line is drawn between enjoying a family outing and endangering the lives of others. A position which has also brought attention to individual, or systemic, bias and prejudice. The handling of the pandemic, at a governmental, law enforcement, and individual level, has been far from perfect. Often unclear and confusing legislation and guidelines being put into place, enforced by officers who are just as new to the rules as those they are enforcing them on. Guidelines which, unbeknown to the current crisis, are clear infringements on individuals rights and liberties.

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Black Lives Matter Protests

Ledelle Muktarr

It is recognised that the government are facing challenges in containing the threat of COVID-19. We are in the midst of a public health emergency; however, this issue cannot be addressed without being ground in the most basic need, human rights. In light of the regulations in place, they have inevitably encroached on rights and freedoms which are an integral part of democracy and the rule of law. With the authorities focused on curbing the virus, the pandemic has highlighted the structural inequalities and marginalisation of certain groups within our communities. Governments have responded by engaging in abuses of power and silencing critics³⁷¹.

An individual's right to gather is protected by the European Convention of Human rights in two ways: Article 10 which protects freedom of expression and Article 11 which protects freedom of assembly and association.³⁷² This means the authorities must take certain measures to ensure the safety of peaceful protesters. The Health Protection (No 4) Regulations restrict an individual's right to protest, it is a criminal offence to organise or attend a gathering of more than 30 people³⁷³. However, restricting the right to protest has remained the subject of heated debate. Liberty's interim director Gracie Bradley postulated, "as the Government takes unprecedented steps to interfere with our rights, undermining protest is another threat to our

³⁷¹ Repucci S, and Slipowitz A, 'The Impact Of COVID-19 On The Global Struggle For Freedom' (2020)

³⁷² 'Can I Attend A Protest During The November Lockdown? - Liberty' (Liberty, 2020) <https://www.libertyhumanrights.org.uk/advice_information/can-i-attend-a-protest-during-the-coronavirus-lockdown/> accessed 4 December 2020

³⁷³ Ibid

ability to hold it to account and stand up to power.”³⁷⁴ Article 11 is fundamental to the UK’s democracy. The fact that protests have occurred during the pandemic have raised certain issues due to the spread of the virus, however, has also highlighted deep racial inequalities entrenched within the criminal justice system.

On May 25 2020, the death of George Floyd sparked Black Lives Matter (henceforth ‘BLM’) demonstrations nationwide. In response to this, Black Protest Legal Support (‘BPLS’) was founded by Ife Thompsom to provide free legal advice and representation to protesters and activists. BPLS trains legal observers on the ground to “gather evidence and monitor police conduct.”³⁷⁵ The presence of legal observers reassures protesters that they will be entitled to free legal advice if issues arise. Yvonne Kramo from BPLS describes their work as invaluable, they ensure to inform people of their rights ahead of the protests. For example, there is specific guidance for “trans and non-binary communities, and for individuals subject to licence conditions.”³⁷⁶

Throughout various BLM protests, legal observers witnessed police physically and verbally intimidating peaceful protesters. The ‘Britain is not innocent’ report found that police used excessive force and disproportionately targeted black protesters.³⁷⁷ Observers stated they witnessed “officers manhandle a pregnant woman and dragged her across

³⁷⁴ ‘Protest Must Be Allowed To Proceed - Liberty’ (Liberty, 2020) <<https://www.libertyhumanrights.org.uk/issue/protest-must-be-allowed-to-proceed/>> accessed 5 December 2020

³⁷⁵ ‘On The Front Line With Black Protest Legal Support UK’ (Barcouncil.org.uk, 2020) <<https://www.barcouncil.org.uk/resource/guest-blog-on-the-front-line-with-black-protest-legal-support-uk.html>> accessed 5 December 2020

³⁷⁶ Ibid

³⁷⁷ ‘Britain Is Not Innocent | Netpol’ (Netpol, 2020) <<https://netpol.org/black-lives-matter/>> accessed 6 December 2020

a police cordon.”³⁷⁸ This was one of many incidents that suggested police were using extreme levels of violence. Protesters stated they saw many concerning acts take place and expressed their concern over being in a kettle for six hours. Another protester said she saw “four people being hit by batons.”³⁷⁹ Alarming, Black and Brown legal observers were subject to threatening abuse and on one occasion an observer was injured after being aggressively pushed.³⁸⁰ This evidence shows that covid-19 has been used as an opportunity to further repress legal observers, political activists, rights defenders and lawyers, denying them basic assistance and support³⁸¹.

Notably, there was a contrast of experiences between legal observers. White observers reported a more positive experience during their interactions with police.³⁸² This distinct contrast was also reflected in policing tactics during predominately white demonstrations. When far-right counter-demonstrators interrupted the BLM protest the police were subject to aggressive behaviour, however, the police did not respond with excessive force or abuse. The response has undoubtedly caused more animosity towards the authorities. The painful reality is that this is not ‘just an American problem,’ police brutalisation is homegrown.

The disparities within the criminal justice system have become impossible to ignore. There are evident structural inequalities which are maintained by over-policing certain communities, racial profiling and harsh sentencing.

³⁷⁸ Brennan J and others, *Justice Matters: Essays From The Pandemic* (2020)

³⁷⁹ 'Legal Observers Report Concerns Over Police Treatment Of London Black Lives Matter Protesters' (inews.co.uk, 2020) <<https://inews.co.uk/news/uk/legal-observers-report-concerns-treatment-black-lives-matter-protesters-london-442553>> accessed 5 December 2020

³⁸⁰ Brennan J and others, *Justice Matters: Essays From The Pandemic* (2020)

³⁸¹ Repucci S, and Slipowitz A, 'The Impact Of COVID-19 On The Global Struggle For Freedom' (2020)

³⁸² Ibid

For example, the NPCC found that police are twice as likely to fine young black men during lockdown. Posch articulates, “compared to their share of the population, people from a black ethnic minority were 2.17 times more likely to receive a fine.”³⁸³

Stop and searches carried out on black people increased ”7.2 per 1000 in March to 13.5 per 1000 in May.”³⁸⁴ With 80% of these stops resulting in no further action. There was also disproportionality in the number of arrests made for alleged breaches, ”black people were over-represented, making up 31% of arrests.”³⁸⁵ While the Metropolitan police state they ’encourage’ the regulations and will ’fine and arrest at the last resort’, evidence suggests otherwise. Liberty state that ”police powers were misused and led to widespread discrimination.”³⁸⁶ According to the Crown Prosecution Service “at least 89 people have been prosecuted under the Coronavirus Act, and every prosecution has been incorrect and withdrawn.”³⁸⁷ This is important as it shows there are inconsistencies within the Act.

Black people are more likely to receive a harsher custodial sentence than that of their white counterpart. In 2019 the Lammy review showed that 51% of those in youth detention were from minority groups³⁸⁸. There is a danger that this figure will not be significantly reduced for some time due to the

³⁸³ Dodd V, 'Met Police Twice As Likely To Fine Black People Over Lockdown Breaches – Research' (the Guardian, 2020) <<https://www.theguardian.com/uk-news/2020/jun/03/met-police-twice-as-likely-to-fine-black-people-over-lockdown-breaches-research>> accessed 6 December 2020

³⁸⁴ Brennan J and others, Justice Matters: Essays From The Pandemic (2020)

³⁸⁵ Ibid

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<<https://www.libertyhumanrights.org.uk/issue/pandemic-of-police-powers-liberty-reveals-scale-of-misuse-of-police-powers-under-lockdown/>> accessed 6 December 2020

³⁸⁷ Ibid

³⁸⁸ Brennan J and others, Justice Matters: Essays From The Pandemic (2020)

recent extension of custody time limits.³⁸⁹ Griff Ferris reinforces this stating:

*“The government knew that its actions would directly lead to more black people being held in custody for longer, despite being more likely to be released after a trial. Extending custody time limits directly reinforces the structural inequality and discrimination that already exists in the criminal justice system.”*³⁹⁰

This is a serious concern; it is believed that we are dealing with institutional racism. Which was especially demonstrated through policing tactics at the BLM protests, criminalising protesters for exercising their rights. Rhona Friedman highlights, “the pandemic has resulted in the suspension of rights on one hand and the performative rule of lawism on the other.”³⁹¹

To conclude, it is clear the pandemic has had a significant effect on freedoms around the globe. As the condition for democracy and human rights has grown worse internationally, the Government’s approach can be criticised. Liberty has been campaigning for the repeal of the Coronavirus Act which they say “created a dangerous array of new state powers. The Government’s strategy has been to meet a public health crisis with a criminal justice response, putting our rights and health at risk.”³⁹² Experts have expressed scepticism of the regulations and government information on the coronavirus. Reflecting this Freedom House found, “a 62 per cent majority of survey respondents said they distrust what they are hearing

³⁸⁹ Ibid

³⁹⁰ 'Extending Custody Time Limit Will Hit BAME People Hardest, Moj Told' (the Guardian, 2020) <<https://www.theguardian.com/law/2020/oct/16/extending-custody-time-limits-will-disproportionately-affect-bame-people-moj-told>> accessed 6 December 2020

³⁹¹ Ibid (2)

³⁹² 'PANDEMIC OF POLICE POWERS: LIBERTY REVEALS SCALE OF MISUSE OF POLICE POWERS UNDER LOCKDOWN - Liberty' (Liberty, 2020) <<https://www.libertyhumanrights.org.uk/issue/pandemic-of-police-powers-liberty-reveals-scale-of-misuse-of-police-powers-under-lockdown/>> accessed 6 December 2020

from their national government.”³⁹³ However, some experts reported ”fear of criticising government policies around the pandemic in fear of due to the crackdown on activists.”³⁹⁴

Attention to the public health crisis is crucial, however, success will not be sustainable without support for human rights and strong democratic institutions. In response to this, a future recommendation would be to “ensure that emergency measures are accountable, proportionate and time-restricted.”³⁹⁵ The government needs to ensure the freedom of assembly, association and movement are not affected for a long duration. Additionally, it is suggested “individuals should have the opportunity to seek remedies and compensation for any unnecessary or disproportionate rights violations committed during the crisis.”³⁹⁶ Further recommendations include to ”identify human rights abuses, to condemn them when they occur and to hold perpetrators to account.”³⁹⁷ More so, to protect marginalised groups that have faced vulnerabilities during the pandemic. Melanie Simpson QC took the view that “the answer to solving systemic injustices lies in implementing, at the very least, the recommendations contained in the Lammy report.”³⁹⁸ Now is the time to protect society.

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³⁹⁴ Ibid

³⁹⁵ Ibid (2)

³⁹⁶ Ibid (3)

³⁹⁷ Ibid (4)

³⁹⁸ Brennan J and others, Justice Matters: Essays From The Pandemic (2020)

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Freedom of Assembly and Protest

George Chai

2020 has undoubtedly seen an increase in protesting around the world with political groups, such as the Black Lives Matter movement, taking the forefront in demanding change. The safety of the national public is a priority during the pandemic and UK authorities have attempted to curb the spread of coronavirus by banning large gathering of groups during lockdown measures. Protesting remains an essential part of democracy to enable individuals to exercise power to incite policy change,³⁹⁹ but the limitations imposed by lockdown measures have the potential to diminish an individual's access to Human Rights.

The UK has witnessed an increase in protesting during the pandemic, and support of conspiracy theories has played a role in a large number of such protests. The attempt to slow the spread of the coronavirus, with lockdown measures banning the mixing of households and large groups of people, has provided authorities the power to disperse groups with threats of fines and often physical force that has resulted in violent clashes between protestors and police.⁴⁰⁰ Questions have been raised continually toward the legality of aggressive force used by the police and the justification for departing from obligations to uphold human rights by measures out of proportion to the prevention of the spread of the virus.

³⁹⁹ A M Perry and C Romer, 'Protesting is as important as voting' (Brookings, 28 August 2020) <<https://www.brookings.edu/blog/the-avenue/2020/08/28/protesting-is-as-important-as-voting/>> Accessed 1 December 2020

⁴⁰⁰ BBC News, 'London Protests: More than 100 arrests after violent clashes with police' (BBC, 14 June 2020) <<https://www.bbc.co.uk/news/uk-53037767>> Accessed 1 December 2020

Article 10 of the European Convention on Human Rights (“ECHR”) grants an individual the right to freedom of expression⁴⁰¹ while Article 11 ECHR grants the freedom of assembly and association.⁴⁰² These articles of the ECHR are entrenched within domestic law under Human Rights Act 1998⁴⁰³ and are protected rights that have arguably been interfered with during the pandemic and its subsequent lockdown measures.

The lockdown measures imposed by the government to combat the spread of coronavirus are mainly enforced by the Coronavirus Act 2020,⁴⁰⁴ the Health Protection (Coronavirus Restrictions) (No.3) (England) Regulations 2020⁴⁰⁵ (“the regulations”) and under powers delegated by the Public Health (Control of Disease) Act 1984.⁴⁰⁶ The regulations subject the United Kingdom to the most severe restrictions on liberty that the UK has experienced,⁴⁰⁷ coming into effect in England, Scotland and Wales on 26th March 2020, with Ireland following on 28th March 2020.⁴⁰⁸ The Regulations imposed obligations to remain at home until further notice with the addition to providing ‘relevant persons’⁴⁰⁹ (mainly police officers) with powers to disperse gatherings by the usage of reasonable force.⁴¹⁰ The powers granted to disperse gatherings should instead be limited to ensure that excessive force does not become a regularity.

⁴⁰¹ Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) (ECHR) art.10

⁴⁰² *Ibid* art.11

⁴⁰³ Human Rights Act 1998 (c.42) s.1

⁴⁰⁴ Coronavirus Act 2020 (c.7)

⁴⁰⁵ The Health Protection (Coronavirus, Restrictions) (No.3) (England) Regulations (S.I. 2020/750)

⁴⁰⁶ Public Health (Control of Disease) Act 1984 (c.22)

⁴⁰⁷ T Hickman QC et al, ‘*Coronavirus and Civil Liberties in the UK*’ (Blackstone Chambers, 6 April 2020) <https://coronavirus.blackstonechambers.com/coronavirus-and-civil-liberties-uk/#_edn4>

Accessed 2 December 2020

⁴⁰⁸ *Ibid*

⁴⁰⁹ D Anderson QC, ‘*Can we be forced to stay at home?*’ (Personal Blog, 26 March 2020) <

<https://www.daqc.co.uk/2020/03/26/can-we-be-forced-to-stay-at-home/>> Accessed 3 December 2020

⁴¹⁰ *Ibid*

In an attempt to identify the origin of an unexpected dangerous virus that has caused 1.54 Million deaths⁴¹¹ – increasing at a daily rate – a number of conspiracy theories have emerged with growing worldwide support. The UK has witnessed the popularisation of conspiracy theory movements such as the 5G conspiracy and the Qanon conspiracy group⁴¹² with a number of protests being staged during lockdown, often questioning the legality of the measures themselves. The 5G conspiracy theory emerged from claims that the technology is linked to radio frequencies damaging cells,⁴¹³ and newly installed 5G masts in Wuhan caused the spread of the virus through harmful radio waves.⁴¹⁴ The Qanon conspiracy theory has become a popularised conspiracy during the Covid-19 pandemic, believing in the conspiracy of the evil new world order⁴¹⁵ – where most powerful members of society run a sex-trafficking ring and the virus providing an attempt to cover up sex trafficking and micro-chipping to track the public.⁴¹⁶ The conspiracy theories have been continually debunked but support has increased during the pandemic with popular celebrities such as boxer Amir Khan, singer Anne-Marie and actor Woody Harrelson,⁴¹⁷ spreading information claiming that the symptoms of 5G exposure are similar to the symptoms of coronavirus. Interestingly, the lockdown measures have accelerated the

⁴¹¹ BBC news, 'Covid-19 pandemic: Tracking the global coronavirus outbreak' (BBC News, 7 December 2020) <<https://www.bbc.co.uk/news/world-51235105>> Accessed 7 December 2020

⁴¹² M Spring and M Wendling, 'How Covid-19 myths are merging with the QAnon conspiracy theory' (BBC News, 2 September 2020) < <https://www.bbc.co.uk/news/blogs-trending-53997203> > Accessed 1 December 2020

⁴¹³ *Ibid*

⁴¹⁴ *ibid*

⁴¹⁵ J Banks et al, 'From 2018: Explaining QAnon, the Internet Conspiracy Theory that showed up at a trump Rally' (New York Times, 1 August 2020) <

<https://www.nytimes.com/2018/08/01/us/politics/what-is-qanon.html> > Accessed 3 December 2020

⁴¹⁶ *Ibid*

⁴¹⁷ Temperton J, 'The rise and Spread of a 5G Coronavirus Conspiracy theory' 9Wired UK, 4 September 2020) < <https://www.wired.com/story/the-rise-and-spread-of-a-5g-coronavirus-conspiracy-theory/> > Accessed 29 November 2020

formation of groups where individuals feel part of a ‘community’⁴¹⁸ and are being punished even when many of the protests are observant of the requirements of the coronavirus regulations.⁴¹⁹

The existence of such prominent conspiracy theories during the pandemic are nothing particularly new or ground-breaking, but lockdown measures have accelerated the ways in which conspiracies have been spread, through an increase in social media usage resulting consequentially in an increase of support.⁴²⁰ The ideologies of a number of conspiracies are often underpinned by similar theories that coronavirus is man-made and a way for authorities to track and control its citizens.⁴²¹ Though the conspiracy theories are characterised as ‘baseless,’⁴²² almost half of Britons now believe that coronavirus is man-made.⁴²³ The conspiracies may not hold much validity in fact, but freedom of speech has been continually challenged during the pandemic. The pandemic has created an opportunity for increased surveillance, fines and force for organised protests and has even gave grounds for censorship on television in respect to the sharing of ‘fake news’.⁴²⁴

⁴¹⁸ A Clark, ‘The network of coronavirus conspiracy theorists that fuelled the Edinburgh anti-mask protest’ (Edinburgh live, 8 September 2020) < <https://www.edinburghlive.co.uk/news/edinburgh-news/coronavirus-edinburgh-protest-conspiracy-theory-18898221> > Accessed 2 December 2020

⁴¹⁹ D Gayle, ‘Piers Corbyn Fined £10,000 for organising anti-lockdown rally’ (The Guardian, 30 August 2020) < <https://www.theguardian.com/world/2020/aug/30/piers-corbyn-fined-10000-for-organising-anti-lockdown-rally> > Accessed 2 December 2020

⁴²⁰ n20

⁴²¹ n19

⁴²² L Dearden, ‘Coronavirus: Almost half of Britons believe virus is ‘man-made’ as conspiracy theories spread’ (The independent, 28 April 2020) < <https://www.independent.co.uk/news/uk/home-news/coronavirus-5g-conspiracy-theories-man-made-uk-poll-bleach-a9484066.html> > Accessed 28 November 2020

⁴²³ *Ibid*

⁴²⁴ P Coe, ‘the good the bad and the ugly of social media during the coronavirus pandemic’ [2020] 25(3) Comms.L. 119-122

The requirement for the mainstream media to produce a constant news report on coronavirus updates has often resulted in difficulty in disseminating between factually correct information and inaccurate health information.⁴²⁵ While it is of utmost importance to provide accurate information regarding correct medical advice and health information, often those who believe specific theories and ideologies are punished for providing an interpretation of their personal beliefs and representation in mainstream media. Conspiracy theorist David Icke gave a 1 hour and 45-minute interview to London Live, discussing that he believed that the pandemic had been ‘created by a globalist cult with the aim of enslaving humanity.’⁴²⁶ After Ofcom received 48 complaints the regulator found that the interview caused a violation of r.2 of the Broadcasting Code, stating it ‘caused harm to vulnerable groups’⁴²⁷ due to the appearing on a London channel and London being an area prone to transmission of the virus.⁴²⁸ Nevertheless, although Icke’s interview was factually incorrect, the decision of Ofcom to sanction the channel under r2.1 of the Broadcasting code diminishes the purpose of the debate. Instead, we would argue that measures should be taken to ensure that those who are watching reports, such as the interview with David Icke, are given warnings about the dangers of falsified information, as the need to maintain a ‘vibrant and diverse public debate’⁴²⁹ is of the upmost importance when upholding the freedom of expression, sanctioning the channel conveys that a legitimate debate on one person’s beliefs is sufficient to derogate the right to freedom of expression.

⁴²⁵ *ibid*

⁴²⁶ ‘*Freedom of Speech*’ [2020] Jul. P.L. 558-560

⁴²⁷ *Ibid*

⁴²⁸ *Ibid*

⁴²⁹ *Ibid*

The purpose of the powers granted by the Coronavirus regulations are undoubtedly to combat its transmission, yet the provisions interfere directly with an individual's fundamental freedoms and its application has resulted in 'overzealous action by the police.'⁴³⁰ Article 15 of the ECHR⁴³¹ provides a state's specific right to derogate from its obligations in circumstances of 'war or other public emergency threatening the life of the nation'⁴³² and the United Kingdom has relied on the right of derogation during the coronavirus pandemic,⁴³³ yet is derogation needed when most measures taken to prevent the spread of Covid-19 are covered by a number of the articles in the convention already?⁴³⁴ Article 15 requires the departure from the Articles to remain proportionate to the extent of the crisis⁴³⁵ and the right to freedom of assembly already provides exceptions to when there is a risk to maintaining public order and public health.⁴³⁶ Arguably, derogating from obligations under the ECHR should not be used as a way to limit access to Human Rights but states should seek to uphold the Articles, using derogation as a resort to fight the pandemic 'proportionate to the necessities of the situation.'⁴³⁷

The surge in protests and assemblies in support of conspiracy theories have frequently been met with escalated tension from the police force that has resulted in the use of violence or threats of extortionate fines in order to disperse large crowds. Although the purpose of dispersing crowds is a way

⁴³⁰ n9

⁴³¹ ECHR Ar.15

⁴³² *Lawless v Ireland* (No.3) [1961] ECHR 2

⁴³³ European Court of Human Rights, '*Derogation in time of emergency*' (Press Unit, September 2020) < https://www.echr.coe.int/documents/fs_derogation_eng.pdf > Accessed 7 December 2020

⁴³⁴ Prof K Dzehtsiarou, '*Article 15 derogations: are they really necessary during the COVID-19 pandemic?*' [2020] 4 E.H.R.L.R. 359-371

⁴³⁵ *Ibid*

⁴³⁶ *Ibid*

⁴³⁷ *Ibid*

to curb the spread of Covid-19, as Francis Hoar argues, ‘the powers granted by Parliament are disproportionate to the crisis itself and measures used show potential of illegally derogating Human Rights.’⁴³⁸ Aggressive action by police force in response to demonstrations, such as the use of excessive force in the Liverpool anti-lockdown protests on 21st November 2020,⁴³⁹ appears justified on the basis that the protests are in support of conspiracy as opposed to fact. Acknowledging that the sharing of false information can be harmful and increase the risk of contracting coronavirus, states should not enjoy unlimited power from derogation under Article 15 and must not go beyond the ‘extent strictly required by the exigencies of the crisis.’⁴⁴⁰ States must bear in mind that the existence of a public emergency ‘must not serve as a pretext for limiting freedom of political debate.’⁴⁴¹ Mehmet Hasan Altan v Turkey⁴⁴² highlighted that states must protect the democratic order and safeguards should be taken to protect the values of a democratic society,⁴⁴³ as opposed to censorship limiting the democratic order. The usage of violence and issuing of extortionate fines by the police force during a protest is not proportionate to the necessities of the situation and deteriorates the importance of obligations to uphold a democratic society.

Though the threat of fines is often sufficient to deter the mass gathering of groups, the coronavirus legislation provides authorities with powers to issue extortionate fines for breaking lockdown measures. The met office

⁴³⁸ F Hoar, *A disproportionate interference: the Coronavirus Regulations and the ECHR* (UK Human Rights Blog, 21 April 2020) < <https://ukhumanrightsblog.com/2020/04/21/a-disproportionate-interference-the-coronavirus-regulations-and-the-echr-francis-hoar/> > Accessed 4 December 2020

⁴³⁹ Liverpool Echo, ‘police look into complaint over arrest at anti-lockdown protest’ (Liverpool Echo, 22 November 2020) < <https://www.liverpoolecho.co.uk/news/liverpool-news/police-look-complaint-over-arrest-19325068> > Accessed 3 December 2020

⁴⁴⁰ n35

⁴⁴¹ *Ibid*

⁴⁴² Mehmet Hasan Altan v Turkey (13237/17) [2018] ECHR 251

⁴⁴³ *ibid*

police have provided that those aged 18 and over who break lockdown measures can be fined ‘£200 for the first offence, lowered to £100 if paid within 14-days’⁴⁴⁴ or ‘£400 for the second offence, then doubling for each further offence up to a maximum of £6,400.’⁴⁴⁵ Piers Corbyn, brother of ex-Labour leader Jeremy Corbyn received a fine of £10,000 for the organisation of an anti-lockdown rally in August 2020 protesting against a number of conspiracy theories including ‘5G and anti-vaccination conspiracies.’⁴⁴⁶ Corbyn claimed that ‘he had filled out the necessary risk assessments and spent two weeks negotiating with Scotland Yard over the event.’⁴⁴⁷ Corbyn adhered to the requirements of the coronavirus regulations yet was issued with a substantial fine. As Francis Hoar conveys, is granting the police power to issue fines a measure ‘disproportionate to the crisis itself?’ The wide power of the police to interpret when it is reasonable to issue a fine has unsurprisingly increased the number of reports regarding police abuse,⁴⁴⁸ consequently, can it truly be reasonable for a police officer to be able to issue substantial fines under his own belief of what is proportionate with compliance of the regulations?

The attempt to deter protesting has frequently provided multiple accounts of heavy-handed tactics by the police, with claims that the police have incited violence and aggravated protestors arising in the aftermath of protesting in support of anti-lockdown measures. The Met office provided

⁴⁴⁴ Met Office Police, ‘*Coronavirus (Covid-19) police powers*’ (Metropolitan Police) < <https://www.met.police.uk/advice/advice-and-information/c19/coronavirus-covid-19/coronavirus-covid-19-police-powers/> > Accessed 1 December 2020

⁴⁴⁵ *Ibid*

⁴⁴⁶ n21

⁴⁴⁷ *Ibid*

⁴⁴⁸ V Dodd and L O’Carroll, ‘*UK police warned against ‘overreach’ in use of virus lockdown powers*’ (The Guardian, 31 March 2020) < <https://www.theguardian.com/uk-news/2020/mar/30/uk-police-guidelines-coronavirus-lockdown-enforcement-powers-following-criticism-lord-sumption> > Accessed 3 December 2020

that 18 arrests were made following the ‘stop the new normal’ protests – protesting the use of masks, vaccinations and the link between coronavirus and 5G⁴⁴⁹ – yet an anti-Trump protest staged the same day in Parliament Square in London resulted in 0 arrests.⁴⁵⁰ The stark contrasts in arrests made between a conspiracy theory protest and a political protest may suggest differing positions taken by the police force, or may equally indicate different behaviour by different protest groups.

Similarly, 27 arrests were made after protests took place in Liverpool on 14th November against the lockdown measures. The police stated that the arrests were made for: ‘1 for assaulting a policeman. 1 on suspicion of attempted wounding and dangerous driving. 25 for breaching public order and coronavirus regulations.’⁴⁵¹ A number of claims of police brutality were raised after the arrests yet little investigations have taken place; the police appear to take responsibility principally when video recording evidence emerges.⁴⁵² As Francis Hoar states, Parliament’s approach during the pandemic and its delegation of powers to the police force is ‘potentially illegally derogating Human Rights, using measures that are disproportionate to the crisis itself.’⁴⁵³

In conclusion, the legislative developments brought on by the coronavirus pandemic have undoubtedly highlighted the importance of, and tensions in, citizens’ right to freedom of expression and freedom of assembly and

⁴⁴⁹ Mirror, ‘Anti-mask mob chant ‘freedom’ and demand end to lockdown in London protest’ (Mirror 24 October 2020) < <https://www.mirror.co.uk/news/uk-news/anti-mask-mob-chant-freedom-22900143> > Accessed 4 December 2020

⁴⁵⁰ *Ibid*

⁴⁵¹ BBC News, *Liverpool anti-lockdown protest: Arrests rise to 27* (BBC News 15 November) < <https://www.bbc.co.uk/news/uk-england-merseyside-54950022> > Accessed 5 December 2020

⁴⁵² N141

⁴⁵³ N140

association pursuant to the ECHR. The legislation has the power to ensure the safety of citizens from transmission of the virus, yet derogation under Article 15 has permitted authorities to deter from Human Rights obligations in situations where they see fit. Tougher enforcement by police has resulted in unnecessary use of violence and the issuing of significant fines in protests, even those organised in adherence to the requirements of the regulations..

Political debate is essential to a democratic society, and while it is understandable that tougher enforcement and restrictions are necessary to ensure the safety of the public, if the UK wishes to uphold its values as a cohesive society then more attention should be focussed on upholding an individual's democratic rights rather than punishing the exercise of such rights.

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Liberty and Justice

Phillip Johnson, Georgia Reilly & Emily Thorbjornsen

Court Closures

Emily Thorbjornsen

Introduction

This piece considers the impact of court closures on liberty and justice. Being accused of a criminal offence causes extreme stress to those accused.⁴⁵⁴ Just as a decade of austerity was already taking its toll, the pandemic has resulted in a backlog of almost half a million criminal cases.⁴⁵⁵ Criminal trials have been conducted over Microsoft Teams, innocent defendants have pleaded guilty and victims' families have been forced to wait years for closure.⁴⁵⁶ The impact on justice and liberty has been devastating, however, the government has attempted to mitigate this during the second lockdown.

Court closures and justice

As a result of the Covid-19 pandemic, quick decisions have understandably been made in the UK, as a result, decisions have not been scrutinised as much as they normally would be.⁴⁵⁷ This means that some decisions have been disproportionate, impacting vulnerable groups.⁴⁵⁸ Emergency measures implemented by the UK government has had an effect on

⁴⁵⁴ David Sleight, 'Justice Delayed Is Justice Denied For Clients In Lockdown Limbo' (*Law Gazette*, 2020) <<https://www.lawgazette.co.uk/commentary-and-opinion/justice-delayed-is-justice-denied-for-clients-in-lockdown-limbo/5106414.article>> accessed 4 December 2020.

⁴⁵⁵ Sara Nelson, 'UK Justice System Is Collapsing Under Strain Of Covid, Say Top Lawyers' (*Huffingtonpost.co.uk*, 2020) <https://www.huffingtonpost.co.uk/entry/coronavirus-uk-collapsing-legal-system_uk_5f7c28fac5b6e5aba0cf90fb?guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xiLmNvbS8&guc_e_referrer_sig=AQAAAKHDb3yFb5xkrYsjGHdbshQ8WmkjGUgUrimW03SroytkWRuB3CkMxev7yeEN0N7mHppq_5FJ_hgW-y9eNjlZ6LPHGzK_qQrn26rkB0s1rNaSP9CBM2-aY_8lLhow2E3ITz-eN1_GnDGny6TkRNypm1r__5k-mwmrgaxkwyjgBj4AR&_guc_consent_skip=1607173297> accessed 10 November 2020.

⁴⁵⁶ Ibid.

⁴⁵⁷ 'Law Under Lockdown: The Impact Of COVID-19 Measures On Access To Justice And Vulnerable People' (*Lawsociety.org.uk*, 2020) <<https://www.lawsociety.org.uk/topics/research/law-under-lockdown-the-impact-of-covid-19-measures-on-access-to-justice-and-vulnerable-people>> accessed 10 November 2020.

⁴⁵⁸ Ibid

fundamental rights, thus access to justice is essential.⁴⁵⁹ Access to justice should have been at the forefront when deciding to strip fundamental rights, it is not right that the most vulnerable have been left to suffer without proper access to justice. Surveys have found that solicitors have waited up to eight weeks to talk to their clients, with some hearing dates being offered before solicitors have taken instructions.⁴⁶⁰

The head of public prosecutions in the UK has warned that delays in court hearings are forcing victims to wait for justice, and suggested that remote hearings could be the answer to tackling the growing backlog.⁴⁶¹ However, using software such as Microsoft Teams can prevent defendants from being able to participate in the hearing properly because technology functions poorly, or due to the disconnect between people via a screen.⁴⁶² In the UK, an adversarial system is in use. This means that for victims and those accused of an offence, memory is at the heart of the criminal justice system. The delays that people are suffering is not fair on those who need to rely on their memory during a trial. They may find themselves tripping up over details, or not being able to recall a vivid account of what happened, which gives the jury the wrong impression that the person in the witness box is being untruthful.⁴⁶³ This results in potentially innocent people being found guilty and potentially guilty people walking free. How can this be justice?

Court closures and liberty

⁴⁵⁹ Ibid.

⁴⁶⁰ Nelson *ibid* (n 2).

⁴⁶¹ Maddie Goodfellow, 'Hotels And Theatre To Be Used As Nightingale Courts' (*LBC*, 2020) <<https://www.lbc.co.uk/news/hotels-and-theatre-to-be-used-as-nightingale-courts/>> accessed 12 November 2020.

⁴⁶² Nelson *ibid* (n 2).

⁴⁶³ Ibid.

The impact of a shutdown on criminal trials has had devastating consequences for liberty. A teenage client of the Secret Barrister, a prominent writer who chooses to write anonymously, has been remanded into youth detention, who because of Covid, has gone nine months without visits from family and is confined to his cell for 23 hours a day.⁴⁶⁴ This is a person who has not yet been found guilty, a person who may be completely innocent, yet is suffering at the handling of criminal trials during this pandemic.

Similarly, the pandemic has led to the Custody Time Limit of those accused of serious offences from 182 days to 238 days.⁴⁶⁵ Hardy fears people are taking “mathematical” decisions to plead guilty, simply because they will receive less time in custody.⁴⁶⁶ Not only is this a concern for liberty, in that those people are having their freedoms removed for a longer period of time, but it is concerning for justice as it leaves the accused and victims’ families waiting longer for justice.

An equality impact statement, drawn up by officials for the justice secretary, Robert Buckland, states that “defendants who are black, mixed, Chinese or other ethnic groups, males, or children are more likely to be remanded in custody during any point in crown court proceedings”.⁴⁶⁷ It follows that those with such protected characteristics that are going to be disproportionately impacted.⁴⁶⁸ However, a spokesman for the Ministry of Justice commented that the measures are proportionate in protecting court

⁴⁶⁴ Ibid.

⁴⁶⁵ Ibid.

⁴⁶⁶ Ibid.

⁴⁶⁷ Jamie Grierson, 'Extending Custody Time Limit Will Hit BAME People Hardest, Moj Told' (*The Guardian*, 2020) <<https://www.theguardian.com/law/2020/oct/16/extending-custody-time-limits-will-disproportionately-affect-bame-people-moj-told>> accessed 4 December 2020.

⁴⁶⁸ Ibid (n 14) Grierson.

users, also commenting on the defendants' right to apply for bail and have their detention scrutinised by a judge.⁴⁶⁹

Nightingale courts

The government has invested an extensive amount of money into 'Nightingale' courts in order to tackle the impact of the pandemic on the justice system. There are now 17 Nightingale courts with 32 courtrooms across England and Wales.⁴⁷⁰

Nightingale courts are making some headway into tackling the backlog of cases. Magistrates are dealing with 21,000 cases a week, with the Crown Court tackling more than 1,700, holding more than 100 jury trials.⁴⁷¹

The right approach?

Lawyers are allowed to break self-isolation rules 'to fulfil a legal obligation, including attending court or satisfying bail conditions, or participating in legal proceedings'.⁴⁷² However, as Davis states, 'Allowing lawyers to break quarantine will increase the risk of Covid-19 transmission and pose a significant danger to court users – especially those who have underlying health conditions or are particularly vulnerable to Covid-19.'⁴⁷³ Justice is important, but can a lawyer suffering from Covid-19 really be expected represent their client in the best possible way? It appears that rather than the purpose behind this rule being in favour of justice and

⁴⁶⁹ Ibid.

⁴⁷⁰ 'Eight More Nightingale Courts To Deliver Justice' (*GOV.UK*, 2020) <[⁴⁷¹ Goodfellow *ibid* \(n 8\).](https://www.gov.uk/government/news/eight-more-nightingale-courts-to-deliver-justice#:~:text=It%20brings%20the%20total%20number,tribunals%20resulting%20from%20the%20pa ndemic.> accessed 5 December 2020.</p></div><div data-bbox=)

⁴⁷² Monidipa Fouzder, 'Society Alarmed By Covid-19 Exemption For Lawyers' (*Law Gazette*, 2020) <

⁴⁷³ Ibid.

liberty, it is actually to reduce the number of cases; that is, it is about statistics rather than liberty and justice.

Following this, evening court hearings that have been introduced are having a devastating impact on those serving justice. One legal professional said: 'By the end of the two weeks I was exhausted. I wasn't getting home until gone 8pm'.⁴⁷⁴ Exhausted lawyers cannot be expected to perform well in court, this is a terrifying threat to justice. As one judge notes, morning court is not equal to morning court: 'Nobody wants to be there. The energy is negative, people are very flat and tired,'.⁴⁷⁵ This is before one considers the impact of extended working hours on lawyers with caring duties for young children.

The extra funding put into the criminal justice system as a result of the pandemic is being put to good use. However, the Lord Chief Justice says it is not enough to deal with the backlog of cases in the courts.⁴⁷⁶ Furthermore, he stresses the need for reform and modernisation in the system. Remote hearings are effective in some hearings, some hearings are only short and are done to satisfaction remotely.⁴⁷⁷ Not only should the government be investing in Nightingale courts, but also in technology. Remote hearings would go a long way in tackling the backlog, allowing people to receive justice more quickly.

⁴⁷⁴ Fouzder M, 'Home After 8Pm: Covid-19 Court Hours Affecting Work-Life Balance' (*Law Gazette*, 2020) <<https://www.lawgazette.co.uk/news/home-after-8pm-covid-19-court-hours-affecting-work-life-balance/5106609.article>> accessed 4 December 2020.

⁴⁷⁵ Ibid.

⁴⁷⁶ John Hyde, 'LCJ Wants 'Realistic Assessment' Of Funds Needed To Reduce Backlog' (*Law Gazette*, 2020) <<https://www.lawgazette.co.uk/news/lcj-wants-realistic-assessment-of-funds-needed-to-reduce-backlog/5106262.article>> accessed 4 December 2020.

⁴⁷⁷ Ibid.

The government have continued to invest money into the system, allowing for more court staff to be recruited, more technology to be rolled out, and temporary jury rooms. Such measures have shown positive results, allowing for 21,000 cases to be dealt with in the magistrates court each week and the Crown Courts hosting over 100 jury trials each week.⁴⁷⁸ Thus, things are getting better. The more cases that can be heard each week, the less time people are being left waiting for justice, the less time people are being held in custody.

Conclusion

Ultimately, the impact of the pandemic on liberty and justice has been devastating. The closure of courts has left victims waiting too long for justice, and defendants waiting too long in custody. The emergency measures in place were in no doubt necessary given the health crisis, however legal protection should always be a priority, especially at a time where fundamental rights are being stripped. It seems that the government have learnt from this with the introduction of Nightingale courts and excluding those with legal duties from lockdown rules, though this is not always the best solution.

⁴⁷⁸ 'Three More Courtrooms At Ministry Of Justice HQ' (*GOV.UK*, 2020)
<https://www.gov.uk/government/news/three-more-courtrooms-at-ministry-of-justice-hq?utm_source=863dcda3-a344-418e-9f77-e3e2b1632a4a&utm_medium=email&utm_campaign=govuk-notifications&utm_content=daily>
accessed 4 December 2020.

Family Courts during the Lockdown

Georgia Reilly

Introduction

This research has looked into the impact of liberty and justice in the context of the family court especially within access to the court and access to justice. This research has been completed in attempt to understand the impact that the Covid 19 pandemic has had on hearings that were conducted in person, hearings that were conducted online, the accessibility of technology to attend those hearings, the fairness in access to justice and finally human rights in the context of access to justice.

Research Methods

The research methods used for this research have predominantly been online resources complemented by keynote speaker talks (Professor Celia Kitzinger and Tristan Kirk).

The limitations of using this type of evidence is that there was no opportunity to conduct primary research and tailor information specifically to the research conducted. In addition to this the information was limited because of the ever-changing nature of information published during the pandemic.

Results

Access to Court and Remote Hearings

It is undeniable that access to court in its most simplistic form of attending was severely impacted by the pandemic. The President of the Family Division, Sir Andrew McFarlane, issued guidance with the approval of Lord Chief Justice and the Senior Presiding Judge regarding the response to Covid 19 in the family division to be ‘followed with immediate effect by all levels of the Family Court’.⁴⁷⁹ The principal aim was made clear, to ‘keep business going safely’⁴⁸⁰ and to reassure the strong public interest in the Family Justice System that things were going to function as normally as possible whilst adhering to the government guidelines.

The immediate impact of Covid 19 guidance meant that all ‘family court hearings should be heard remotely’ and only ‘where the requirements of fairness and justice require a court-based hearing and it is safe to conduct one, then a court-based hearing should take place’.⁴⁸¹ Furthermore, the Coronavirus Act 2020⁴⁸² permitted the expanded use of video and audio hearings in addition to the Family Procedure Rules 2010 (FPR) which provided the use of remote hearings in ‘appropriate cases’ by making sufficient use of technology.⁴⁸³

⁴⁷⁹ Sir Andrew McFarlane, 'COVID 19: National Guidance For The Family Court 19Th March 2020' (2020) <https://www.judiciary.uk/wp-content/uploads/2020/03/Presidents-Guidance_Covid-19-2.pdf> accessed 1 December 2020.

⁴⁸⁰ Sir Andrew McFarlane, 'COVID 19: National Guidance For The Family Court 19Th March 2020' (2020) <https://www.judiciary.uk/wp-content/uploads/2020/03/Presidents-Guidance_Covid-19-2.pdf> accessed 1 December 2020.

⁴⁸¹ Sir Andrew McFarlane, 'COVID 19: National Guidance For The Family Court 19Th March 2020' (2020) <https://www.judiciary.uk/wp-content/uploads/2020/03/Presidents-Guidance_Covid-19-2.pdf> accessed 1 December 2020.

⁴⁸² Coronavirus Act 2020.

⁴⁸³ 'Part 1 - Overriding Objective' (*Justice.gov.uk*, 2020) <https://www.justice.gov.uk/courts/procedure-rules/family/parts/part_01#IDAQFV1> accessed 1 December 2020.

Access to Court with Hearings in Person:

March 2020 marked the unprecedented shift from traditional court-based hearings to online remote experiences. Despite numerous references to remaining as normal as possible, it is evidentially clear that access to the court was as far from it as possible. In the extremely limited cases where hearings were in person, social distancing and hygiene measures were put into place. For example, in Liverpool Family Court, you could not attend with any symptoms of Covid 19 (this was problematic as new symptoms such as loss of taste were not originally recognised in March 2020) as well as queuing 2 metres apart for entrance with arrivals permitted no more than 15 minutes before appointment.

Access to Court with Remote Hearings:

The categorisation of remote hearings was outlined by the President of the Family Division⁴⁸⁴:

Hearings to be held remotely
Public law children: <ul style="list-style-type: none">i. Emergency protection ordersii. Interim care ordersiii. Issue resolution hearings
Private law children: <ul style="list-style-type: none">i. First hearing dispute resolution appointmentsii. Dispute resolution appointments

⁴⁸⁴ Sir Andrew McFarlane, 'COVID 19: National Guidance For The Family Court 19Th March 2020' (2020) <https://www.judiciary.uk/wp-content/uploads/2020/03/Presidents-Guidance_Covid-19-2.pdf> accessed 1 December 2020.

- iii. Other interim hearings
- iv. Simple short contested cases
- v. Injunction applications where there is no evidence that is to be heard or only limited evidence
- vi. Financial cases
- vii. Appeals
- viii. Other hearings as directed by the judge concerned

Unfortunately, the cases that were scheduled for March 2020 that were unable to be held remotely were adjourned and consequently listed for a direction hearing (held remotely). Not only did this delay the process of access to the court, there is no evidence for consideration of the motives behind why the hearing could not be held remotely. For example, if there is no access to technology for clients, what impact if any would adjournment have?

In the context of urgent cases of time sensitive nature that were unable to be conducted remotely, it would be the determination of whether they were 'genuinely urgent'⁴⁸⁵ that would determine their importance. This is exceptionally problematic as cases identified as urgent should not require further scrutiny. Anybody attending court for a family matter is fact a distressing experience with detriments to mental health and overall wellbeing, without a pandemic needing to add to the complications.

⁴⁸⁵ Sir Andrew McFarlane, 'COVID 19: National Guidance For The Family Court 19Th March 2020' (2020) <https://www.judiciary.uk/wp-content/uploads/2020/03/Presidents-Guidance_Covid-19-2.pdf> accessed 1 December 2020.

Remote hearings conducted via telephone conference offer exceptional challenges to those with learning difficulties, language barriers, mental health issues and other factors that would impact ability to understand proceedings. Based on a solicitors' survey conducted by the Law Society, only 16% reported that the clients represented were able to participate effectively in remote hearings, with specific mention of unacceptable barriers in access to the courts.⁴⁸⁶ Furthermore, research from the University of Surrey conducted prior to the pandemic found that defendants are more likely to be jailed in video hearings and suspects are less likely to have legal representation in remote settings leading to unfair and possibly harsher outcomes.⁴⁸⁷ Moving forward in a post pandemic society, it is possible that this could lead to unprecedented levels of appeals and complaints for the family justice system.

Types of Hearing

When hearings are conducted remotely, there is also a variation in the platform used to do so, a lot of judges have preferred to use BT Meet Me which is a telephone conference system, others using Cloud Video Platform (CVP) and others using Microsoft Teams due to its relatively straightforward nature.

⁴⁸⁶ 'Law Under Lockdown: COVID-19 Measures, Access To Justice And Vulnerable People' (*Lawsociety.org.uk*, 2020) <<https://www.lawsociety.org.uk/en/contact-or-visit-us/press-office/press-releases/law-under-lockdown-covid-19-measures-access-to-justice-and-vulnerable-people>> accessed 1 December 2020.

⁴⁸⁷ 'Law Under Lockdown: COVID-19 Measures, Access To Justice And Vulnerable People' (*Lawsociety.org.uk*, 2020) <<https://www.lawsociety.org.uk/en/contact-or-visit-us/press-office/press-releases/law-under-lockdown-covid-19-measures-access-to-justice-and-vulnerable-people>> accessed 1 December 2020.

A format known as a hybrid hearing has become more popular during the pandemic too, in an attempt to provide sufficient access to the courts as well as protecting everyone from infection. In this context, hybrid hearings would be case dependent, for example, if the case was contested and evidence was required to be a hybrid hearing would be beneficial because the parents and judge would be present in court, but the local authority and remainder of care case would be remote from home. However, there is a distinct differentiation between private law and public hearings. For private law, the hearings were all conducted online remotely based due to the clients having greater access to technological developments in contrast to cases where the local authority is involved.

The remote hearings raised issues of access to the courts but were synonymous with access to justice in the simple terms of having access to technology and Wi-Fi that would be sufficient to conduct a remote hearing. Unfortunately, in these circumstances, it would be a case of those who were less well-off and unable to gain access to satisfactory technology that would struggle more in this situation. This therefore raises the question of fairness in the courts and their access during the pandemic, the clear aim at the forefront when guidance was issued in March 2020 was to continue as normal where possible and to keep a standard day to day process. By moving to remote hearings, marginalised groups suffer the consequences the most because they have no access to technology or sufficient Wi-Fi and no ability to go to a public library, coffee shop or public space with Wi-Fi because everywhere was closed. It is this group of people that will undeniably suffer more as a consequence of the pandemic and the courts reaction. This is especially important when considering that the decision of

cases to be held remotely or in person is largely at the discretion of the judge or magistrate.

Access to Court Conclusion

Finally, it is imperative to note that when researching the impact that the pandemic has had on access to the courts, the changing rules and developments of coronavirus legislation combined with the changing symptoms recognised as Covid 19 have paved an unstable landscape for the justice system to function on. From March to July, it was essentially totally online. After July, the majority of cases have remained online whilst the family court and its workers have adapted and evolved to the challenging conditions that the coronavirus pandemic has put forward in order to provide the most sufficient access to the court. Ultimately, the Family Justice System compared to other courts in the UK is the closest to being back to normal as of September 2020 which is a stark contrast when compared to criminal cases that have been adjourned until 2022.

Access to Justice

Access to justice in the Family Court System is a crucial fundamental principle of Human Rights. Unprecedented challenges to the court meant that a backlog of 23% (52,391) of cases from pre Covid to the end of August 2020 was generated.⁴⁸⁸ Hearings being adjourned up to and including 2020 raises the questions whether there is any justice within a pandemic. This

⁴⁸⁸ 'Law Under Lockdown: COVID-19 Measures, Access To Justice And Vulnerable People' (*Lawsociety.org.uk*, 2020) <<https://www.lawsociety.org.uk/en/contact-or-visit-us/press-office/press-releases/law-under-lockdown-covid-19-measures-access-to-justice-and-vulnerable-people>> accessed 1 December 2020.

idea is further reinforced with prolonged struggles to access legal advisors and family for legal and overall wellbeing support. Reports have concluded during the peak of Covid 19, solicitors often experienced 8 week waits to talk to their clients with hearings often taking place before being able to speak to them and take instructions.⁴⁸⁹

Fairness in Access to Justice:

The case of *Re A (Children)(Remote Hearing: Care and Placement Orders)*⁴⁹⁰ concerned the impact of the pandemic specifically on the Family Justice System. This case referred to the welfare of children and reached the Court of Appeal on the issue of remote hearings and consequent access to justice during the Covid 19 pandemic. The most important conclusions from this case concern the decision to conduct a hearing remotely and the means by which it is done being at the discretion of a judge or magistrate to decide on a case-by-case basis. This allows an overarchingly wide discretion to judges based on the ordinary principles of fairness, justice and the need to promote the welfare of children.⁴⁹¹ Indications on which cases are most suitable for what type are limited to mere suggestions and guidance and are not a requirement to be followed.

⁴⁸⁹ 'Law Under Lockdown: COVID-19 Measures, Access To Justice And Vulnerable People' (*Lawsociety.org.uk*, 2020) <<https://www.lawsociety.org.uk/en/contact-or-visit-us/press-office/press-releases/law-under-lockdown-covid-19-measures-access-to-justice-and-vulnerable-people>> accessed 1 December 2020.

⁴⁹⁰ *Re A (Children) (Remote Hearing: Care and Placement Orders)* [2020] Royal Court of Justice (Royal Court of Justice).

⁴⁹¹ *Re A (Children) (Remote Hearing: Care and Placement Orders)* [2020] Royal Court of Justice (Royal Court of Justice).

It is not unreasonable to consider the possibility that once judges become settled to a certain format of hearing remotely, they will continue to use it regardless to the case-by-case nature suggestion. If this was to happen, in the aforementioned ‘genuinely urgent’ cases, if the presiding judge decided remote was best despite guidance suggesting otherwise, is justice achieved? The FDR guidelines at part 4.3, state that the court ‘may make orders of its own initiative’.⁴⁹² Evidence therefore suggests that it will become inevitable in the future that appeals will emerge in the cases of children heard during the pandemic.⁴⁹³

Women’s Access to Justice:

Perhaps an unintended consequence of remote hearings in access to justice concerns women with their competing needs to arrange care for children in order to ensure confidentiality when cases are being conducted from home. Evidence has stated that ‘new mothers are having their babies taken into care during remote video and phone hearings from hospital’ and ‘parents are joining online proceedings from home without adequate technology or support when life changing decisions are being made about their children’.⁴⁹⁴ This is a particularly problematic limitation when considering access to justice when almost half of parents and relatives involved in virtual family court hearings confirmed that they did not understand well

⁴⁹² ‘Part 4 - General Case Management Powers’ (*Justice.gov.uk*, 2020)

<https://www.justice.gov.uk/courts/procedure-rules/family/parts/part_04> accessed 1 December 2020.

⁴⁹³ *Re A (Children) (Remote Hearing: Care and Placement Orders)* [2020] Royal Court of Justice (Royal Court of Justice).

⁴⁹⁴ ‘Babies Being Removed From Mothers During Remote Hearings – Report’ (*The Guardian*, 2020)

<<https://www.theguardian.com/law/2020/oct/27/babies-being-removed-from-mothers-during-remote-hearings-report>> accessed 1 December 2020.

what was going on, and it is clear that this is unacceptable and needs to be changed immediately.⁴⁹⁵ The most concerning element of this information is that this research was reported on the 27th of October 2020, which means that there has been no development or changes that could be understood in March and these mistakes continue to take place today.

It is unclear what women who suffer from domestic abuse are supposed to do in the pandemic, if they are participating in a remote hearing the likelihood of them being completely transparent and honest whilst at home with their abuser is little to none.

Finally, for women who do participate in remote hearings are often alone in their home, usually in the living room or bedroom. When they are then told that the care of their child will be taken away from them there is no protection or support for their response whilst they are alone. One judge expressed significant concern ‘In court they'd at least have a lawyer with whom they could grieve, rant, consider appeal and have support. By phone or video, they may be in their bedroom alone and in despair’.⁴⁹⁶ This means that there is no limitation to what they could do in terms of harming themselves or the child.

⁴⁹⁵ 'Babies Being Removed From Mothers During Remote Hearings – Report' (*The Guardian*, 2020) <<https://www.theguardian.com/law/2020/oct/27/babies-being-removed-from-mothers-during-remote-hearings-report>> accessed 1 December 2020.

⁴⁹⁶ 'Babies Being Removed From Mothers During Remote Hearings – Report' (*The Guardian*, 2020) <<https://www.theguardian.com/law/2020/oct/27/babies-being-removed-from-mothers-during-remote-hearings-report>> accessed 1 December 2020.

Open Access to Justice:

Professor Celia Kitzinger⁴⁹⁷ observed the first hearing in the court of protection under Covid conditions and concluded that it was an utter disaster, and an unpleasant and unhelpful experience with a lack of ‘gravitas’. The first hearing concerned a man’s life, whilst a daughter watched her father’s future being decided in someone’s living room. This unfortunately emphasised the dark side of remote hearings, especially at the start of pandemic. In this circumstance, there was a total preoccupation with technology, huge marked lack of empathy and nobody except the people accompanying the daughter knew how openly sad she was because the camera was off⁴⁹⁸.

Being present in the court for some provides the same closure that a funeral provides for others, to allow themselves to experience discussion and conclusion for life’s circumstances. The removal of being in person, combined with the nature of cameras being off displays an ignorance of the court to real human emotion and therefore undermining the weight of the case which could lead to claims that justice was not done. On the other hand, Professor Kitzinger noted that the Open Justice initiative had resulted in more people observing proceedings in the Court of Protection than was usual in pre-pandemic times: this accessibility of courts and the ability to witness justice in action is a vital pillar of our justice system and by extension the role of law.

In addition to Professor Kitzinger, a guest lecture by Tristan Ki, court correspondent for the London Evening Standard, established what he

⁴⁹⁷ Teams Talk with Professor Celia Kitzinger

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termed as ‘judicial quirks’⁴⁹⁹. This was in reference to the small errors and miscommunication issues that arose at the start of the pandemic lockdown in terms of gaining access to hearings. Kirk noted that it was more difficult to get into mundane normal cases whilst being granted access easier to higher profile cases such as the Johnny Depp case. In this circumstance, Kirk concluded what results have already highlighted, ultimately open access to justice was at the discretion of the judge. The difficulty presented at the start of the pandemic in gaining access to online hearings when you are not legal representation or directly involved in the case presented an alarming threat to human rights and undermined Open Access to justice. This is especially concerning when Mr Justice Hayden stated that ‘transparency is central to the philosophy of the Court’.

Human Rights and Access to Justice:

Human rights are inextricably linked with access to justice in a fair and democratic society. Article 6 of the European convention on human rights (ECHR) guarantees the right to a fair trial including the right of access to legal advice and the right to remain silent as a qualified right.⁵⁰⁰ Other elements of this protection include the guarantee of a public hearing which is undertaken in a reasonably timely manner.

It therefore goes without saying that Article 6 has been undermined as a consequence of the pandemic. The results discussed above such as issues with Open Access to justice, issues getting in touch with clients before hearings and difficulties in sufficient technology have proved to make

⁴⁹⁹ Teams Talk with Tristan Kirk

⁵⁰⁰ 'European Convention On Human Rights' (2020)

<https://www.echr.coe.int/documents/convention_eng.pdf> accessed 1 December 2020.

significant challenges for both those who work in the legal system and the members of the public involved. Additionally, the right to privacy becomes challenging whilst working from home as the rules still apply in terms of confidentiality but the ease of this is dependent on privilege.

With regards to Human Rights and the pandemic, it is imperative that a pragmatic approach is undertaken, and some allowances given. For example, a QC in Scotland was subject to enforcement action by Information Commissioners Office in 2011 after her laptop was stolen from her home with sensitive information on.⁵⁰¹ If this was to occur during working from home in the pandemic, especially when combined with the ‘immediate effect’ of guidelines it is unfair and unrealistic of an expectation.

Recommendations for Reform

The most prominent issue with recommendations for reform in this circumstance is that the conditions of which reformers suggested are continuously changing. This makes it challenging to present effective reforms that would work given any condition. However, there are a few reforms which would be beneficial moving forward for the courts in order to deliver sufficient Liberty and justice to the public despite challenging circumstances.

Increased Discretionary Powers:

⁵⁰¹ Paul Bennett, 'COVID-19: Confidentiality And Working From Home' (*Lawsociety.org.uk*, 2020) <<https://www.lawsociety.org.uk/topics/blogs/covid-19-confidentiality-and-working-from-home>> accessed 1 December 2020.

A theme highlighted throughout the results of this research is that there has been a lot of autonomy and consequential pressure placed onto judges and magistrates. By increasing the discretion to those who make the decisions about whether the hearings are online, and who can attend, takes the pressure off of one person and also enhances a democratic process in the case-by-case basis of deciding how hearings will be heard.

Set Up an Independent Committee to Oversee Outcomes of Remote Hearings:

The implementation of an independent committee to oversee outcomes of remote hearings to establish a damage limitation system if there were to be a disproportionately increased number of appeals following return to normal. Many people may feel that they have had their court outcome impeded by the pandemic and consequential situations, so by having a committee review cases when appeals are applied for, there will be a committee ready to handle this and not overwhelm the legal workers.

Provide Training For Continued Work From Home:

Examples from 2017 demonstrate a barrister working from home being fined £1000 for having client related data on their personal laptop which was not encrypted highlights the challenges legal workers are faced with when being held to higher standards than other work sectors.⁵⁰² This can be dealt with through staff training from home which can be done remotely and can aid the transition further.

⁵⁰² Paul Bennett, 'COVID-19: Confidentiality And Working From Home' (*Lawsociety.org.uk*, 2020) <<https://www.lawsociety.org.uk/topics/blogs/covid-19-confidentiality-and-working-from-home>> accessed 1 December 2020.

Lower Expectations of Legal Representation Working From Home:

Those who work in the legal sphere have been held to an extremely high standard, as highlighted in a QC being fined for having his laptop stolen. Under the current pandemic circumstances, it is essential to allow some room for manoeuvre when workers are not being provided with sufficient workplace environments to follow the standards and rules they are being held to.

Conclusions

New Insights and What Results Don't Tell Us:

Whilst this research has highlighted the challenges that have been faced, there have been some positive new insights that previously were unknown. First, thanks to technology, more protected people and their families are able to be present in court than ever before because all that is required is a laptop or computer - this closes the geographical gap and eliminates distance issues.⁵⁰³ Second, moving forward the courts could be able to adopt more hybrid hearings placing the most important cases to the forefront in person and ease the struggles of backlog of cases. Hybrid hearings can be used to ease pressure on parents finding childcare to attend court and can act as damage control when parents do not get along keeping them separate from one another to enhance safety.

There are some key limitations to acknowledge, however. In the instance of care proceedings, evidence falls short on how children are removed in

⁵⁰³ 'Babies Being Removed From Mothers During Remote Hearings – Report' (*The Guardian*, 2020) <<https://www.theguardian.com/law/2020/oct/27/babies-being-removed-from-mothers-during-remote-hearings-report>> accessed 1 December 2020.

Covid safe conditions and how and when this takes place. Are there possible time lags in these situations?

Finally, the results of this research do not indicate the impact of substantially unacknowledged work by those who work in the courts. It is undeniable that there has been extreme pressure applied onto all contributors from judges, to barristers and solicitors. There is no opportunity to discuss the conclusions of hearings, no opportunity to discuss in advocates meetings rooms and the social element is effectively taken away. It is possible that long term this will have dire mental health complications to those who work on particularly sensitive care cases.

Positivity in Retrospect:

The most important thing to conclude from this research, is that justice is and continues to be done. The Family Court System did not stop because of Covid, but instead it adapted to extremely challenging conditions. The open access to justice thanks to hearings being online supports the ideology of Human Rights in the courts, allowing access to a fair trial with scrutiny available from all of the public.

Sir Andrew McFarlane concluded: “This emergency is without precedent. Judges and others have worked tirelessly and continue to do so, so that the family court has continued to function without break since the start of lockdown... We have adjusted, developed and adapted our methods of working as the crisis has persisted. Much of the work of the family court

cannot be left to wait as many cases involving the welfare of children as well as adults are urgent”.⁵⁰⁴

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Impact of COVID-19 on the Youth Courts and Youth Justice System in the UK

Phillip Johnson

Introduction

In this report we describe observations about the daily and other extraordinary situations that youths in England and Wales have encountered since the public announcement of a “viral pneumonia” the world-wide outbreak of SARS CoV-2 (‘Covid-19’). Moreover, we attempt to observe the impact on trials and proceedings at the youth courts and the affected youth justice system during the global pandemic.

On 23rd March 2020, Prime Minister Boris Johnson announced UK was implementing preventive schemes to offset a public health crisis that would require the country to go into lockdown. After March 23, H.M. Courts and Tribunal Service (HMCTS), and Ministry of Justice with the Judiciary closed courts and halted new jury trials in an emergency measures to reduce social interaction and control the spread of Covid-19.⁵⁰⁵ A HMCTS pandemic report states 157 essential court and tribunal buildings remained open. The courts began using remote technology for some cases when arrangements was possible. There was a heavy case backlog in the Crown Court, 40,900 and Magistrates’ Court had 416,600 outstanding cases,⁵⁰⁶ as result of court closures and a low court disposal rate. Magistrates’ Court opened for trials in May; new cases are about 60% of the pre-Covid

⁵⁰⁵ Justice Committee ‘Coronavirus (COVID-19): The impact on the legal professions in England and Wales’ (HC520, 22 August 2020)

⁵⁰⁶ Justice Committee ‘Coronavirus (COVID-19): The impact on courts’ (HC 519, 30 July 2020)

baseline. “Youth court backlogs had increased 55 per cent by the end of June 2020 compared with a year previously.”⁵⁰⁷ Concerns were raised that as a result of delayed trials youths aged 17 years-old may age out before their hearing date.

Legislation/Regulations

Coronavirus Act 2020, passed 25 March 2020⁵⁰⁸; the Health Protection (Coronavirus) Regulations 2020 (revoked), and the Health Protection (Coronavirus, Restrictions) (No. 2)⁵⁰⁹ is the legal framework that give supplemental statutory power to the Government, health officials and police. The regulations are presumably a more aggressive public health policy approach to counteract the pending crisis, however legislation has nonetheless affected how we view civil liberties and human rights of the person.

The COVID-19 public health protection regulations are reviewed periodically, every 6th month by Parliament and 3 weeks by the Secretary of State. *The Secretary of State considers that the restrictions and requirements imposed by the Health Protection (Coronavirus, Restrictions) (England) (No. 4) Regulations 2020(2) as amended by these Regulations are proportionate to what they seek to achieve, which is a public health response to that threat.*⁵¹⁰

⁵⁰⁷ HMIP Annual Report: *Inspection of youth offending services 2019-20* (November 2020)

⁵⁰⁸ Coronavirus Act 2020 c.7 <<https://www.legislation.gov.uk/ukpga/2020/7/contents/enacted>>

⁵⁰⁹ Health Protection (Coronavirus, Restrictions) (No. 2)

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⁵¹⁰ Health Protection (Coronavirus, Restrictions) (England) (No. 4) (Amendment) (No. 2) Regulations 2020

Youth Court and Hearings

The age of criminal responsibility for children in UK is 10 to 17 years-old, or under eighteen. Youth offenders are sent to Youth Court, or other Magistrates' Courts for hearings after arrest for criminal offence, resentencing and breach hearings. If the offence requires children to be charged as an adult, they would appear in the Crown Court. The jurisdictional power is higher in the Crown Court. Youths attend hearings at the court in their residential justice area. The low age of criminal responsibility in the UK has often been challenged.

A brief overview of the youth court – it's less formal than adult court, everyone is at same eye level in the room (if the adapted courtroom is available), and the youth sits outside the dock with parent, etc. The court is closed to the public. A study by Justice Innovation on youth courts, states diversion efforts has contributed to a declining number of cases however, “young people remaining in the system and appearing at youth court tend to be the most vulnerable and often have significant welfare and other needs as well as more serious offending profiles.”⁵¹¹ The study also looked at causal delays in youth going to court, significantly from date of arrest, being charged, collecting evidence, and other concurrent events, contributed to question of fair trial. A “YOS worker was asked what they would prioritise to improve practice at youth court, they suggested greater awareness among defence solicitors of special educational needs (SEN) amongst young people attending court to improve the way they communicate with their young clients.... A magistrate, for example, acknowledged practice was much better when solicitors were familiar with youth court procedure: “I can think of two to three solicitors who deal with

⁵¹¹ Centre for Justice Innovation ‘Time to get it right: Enhancing problem-solving practice in the Youth Court’ (June 2020)

youth work, possibly exclusively as we regularly see them, who certainly act in the best interests of their clients... They'll address us in such a way that we know what they mean and they know what the likely outcome is as well. I think that relationship works extremely well ...But there are too many that don't."⁵¹² Youths have expressed they would be more comfortable with a solicitor who speaks their language.

Legal professionals experienced in criminal law usually work in the adult courts. Responsive to challenge of representing youths and youth advocacy, "...the Bar Standards Board (2017) has published a set of competencies which all barristers practicing in youth proceedings must meet. They include requirements in relation to: specialist legal knowledge; an ability to communicate effectively with children; the capacity to respond to children from disadvantaged backgrounds; and having an understanding of, and an ability to adapt practice to meet the types of vulnerability which children in trouble frequently manifest."⁵¹³ The application for judicial review in *R. v West Glamorgan Youth Court* [2020] illustrates the need for youth advocacy and representation. The 13 year-old defendant under section 51A of the Crime and Disorder Act 1998 was committed by Youth Court to Crown Court with other offender participants. The Youth Court had determined it was not the venue having "real prospect of sentencing" power. The High Court's decision to quash decision points to guidance on "real prospect" of sentencing in *R. v South Tyneside Youth Court* [2015], that youth courts have limited knowledge of material facts and interpreting "real prospect" they will send cases for trial at other courts if considering the consequence that more information can be admitted after sentencing at

⁵¹² *Ibid* at 17

⁵¹³ NAYJ ' The State of Youth Justice 2020

later proceedings. Furthermore, youth courts frequently send cases they can decide. [T]hey relied on the overall circumstances as set out in the police report to justify the conclusion that this was a case in which there was a real prospect of a sentence in excess of the powers of the Youth Court.... They may be excused for this, given that it not appear that the authority was drawn to their attention. Had it been and had they taken proper account of it, BB would not have been sent for trial at the Crown Court.⁵¹⁴ Decided, the youth court was proper venue for defendant.

Youths in Custody

According to the current HMPP youth custody reports: 571 youths were in custody as of August 2020 (-31 difference of the average under eighteen population). Additionally, 638 male and 18 female was in secure population (256 are remands and 184 have detention and training orders ‘DTO’); 496 under age 18 were in a youth offender institution; 104 in secure training centres, and 56 in secure children’s homes. The ethnicity breakdown of youths in custody was: White 269; Black 165; Mixed Heritage 79 and Asian 48.⁵¹⁵ A pre-Covid assessment examining the care status of children in estate population indicates: 56% were Child in Need; 8% of children sentenced were in a child protection plan; 12% had a care order; 5% remanded to youth detention accommodation, and 2% had been remanded to local authority accommodation.⁵¹⁶

During the first lockdown, in response to Covid-19 requirements custodial institutions implemented changes respective to social distancing. “The

⁵¹⁴ R (on application of BB) v West Glamorgan Youth Court v Crown Prosecution Service [2020] EWHC 2888 (Admin) [15]

⁵¹⁵ HMPPS Youth Custody Report (September 2020)

1. ⁵¹⁶ Ministry of Justice/Youth Justice Board ‘Accessing the needs of children in the Youth Justice System’ (28 May 2020). This is the latest census available.

regime in prisons has been severely restricted, with most children being placed in prolonged solitary confinement. There are no face-to-face visits, no face-to-face education in the majority of establishments and no therapy. Children are experiencing difficulties in accessing the support they need to plan for release. The usual safeguards that exist, including on-site advocacy services, are no longer present.”⁵¹⁷

The Guardian newspaper, report on a COVID-19 assessment report reiterated portions: “At young offender institutions, which provide a more prisonlike environment for 15 to 21 year-olds, inspectors found that young people’s educational activities were limited to worksheets in their cells. time out of cell varied from three hours a day to just 40 minutes.” “Such constraints on what are already impoverished regimes inevitably increase the acute strain on extremely vulnerable children..,” “Whilst it is too early to assess the full implications for children in prison, a number of consequences are already clear. In particular, changes to regimes to accommodate social distancing have already had disturbing consequences.”⁵¹⁸

Press reporting on the UK justice system during the pandemic recounted the detention of 17 year-old males who had no access to a solicitor while waiting for trial. “The teenagers were not brought to court or put on videolink for two hearings in August and in early October lawyers had still not been able to speak to them. On October 23, the boys had again not been brought to court. Four days later, one defendant was finally in the dock but

⁵¹⁷ Howard League for Penal Reform, ‘Children in prison during the Covid-19 pandemic’ (London, 30 April 2020) <<https://howardleague.org/publications/children-in-prison-during-the-covid-19-pandemic/>>

⁵¹⁸ Helen Pidd, ‘Covid sopped family visits for children in youth prisons in England and Wales’ *Guardian* (23 September 2020)

another was missing, leading Judge Nigel Peters QC to call the case as “a total horror show”.⁵¹⁹

A Guardian news article about custody extensions and COVID-19 impact statement reported: An equality impact statement, drawn up by officials for the justice secretary, Robert Buckland, and quietly published earlier this month, warned there would be a disproportionate impact on black, Asian and minority ethnic people. It states that “defendants who are black, mixed, Chinese or other ethnic groups, males, or children are more likely to be remanded in custody during any point in crown court proceedings”.⁵²⁰

The Guardian newspaper published an article about a 15 year-old experiencing psychosocial anguish. He was in solitary, segregated lockup at a secure training centre (STC) in response to pandemic social distancing: “I had to go into total isolation for the first two weeks, just 15 minutes out every day. It was my first time in custody and at first I thought this is OK, it’s a chance to slow things down. But after two weeks it began to affect me. You couldn’t do anything. I could hear voices calling on the wing, but I only saw the guard.”⁵²¹

Remote hearing were scheduled after the magistrates’ court opened. Solicitors complained about difficulty with more than one videolink setup in some settings, specifically in the special training centres. Virtual hearings were completed at home or, in office settings. When required by

⁵¹⁹ Tristan Kirk, ‘Teens facing attempted murder charge locked up for three months without access to lawyers’ *Evening Standard* (18 November 2020)

⁵²⁰ Jamie Grierson, ‘Extending custody time limit will hit BAME people hardest, MoJ told’ *Guardian* (16 September 2020)

⁵²¹ Harriet Grant, ‘Just 15 minutes out every day’: a teenage prisoner’s life during Covid’ *Guardian* (27 October 2020)

the court, lawyers were robbed. The Justice Committee contends that use of new computer technology and technical cloud platforms presented problems as result of different levels of technology literacy, upcycled equipment, or a common problem of synchronised audio and visual image.

Youth Offending Services

In their community, youth offenders are supported with available youth offending services. Youth offending teams are part of the local council, and work together with the youth courts. YOTs provide services to help youths avoid recidivist behavior, guidance for rehabilitation progress, and they also coordinate community service programs. During the lockdown YOTs were exceptional in providing risk management service for youths with referral orders. “We found partnerships with police forces and children’s services stayed strong and, in some cases, improved. Work continued at the same level as before lockdown, with panels meeting virtually. Many YOT staff rose to the challenge, developing new and imaginative ways of keeping in touch with children, such as online messaging and video apps. Where necessary, contact was maintained by way of supervision meetings in public parks and gardens. Many YOTs also distributed food packages, toys and computers to their most vulnerable and isolated families.”⁵²²

The following is a case review of youth’s engagement during the pandemic after a referral order:

R is a 15-year-old girl who received a 3-month referral order for assaulting a police officer. Her order started just before lockdown, so most of her court order had been delivered within COVID-19 restrictions and

⁵²² HMIP Annual Report: *Inspection of youth offending services 2019-20* (November 2020)

*supervised by --YOT. She lives with her mother and disabled sister and space at home is limited. Both sisters were subject to child protection plans and children's services were involved with the family. ... The YOT has continued to provide an intervention – a girls' programme – which has been delivered by email and followed up with telephone discussions. R appears to have engaged with this model, with insightful and thoughtful conversations. There have been walk and talk appointments outside the home, and Ria has chosen the route for these walks, which means she can decide the length of the meeting. This gives her some control and ownership of her appointments. R successfully completed her referral order.*⁵²³

The YOTs also manage risk and intervention panel orders and offender and parent are required to appear. The mechanisms of using a panel discussion (referral order, out of court disposal order, or risk management panel) changed during the pandemic as result of social distancing and using a remote, virtual platform. In assessment of a remote proceeding YJB states, “Panel members had received some training and instruction on the use of virtual meetings. However, they felt that, despite the best efforts of the YOT staff, they couldn't really get a sense of the child and too much was lost in not being able to see the non-verbal communication and dynamics between children and their parents and carers. Panel members also regretted the loss of the option of early revocation for good progress, as courts had closed.”⁵²⁴

Additional perspectives on the Covid-19 impact on YOTs case management:

⁵²³ HMIP 'A thematic review of the work of youth offending services during the COVID-19 pandemic' (November 2020)

⁵²⁴ *Ibid*

Children in YOIs fared worse. Although case managers received some additional money to spend on phone calls, they had real difficulties in keeping contact with these children and in contacting custodial case work teams. This included cases where the child was due to be released and where resettlement planning should have been the priority.

The second group are children who are looked after by the local authority and placed away from their home area. Very few of the assessments and plans for these children included consideration of their access to technology.

There is a small group of children who have internet-enabled offences, including sexual offending. The management of these children posed real difficulties for YOT risk management panels. In one example, a 15-year-old boy with a conviction for a sexual offence had groomed the victim over the internet. He was also violent towards his mum, who he lived with. Before the lockdown, risk management measures included his attendance at school, where his use of the internet and behaviour were closely monitored. He had a mentor that saw him every day to engage him in appropriate activities away from the internet. Following lockdown, the risk management responsibility was mostly placed with his mum. He spent increasing amounts of time on the internet, and although his mum tried to supervise this, it was almost impossible for her to monitor him all the time. His violence towards her increased, as did elements of coercive behaviour. The mentor and YOT worker undertook daily visits, but due to restrictions could not enter the house.⁵²⁵

⁵²⁵ Ibid

The economy of the pandemic will affect changes to child care and youth social services mechanisms. The statutory services: child in need, child protection, and children in a care program; seem to remain the focus of continuing assessment. Covid-19 has complications providing for the other vulnerable children because they are outside the management of youth services and underreported for needing care services in their communities. The need for up-skilled training for volunteers and youth workers is apparent. They will need competencies in mental health triage, working with children who are at risk, children who do not attend school regularly, and children from vulnerable families who live in unsafe environments where social distancing is impossible.

Barriers to out of custody resettlement

In pre-Covid times, over the past eight years, the Ministry of Justice/Youth Justice Board has decreased funding to youth offending services. The gradual decline in number of youths appearing in court cases and huge success of out of court disposals are probable cause for diminution of grants. The youth offending services now depend on local funding and not-for-profit cohorts have funding shortages because of streamlined funding. YJB visualized a down to business of resettlement platform for YOS and had proposed several concepts for reintegration and youths 'constructive' resettlement in their communities.

According to YOTs the cases they begin to manage now are youths in a more violent category of offenders, majority are offences against a person. Gangs are visible during the pandemic, primarily youths from lessor economic means do not languish at home when schools are closed, they

continue a cultural pattern to be on the street with friends. It's also a reasonable assumption that they are less educated about the vagaries of the Covid-19 disease, some may have special educational needs, and they have no fear of infection. The press continues to report on rival street gang violence in hot areas, e.g. London and West Midlands. It's also a fair assumption that youths charged with a violent offence are gang associated.⁵²⁶ In the year ending 2019, the Youth Justice Board reported 58,900 proven arrests for notifiable offences (30%: violence against the person); 8,552 cautions; 19,316 youths received occasion sentences, and the average custodial sentence was 17.7 months.⁵²⁷

YJB's pre-Covid planning for youth's post-custody rehabilitation was: "Children will co-create their customised resettlement plans, which will build upon their strengths and they will be provided with the individualised personal and structural support to develop their pro-social identity and achieve positive outcomes."⁵²⁸ However, the YOT's and partnering cohorts with responsibility for success of this proposed YJB initiatives is presently in flux as result of diminished capacity to meet and stay in contact with youths released during the covid pandemic. "As the youth justice system has contracted, the overrepresentation of minority ethnic children, in particular Black and mixed heritage children, has become more pronounced. More disturbingly, the extent of disproportionality has increasingly risen with the intensity of intervention: more than half of children currently deprived of their liberty derive from a minority background. Children in care are also more likely than their peers in the

⁵²⁶ National Youth Agency 'Hidden in Plain Sight: Gangs and Exploration' (May 2020)

⁵²⁷ YJB 'Youth Justice Statistics for England and Wales 2018/19' (30 January 2020) This is the last census available.

⁵²⁸ YJB 'Strategic Plan 2019-2022

general population to be criminalised.”⁵²⁹ The YJB conceded the contentious views that Black, Asian and Mixed Heritage youths are disproportionately represented in the youth justice system. The approach to resettlement recommendation was: “seek to influence issues such as employability, and the place of sport as a means of building on the strengths of black children to help them to desist from harmful behaviour.”⁵³⁰

Human Rights

The United Kingdom is a state party to the European Convention for Human Rights, and optional protocols. Although, Parliament enacted Human Rights legislation, the Human Rights Act 1998, which incorporates fundamental provisions propounded by the ECHR, there is no state derogation from the treaty. British nationals have communicated complaints under ECHR to the court in Strasbourg for review. According to the ECtHR website, the Court recognizes Covid-19 lockdown measures by the host state however, continues to fulfill its obligations. In a 2018 complaint about deprivation of liberty under Article 5(1), a British national sought review of his detention and extended custody (11 days), and remedy under Article 13. In April 2020, the Government confirmed the applicant had received full settlement, Brooks had sent correspondence before to the court in April. *Brooks v UK* App no 9577/18 (ECHR, 5 May 2020) (stricken).

United Kingdom is a party to the UNCRC. The Child Alliance published several briefing papers, reminding state parties of their obligations under

⁵²⁹ NAYJ ‘State of Youth Justice 2020’

⁵³⁰ YJB ‘Strategic Plan 2019-2022’

Article 24 of the CRC⁵³¹ “Treat every child deprived of liberty with humanity and respect for the inherent dignity of the human person and strictly safeguard their due process rights and procedural guarantees. Public authorities, including prosecutors and judges, should exercise their detention powers cautiously, considering the extreme nature of the detention measure, the heightened vulnerability of the child, and upholding the best interests of the child as a primary consideration, particularly in the current context of COVID-19. Alternative measures should be prioritized and promoted with all the due safeguards for the children and their families at this time.” In a section of the same briefing paper - *Safeguarding Against Discrimination*, “States should provide children who are deprived of their liberty with the same information provided to children in the community about the pandemic, as well as how to protect themselves, ensuring accessible and child-friendly information.”⁵³²

Conclusion

The Secretary of State for Health and Social Care reviews the Covid-19 legislation every 21 days, and Parliament is reviewing at periodic six-months.

The lockdown restrictions created extreme transitions and demands to change mainstream patterns of how to survive an infectious disease. The need for compromised freedom of movement to abide with lockdown

⁵³¹ Art. 24, CRC: 1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services. 2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures...

⁵³² ‘Technical Note: COVID-19 and Children Deprived of their Liberty’(The Alliance for Child Protection) <<https://www.alliancecpha.org/en/series-of-child-protection-materials/protection-children-during-covid-19-pandemic>>

measures is difficult for persons accustomed to a norm of making unilateral decisions about family care and themselves. Covid-19 regulations further imposed an overstrain on family resources when a working partner was made redundant or business permanently shut down. In Alec Samuels' article on the COVID-19 impact he states, "the English common law tradition has long been that a citizen may do as he wishes unless it is expressly prohibited by law, the police can act only within their powers and the citizen must always have the right of recourse to the judge. So anything perceived as reasonable by the citizen, and prohibited by the police, can create a situation of tension."⁵³³

On or about 5 November 2020, England engaged a national Tier 3 restrictions until 2 December 2020. The government debated on a new COVID-19 strategic measure, that beginning on 3 December each city is designate a Tier 1, 2, or 3 lockdown zone. The 35 boroughs in London are designated Tier 2 medium alert status. This decision is still debatable by those persons who are required to close a pub, restaurant, salon, professional office, and have economic difficulties from previous tier lockdown closures.

Impact on Education in YOIs during Coronavirus lockdowns

This section of the report will look at the impact of lockdown on the provision of education in prison and in Young Offenders Institutions, (YOI) in the UK. It will give information on the changes to educational

⁵³³ Alec Samuels, 'Coronavirus Act 2020: An overview by a lawyer interested in medico-legal matters' (2020) 88(2) MLJ, 86

provision in the prison estate, (children, and young adults) which have resulted from restrictions imposed during the coronavirus lockdowns.

There are five YOIs in England and Wales. They are Cookham Wood, Feltham, Parc, Werrington, and Wetherby. They house boys aged 15-17 years and young men aged 18-21 years. Before the pandemic between fifteen and thirty hours of education was provided in YOIs weekly, and sometimes even more if staff-offender numbers allow.

In May 2020 three of these YOIs were visited by inspectors to assess current practice during the Covid-19 pandemic. It was noted in the [publication](#) ‘Children and Young People Now’ that the chief inspector of prisons Peter Clarke has released a report, entitled [Young offender institutions holding children](#). The report details both concerns and good practice in Cookham Wood in Kent, Parc in South Wales, and Wetherby in Yorkshire. The report noted that the children were living under restricted regimes and inspectors had concerns over ‘inconsistencies and variations in practice across the three settings visited’. It stated that time out of cells was around 40 minutes at Cookham Wood, one hour at Wetherby and three hours at Parc.

In July 2020 it was reported again in [CYPNOW](#) that following scrutiny visits to Feltham and Werrington YOIs that face to face education had not yet resumed. Peter Clarke again stated that the ‘main concern’ of HM Inspectorate of Prisons (HMIP) was the decision to stop face to face education in YOIs. Clarke states that following lockdown that ‘nearly all children had been locked up for more than 22 hours every day since the start of restrictions. This was both disproportionate and avoidable.’

The UK Government's Human Rights (joint committee) [latest report](#) published on 21 September 2020 seeks to inform the six month review of Coronavirus legislation required by the Coronavirus Act 2020. It stated that there must be close assessment of the measures taken to provide education to children in detention and that they must be proportionate to the situation. It also states that solitary confinement of children breaches their basic human rights.

The report also states that Under the Civil Contingencies Act 2004 emergency regulations must be

(1) compatible with Convention rights within the meaning of the Human Rights Act 2000 and

(2) appropriate and proportionate to the emergency.

Government responses to Covid 19 in detention settings should receive particular scrutiny for human rights violations.

The UK government is also a signatory to other binding international charters which seek to promote basic rights such as the Charter of Fundamental Rights (CFR). This Charter came into force fully with the signing of the Lisbon Treaty in December 2009.

Article 14 CFR states that everyone has the right to education and to have access to vocational and continuing training. How YOIs are managing to implement this is certainly a matter of concern.

The Universal Declaration of Human Rights was signed by the UK in 1951 and it came into force in 1953. Article 26 states that, (1) everyone has the

right to education and (2) that education shall be directed to the full development of the human personality.

The UK is a signatory to the United Nations Convention the Rights of the Child (UNCRC) and it ratified the Convention in 1991 bringing it into full force in 1992. Article 28 of this convention recognises the right of the child to education.

The UK has agreed to be bound by international agreements to the provision of education for all its children regardless of their physical whereabouts. By removing access to education in the YOIs it could be said that the UK government is ignoring these obligations at the present time.

Article 24 of the Charter of Fundamental Rights states that children are entitled to ...'such care as is necessary for their well-being'.

Article 27 of the United Nations Convention the Rights of the Child guarantees the child the right to 'a standard of living adequate for the child's physical, mental, spiritual, moral and social development'.

The conditions in YOIs as described in the reports above would suggest that these rights are not being met during the Coronavirus lockdown.

The impact of e-learning on students during lockdown

Covid-19 has led to the temporary closure of educational institutions across the world. Globally, over 1.2 billion children are out of the classroom. As a result of the pandemic there has been a significant shift in the way education is now being delivered. There has been a distinctive rise in the use of e-learning, whereby teaching is undertaken remotely and on digital platforms.

Benefits

- There is evidence that suggests learning online can be more effective than the traditional format of learning. Some research shows that on average, students retain 25-60% more material when learning online compared to only 8-10% in a classroom. This is mostly due to the students being able to learn faster online; e-learning requires 40-60% less time to learn than in a traditional classroom setting because students can learn at their own pace, going back and re-reading, skipping, or accelerating through concepts as they choose.

Challenges:

- Some students who don't have access to technology or internet struggle to participate in digital learning; this gap is seen across countries and between income brackets within countries. For example, whilst 95% of students in Switzerland, Norway, and

Austria have a computer to use for their schoolwork, only 34% in Indonesia do, according to OECD data.

- In the US, there is a significant gap between those from privileged and disadvantaged backgrounds: whilst virtually all 15-year-olds from a privileged background said they had a computer to work on, nearly 25% of those from disadvantaged backgrounds did not. While some schools and governments have been providing digital equipment to students in need, such as in New South Wales, Australia, many are still concerned that the pandemic will widen the digital divide.
- The effectiveness of online learning varies amongst age groups. The consensus on children, especially younger ones, is that a structured environment is required, because kids are more easily distracted.^[1]
- Children with little to no access to internet or technology (the resources required to participate in virtual learning) will fall behind in their education and are more likely to drop out of school.
- For some students, school meals make up the bulk of their daily meals. Thus, being out school means that they will be missing out on meals and this will consequently increase the number of malnutrition cases in children globally.

Although, the shift to e-learning does have its upside, the downside to this change far outweighs its benefits. As mentioned earlier, the shift to e-learning or virtual learning as a result of the pandemic has resulted in some children completely missing out on their education. According to World Bank, prior to the coronavirus outbreak students completed an average of 7.9 years of effective schooling throughout their school-age lives. However, following the crisis this figure is expected to drop to 7.3 years.

Therefore, meaning that school closures will result in a loss of 0.6 years of schooling.

Before the coronavirus outbreak, the world was already facing a learning poverty crisis, with 53% of children living in low and middle income countries struggling to read and write by the age of 10.^[2] Jaime Saavedra, World Bank Global Director for Education stated that “The effects being simulated show a potential substantial setback to the goal of halving the number of learning poor by 2030 unless drastic remedial action is taken. We were already living a learning crisis before the pandemic. With the spread of the coronavirus, the learning crisis will be even deeper – the baseline from which we need to accelerate and improve learning is now even more challenging.” Saavedra added, “Moreover, we were already living in a world where opportunities were highly unequal; now those disparities are more profound, as poorer children would have had fewer opportunities to maintain any engagement with the learning process.”^[3]

Anne Longfield, the Children's Commissioner for England, writing in the Yorkshire Post, observed that it took 200 years to ensure that the right to education was regarded as a basic right for all children in England. The goal being to take poor and underprivileged out of the workplace and into the classroom. ^[4] In England, it is only since 2013 that it has been made compulsory for all children of schooling age to be in education or training until they are adults, something that has still not been accomplished by other nations in the UK. Article 28 of the UN Convention on the Rights of the Child recognises the fundamental rights of all children to a primary and secondary education. However, around the world, an estimated 242 million children are currently not in education. Those most affected by the closures

of schools are from low-income families and underprivileged communities. This violates Article 2 of the UN Convention on Rights of the Child which requires that children are not discriminated against because of their background or circumstance. [\[5\]](#)

The impact of social distancing in schools

Despite the rising rate of infection of the corona virus some schools and universities have been allowed to open. In order to keep students and teachers safe, the social distancing measure is now being implemented in educational institutions.

Challenges

- It is difficult for children in early years to keep their distance from each other.
- The restrictions on class sizes means it is impossible to accommodate all children in every year group to attend school on a full-time basis. Most schools would need to double in size, double their staff and double their resources in order to provide a full-time education to all children.
- Requiring teenagers to remain apart from one another deprives them of opportunities to interact in ways that are a valuable part of their social and emotional development.
- For some children their only contact with people their own age will be at school. Children without siblings are likely to feel increasingly isolated and lonely. The longer such isolation continues, the greater the risk for feelings of anxiety and depression to arise which long

term, will impact on reintegration with peers and wider society when the time allows.^[6]

Adult education in prisons

Prison education has been recognised as a right by a number of international bodies. The United Nations' Basic Principles for the Treatment of Prisoners states that '[a]ll prisoners shall have the right to take part in cultural activities and education'.^[7] The Council of Europe similarly states that 'all prisoners shall have access to education'.^[8] Despite this, adult prison education in the United Kingdom has been restricted as a result of Covid-19.

Conflicting positions on the new approach

Ministry of Justice and HMPPS guidance emphasises the importance of safety measures to restrict normal prison activity; '[w]here certain activities can resume – such as social visits or education – we should expect them to do so with considerable restrictions and adaptations (including reduced capacity) in the interests of safety'.^[9] This approach is reflected in the 'Exceptional Delivery Model' (EDM), the framework for delivering prison education as national lockdown restrictions ease. For example, the 'reintroduction of classroom based education in the adult estate' occurs at Alert Level 2 out of the 5 tier alert system.^[10]

This restrictive approach has been criticised by Andrea Greer, the Deputy Principal of prison education at Weston College, a provider of the Prison Education Framework. Greer states that the lack of face-to-face teaching

‘disrupt[s] continuity and focus’, makes it difficult for some prisoners to ‘adapt to in-cell learning’ and results in some prisoners being distracted by noise in the prison.^[11] This is particularly important because Ministry of Justice research shows that prisoners who undertake education whilst in prison are significantly less likely to reoffend than those who do not.^[12] Similarly, the Prisoner Learning Alliance has criticised ‘the decision to remove education provider staff’ from prisons as being ‘flawed and short-sighted’.^[13]

However, such a move towards face to face teaching in prisons during the pandemic has been opposed by the University and College Union (UCU), a trade union for higher education staff. UCU describe the Ministry of Justice and HMPPS guidance as ‘fail[ing] to make any adjustments for the attendance or activities of prison education staff during the current lockdown’.^[14] This is because, as UCU note, there are variations between ‘individual prison sites to the EDM levels’, which has a direct impact on UCU members’ safety.^[15] In a letter to providers and HMPPS, UCU criticise the “‘business as usual’” approach taken by some providers and prison governors.^[16] This position is supported by Grahame Morris MP; he acknowledges that ‘some governors have tweaked their exceptional delivery models to permit classroom-based education, despite national guidance that says this must not happen while Covid threat levels remain high’.^[17] As such, he argues that ‘[w]orkers in our criminal justice system are being deprived of one of the most basic employment rights—the right to a safe workplace’.^[18] Therefore, despite guidance focussing on the implementation of safety measures, in practice, this is not being adhered to.

This statement coincides with the Education Committee announcing that a prison education enquiry will take place.^[19] The enquiry will look into the accessibility of suitable education for adults in prison, amongst other things.^[20] The results of this enquiry should be monitored in due course to see whether the way prison education has adapted to Covid-19 is evaluated.

Variability in teaching

The Prisoners Learning Alliance has pointed out that the ‘most significant difference between prison and community education is that prison learners have no internet access’.^[21] This puts prison learners at a significant disadvantage compared to those learning outside of prisons, as prisoners cannot adapt their teaching methods to accommodate remote learning as effectively. This is supported by evidence from the Chief Inspector of Prisons, Peter Clarke. It was found that ‘in all of his recent reports on short scrutiny visits...education provision across the prisons inspected was variable’.^[22] This is in contravention with the Council of Europe’s recommendation that ‘[e]ducation for prisoners should be like the education provided for similar age-groups in the outside world’.^[23]

However, attempts have been made to reduce this variability by prison education providers. For example, Weston College has uploaded the learning packs they have used to deliver remote teaching ‘to a shared portal so they can be accessed by other educators’.^[24] In addition, providers ‘share best practice’ during meetings with the Ministry of Justice and HMPPS.^[25] This collaboration may go some way towards ensuring that educational provision across different prisons is consistent.

Impact on international students in higher education

This section of the report will focus on international students in higher education institutions in the UK. Looking largely to the experience of Tier 4 students, this section will explore how the pandemic and its related lockdowns have impacted international students. These impacts issues such as online access and digital exclusion, visa-related issues, and pandemic-related financial hardship. The research thus far indicates that the UK government has taken positive steps and provided concessions to ensure that international students do not run afoul of their visa requirements because of Covid-19 related issues. However, international students still face challenges because of the lockdowns and travel restrictions.

To understand the actual impact of the pandemic and the lockdown, it is important to centre the discussion by focusing on the lived experiences of international students. A recent Migrants Rights Network report surveyed 124 international students from 24 countries.^[26] International students often look to support themselves by undertaking work alongside their studies. Unsurprisingly, 54 respondents indicated that they had jobs before the pandemic and subsequent lockdown. Approximately 76% of these students were either made redundant or otherwise lost their jobs, with a further 20% being furloughed.^[27] Making matters worse, Tier 4 students are not allowed recourse to public funds,^[28] meaning these students struggled for a safety net and turned to charities and food banks to feed themselves.^[29] Alarming, about 23% of the students indicated that they would have trouble paying their tuition fees, despite turning to already stretched families at home,^[30] and felt that their visas would thus be endangered.^[31]

The financial hardships and ongoing uncertainty had a negative impact on these students' mental health and on their education.

Visa concerns proved a recurring theme for international students. Tier 4 visas require that students be present in the UK for their studies, precluding distance learning. With various government restrictions on travel in and out of the country, international students feared running afoul of their visa requirements. Recognising this issue, the government relaxed rules and is currently allowing international students the option of distance learning.^[32] These concessions apply to both existing and new international students and will be in place through the 2020/21 academic year.^[33] However, relaxed rules on distance learning do not address other concerns or underlying issues. The Office for Students notes that a move to the online provision of education may not serve international students equally. Being in a different time zone makes connecting with staff more difficult and some students may simply lack online access in their home countries.^[34] Crucially, students facing financial hardships still do not have recourse to public funds and support. Those seeking to support themselves are still subject to the 20-hour weekly work limit, despite the limit being lifted for students working for NHS trusts in certain healthcare roles.^[35]

As evidenced above, the pandemic and subsequent government actions have placed more vulnerable groups at greater risk. Although some rules have been adapted or relaxed to fit the circumstances, other issues persist. Financial hardships created by the lockdown and lost jobs, as well as a lack of digital access have increased the burden on students. International students' educational rights have unquestionably been affected by the

pandemic and the government’s lockdown rules. Parliamentary scrutiny of these rules and their consequences is much needed.

^[1] <https://www.weforum.org/agenda/2020/04/coronavirus-education-global-covid19-online-digital-learning/>

^[2] <https://www.worldbank.org/en/topic/education/publication/simulating-potential-impacts-of-covid-19-school-closures-learning-outcomes-a-set-of-global-estimates>

^[3] <https://www.worldbank.org/en/news/press-release/2020/06/18/covid-19-could-lead-to-permanent-loss-in-learning-and-trillions-of-dollars-in-lost-earnings>

^[4] <https://www.yorkshirepost.co.uk/news/opinion/columnists/generation-will-suffer-if-our-schools-stay-shut-anne-longfield-2881694>

^[5] <https://www.childrenscommissioner.gov.uk/2020/06/15/how-the-covid-19-crisis-has-affected-childrens-right-to-an-education/#:~:text=Up%20to%208%20million%20children,result%20of%20the%20coronavirus%20crisis.&text=A%20report%20from%20the%20Insitute,are%20those%20from%20poorer%20families.>

^[6] <http://www.jaynelifetherapy.co.uk/blog/the-impact-of-social-distancing-in-schools/#:~:text=Children%20without%20siblings%20are%20likely,society%20when%20the%20time%20allows>

^[7] United Nations Basic Principles for the Treatment of Prisoners 1990, 6

^[8] Council of Europe Recommendations on Prison Education 1989, 1

^[9] Ministry of Justice and HMPS, ‘COVID-19: National Framework for Prison Regimes and Services’ (2020) 2

^[10] *ibid* 5

^[11] Yasemin Craggs Mersinoglu, ‘Locked-up and locked-down: how prison education has fared during Covid-19’ 2020 Feweek <https://feweek.co.uk/2020/07/06/locked-up-and-locked-down-how-prison-education-has-fared-during-covid-19/> accessed 9 December 2020

^[12] Ministry of Justice, ‘Justice Data Lab Re-offending Analysis: Prisoners Education Trust’ 2015

^[13] Prisoner Learning Alliance, ‘Written evidence from the Prisoner Learning Alliance (PLA) (COV0211)’ 2020 <https://committees.parliament.uk/writtenevidence/9236/pdf/> accessed 9 December 2020

^[14] University and College Union, “New national restrictions’ - UCU demands for prison educators” 2020 <https://www.ucu.org.uk/article/11118/New-national-restrictions---UCU-demands-for-prison-educators#letter> accessed 9 December 2020

^[15] *ibid*

^[16] *ibid*

^[17] HC Deb 17 November 2020, vol 684, col 55WH

^[18] *ibid*

^[19] UK Parliament, 'Education Committee launches prison education enquiry' 2020 <https://committees.parliament.uk/committee/203/education-committee/news/132726/education-committee-launches-prison-education-inquiry/> accessed 9 December 2020

^[20] *ibid*

^[21] (n 13) 2

^[22] Justice Committee, *Coronavirus (Covid-19): The impact on prisons* ' 2020 (HC 2020) para 12

^[23] (n 8) 2

^[24] (n 11)

^[25] *ibid*

^[26] 'The Effects of Covid-19 on Tier 4 International Students' (*Migrants' Rights Network and Unis Resist Border Controls*, August 2020) <<https://migrantsrights.org.uk/wp-content/uploads/2020/08/The-Effects-Of-Covid19-On-Tier-4-International-students-Report-Aug-2020.pdf>> accessed 9 December 2020

^[27] *ibid*

^[28] s115 Immigration and Asylum Act 1999

^[29] Judith Burns, 'International students turn to food banks in lockdown' (*BBC News*, 29 July 2020) <<https://www.bbc.co.uk/news/education-53552831>> accessed 9 December 2020

^[30] n26

^[31] n26

^[32] 'Covid-19: Guidance for Student sponsors, migrants and for Short-term students' (*Home Office*, 5 October 2020) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/922616/Tier_4_Guidance_-_Covid-19_response_05102020_FINAL.pdf> accessed 9 December 2020

^[33] *ibid*

^[34] 'Coronavirus Briefing Note – Note 4' (*Office for Students*, 21 May 2020) <<https://www.officeforstudents.org.uk/media/e67a899b-f482-46ae-8dbd-02b6dd18d582/coronavirus-briefing-note-supporting-international-students.pdf>> accessed 9 December 2020

^[35] n32

FURLOUGH

INTRODUCTION

What is the Coronavirus Job Retention Scheme?

The Coronavirus Job Retention Scheme (CJRS) is a furlough scheme introduced by the Chancellor of the Exchequer Rishi Sunak on 20 March 2020. Initially it aimed at providing subsidies to employers to pay the 80% of staff wages to employees unable to work because of the restrictive measures introduced by the government following the COVID-19 pandemic. With easement of the lockdown measures in July, the scheme allowed employees returning to work on a part-time basis to be still eligible to recover the money for the hours not worked; however, the employer was under the responsibility to pay the employment costs for the hours worked. Since August, employers were held responsible to also pay the National Insurance and pension contributions of the employees. In the months of September and October employers were additionally asked to pay respectively 10% and 20% of the hours not worked by the employees. On the 31st of October with the announcement of a second lockdown, the scheme, which was initially set to terminate, was extended until the end of November. A further extension until the 31 March 2021 has been announced on the 5 November 2020.^[1] Under the CJRS, employees cannot do any work for their employer for the hours in which they are recorded as being on furlough. For the purposes of the scheme, work is intended to include any performance of the employee that “makes money or provides services for their employer or any organisation linked or associated with their employer”. However, employees are still permitted to take part in

training, volunteer for another employer or organisation or work for another employer, if this is contractually allowed.^[2]

1. What is furlough fraud?

Furlough fraud occurs where an employer intentionally claims back wages under the CJRS for an employee who is actually working, or for hours/days when the employee is working. It would also include circumstances where an employer claim for a fictitious employee. Joanne Frew, head of employment at the DWF, has said that furlough fraud manifests in different forms from “a quick phone call of an employer asking for a worker on furlough to provide some assistance, to obliging the employee working as normal”. She continued to state that fraudulent claims are also situations where an employee in maternity leave or sickness absence has been forced to return to work in order for the employer to financially benefit from the scheme.^[3] Speaking to the Public Accounts Committee on the 7 March 2020, Jim Harra, the head of the HMRC, stated that between 5% to 10% of money distributed through the CJRS was likely to be addressed to fraudulent or mistaken claims. By reliance to other grants and benefits, such as the tax credit, the tax authority alleged that lost money would amount approximately to £3.5billion.^[4]

On 6 October 2020 the HMRC has arrested three people with suspicion of furlough fraud and it expects a high volume of claims of fraud, roughly around 27,000.^[5]

Who have been affected by the furlough fraud?

Employees are certainly those disproportionately affected by the scheme. Because of their weaker position in the bargaining power, employees do not have much say to the decision of the employer to matters concerning furlough. Furthermore, until recently the CJRS did not have a mechanism which allowed employees to report alleged abuse of furlough scheme on the part of their employers. Liz Gardiner CEO of Protect, a whistleblowing support body, told Sky News, the organisation received a high number of calls to its advice line on furlough fraud. She stated:

In this time of unprecedented change, when people are really worried about their jobs. It's a really difficult thing to stand up and say 'I think you're committing fraud and I'm going to report you'. [\[6\]](#)

Another Centre called WhistleblowersUK reported that one fifth of the calls received were from employees in the care sector. The CEO Georgina Halford-Hall told:

"I'm sure employers are in a very difficult situation not knowing when an invoice might be paid. But to put their employees, who are really dedicated to those people they have got to know in the community, in a position where they're having to choose between committing a criminal act, or not having a job, or not look after the old people they're caring for, it really is a disgrace, a national disgrace." [\[7\]](#)

In a survey conducted by the Trade Union Congress (TUC) In June 2020 between 3400 women who were pregnant or in maternity leave during the Covid 19 pandemic, a quarter said that they had experienced unfair treatment at work, which include being made redundant or not able to be

furloughed. TUC has invited the government to change the law to make it compulsory for employers to undertake individual written risk assessment when they have a female employee who is pregnant, has given birth in the past 6 months or is breastfeeding.^[8] The lack of clarity in the guideline has accentuated the risk of discrimination in the furlough scheme of pregnant women. Government guidance states that pregnant women are vulnerable. This has led some employers to send home promptly their pregnant employees on statutory sick pay or without pay at all, believing they need to be shielded and self-isolated.^[9]

In another survey held in June 2020 with 20000 furloughed employees across the United Kingdom, it emerged that 34% were asked by their employer to carry out their normal duties, despite their employers claiming back CJRS. Among these, 18% were asked to work for another company linked to their employer and 19% were asked to cover someone's job within the firm.^[10]

Here are some examples of people having been victim of the scheme, with no possibility to report the fraud or counterattack the abuse of powers of their employers.

Eloise is a senior manager working in financial services. The Chief executive sent an email to all directors saying that staff will be furloughed (this is around 30 people) despite the fact that all staff are working from home and that as the staff work mainly from sales commission which falls outside of the scheme. Eloise raised her concerns with the Chief Executive who threatened her with dismissal if she objected to the plan.^[11]

Mohammad was furloughed by his employer but was then asked to carry on working. When Mohammad refused to work as it went against the Government guidelines his employer threatened him with dismissal. A few days later Mohammad received a letter making him redundant as the company lacked the cash flow to pay his wages.^[12]

“Knowing that my company is fraudulently making us work while taking money from the government is really impacting my mental health. If I don’t work I lose my job and cannot pay my bills. If I report the company now, and the government stops paying my company, I might be the reason people don’t get paid”^[13]

“I’ve stayed firm and not completed the tasks for fear of not being eligible for the furlough scheme.”^[14]

“I could lose my job by not working. Colleagues could be complicit in fraud for continuing to work as they’ve been scared into doing”^[15]

Craig works for a small company where all the staff have been furloughed. He and other staff have been asked to carry on working for the company as “volunteers”, so the work will be unpaid. Craig has raised this as part of a group of concerned colleagues, but his managers have responded to say that such arrangements are legitimate and that they took legal advice.^[16]

Timothy works in the finance department of a small company. During his work organising the company accounts he notices that he and 5 other members of staff (including a director) have been placed on furlough leave.

All the staff on the scheme are still working for the company. Timothy raised his concerns with his line manager, the Finance Director. The response was to remove Timothy from the scheme, but the line manager refused to remove anyone else as he felt bodies such as HMRC would not have the resources to prosecute all those companies that breached the rules.^[17]

Mistakes happen and HMRC acknowledges this. Where an employer has overclaimed by mistake, he/she would not incur on any particular legal consequences, provided that they followed the HMRC guidelines to rectify such mistakes. Employers deliberately making fraudulent claims may be charged of the following offences: fraud by false representation under the Fraud Act 2006, false accounting, conspiracy to fraud, cheating to public revenue, money laundering. Furthermore, HMRC can recover the full amount of the over claimed amount through tax assessments.^[18]

Employees have been moved to the furlough scheme without a sophisticated process.^[19] Empirical evidence provided above, suggest that a considerable number of employers have breached s4 of the Equality Act and other employment rights.

During the Covid-19 pandemic several guidelines and announcements of the Government undermined the transparency and certainty of law. This has been vividly acknowledged by Barnett and Schofield.

“[the pandemic] has led to a situation where various iteration of the Guidance were released by the HMRC before they even had any legal power to administer the scheme”.

They went further to assert that the rules on furlough scheme did not only affect the employees, but also the employers, who were unfairly treated by the government. ^[20]The same position has been reiterated by Peter Cheese CEO of the CIPD:

“We welcome the Government’s changes in making JSS Open more flexible and significantly increasing its contribution to wage costs, while reducing the amount that employers have to contribute. However, the latest changes to the Job Support Scheme are very confusing for employers, given the new scheme is being introduced in ten days’ time, before the guidance on the now obsolete part-time Job Support Scheme had even been published. It is crucial that guidance for employers on the new scheme is available as soon as possible. Small firms in particular will struggle to get to grips with the details of the new scheme, while there will be real challenges for a business that has outlets throughout England or in the other nations under different tier restrictions and have to claim under both the JSS Open and JSS Closed. Longer-term Government needs to simplify its approach to wage subsidy support to create one clearly understandable national scheme that provides a base level of sufficient support for all worst hit firms with criteria restricting it to those most affected by the pandemic.”^[21]

A percentage of claims that may be classified as fraudulent could be attributable to the tardive publication of guidelines from the HMRC concerning the scheme. Indeed, following the statement of the HMRC in

relation to the 3.5 billion £ being distributed in fraudulent claims, a freedom of information request of the Press Association has found that £215.7 million of furlough money has been returned voluntarily by firms to HMRC, after having found they overclaimed by mistake.^[22]

Let us consider for instance the Finance Act 2020, under which the HMRC has the power to claw back furlough payments which were paid for businesses not entitled to such payments. The Act was promulgated only 22 July 2020, after 4 months from the establishment of the CJRS. The promulgation of the Act which applies retrospectively to claims of furlough goes against the principle of the rule of law, that predicts for a law which is accessible, clear, and prospective.

2. Is the UK Government accountable?

As also Frew has stated, a scheme such as the CJRS would take at least two years to be implemented; however, due to unprecedented times and the economic crisis stemming from the COVID-19 pandemic, the scheme has been brought up within 2 weeks.^[23] However, there has not been introduced any effective policing mechanism to supervise the legality of the scheme. HMRC paid the grants under the furlough scheme “swiftly”, with checks on the claim being only made at a later stage.

The HMRC has a “long-standing approach in tackling non-compliance”. They consider “the best way to tackle non-compliance is to prevent it happening in the first place, while cracking down on the minority who do break the rules.”

Did HMRC take such long-standing approach in the furlough scheme context?

NAO asserts that HMRC, having been aware of the high number of employers that would exploit the scheme, informed the Chancellor that they could not establish “strong preventive controls to minimise the risks”.^[24]

HMRC assessed the risk of fraud in both SEISS AND CJRS. They were aware of the high likelihood of the CJRC being abused: that is the reason why they limited the scheme to only taxpayers with current records. Whereas SEISS provided exhaustive safeguards (the grant to self-employed people was based on the existing tax return data), under the CJRS employers were responsible for informing employees about their furlough status and the payment of money. HMRC did not require the small employers to ask how much was being claimed for each employee as for the lack of resources in such unprecedented times. A significant factor that contributed to the risk of fraud is the reduction in the number of maximum days to validate CJRS claims: claims must be processed and assessed in 3 days, which is faster than the 22 days in Tax Credits and Child Benefits. HMRC did not initially have the power to undertake compliance work for grant schemes, as it happens with tax investigations. Given the small time, HMRC centred on the prioritisation of suspected cases of organised crime, where the potential recovery of money is more difficult than for opportunistic fraud committed by known taxpayers. The only preventive measures established were an honesty declaration in the online form, whistleblowing routes and other forms of intelligence and retrospective

investigation. HMRC set up an online fraud reporting form in addition to the telephone hotline. However, the hotline was not available for the duration of CJRS 1 because home-working restrictions meant staff could not take calls in a secure environment. Contacting employees retrospectively to check the payment was ruled out as it required resources to be invested and diverted from new claims. Publishing the name of employers said it would deter too many legitimate companies that would benefit from the scheme.^[25]

The tardive policing mechanism introduced to combat fraud constitute a violation of Article 4 of the European Convention of Human Rights (ECHR). The Strasbourg Court ruled in the cases of *C.N v United Kingdom* and *Silladin v France* that member states have to prosecute effectively any act aimed at “maintaining a person in a situation of slavery, servitude or forced or compulsory labour under Article 4 of the Convention.”^[26] States failing to provide a legislative and administrative framework prohibiting forced or compulsory work violate Article 4 of the Convention. The law on furlough has been changing so many times: employers cannot predict accurately what they are required and not required to do. This has led to chaos on the application and assessment of claims for furlough.

RECOMMENDATION

The publication of the record of employers on furlough scheme may constitute the most transparent and effective way of keeping both the HMRC and employers accountable. Not only employees would be able to know whether their employers are receiving aid from the HMRC, but also competitors and other stakeholders would be aware and could question the appropriateness of their conduct.^[27] Starting from December, the HMRC

will publish the details of employers making the claim under the extended CJRS scheme.^[28]

^[1] HM Revenue & Customs ‘Policy Paper: Extension of the Coronavirus Job Retention Scheme’ 5 November 2020

<https://www.gov.uk/government/publications/extension-to-the-coronavirus-job-retention-scheme/extension-of-the-coronavirus-job-retention-scheme>

^[2] HM Revenue & Customs ‘Policy Paper: Extension of the Coronavirus Job Retention Scheme’ 5 November 2020

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^[3] Elizabeth Howlett ‘What is furlough fraud and how can you avoid it?’ 12.11.2020

<https://www.peoplemanagement.co.uk/experts/advice/what-furlough-fraud-how-avoid-coronavirus-job-retention>

^[4] House of Commons Public Accounts Committee ‘Tackling the tax gap’ (No HC 650) 12.10.2020 [4] Emma Agyemang, Delphine Strauss ‘Furlough. Widespread reports of fraud and error worth an estimated £3.5 Billion.’

<https://www.ft.com/content/22f78e4a-8e24-4189-9983-3a1f95788340>

^[5] Delphine Strauss ‘Job support scheme fraudsters face HMRC crackdown’

<https://www.ft.com/content/dc2e87c4-cc79-469e-818a-775b38c159c7>

^[6] Jo Faragher ‘Hundreds report employers to HMRC over furlough fraud’

<https://www.personneltoday.com/hr/furlough-fraud/>

^[7] Jo Faragher ‘Hundreds report employers to HMRC over furlough fraud’

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^[8] Alan Jones ‘A quarter of pregnant women face discrimination during Covid-19 crisis’ 11 June 2020

<https://www.scotsman.com/lifestyle/quarter-pregnant-women-face-discrimination-during-covid-19-crisis-2880976>

^[9] Beverly Sunderland ‘Maternity leave and furlough: what options do HR have?’ 5 May 2020

<https://www.personneltoday.com/hr/maternity-leave-furlough-what-options-do-hr-have/>

^[10] 18 June 2020 <https://www.crosslandsolicitors.com/site/hr-hub/furlough-fraud-coronavirus-lockdown>

^[11] Andrew Pepper-Parsons ‘Whistle-blowers can stop new furlough fraud’

<https://protect-advice.org.uk/whistleblowers-act-to-stop-the-newest-form-of-furlough-fraud-2/>

^[12] Andrew Pepper-Parsons ‘Whistle-blowers can stop new furlough fraud’

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^[13] Sarah Butler ‘Nearly 800 reports of people defrauding UK furlough scheme’

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<https://www.nao.org.uk/wp-content/uploads/2020/07/Implementing-employment-support-schemes-in-response-to-the-COVID-19-pandemic.pdf>

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The impact of the Coronavirus Lockdown on Domestic violence

What is domestic violence?

Domestic violence is a major human rights issue, which disproportionately impacts women and their children. Domestic violence can deprive women of their physical and mental wellbeing, infringing on their basic human rights of personal autonomy and liberty, freedom from torture, inhumane and degrading treatment, the right to life and right to respect for private and family life. It is estimated that 1.6 million women and 786,000 men ^[ii] in the UK suffered some form of domestic violence during 2019.

The Istanbul Convention (Convention on Preventing and Combating Violence against Women and Domestic Violence), an EU treaty which the UK signed in 2012 and is still working to ratify (future applicability may be uncertain due to Brexit?), defines domestic violence as ‘acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim’ (Article 3(b))^[iii]. While there is currently no official legal definition of domestic violence in the UK, the anticipated Domestic Abuse Bill will

include a statutory definition, and the Bill is another step in the ratification of the Convention^[iii].

The impact of lockdown on domestic violence

With the coronavirus regulations and lockdown imposing further restrictions on civil liberties, including restrictions on movement and subsequent reduced access to support services, victims of domestic violence face even further risk of having their human rights violated. In light of this, it may be no surprise that the number of domestic violence cases and fatalities have risen exponentially during the UK lockdown period.

In the first 3 weeks of lockdown, from 23rd March to 12th April, 14 women and 2 children were killed due to domestic violence, a figure that Karen Ingala Smith, from Counting Dead Women, highlights is the highest amount in a three week period in the last 11 years^[iv], and more than double the average rate.

Metropolitan police reported that the number of calls concerning domestic violence had gone up by approximately a third and in the 6 weeks up to April 19th, more than 4,000 arrests were made for domestic violence offences^[v]. In May, The National Domestic Abuse helpline run by Refuge reported a 66% increase in calls to its helpline since the beginning of lockdown in March and in a single day, reported a 700% increase in visits to the helpline website.^[vi]

Domestic violence and protecting human rights during Covid-19: has the UK Government done enough?

The ECHR imposes a duty on the state to protect the human rights of domestic violence victims in more general terms, while the Istanbul Convention places obligations on the Government as to how they should respond specifically to violence against women, including domestic violence.

Article 2 of the ECHR, the right to life, imposes a positive duty on the state to protect against a real and immediate risk to life. This means that the state should act when there is a risk to life in domestic violence situations, including when the ‘authorities knew or ought to have known about the risk’ (*Opuz v Turkey*), and they should take appropriate measures which could reasonably have avoided the risk, such as proper investigation of domestic violence allegations and issuing protection/restraining orders (*Branko Tomasic and Others v Croatia*)^[vii].

Article 3 of the ECHR, the right to freedom from torture, inhuman and degrading treatment also imposes a positive duty on the state to protect against this type of treatment. The nature of domestic violence can amount to inhuman and degrading treatment, so authorities such as the police are required to take reasonable action when there is a risk of such treatment, that ‘they knew or ought to have known about’ (*Opuz v Turkey*)^[viii] in order to avoid the risk. There is a procedural duty on authorities, including the UK police, to properly investigate any incidence of torture, inhuman or degrading treatment, which was recently reinforced in the Supreme Court ruling in *Commissioner of Police of the Metropolis (Appellant) v DSD and another (Respondents)*.

Personal autonomy and liberty Article 5 Article 5 ECHR (Liberty and security) may also be impacted by being unable to leave the DV situation because of the restrictions resulting in reduced support??

The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 which came into force on the 26th March 2020 set out a number of limits to civil liberties ,including restrictions on leaving the house other than for essential reasons or ‘reasonable excuses’, and limits on socialising and social distancing. In terms of protecting domestic violence victim’s rights under Articles 2 and 3, the UK Government recognised leaving the place of residence ‘to avoid risk of injury or harm’ as a ‘reasonable excuse’ at S6 (6)(c), and therefore an exemption from the order to stay at home^[ix].

In theory, this suggests that domestic violence victims will be able to leave their home to access support in the same way as before the coronavirus restrictions. However, the restrictions have a wider impact on the availability and operation of services, including charities and shelters. The Governments response to Covid-19 has neglected the needs of domestic violence victims, leaving them with a lack of support, protection, and resources, ultimately risking the violation of their human rights.

This lack of protection is evident in the guidance on issuing injunctions under the regulation restrictions, when the majority of courts are closed. It is assumed that the victim has enough time away from their abuser to fill in an application form, provide a valid witness statement and attend a telephone hearing, a process which they may find difficult if they do not qualify for legal aid^[x], or even impossible if they have no access to technology. The inability to apply for these injunctions means the victim may face violation of their rights under Art. 2, 3 and 8 ECHR. There have been calls for the Government to offer an alternative route and unconditional legal aid to victims seeking an injunction to make sure justice is achieved and victims can be better protected^[xi].

UK Home Secretary Priti Patel introduced the #YouAreNotAlone campaign to highlight that support was still available for domestic violence victims. The shift by services to phone and online platforms and the lack of access to technology has also exacerbated the inequalities that BAME communities face in accessing domestic violence support, with Rosie Lewis of the Angelou Centre highlighting that 25% of the BAME women the centre supports don't have access to a phone, let alone a smart phone^[xiii]. This leaves already vulnerable women facing a further hurdle to access support and information.

Women's Aid found that despite trying to adapt to the governments measures, 88.4% (38 out of 45) of support services and more than one third (12 out of 33) of the refuge services that responded to their survey have been forced to withdraw or reduce the support they offer due to Covid-19, with outreach and drop in services most effected. The survey highlighted a number of reasons including reduced staff numbers due to the need to social distance, issues with remote working and staff access to laptops, and a reduced number of referrals being accepted due to safety concerns as current residents were self-isolating^[xiii].

As illustrated by the Women's Aid survey, refuges are also being forced to reduce their support due to the restrictions. With shelters facing increasing funding cuts every year, they were struggling to meet the needs of victims even before the pandemic and the number of refuge bed spaces already fell 30% short of the standards expected by the Council of Europe^[xiv]. Refuge spaces designated for women in marginalised groups are even more limited, as of May 2019 there were only 418 spaces dedicated to BAME women, 4 for women aged over 45, 12 for women with learning disabilities and not a single bed for deaf women^[xv]. On top of this, refuges have also needed to leave beds vacant in order to adhere to

Government social distancing/quarantine guidelines. Without a refuge to turn to, women are facing the choice of staying at home with their abuser, which risks their rights under Art 2 and 3, or homelessness, which also potentially infringes on Article 8 ECHR, the right to respect for private and family life.

The Government has been widely criticised for its initial response to the rise in domestic violence and pressure on support services during lockdown, initially proposing an emergency funding amount of £2m for the sector^[xvi], which was deemed inadequate to help protect victims.

The Government needs to provide more emergency funding support to charities, refuges and local authorities so that helplines can operate efficiently, and shelters can open and re-open more beds for victims and their children. Failing to address the lack of access to these services and therefore the ability of domestic violence victims to escape from dangerous, potentially life- threatening situations, amounts to infringing upon their human rights under Articles 2, 3 and 8 ECHR (And Art. 5?). These rights should be prioritised by the Government in order to fulfil their obligation under the Istanbul Convention which provides that ‘parties shall ensure that policies... place the rights of the victim at the heart of all measures’ (Art 7)(2) of the Istanbul Convention)^[xvii]. In May the Government announced a new £76m fund for the sector, with £10m towards emergency housing and safe accommodation services which is vital given the rise in domestic violence and lack of refuge spaces^[xviii].

There is also concern over the Government’s delay of the Domestic Abuse Bill which is supposed to provide better legal protection to victims of domestic violence, and the age discrimination within it (Art 14 ECHR might be relevant?). There is no plan to include a provision specifying more reliable data collection concerning the impact of domestic violence on

those over 74. This may result in over 74's being excluded from support services.

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- ^[iii] Home Office (2020) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/928764/CCS001_CCS1020331858-003_Istanbul_Convention_Progress_Report_E-Laying.pdf
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- ^[vi] Refuge (2020) <https://www.refuge.org.uk/refuge-sees-700-increase-in-website-visits/>
- ^[vii] https://www.echr.coe.int/Documents/Guide_Art_2_ENG.pdf
- ^[viii] British Institute of Human Rights <https://www.bihhr.org.uk/vaw>
- ^[ix] The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020
- ^[x] New Law Journal (2020) <https://www.newlawjournal.co.uk/content/covid-19-protecting-domestic-abuse-victims>
- ^[xi] National Centre for Domestic Violence <https://www.ncdv.org.uk/domestic-abuse-victims-need-unconditional-legal-aid-law-society/>
- ^[xii] The Oxford Human Rights Hub <https://ohrh.law.ox.ac.uk/wordpress/wp-content/uploads/2020/06/OxHRH-Submission-to-UNSR-on-Violence.pdf>
- ^[xiii] Women's Aid (2020) <https://1q7dqy2unor827bqjls0c4rn-wpengine.netdna-ssl.com/wp-content/uploads/2020/05/The-impact-of-Covid-19-on-domestic-abuse-support-services-1.pdf>
- ^[xiv] Bowcott and Grierson (2020) The Guardian <https://www.theguardian.com/society/2020/apr/28/refuges-from-domestic-violence-running-out-of-space-mps-hear>
- ^[xv] Women's Aid (2020) <https://www.womensaid.org.uk/wp-content/uploads/2020/01/The-Domestic-Abuse-Report-2020-The-Annual-Audit.pdf>

^[xvii] Home Office (2020) <https://www.gov.uk/government/publications/covid-19-home-office-extraordinary-funding-for-domestic-abuse-support-services>

^[xviii] Liberty (2020) http://www.libertyhumanrights.org.uk/wp-content/uploads/2020/02/Libertys-Response-to-the-Governments-Consultation-on-the-Domestic-Violence-and-Abuse-Bill-2018_4.pdf

^[xix] Refuge (2020) <https://www.refuge.org.uk/refuge-responds-to-government-announcement-of-a-76-million-fund-to-support-the-most-vulnerable/>

Universal Credit and the Coronavirus

With approximately 18% of the UK workforce facing reduced hours or redundancy due to the coronavirus restrictions, over 1.5m people submitted claims for Universal Credit during the UK Coronavirus lockdown. According to the DWP, the majority of these claims were made in mid-March, at the time the lockdown and social distance measures first came into force. Over 100,000 claims were made every day in the first two weeks after the lockdown was announced on 23 March 2020, this is more than 6 times the average amount for the same period pre-covid^[1].

Universal Credit claims are made predominantly via online systems and the digital divide is a significant barrier in allowing people to access the benefits and help they require during the pandemic. Many people, particularly those from poorer backgrounds, may not have reliable access to the internet, the resources to fill in the forms, or be able provide the valid evidence needed to make a claim. This is particularly true for the gypsy traveller communities, who are more likely to have a lack of documentation, literacy issues and access to information about entitlement to Universal Credit. On top of this, the Gypsy community's traditional sources of income will have been impacted by the restrictions and so access to benefits would be vital^[2].

Even with the financial struggles facing people during Covid, the standard 5 week timeframe until first payment still applied to Universal Credit claims. According to StepChange, a charity focusing on debt advice, 92% of it's clients reported that they had experienced financial hardship

due to this 5 week waiting time, with 65% of these clients stating that they had to either reduce or miss meals due to lack of money^[3]. In addition, the limit on entitlement to Universal Credit child tax credits for only the first two children remained in place. This means that larger families will likely suffer more financial hardship, both during the waiting period and even once payments start^[4].

To combat this 5 week waiting period, there has been the option, even pre-covid to take out advance loans from the DWP. Out of the new lockdown claimants, over 500,000 took out an advance loan. The issue with these loans is that they must be repaid from the benefit payments once they begin, at a rate of up to 25%, and this can put already financially vulnerable people at further risk of debt and instability. It may be unsurprising then that the Government have been criticised for not scrapping the 5 week waiting period or the 2 child cap, and the continuation of the advance loans, which some argue given the situation with Covid, should be provided as non-repayable grants^[5].

Without proper access to the right benefits, people are at risk of rights infringements and further socio-economic harm during the Covid crisis. This is particularly true for those living in poverty as they are already disadvantaged. Among poorer communities there is a higher rate of zero-hour contract work, less job security and a higher use of food banks. For instance, some households that already experienced fuel poverty pre-covid will struggle to pay increased electricity or gas bills that will result from greater use of heating, lighting, use of household appliances etc., as everyone is forced to spend more time indoors. As well as the health issues that can arise from long term exposure to a cold home environment for both adults and children, which may even amount to an infringement under Article 2, fuel poverty is also likely to have a wider impact^[6]...If only one

room can afford to be heated for few hours, children's education may face further disruption if it is too cold to continue with schoolwork. In the most serious circumstances, this may amount to an infringement on ECHR Article 2 Protocol 1 Right to an Education^[7].

The delays/ mistakes with benefits claims that have been seen with the huge increase in claimants during coronavirus can also lead to rent and council tax / mortgage arrears and ultimately the risk of homelessness^[8]. Shelter England highlights that failure to provide welfare/benefits, including housing, so as to allow family life to continue, may engage ECHR Article 8 Right to a private and family life^[9].

While Article 3, 6, 8, and 14 ECHR may all be relevant in certain cases, there is no ECHR provision specifically providing for the right to social security or housing. The right to adequate housing is recognised under the right to an adequate standard of living, provided for in the 1948 Universal Declaration of Human Rights, as well as Article 11 of the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR). ICESCR Article 11 provides for 'The right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions'. Article 9 ICESCR sets out the right to social security^[10].

Although these provisions require the signatory governments to take measures to adhere to them, the ICESCR includes no mechanism for individuals to submit complaints where their Government is not upholding their rights^[11]. In addition, the UK Government is not bound by the ICESCR, and it cannot be relied upon/enforced in domestic courts, as it has yet to fully ratify the provisions in UK domestic law^[12].

In an attempt to get homeless people off of the streets during lockdown, on 27 March, the Government launched the 'Everyone In' scheme, giving

councils extra funding to provide emergency shelter, including hotels and B&B's. The scheme helped to temporarily house around 5,400 people throughout the UK. In a study from UCL, Imperial College and Lancaster University, it is thought that the scheme helped to prevent 266 deaths in England alone. At the announcement of a second UK lockdown, the Government provided £15m extra funding for the areas seeing the highest levels of homelessness so that they could continue to provide emergency shelter. However, this second wave of funding has been criticised by charities such as Crisis as inadequate to meet demand when the threat from the virus is the same as during the first lockdown^[13]. In addition to the scheme, there was a pause in enforcement of evictions until 11 January 2021, unless there is evidence of anti-social behaviour or domestic abuse^[14].

While these measures may help to safeguard socio-economically vulnerable and homeless people from having their right to life, private and family life, adequate standard of living and social security rights infringed during the lockdown period, there are still issues with the Government's response.

Despite the government promising that all homeless individuals would be provided with accommodation under the 'Everyone In' scheme, there have been reports of up to 200 homeless people seeking shelter in Heathrow airport after struggling to secure emergency accommodation from local councils^[15]. In another case, a homeless migrant was left to sleep on a bus while he was suffering from Covid symptoms, with Tower Hamlets Council citing that his refused asylum application meant he was not eligible for any government help under the scheme (Article 14 ECHR?)^[16]. These situations are putting already vulnerable people at risk, not only are they

being cut off by support services that have been forced to close, they are also being put at risk of serious illness from Covid.

Particularly at the beginning on lockdown, there was an overzealous police response towards the homeless, with a number of people being fined for being outside, even though homeless people were excluded from the Coronavirus regulations^[17].

The Government needs to continue to provide emergency funding to councils and charities so that homeless and vulnerable people can continue to have adequate housing, something that should be maintained after the pandemic. The issues with Universal credit should also be prioritised, including equal access, reviews of the 5 week waiting period, advanced loans and removal of the 2-child cap considered.

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^[13] Booth, R. (2020) The Guardian <https://www.theguardian.com/society/2020/nov/06/charities-urge-return-of-homelessness-scheme-in-english-lockdown>

^[14] See 13.

^[15] BBC News (2020) <https://www.bbc.co.uk/news/uk-england-london-52151662>

^[16] Liberty (2020) <https://libertyinvestigates.org.uk/articles/homeless-man-left-on-a-bus-with-covid-19/>.

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Restriction of Freedom for the Protection of Public Security, Public Health and Public Tranquility in Nigeria

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Abstract

When covid-19 scuttled the peace of the world, most countries could not fathom the extent it would drag the world. Its presence stalled not just the economy but also the movement of the people worldwide and this became deleterious and threatened the wobbling economic advantages. International borders were shut down as the death toll reached alarming stages. In countries where the strain of the pandemic could be felt, national borders were closed even those yet to feel its pang also shut down their borders to international passengers. However, before some international borders could be shut, the pandemic had already crept into their territories. In Nigeria, an Italian had come on business trip, got an uber driver who took him to his destination at the Portland Cement factory in Ewekoro, Ogun State -a neighbouring state to Lagos where he had disembarked. He

reported the strange feelings in his body which were consistent with symptoms of covid-19. Consequently, he was quarantined and all those he came in contact with fetched out and put under watch. The cement factory was locked down. Subsequently, directives were issued both by the Federal and the state governments restraining the movement of the people. Both pedestrian and vehicular activities were halted as a general lock down was announced by the federal government. A legislation was hurriedly passed through the parliament to legalize the action of the government. This report examines the impact of the Covid-19 on the restrictive law as enacted by the government. What are the implications of the legislation on the public health and public tranquility? Finally, reports on its effectiveness and suggest solutions for future emergency situations.

Introduction

The research discusses the legal implication of the COVID-19 crisis in Nigeria. Nigeria recorded its first case of COVID-19 on 27 February 2020, when an Italian expatriate with Lafarge Cement Company in Ewekoro, Ogun State, who flew in from Milan, Italy to the International Airport, Lagos, Nigeria later tested positive. Since then, Nigeria has recorded an increase in the number of infections, as well as fatalities. The rise in the number of infected persons led the Federal Government of Nigeria to promulgate new regulatory measures such as the (National) Infectious Diseases (Emergency Prevention) Regulations 2020 in addition to existing federal statutes, e.g., Quarantine Act 1963,⁵³⁴ to curb the spread of COVID-19. State Governors followed suit with laws such as the Lagos State Infectious Diseases (Emergency Prevention) Regulations 2020. The Government of other states such as Rivers, Kaduna, Kano, and Ekiti made similar regulations initiating full or partial lockdown and put in measures

⁵³⁴ Cap. Q2 Laws of the Federation of Nigeria (LFN) 2004 (“Quarantine Act”).

to curtail the spread of the virus. It is note worthy that Ogun State government did not enact any law to curb or control the spread of this disease in spite of its presence in the state which led to the closure of the multi-million Naira cement factory.

The extant data of covid 19 as at the time of this report

As at the 9th December 2020 when this report is being finalized, there were 3,903 active covid-19 cases. There were 822,231 samples tested as at that day; there were 70,195 confirmed cases; 65,110 discharged cases and 1,182 confirmed deaths in the whole 36 states of Nigeria and the Federal Capital Territory, Abuja.⁵³⁵ On 8th December 2020, 550 new confirmed cases and 1 death was recorded in the country. The new 550 cases were reported from 17 states; these states include Lagos (219), FCT (168), Kaduna (52), Kwara (19), Kano (15), Rivers (15), Sokoto (10), Enugu (9), Gombe (8), Plateau (7), Osun (7), Anambra (5), Oyo (5), Jigawa (4), Ogun (4), Bauchi (2) and Edo (1).⁵³⁶ Nigeria is 38.9 per cent on the Epidemic Preparedness Index of the World bank.⁵³⁷ This figure is assessed to be higher than the African and global averages.⁵³⁸

Public health, state's administrative authority and approach to its emergencies

Lagos State Infectious Diseases (Emergency Prevention) Regulations 2020

Lagos State is the commercial city of Nigeria. Most international arrivals occur in Lagos and Abuja which is the Federal Capital Territory (FCT).

⁵³⁵ Federal Government of Nigeria. 'Covid-19 Nigeria'. <www.covid19.ncdc.gov.ng> accessed 9 December 2020.

⁵³⁶ *Ibid.*

⁵³⁷ Zeufack, Albert G.; Calderon, Cesar; Kambou, Gerard; Djiofack, Calvin Z.; Kubota, Megumi; Korman, Vijdan; Cantu Canales, Catalina. 2020. "Africa's Pulse, No. 21" (April), World Bank, Washington, DC. Doi: 10.1596/978-1-4648-1568-3. Accessed from <<https://openknowledge.worldbank.org/bitstream/handle/10986/33541/9781464815683.pdf?sequence=18>> on 9 December 2020.

⁵³⁸ Chatham House. 'Nigeria's Political Leaders Need to Win Trust to Tackle COVID-19' <<https://www.chathamhouse.org/2020/04/nigerias-political-leaders-need-win-trust-tackle-covid-19>> accessed 9 December 2020.

The position of Lagos State is therefore significant when it comes to the assessment of covid-19 impact on the ingress, egress and economic situation in Nigeria. The Lagos State Infectious Diseases (Emergency Prevention) Regulations 2020 which aims at preventing further spread of the virus within the state was made pursuant to the Lagos State Public Health Law, and Section 8 of the Quarantine Act 1963. The Regulations gives the Governor powers to take certain measures geared towards preventing and containing the spread of COVID-19, saving lives, reducing ill health, and ensuring that the economy of the state is not weakened because of the pandemic. Other specific aspects of the Regulation include the following:

Declaration of Dangerous Infectious Disease and Local Areas

In line with the provisions of the Lagos State Infectious Diseases (Emergency Prevention) Regulations 2020, COVID-19 has been declared as a dangerous infectious disease which constitutes a serious and imminent threat to the public health of the people. This suggests that citizens must take proactive steps to ensuring that they do not take actions that will imperil them or their neighbours. The spread of the disease can only be contained upon awareness of its deleterious effect on the health of an individual and the community.

Power Over Potentially Infectious Persons

The Governor is empowered under Regulation 6 to direct any potentially infectious person within a Local Area to go to a place specified for screening and assessment. He is also empowered to direct the removal of or command any potentially infectious person to go into isolation. The Regulations also apply to a potentially infectious person who is a child. It is under this Regulation that Isolation Centers are established where

persons undergoing treatment for the recovery from the covid-19 attack are treated.

Restriction of Movement/Social and Religious Gatherings

The Regulations allow the Governor to restrict movement of residents within, into or out of the Local Area, except for transportation or movement of essential supplies such as food, water and pharmaceutical products, and the movement for the purpose of procuring these essential supplies. The Governor is also empowered to restrict or prohibit the gathering of persons in the Local Area such as conferences, meetings, religious services, event centers and bars among others. It is important to mention that the Governor had earlier banned religious or social gatherings of twenty-five (25) people or more towards the containment of the COVID-19 pandemic prior to the commencement of the Regulations. This action has been ratified by paragraph 1(2) of the Regulations.

Trade and Commercial Activities

The Regulations also empower the Governor to restrict the conduct of trade, business and commercial activities within the Local Area for such period as he deems necessary. Note however that this power of restriction does not affect the conduct of trade or business relating to essential supplies. Under this rule, lots of businesses were locked down except essential ones like grocery shops, etc.

Transportation and Disposal of the Remains of Persons Infected with Covid-19

In relation to the death of an infected person, the Governor has the power to determine how the remains of the person will be transported and disposed of. He may also order that the remains be cremated in line with the provisions of the Lagos State Cremation Law 2015. From the wordings of the Regulations, it appears that the power of the Governor will override

the deceased person's faith and burial wishes, whether as a Muslim, Christian or otherwise.

Offences

Any person who fails to comply with the directives under the Regulations or fails to comply with a restriction, prohibition or does anything contrary to the Regulations may be liable to an imposition of a fine, imprisonment or to both.

Laws protecting fundamental freedoms

- a. The question we asked ourselves is this: whether if the Governor can wield all these powers, what happens to the constitutional rights of freedom of movement and religion of Nigerians? True as it is, the Nigerian Constitution 1999 guarantees freedom of movement, religion and association.⁵³⁹ However, these rights are not absolute and there may be a derogation from them in the interest of public safety or public health, just as is currently being experienced with the COVID-19 pandemic. To buttress this fact, we refer to section 45 of the Constitution. The section provides that any law that curtails a guaranteed right will not be invalidated if such a law is reasonably justifiable in a democratic society in the interest of public safety or public health. It is therefore plausible to argue that COVID-19 affects public health and safety.

It is considering this constitutionally permissible derogation that the Quarantine Act, for instance, was enacted. The Quarantine Act empowers the President or the Governor to issue regulations for the safety and protection of Nigerians. Section 4 of the Quarantine Act gives the President the power to make regulations to, among others, prescribe the steps to be

⁵³⁹ Federal Republic of Nigeria. Constitution of the Federal Republic of Nigeria, 1999.

taken within Nigeria where there is any dangerous infectious disease and take steps towards preventing the transmission of the disease.

One may ask, what about the issue of Quarantine? Isn't that an item that only the Federal Government has the power to legislate on? Although Quarantine is an item under the Exclusive Legislative List under the amended Constitution of the Federal Republic of Nigeria 1999 (which only the Federal Government may legislate upon). This power has been delegated to the State Governors by virtue of Section 8 of the Quarantine Act. The section provides thus:

If and to the extent that any declaration under section 2 or 3 of this Act has not been made, and to the extent that regulations under section 4 of this Act have not been made by the President, power to make any such declaration and to make such regulations may be exercised in respect of a State, by the Governor thereof as fully as such power may be exercised by the President, and subject to the same conditions and limitations.

- b. It appears the Governor of Lagos has made the Regulations in line with the provisions of Section 8 of the Quarantine Act, among other laws empowering him to do so, because of the fact the Federal Government has yet to make any declarations in this regard despite the spike in the number of confirmed cases of COVID-19 in Nigeria.

Conditions under which the President is empowered to use his executive powers to restrict movement

The Constitution of the Federal Republic of Nigeria 1999 (as amended) provides for the power of the President to declare an emergency, where there is imminent danger or disaster or natural calamity affecting a community, or any other public danger constituting a threat to the country. A public health emergency of COVID-19 proportions would

arguably be considered an imminent danger. Declaration of an emergency in this case would require the passing of a resolution by the National Assembly after the President's proclamation; otherwise, such a proclamation would expire in 10 days. However, the President chose a different vehicle to impose restrictions. Instead of passing a proclamation of emergency, which would have required the input of the National Assembly, he issued regulations under the Quarantine Act, a 1926 Law which allows the President to declare a place within the country an "infected local area."

Emergency Legal Response to COVID-19

President Muhammadu Buhari called upon his emergency powers under the extant Infectious Diseases Law – the [Quarantine Act](#). The Act gives the President sweeping powers towards "preventing the introduction into and spread in Nigeria, and the transmission from Nigeria, of dangerous infectious diseases" and to make regulations for associated purposes. The President in pursuance of the Act issued the first Regulation (COVID-19 Regulations 2020) which declared COVID-19 a "dangerous infectious disease" and made lockdown orders in Lagos, Abuja and Ogun states. The constitutionality of the act of the President has generated legal controversy. Questions have been raised regarding the difference between the emergency powers under the Quarantine Act and those provided in section 305 of the Constitution. It is apposite to state that both powers are different. A state of emergency is a unique process as established by the Constitution and this is different from the use of emergency powers as is the case with the making of the Regulations pursuant to the Quarantine Act. In the former, there is the need for legislative approval while the latter is a purely executive function.

The Regulation issued by the President in pursuance of the Quarantine Act effectively suspended several rights. For example, it stipulates that inter and intra state movements in the concerned areas were prohibited for an initial period of 14 days and security agencies were instructed to strictly enforce the lockdown order. Citizens of the affected regions were to stay at home to “identify, trace and isolate” infected persons. Certain groups of persons were exempted including people on essential duties such as medical workers and journalists. While the seaports were to remain operational, the airports were to be shut.

Finally, the Regulations recognized the pains and sufferings of the people in satellite and commuter towns and therefore made provision for relief materials. After the 14 days tenure of the first Regulation, another Regulation was made further extending the order for another 14 days. All the states with confirmed cases also made various lockdown orders similar to that of the federal government. Several lockdown orders and directives were issued by the governments across various states in addition to the Federal Regulations issued by the President. Law enforcement agents, such as the Police and Army were given the task of implementing the orders, directives, and regulations and were empowered to take steps to ensure that citizens respect the restriction of movement. However, most of the orders neither provided the procedure for enforcement nor contained specific actions to be taken by law enforcement officers to implement them. This led to several cases of human rights abuses and infringements, as persons who were found violating the lockdown orders were mostly treated according to the whims of particular security personnel or the government. Many were killed, many were arrested and kept in congested cells while many were made to pay a fine or engage in community service before they could be released. As of 14 April 2020, the National Human Rights

Commission in its COVID-19 Report on Incidents of Violation of Human Rights stated that it had received 105 complaints on violation of human rights during the lockdown period from 24 out of 36 Nigerian states. The report also stated that law enforcement agents have extra-judicially executed 18 persons while enforcing the regulation at a time when the dreaded COVID-19 had killed only 11 persons. The report further showed that out of the 18 deaths, the Correctional Service was responsible for 8 deaths; the Police was responsible for 7 deaths; the Army was responsible for 2 deaths while a State Task Force on COVID-19 was responsible for 1 death. Other forms of human rights violations recorded within the period include torture, inhumane and degrading treatment, restriction of movement, unlawful arrest and detention, seizure/confiscation of properties, extortion, sexual/gender-based violence, and discrimination in the distribution of food items.

Brief critique of the CIDA 2020

From the foregoing, several issues arise for human rights and rule of law. This makes one question whether all the sacrifices are indeed worthy for public health. Besides, the restrictions no doubt have caused untold hardship on the common Nigerian and that may probably be a reason why they are gradually being lifted despite the upsurge in confirmed cases. From a human rights perspective, several issues are noteworthy. First, the Regulations have impacted upon the right to life in that security agents enforcing the orders have used this to carry out extra-judicial killings. Second, the right to human dignity has also been affected by the series of unjustified punishments inflicted on people who violate lockdown orders by security forces. Besides, the lockdown has led to a sharp increase in cases of domestic violence across the country. Third, access to justice is also impacted as the courts were indefinitely closed. This is indeed a huge

challenge considering the already longstanding problem of overloaded courts and delays in determination of cases. While measures are being put in place to resume court sittings virtually, it is unlikely that significant progress can be made in view of the gross shortage of infrastructure. Fourth, the COVID-19 Regulations significantly affected freedom of religion since people were restricted from gathering for religious purposes. This is overly critical in that most religious faiths in Nigeria worship by gathering. The violation of human rights especially by security agencies has led to renewed calls by Amnesty International for the government agencies to “adopt a right respecting approach and give clear instructions to security agencies not to abuse their powers”.

Perhaps the most impacted human right is the right to movement which obstructs people’s sustenance. As rightly noted, most people in the affected regions where lockdown orders are in force “live on daily income with no savings to act as a financial buffer during the lockdown”. Staying at home will no doubt cause significant hardship and hunger. Although the President promised support such as the distribution of foodstuffs and other items, such cannot be effective considering Nigeria’s size and its population. Indeed, as was reported, only a small fraction of the targeted beneficiaries confirmed receiving any palliatives. Besides, the distribution of these relief materials has been enmeshed in controversy.

Questions have arisen regarding the integrity of the process as a whole and the selection of beneficiaries specifically. Identification of beneficiaries for relief also raises its own unique human rights issues since it involves data mining. The Minister of Communications was reported to have said that “the poorest of the poor in the country were identified and offered supports through the SIM registration data mined by the ministry”. This is a gross violation of the right to privacy and data protection in a country without a

data protection legislation in place. Indeed, while the Nigerian Constitution provides for the right to privacy in section 37, the right to data protection can only be implicitly read into the said section.

How effective is the law on restriction of movement? We shall examine the effect of the regulations on the following sub-headings: public tranquility, public health, and public security.⁵⁴⁰

Public Tranquility

The enactment and implementation of the Regulations by the Governor are a welcome development and will go a long way towards preventing the COVID-19 virus from spreading further. Failure to identify, isolate and treat infected persons has an irreparable impact on public health facilities and it is imperative that this is prevented from happening as much as possible. On the other hand, several punitive measures were taken by Governors of the various states. For instance, Lagos State Government shut hotel and club houses for contravening COVID-19 guidelines. Bayelsa State shut six churches for flouting COVID-19 Directive. Moreover, people were confined to their houses. Businesses were on hold as the prices of transportation were hiked, food and basic commodities could not be transported from one state to another, which made the prices of food very high in the market and some essential food items were totally scarce. Imported foods could not be brought into the country. Even bus drivers were given a certain number of people to carry at a time which hiked transportation prices.

Public health

⁵⁴⁰ Jamaz. Covid-19: During Self Isolation, I Turned Back Visitors During Sallah – Oyo Commissioner, *Inside Oyo*. (13 August 2020) <<https://www.insideoyo.com/covid-19-during-self-isolation-i-turned-back-visitors-during-sallah-oyo-commissioner/>> accessed 13 August 2020.

Prior to COVID-19, healthcare institutions were already overburdened with many ailments given poor medical supplies, shortage of medical workers and poor infrastructure. Infectious disease outbreaks of large magnitude such as COVID-19, need special attention beyond the routine in terms of resources and procedures, as they have tendency to significantly impact the nation's economy and health system. These impacts are usually more felt at the community level where the existing health resources are usually limited. Beyond the shortage of personal protective equipment (PPE), health workers also face high risks and challenges. Being always at the front line to take care of the numerous COVID-19 patients increases the exposure of health workers to the deadly infection. Thus, to have a fighting chance against COVID-19 requires intensive care, adequate funding for the healthcare sector, incentives for health workers and health care subsidies for the most vulnerable people. Another problem is that a large section of the Nigerian population still believe that COVID-19 is not real hence they flagrantly disregarded covid-19 precautionary measures like the ban on interstate travels. Overall, public health also suffered as doctors, nurses and paramedics reportedly abandoned their duty posts at various government hospitals due to fear of contracting the virus for lack of necessary protective gears and poor remuneration. According to the *Punch Newspaper*:

A survivor of the COVID-19 pandemic in Lagos State has asked the government to pay more attention to the welfare of Corona virus patients being isolated at the Infectious Disease Hospital, YABA'. She said that the doctor and nurses complained that they ran out of personal protective equipment and hence could not endanger their lives.⁵⁴¹

⁵⁴¹ Samson Folarin 'Lagos Doctors, nurses always abandon Isolation Centre patient'.

Moreover, the hospitals did not attend to other patients with other illness apart from Covid-19 patients. Citizens were left to attend to their own personal sicknesses, and which resulted in some people's deaths. Government did not make adequate arrangements for citizens with other health issues. Also, the supposed created Isolation Centers were funny as isolated individuals engaged in musical jamborees which underscored the seriousness of the pandemic. Using Events Hall which in the long run will still serve as a place of social gathering was totally uncalled for and could easily exacerbate the extent of the disease.

Public Security

While the legal response such as a lockdown was critical for COVID-19 containment, it undermined the economic and social foundations for survival and the resilience structures of Nigeria's most vulnerable population as many were temporarily and permanently put into unemployment, which further exposed them to the "hunger-virus." Lockdown-induced poverty and unemployment might, therefore, trigger an increase in other social problems, including general insecurity, kidnapping, and gender-based violence. Public security, during the lock down was mostly affected. Citizens who could not afford the basic needs of life began to break into people's houses at night to steal while there was a limit to what the police force could do as they were also in charge of ensuring everyone stayed indoors. They were literally overwhelmed by the situation the police found themselves. Citizens began to serve as night guards by themselves to ensure their families and communities were safe.

While these were ongoing, lorry loads of suspected insurgents from the Northern part of Nigeria being distributed to very part of the Eastern and Southwest Nigeria were intercepted by the people. This has created serious insecurity in those parts of the country as killing alluded to these insurgents

even during the lockdown continued unabated and un-checked by the federal security forces.

Also, the security checkpoints deployed by the Nigeria Police force personnel as a primary measure to ensure adherence to COVID-19 preventive measures literally became extortion centres. Reports from across the country all suggest that police officers and army personnel seriously undermined efforts to prevent the movement of people across the state boundaries by demanding bribes from those desirous of moving around

Conclusions and Recommendations

The response to COVID-19 presents a dilemma involving a consideration of the trade-offs between public health interventions and socio-economic consequences. The economy can be reactivated through sound economic stimuli, and recovery policies, but the inadequate support to the healthcare system, lack of incentives and safety net to the most affected in terms of reduced health-care cost has resulted in great social disequilibrium. Hence, improved transparency in implementation of COVID-19 measures and national support for subnational (state) governments would greatly help to cushion the impact of Covid-19 on public health, public security, and public tranquility.

The Government should have provided for more facilities to attend to the health of citizens irrespective of whatever virus was in town. Every citizen who came for treatment were lumped together as Covid-19 patients irrespective of their ailment. The government should have provided other forms of treatment. For example, E-health (an online health facility could have done the magic). Citizens could lodge their complaints online and a doctor might be assigned to visit them and attend to them instead of citizens

dying. However, this is not realistic due to the erratic power supply and absence of both institutional, infrastructural, and regulatory support.

The Police should have been assigned to every community, especially at night to ensure that the citizens are very safe not only in the day but also to ensure they all obey the rules of the government. And if the Police are overstretched other security agencies like Nigerian Civil Defence Corps, the various local vigilante and security outfits could be drafted in to support. It appears the government was overwhelmed by the whole situation in the country as wealthy people and politicians were majorly affected by the covid-19 pandemic. It killed more in the ranks of the government officials and politicians because they refused to follow the simple rules for the containment of the pandemic in Nigeria. Government should have provided other means to transport food into the country especially when there were private air-jets running errands for governments. The food shared by the government was not enough to go around and feed the citizens. Unfortunately, some government officials including state governors hoarded the covid-19 palliative materials. The truth was exposed during the October 20, 2020 #EndSars protest by the Nigerian youths. The warehouses where these items were locked up were looted and all the items became free for all distribution to the poor people. Some governors and legislators shamelessly told the press that they were waiting for their birthday celebration to distribute the palliative materials. These palliatives ought to have been timeously distributed to the people to cushion the effect of the pandemic on the population. The government before imposing a lockdown should have found solutions to these problems because many citizens went back to square one, many lost their jobs, families and even friends.

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Report for Croatia

**Economic consequences of the Coronavirus: Debt
Reconstruction and Bankruptcy of Companies**

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INTRODUCTION

Economic crisis caused by coronavirus is in many ways unprecedented global health and economic crisis. This crisis stroke Croatia in the same way as any other country in the world, however this crisis is not the first economic crisis of such scale that affected Croatia in its recent history. This small and newest EU Member State, which is built on a socialist legal legacy for years have been struggling with economic problems caused by war, economic transformation, suspicious privatisation and lastly wave of bankruptcies. Due to all that, Croatian economy is still rather fragile and non-resilient to big crisis.

In last five or six years there were clear indicators of economic recovery of Croatian economy.

And when Croatian economy finally saw „a light at the end of tunnel” new global economic crisis caused by the coronavirus hit the whole world. The fear that this global crisis may result with a new wave of bankruptcies became very realistic. This fear may not be fully understandable to outside observers, however it is not ungrounded or unfounded. It is based on past (and to some extent present) negative experiences that Croatia had in relation to bankruptcy proceedings. According to some estimations, since 1990’s thousands and thousands of jobs have been lost in Croatia. Billions and billions of Croatian Kunas have been wasted in ineffective and slow bankruptcy proceedings. So at the very beginning of the coronavirus crisis it was clear to everyone in the country that we must avoid mass bankruptcy scenario. The Government measures aimed at helping particularly small and medium undertakings became a primary and ultimate goal of the current Croatian government in dealing with economic crisis caused by COVID-19.

It that sense, in our research we will first shortly present economic consequences that Croatian economy has suffered because of ineffective past bankruptcy policies.

In second part of the paper we will present government measures aimed at supporting businesses in order to prevent wave of bankruptcies. In third part of our research we will give an overview of EU measures aimed at supporting Member State's economies in order to prevent bankruptcies and job losses. And lastly, in the conclusion we will provide personal observations on the efficiency of implemented measures and statistical data that show whether those measures were effective or not.

(FOUNDED OR UNFOUNDED) FEAR OF ECONOMIC CRISIS AND OF A NEW WAVE OF BANKRUPTCIES IN CROATIA

Modern Croatia was founded 30 years ago. It is a small European country with only 4 million inhabitants which from the moment when it was established, beared heavy burden: communist legal legacy, non-market model of economy, political and judicial nepotism and many other problems that are typical for all post-communist countries. However, many Croatians had a firm determination and clear picture of the future Croatia, and that future Croatia was: independent, modern and democratic mid-European country. The question was how to achieve that? Croatia fought for that goal slowly and persistently for years. In last thirty years it conducted unimaginable number of reforms. Almost all aspects of social and economic life were tackled by the reforms. However, economic and judicial reforms were probably the most important, difficult and complex. Simultaneously transforming from non-market to market economy, setting up institutions and conducting privatisation was a difficult task. Some of those reforms were more successful, some were less. However, reforms concerning bankruptcy proceedings fell in the latter category. Despite the fact that Croatia enacted modern Insolvency code in 1996 and despite the fact that this Insolvency code was modeled after very new and modern German Insolvency code at that time, insolvency policies and insolvency proceedings in

Croatia were slow and ineffective.⁵⁴² According to some estimations from 1998 to 2017, more than 14 000 bankruptcies were carried out in the Republic of Croatia and the value of assets of legal entities that ceased to exist through bankruptcy amounted to approximately 17,6 billion euros. Those bankruptcies were managed by around 250 bankruptcy trustees whose compensation over 17 years amounted to approximately 907 million euros. Meaning that each of these bankruptcy trustees earned an average of approximately 1,9 million euros by conducting bankruptcy proceedings.⁵⁴³ Many people lost their jobs as a result of ineffective bankruptcy proceedings which led to very low public trust in judicial system, particularly in relation to bankruptcy proceedings.

In order to improve efficiency of bankruptcy proceedings, the original version of the Bankruptcy Law from 1996 was amended seven times. In all those amendments the intention of the legislator was, in the procedural sense, to achieve functionalisation, acceleration and reduction of bankruptcy legal protection. However, it ultimately resulted in unexpected failures.⁵⁴⁴ One of the biggest problem was that bankruptcy proceedings were generally not initiated timely, despite the existence of bankruptcy reasons. Bankruptcy proceedings were initiated in accordance with the Bankruptcy Law in only a little over than 5 % insolvent legal entities.⁵⁴⁵ Moreover, most of previously mentioned problems also remained unsolved. Recognising all the shortcomings of the past bankruptcy legislation and practice, the legislator decided in 2015 to conduct new and complex reform of insolvency law. This time it decided

⁵⁴² Bodul, D., i Vuković, A. (2015). Another Reform of Bankruptcy Legislation – Functionalization of Bankruptcy Legal Protection or Placebo Effect, Proceedings of the Faculty of Law, University of Rijeka, 36(1), page 182. Downloaded: <https://hrcak.srce.hr/141199>, date of access: November 6, 2020.

⁵⁴³ Big Croatian bankruptcy fraud: how bankruptcy trustees earned 6.8 billion kuna on destroyed companies - <https://www.telegram.hr/politika-kriminal/velika-hrvatska-stecajna-prevara-kako-su-stecajni-upravitelji-zaradili68-milijardi-kuna-na-unistenim-firmama/>, date of access: November 6, 2020.

⁵⁴⁴ Bodul, D., Vuković, A., op. cit. 1, page 24.

⁵⁴⁵ Sajter, D., (2010). Bankruptcy restructuring procedure and practice in the Republic of Croatia, Proceedings of the Faculty of Law in Split, 47(3), page 742. Downloaded: <https://hrcak.srce.hr/59765>, date of access: November 23, 2020.

to pass completely new Bankruptcy Act. This new Act regulated pre-bankruptcy and bankruptcy proceedings. It aimed at introducing a more transparent procedure for appointing bankruptcy trustees and publishing their reports and in particular reducing the administrative role of the court and strengthening its judicial function.⁵⁴⁶ All those novelties brought some results. However, if we compare effectiveness of bankruptcy proceedings in Croatia and other EU countries it is obvious that we still don't have reasons for satisfaction.

For example, an average duration of bankruptcy proceedings in Croatia is 3,1 years. On the other hand, in Ireland bankruptcy can be carried out in an average duration of only 0,4 years and in neighboring Slovenia, with whom Croatia shares a common historical and legal heritage, lasts only 0.8 years.⁵⁴⁷ Also we should mention significant costs of the bankruptcy proceedings, which are settled from the assets of the bankruptcy debtor or from a special fund maintained by each court if the assets of the bankruptcy debtor are insufficient to cover the costs of the proceedings. In the structure of costs, a significant share is occupied by the costs of the bankruptcy trustees whose monthly fees average approximately 732 euros.⁷ High costs of bankruptcy proceedings are a big problem which lead to the absurd situation that bankruptcy proceedings become an end of businesses. That is indicated by the World Bank data according to which in Croatia the costs of individual bankruptcy proceedings amount to 14,5% of the value of the bankruptcy debtor's assets while in Slovenia the costs amount to 4% and in Norway a negligible 1% of the value of the bankruptcy debtor's assets.⁵⁴⁸ Considering the bankruptcy figures, it is necessary to look at the "success" of creditors in the collection of established claims within the

⁵⁴⁶ Ibid.

⁵⁴⁷ DOING BUSINESS, Svjetska banka, <https://www.doingbusiness.org/en/data/exploretopics/resolvinginsolvency>, date of access: November 23, 2020. ⁷ Ibid., page 305.

⁵⁴⁸ DOING BUSINESS, World Bank, <https://www.doingbusiness.org/en/data/exploretopics/resolving-insolvency>, date of access: November 23, 2020.

bankruptcy proceedings. It is a devastating fact that creditors manage to collect only 35 cents from an insolvent debtor at the end of a 1 euro bankruptcy claim, while in Norway the collectibility is as high as 93 cents from a 1 euro claim.⁵⁴⁹ The fact that there is room for improvement is also shown by the fact that the World Bank ranked Croatia 63rd in the Doing Business ranking in terms of the success of resolving insolvency proceedings, while Finland, the USA and Japan stand out as the most successful countries.⁵⁵⁰

In light of all those data it is clear that a new wave of bankruptcies presents a serious threat for Croatian economy and society in general.

Consequently, the implementation of bankruptcies in the conditions of the COVID-19 pandemic should be prevented by prudent and responsible measures of the Government of the Republic of Croatia. Otherwise, due to the number entrepreneurs affected by the crisis caused by COVID-19 pandemic, we may face a situation where consequences of an economic crisis after pandemic may be worse than the pandemic itself.

NATIONAL MEASURES FOR PRESERVING JOBS AND PREVENTING BANKRUPTCIES

In early 2020, COVID-19 pandemic hit the European soil, firstly striking Italy and Spain and than it spread across European continent. On February 26th Croatia had it's first positive patient. Soon after, on March 11th, World Health Organization (hereinafter: WHO) declared a pandemic and urged countries around the world to

⁵⁴⁹ DOING BUSINESS, World Bank, <https://www.doingbusiness.org/en/data/exploretopics/resolving-insolvency> , date of access: November 23, 2020.

⁵⁵⁰ DOING BUSINESS, World Bank, <https://www.doingbusiness.org/en/data/exploretopics/resolving-insolvency> , date of access: November 23, 2020.

put in place measures to reduce the number of newly infected people.⁵⁵¹ The Government of the Republic of Croatia immediately acted on the orders of the WHO and on the March 11th passed the Decision on declaring an epidemic of the COVID19 caused by the novel SARS-CoV-2. Since then, the Ministry of Health and the Civil Protection Headquarters have issued a series of recommendations to the citizens of Croatia in order to reduce the incidence of coronavirus. As the recommendations did not have an impact, and the number of newly infected people in the Republic of Croatia grew, the Civil Protection Headquarters on March 19th issued a Decision on measures to restrict social gatherings, work in trade, services and sports and cultural events. In other words, the Civil Protection Headquarters ordered a complete lockdown in Croatia. Economy of the whole country was put on a standstill as businesses in trade, catering and service activities were suspended.

The lockdown in Croatia lasted until the beginning of May when the decisions were suspended, meaning reopening of catering facilities, sports and cultural events continued to operate under controlled conditions, and schools and colleges ended the school/academic year online. In order to deal with the pandemic, the Government of the Republic of Croatia adopted two large groups of measures - health and economic measures. The latter could be divided into two subgroups - for the preservation of jobs and liquidity of companies, while health measures were aimed at preserving human health.

The Government's goal was to enable companies whose operations were hampered or disabled during the coronavirus crisis to maintain their liquidity and market competitiveness in order to avoid a wave of bankruptcies due to inability to operate on a regular basis.

⁵⁵¹ World Health Organization Declares COVID-19 a 'Pandemic.' Here's What That Means, <https://time.com/5791661/who-coronavirus-pandemic-declaration/>, date of access: November 13, 2020.

Further in the paper, we will present main measures undertaken by the Croatian Government in order to help sustainability of Croatian economy and its efforts to prevent bankruptcies. Firstly, the Act on Intervention Measures in Distraint and Bankruptcy Proceedings for the duration of special circumstances⁵⁵², which started to apply on the May 1st. Then we will present other economic measures, measures of Croatian Bank for Reconstruction and Development, Croatian Agency for Small Business, Inovation and Investment, Financial Agency and Croatian Employment Service.

Act on Intervention Measures in Distraint and Bankruptcy Proceedings for the duration of special circumstances

The Act on Intervention Measures in Distraint and Bankruptcy Proceedings (hereinafter: the Act) was one of main legislative tool to combat economic consequences of COVID-19 pandemic. It was passed for the limited period of time during the duration of special circumstances. The Act prescribes intervention measures in distraint and bankruptcy proceedings during special circumstances caused by coronavirus.⁵⁵³

The Act is very short, consisting of only eleven articles which prescribe intervention measures in distraint and bankruptcy proceedings during the duration of special circumstances caused by the COVID-19 pandemic. The Act in its provisions defines what these special circumstances are. More specifically, Article 2 states that special circumstances include an unforeseeable situation that endangers the life and health

⁵⁵² Law on Intervention Measures in Distraint and Bankruptcy Proceedings for the Duration of Special Circumstances, OJ 53/20.

⁵⁵³ Act on Intervention Measures in Distraint and Bankruptcy Proceedings for the duration of special circumstances was adopted during the duration of special circumstances, <https://www.teb.hr/novosti/2020/donesen-zakon-o-interventnim-mjerama-u-ovrsnim-i-stecajnim-postupcima-zavrijeme-trajanja-posebnih-okolnost>, date of access: November 13, 2020.

of citizens, property of greater value, significantly impairs the environment, impairs economic activity or causes significant damage.⁵⁵⁴ It further states that during the duration of special circumstances all distraint proceedings (with certain exceptions) will be suspended.⁵⁵⁵ Article 4 of the Act states that the implementation of distraint on salaries or other permanent cash incomes is suspended.

In its further provisions, the Act states that bankruptcy reasons that arose during the special circumstances are not a precondition for submitting a proposal to instigate bankruptcy proceedings and that default interest does not accrue during the special circumstances. Initially, the Act was supposed to be in force for limited period of time. It was ment to be in force for three months with possibility of extending it to another three month period. After the expiration of those deadlines, the Government of the Republic of Croatia passed the Decision on the extension of the duration of special circumstances until October 18th. Therefore, on October 19th the proceedings on suspended executions regularly continued.

Measures of the Croatian Employment Service

The Croatian Employment Service (hereinafter: CES) brought whole set of measures in order to preserve jobs in those business activities which were mostly affected by coronavirus. CES primarily goal of those measures was to boost employment and enable companies to continue to operate approximately wiht the same intensity as before the COVID-19 pandemic. In order to achive that goal, the Government

⁵⁵⁴ § 2. Act on Intervention Measures in Distraint and Bankruptcy Proceedings for the duration of special circumstances, OJ 53/20.

⁵⁵⁵ Exceptions are such that distraint proceedings are conducted to settle the claim of legal child support, other claims when distraint is carried out to settle future installments due, claims based on due but unpaid salaries, salary compensations or severance pay and if it is a matter of security measures from criminal of the proceedings, and exceptionally also states that, in addition to the stated reasons, the judge decides on a case-by-case basis on a caseby-case basis.

decided that CES will provide a financial support to all employees in Croatia who could not work because of lockdown. Accordingly, each employee in Croatia was entitled to a monthly remuneration in following amount: 3250 Croatian Kunas (approximately 433 euros) per worker for March, and 4000 Croatian Kunas (approximately 533 euros) for April and May.⁵⁵⁶

As the economy was reopening financial support was gradually decreasing. Since May 29th right to financial aid was granted only to those employees and undertakings who could prove that they had a drop of income of at least 50 %.⁵⁵⁷⁵⁵⁸ The amount of remuneration stayed the same – 4000 kunas (approximately 533 euros).

Statistical overview of measures of the CES

Job preservation measures are the most effective of all measures that have been implemented in Croatia. Although they have significantly burdened the state budget, the effects are visible and there is still no significant wave of layoffs.

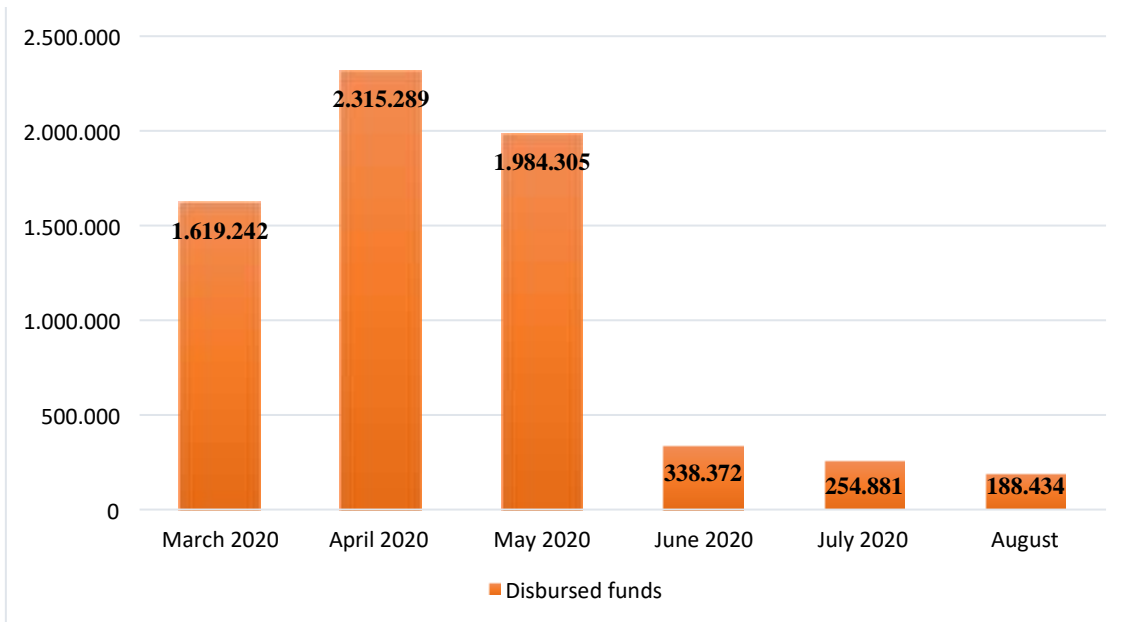
In this paragraph we are going to show statistical analysis on the previously mentioned measures.

Graph 1. shows the total amount of payments by months trasfered from the State budget to undertakings.

⁵⁵⁶ Measures to preserve jobs, <https://mjera-orm.hzz.hr/ocuvanje-radnih-mjesta/> , date of access: November 13, 2020

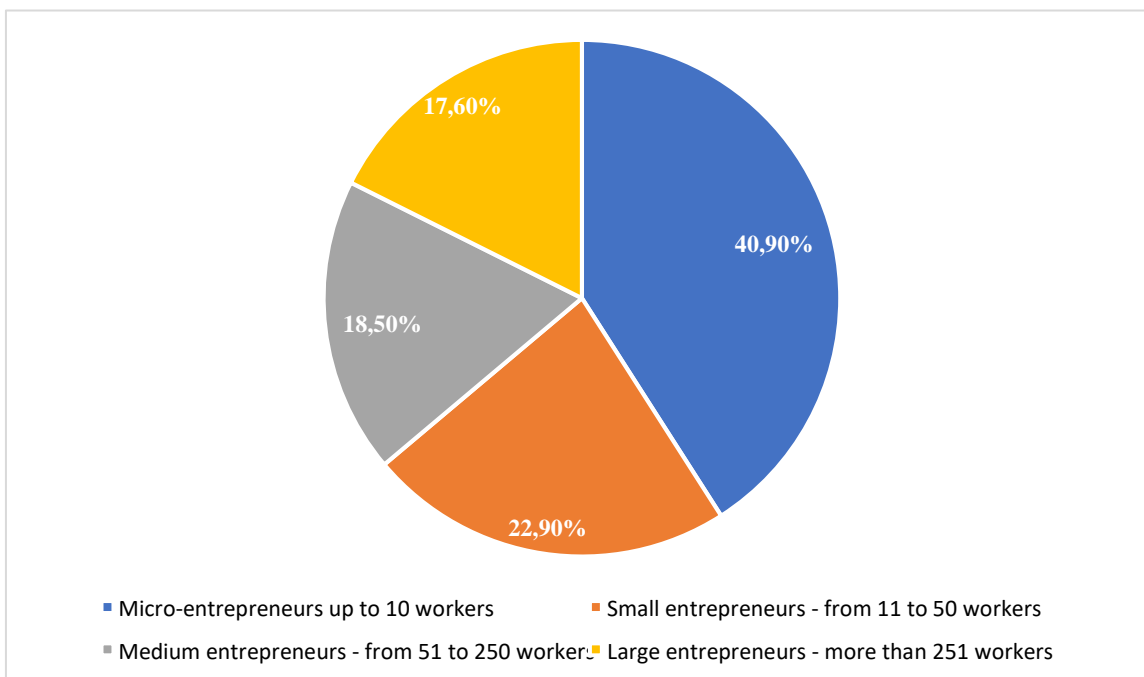
⁵⁵⁷ Ibid.

⁵⁵⁸ Kunas equivalent expressed in euros on December 6, 2020 – 1 kunas is 0,13 euros / 1 euros is 7,54 kunas (middle exchange).



Source: CES ¹⁸

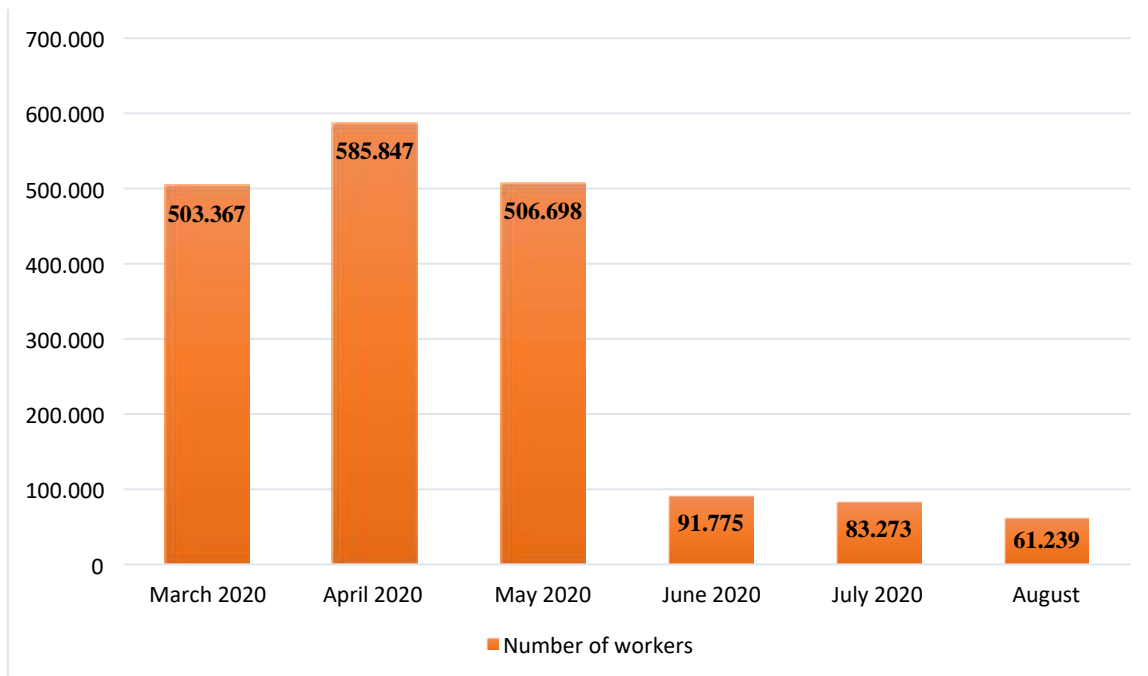
Graph 1. shows a share of payments according to the size of the entrepreneur for all measures



What we can see in this slide is that the CES divided entrepreneurs into four classes based on the number of employees in their companies. According to that division, there are microentrepreneurs (up to 10 workers), small entrepreneurs (from 11 to 50

workers), medium-sized entrepreneurs (from 51 to 250 workers) and large entrepreneurs who employ more than 251 employees in the observed period. Micro-entrepreneurs accounted for 40,9% of financial assistance to entrepreneurs. Furthermore, small entrepreneurs took a share of 22,9%, followed by medium-sized enterprises with a share of 18,5%, and finally large entrepreneurs, whose share in the use of CES measures was 17,6%.

Graph 2. shows number of workers who were receiving financial support from the State budget per month



As we can see in March 2020 support was given to a total of 503 367 employees in the amount of 3200 Croatian Kunas. In April, number of workers who met the conditions for the payment of measures from the CES is slightly lower, so the support was given to 585 847 workers. In May, grants were paid to 506 968 employees in the amount of 4000 Croatian Kunas. At the end of spring, number of new cases of the coronavirus patients dropped and the Government had abolished number of measures what enabled a reopening of many businesses. So, the payment of subsidies fell sharply and a total of 236 251 employees had been given a support for a period from June to August of 2020 in the amount of 4000 Croatian Kunas.

Measures aimed to rescheduling loans

Besides CES measures, Croatian Government adopted a set of other measures aimed at helping Croatian economy to combat COVID-19 pandemic. Some of the most significant were measures in relation to the loan rescheduling and a more favorable

interest rate. Those measures were enabled with the assistance of the Croatian Bank for Reconstruction and Development and The Croatian Agency for Small Business, Innovation and Investment.

1) The Croatian Bank for Reconstruction and Development (hereinafter: CBRD) is a development and export bank of the Republic of Croatia whose main task is to stimulate the development of the Croatian economy. CBRD's measures are directed toward citizens and entrepreneurs of the Republic of Croatia and they include rescheduling existing loans.⁵⁵⁹

2) The Croatian Agency for Small Business, Innovation and Investment (hereinafter: CASBII) is a non-profit legal entity established by the Republic of Croatia whose work is focused on persistent efforts to encourage and develop small businesses and economy. Through a package of six concrete measures, aimed at micro, small and medium-sized enterprises, CASBII enabled moratorium on all installments of loans, extension of repayment, reduction of interest rates on investment loans, increasing the maximum guarantee rate and establishment of a new financial instrument named "COVID-19 credits/loans".⁵⁶⁰

Tax Administration measures

And lastly, along with all previously mentioned measures, we should also mention Government's decisions and measures in relation to tax collection during the COVID

⁵⁵⁹ Reprogramming of existing loans, <https://www.hbor.hr/reprogram-postojecih-kredita/>, date of access: November 14, 2020.

⁵⁶⁰ Measures of CASBII aimed at micro, small and medium-sized enterprises, <https://hamagbicro.hr/mjere-hamagbicro-a-za-pomoc-mikro-malim-i-srednjim-poduzetnicima-uslijed-pandemije-uzrokovane-koronavirusom/>, date of access: November 14, 2020.

19 crisis. Such measure is unprecedented in the Croatian history. For the first time ever, undertakings who had a decrease in income or receipts in the amount of at least 50% compared with the same period last year were released from paying tax. Besides that, Tax Administration Office also brought a measure of installment payment of deferred tax liabilities. In addition, the Tax Administration Office has also adopted measures related to co-financing of salaries with exemption from paying public taxes, exemption from paying tax liabilities in full or in part for taxpayers whose work is prohibited, disabled or hindered, the possibility of deferring payment of due value added tax, distraint proceedings in special circumstances, changes related to value added tax on imports and exemption from value added tax for donations.⁵⁶¹

The role of the Financial Agency in the implementation of national measures

At the beginning of the crisis caused by COVID-19 pandemic, it was necessary to find adequate mechanisms through which to ensure continuous implementation of measures adopted by the Government to help the economy. The Financial Agency (hereinafter: FINA) as the leading Croatian company in the field of providing financial and electronic services, played an important role in this. According to the Government's decision, FINA is in charge of developing and managing a digital platform that enables electronic submission of applications for appropriate measures, collection of data necessary for the decision on approval of measures, calculation of a single assessment of circumstances (COVID score) and establishment of a reporting system. The COVID score is a system for calculating and assessing the

⁵⁶¹ Tax Administration measures, https://www.porezna-uprava.hr/Stranice/COVID_19_informacije.aspx, date of access: November 20, 2020.

vulnerability of business entities with the aim of assessing the need for additional funding, all in accordance with available information. Such a system assesses nine elements of risk that can affect an entrepreneur's liquidity, some of which can be eliminatory. First risk element refers to the score of the type of business entity, where the rating is assigned according to the type of business entity. The second risk element refers to the score of predominant activities, where the score is awarded based on the assessment of vulnerability of certain activities, and priority is given to those activities that are directly affected by measures of controlling pandemic. The third risk element refers to the FINA rating, where priority is given to those companies whose credit risk is lower according to the assessment for FINA's credit rating. The next element relates to whether the subject is in a blockade and the score is determined by the length of the blockade and the time when it began. The fifth element refers to the reduction of the number of employees, in which a smaller number of points is achieved by those entities that lay off workers if the reduction of employees exceeds the criteria defined by the measure for the preservation of jobs. The sixth element takes into account the expected decline in operating income compared with the same period during 2019, where a higher number of points is given to entities that estimate a bigger decline in operating income. Furthermore, the liquidity projection appears as the seventh element in the calculation, whereby the right to additional financing is exercised by entities whose assessment is negative, while those entities whose liquidity has not changed do not have a right to additional financing on preferential terms. The eighth and ninth elements are the eliminating criteria - entrepreneurs who do not pay wages and taxes according to the latest available data, could not be eligible for receiving a support.

Maximum COVID score that can be achieved is 700 points and the minimum is - 100. The

COVID score is submitted to credit institutions which independently decide whether the eliminating criterion will be taken into account when allocating measures and also by reevaluation of the overall liquidity of an individual entity which is visible from the COVID score.⁵⁶²

ECONOMIC MEASURES OF THE EUROPEAN UNION

The COVID-19 pandemic has left significant consequences on the economies of European countries and that was an alarm for the activation of unique assistance measures to the member states of the European Union. Croatia has been EU member state since 2013 and that is reason why Croatia is entitled to financial support from the European Union.⁵⁶³ The key program for the recovery of the European economy, which relates in particular to saving jobs and helping small and medium-sized enterprises, is the SURE program (Support to mitigate Unemployment Risks in an Emergency), also regulated by the Regulation.⁵⁶⁴ Already in its introductory provisions, the SURE Regulation emphasizes that public spending in many EU countries significantly increased due to reduced working hours and unemployment. And also, because of the health measures that had been taken, which have left their

⁵⁶² COVID score, <https://www.fina.hr/-/nova-metodologija-za-izracun-covid-score-a>, date of access: November 20, 2020.

⁵⁶³ Speaking of the European Union, it represents a state union *sui generis*, not only in a political sense, but also in an economic sense, so there is an obligation of mutual assistance and solidarity between states. The coronavirus epidemic encouraged the European Union institutions to legislate, and Article 122 of the Treaty on the Functioning of the European Union²³ (hereinafter: TFEU) is cited as the basis for its existence. Namely, the aforementioned article emphasizes that the Council of the European Union, on a proposal from the European Commission in a spirit of solidarity between Member States, may decide on measures appropriate to the economic situation, especially in the event of serious difficulties in supplying certain products. Likewise, the TFEU article in question provides that, in the event that a Member State encounters difficulties or is threatened with serious difficulties, the Council of the European Union may, on a proposal from the European Commission, grant financial assistance to that State (i.e. States).

⁵⁶⁴ Council Regulation (EU) 2020/672 of 19 May 2020 on the establishment of a European instrument for temporary support to mitigate unemployment risks in an emergency (SURE) following the COVID-19 outbreak, Official Journal of the European Union, L of 20 May 2020.

mark on public finances. The key measures provided in the Regulation are loans, while Member States contribute their collective contributions through guarantees. The entire process of economic assistance is supervised by the European Commission, which determines every six months whether there are conditions for the continuation of economic assistance.

Basic characteristics of European aid through the SURE program

European Union has adopted measures aimed to protect existing jobs in order to protect companies and prevent an unwanted wave of bankruptcies. Namely, the SURE programme complements measures brought by states. Financial assistance is granted in the form of loans taken by the European Commission on capital markets. In order for a Member State to be entitled to a loan, state's planned public expenditures must be suddenly and significantly increased, in the period starting with February 1st, due to the introduction of national measures relating to reducing working time and other measures which mitigate the consequences of COVID-19 pandemic. The maximum amount of aid that Member States could receive in total is 100 billion euros.⁵⁶⁵ Before Member state applies to the Council of the European Union for a loan, the European Commission consults with the Member State requesting financial assistance. European Commission considers all relevant circumstances that should result in the approval of measures. If that loan is approved, it is repaid in installments, and that shows action of European Commission towards the financial sustainability of European Union funds.⁵⁶⁶

⁵⁶⁵ Articles 2 to 5 of the Regulation.

⁵⁶⁶ Articles 6 and 7 of the Regulation.²⁷
Articles 11-14 of the Regulation.

Member States contributions through guarantees

In order to fully strengthen solidarity and equality between Member States, the European Union through the SURE instrument, has also developed ways that Member States could contribute to SURE programme. Member States can contribute to SURE programme by providing counterguarantees for the risk taken by the European Union itself. European Commission and Member States have reached to an agreement on those counter-guarantees and they are irrevocable and unconditional. Guarantees are activated in proportion to the relative share of each Member State in the gross national income of the European Union. In case of total or partial non-activation of guarantees by a Member State, the European Commission has the right to activate guarantees of another Member State. A Member State which has not activated the guarantees is not obligated to activate them. But if a Member State does not activate the guarantees, the financial support provided for that Member State is then relegated to the Member State which has already activated its guarantees. Funds of the SURE instrument are available to a particular Member State only when all Member States pay their contribution of at least 25 % of the maximum aid amount which depends to the share of each Member State in the gross national income of the European Union. SURE funds are supervised, controlled and audited by other European Union institutions. Result of that is strengthening transparency and confidence in European Union institutions.²⁷

European measures in figures

A total of 4,2 trillion euros has been distributed to help the economy of the European Union. Of that amount, 575 billion euros comes from national measures taken in accordance with the budgetary rules of the European Union, 100 billion euros comes

from the SURE instrument, 70 billion euros comes from direct budget support from the European Union budget, 3,045 billion euros comes from national measures subdued by state aid rules, 240 billion euros comes from the European coronavirus epidemic response mechanism while 200 billion euros comes from the European Investment Bank.⁵⁶⁷

As early as mid-March 2020, the European Union began with economic measures through Investment Initiative (CRII) by which 37 billion euros from cohesion policy funds is aimed at mitigating the economic consequences caused by the coronavirus. The European Commission has also implemented a measure by which Member States for 2020 would not have to return unspent pre-financing of the European Structural and Investment Funds in order to increase investment.⁵⁶⁸ The largest part of the funds in SURE instrument – as much as 27,4 billion euros was allocated to Italy, followed by Spain with 21,3 billions euros, Belgium with 7,8 billion euros, while Croatia was allocated 1 billion euros.⁵⁶⁹

According with previously mentioned, European Union needs to take into account the autumn economic trends. The fall in GDP at the level of the European Union in 2020 is expected by 7,4 %, in 2021 it is expected to grow by 4,1 % and in 2022 by 3 %. Inflation is also an important economic indicator – in 2020 at the level of the European Union it is expected to grow by 0,7 %, in 2021 by 1,3 % and in 2022 by 1,5 %. Certainly the most important economic indicator is employment. Thus,

⁵⁶⁷ Coronavirus crisis EU economic response - https://ec.europa.eu/info/live-work-travel-eu/health/coronavirusresponse/jobs-and-economy-during-coronavirus-pandemic_hr , date of access: November 6, 2020

⁵⁶⁸ Communication from the Commission to the European Parliament, the European Council, the Council, the European Central Bank, the European Investment Bank and the Eurogroup – Coordinated economic response to the Covid-19 pandemic, COM(2020) 112 final, page 7.

⁵⁶⁹ SURE - https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/financialassistance-eu/funding-mechanisms-and-facilities/sure_en , date of access: November 6, 2020

according to the autumn forecasts of the European Commission for 2020, the unemployment rate is expected to be 8,3 %, in 2021 9,4 % and in 2022 8,9 %.⁵⁷⁰

Activities of the European Central Bank

One of the most important institutions of the European Union which has a crucial role in sustainability of the entire European economy is the European Central Bank. There are several areas in which the European Central Bank operates. One of its measures is general assistance to the economy in order to overcome the economic crisis. Emergency program of purchasing due to COVID-19 pandemic increased by 600 billion euros, which makes a total of 1,35 trillion euros. Consequently those measures support monetary policy. Accordingly, the period of neto purchase due to the COVID-19 pandemic is expected to be extended until the end of June 2021. Principal of mature securities purchased under this measure should be reinvested by the end of 2022. Dynamic of the neto purchase of securities is planned on a monthly basis in the amount of 20 billion euros.⁵⁷¹

Second important measure of the European Central Bank is to keep a low mortgage cost, as well as easier access to loans, both for businesses and households. For this purpose the list of collateral that can serve as collateral for banks has been expanded, which could be understood as a form of economic assistance and security to banks.

⁵⁷⁰ European Economic Forecast – Autumn 2020, Institutional paper 136, November 2020, page 1.

⁵⁷¹ Monetary policy decisions -

<https://www.ecb.europa.eu/press/pr/date/2020/html/ecb.mp200604~a307d3429c.hr.html>, date of access: November 6, 2020.

It is clear that the core area of activity of the European Central Bank is assistance to banks. This assistance is made by credit financing and it is necessary in order to keep the entire European economy as flexible as possible. Therefore, the European Central Bank places special emphasis on international cooperation and the creditworthiness of banks.⁵⁷²

Croatian implementation of economic assistance measures of the European Union

Croatia is one of the Member States of the European Union that uses measures to preserve jobs and business operations in order to prevent mass layoffs and bankruptcies. The assistance of the European Union to Croatia is justified by the introduced national measures which co-finance the salary of a employee of a company that had a decrease in income, provided that the employee is retained. This amount ranged from 3250 Croatian Kunas (approximately 435 euros) to 4000 Croatian Kunas (approximately 535 euros) monthly during the lockdown. Some of those measures remained in force after the lockdown, depending on the economic disruption of particular sector.

Another measure by which Croatia justified its request for European assistance was the cofinancing of part-time work in the amount of up to 2000 Croatian Kunas (approximately 270 euros) monthly per employee. In its intention to use European economic assistance measures, Croatia intends to use 210 million euros of European funds and 151 million euros of its own money.⁵⁷³

⁵⁷² Our response to the coronavirus pandemic -

<https://www.ecb.europa.eu/home/search/coronavirus/html/index.hr.html> , date of access: November 6, 2020.

⁵⁷³ Council implementing decision granting temporary support under Regulation (EU) 2020/672 to the Republic of Croatia to mitigate unemployment risks in the emergency following the COVID-19 outbreak, Council of the European Union, 2020/0218(NLE), Brussels, 17 September 2020.

Therefore, the Council of the European Union, in accordance with the Regulation on the SURE program, adopted a decision by which it makes a maximum of 1,02 billion euros available to Croatia with a maximum average loan maturity of 15 years. Funds to help the national economy of Croatia are available for a period of 18 months, while the funds themselves are disbursed through a maximum of eight installments. Croatia is obliged to inform the European Commission every six months about the usage of the funds.⁵⁷⁴

CONCLUSION

COVID 19 crisis has really shaken world economy. There is no single country in the whole world that will not feel economic consequences of lockdown and decrease of economic activity.

Countries around the world are fighting this crisis by different means and financial measures. In our paper we presented some of the most important measures undertaken by Croatian Government with the purpose to help Croatian economy to overcome problems caused by COVID 19 crisis. As we can see from presented research, Croatian Government adopted a whole set of measures which include such as direct financial assistance to the most affected businesses to some less direct, such as reprogramming existing loans. So far those measures seem to be effective and it seems that they prevented unwanted wave of bankruptcies in Croatia. According to the data provided by the High Commercial Court of the Republic of Croatia number of bankruptcy proceedings in Croatia is stable. So, from 1 January 2019 until 23 October 2019 there were 2 354 bankruptcy proceedings while in the same period of this year there were only 1 107 bankruptcy proceedings. This means

⁵⁷⁴ Ibid.

that in fact number of bankruptcy proceeding this year in comparison to last year is in decrease, what can be directly attributed to undertaken Governmental measures. This also mean that at least, for now, Croatia prevented a new wave of bankruptcies. However, this doesn't mean that we won this battle. At this moment no one can predict what will happen in future and how severe consequences COVID 19 crisis will at the end leave on Croatian economy.



**ISTANBUL AYDIN
UNIVERSITY**

**COVID-19 PANDEMIC;
REFLECTIONS ON LABOUR AND SOCIAL SECURITY LAW IN
TURKEY**

A Report By İstanbul Aydın University Faculty of Law

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1. Introduction

Covid-19 Pandemics affected millions of people in Turkey and the world. The common view is that, it will reduce its effect as time goes by and lose its capacity be a threat as a whole with the discovery of a vaccine. Two areas of law will face many problems with the end of the Covid-19 Pandemic; "Labor Law" and "Social Security Law". Because during the Pandemic, the activities of a crucial part of the service sector and a considerable part of the manufacturing sector has either stopped or disrupted. In other aspects, the contraction in national and international economies also affected employment, which resulted unemployment and part-time works to reach serious levels.

All these disadvantages in business relations and the economy also affected social security systems; in addition to the decrease in unemployment insurance funds due to unemployment, it also caused to decrease in the premium income of the Social Security Institution (SGK) for the same reason. In addition, it is very likely that there will be changes in the habits of paying premiums regularly to the SGK due to the economic difficulties faced by employers.

This report will cite the problems caused by the Covid-19 Pandemic in Labor Law and Social Security Law in Turkey and the proposals for solutions to these problems will be included. In explaining these problems and solution proposals, both branches of law will be discussed together.

2. Regulations in the fields of Labor Law and Social Security Law during the Covid 19 Pandemic period

As the effects of the Covid-19 Pandemic began to be seen in Turkey, administrative decisions and legal arrangements were taken immediately in the field of Labor Law and Social Security Law to fulfil the needs of the period.

In this sense, circulars and announcements were issued by the Ministry of the Internal Affairs and the Ministry of Family, Labour and Social Services in the first place. “Curfew restriction circulars for people aged 65 and Over/Under 20/and for people having chronic diseases” were published by the Ministry of Internal Affairs. The announcement of the Ministry of Family, Labour and Social Services that facilitate the use of “Short Work Allowance” were the very first regulations affecting the areas of Labour Law and Social Security Law. The short time working allowance is an application that provides income support to insured people for a period in which they cannot work, not exceeding three months in the workplace, in case of a temporary reduction of weekly work times in the workplace by at least one third due to a general economic, sectoral, regional crisis or compelling reasons, or a complete or partial cessation of activity in the workplace for at least 4 weeks without looking for a condition of continuity.

Additionally, some amendments were made by the Law No. 7226 on Unemployment Insurance Law and the Social Insurances and General Health Insurance Law.

The increasing effects and spread of the pandemic prompted the legislator to take more precautions; The “Law on Reducing the Effects of the New Corona Virus (Covid-19) Epidemic on Economic and Social Life and the Law on Amending Some Laws” was accepted and entered into force in April 2020. With the adoption of this law, crucial changes were made on the laws such as Public Servants ‘ Unions and Collective Bargaining Law, No. 6356 Law on Trade Unions and Collective Bargaining, Law on Unemployment Insurance and Labor Law.

Later, according to law No. 7252, which was accepted at the stage of the reduction of the effects of the pandemic period and returning to (new) normal, social insurance premium support was provided to employers of workplaces where the practice of short time working allowances and unpaid leave ended but limited to workers who have received short work allowance and cash wage support, not to be past 25/12/2020. Thereafter, the insured and the employer's share of their premiums, which will be calculated over the lower limit of the main earnings, will be covered by the unemployment insurance fund (provisional Article 26 added to law 4447). The President was authorized to extend this period to six months.

Again by the same law, the President was given the authority to extend the duration of the short time work allowance on sectoral basis separately or as a whole. In this way, the President's

authority to extend the term has become more flexible. (Law No. 7252 Article 3 / Law No. 4447 provisional article 23. Amendment).

In addition, temporary article 10 of No.4857 Labor Law was amended. Along with the article, a ban on termination of contract of services was imposed on employers . According to this provision, “Any business or service contract, regardless of whether it is covered by this law, should not be terminated by the employers instead of the rules of morality and benevolence for 3 months except specific-term employment or service contracts for any reason and shut down at the end of the period in the end of the activity, any and all service procurement and construction works will be made in accordance with the relevant legislation. From the date of the adoption of this article, the employer may allocate the employee to the leave without pay wholly or partially, so as not to exceed the three-month period. Leaving an unpaid leave under this article does not also give the employee the right to terminate the contract for the rightful reason. The employer or employer's representative who terminates the employment contract contrary to the provisions of this article is given an administrative fine equal to the monthly gross minimum wage on the date of the act for each employee whose contract is terminated.

The President was authorized to extend the force of this article for three-months. It should be highlighted that this period has been extended for two months as of 17/9/2020 and with the President's Decision.

It is very likely that new administrative and legal measures will be taken due to the duration and impact of the Pandemic. Even if the Pandemic is likely to come to an end, it can be said that there will be important developments in business life, labour law and social security law, and new arrangements will be made regarding the structure and flexibility of business relations.

To sum up, during the pandemic period in Turkey, legislative and executive bodies took the following actions: Unpaid leave, cash wage support, short-time working allowance, ban on the termination of contract of service, the extension of the duration of the collective labor relations, premium suspensions.

3. Developments in Working Life During the Pandemic Period

As the Covid-19 Pandemic started to show its effects, important developments began to occur in working life. With the closure of some workplaces by administrative decisions, the imposition of a ban on specified people and periodic curfews in the middle of March 2020 was seen. In addition huge growth has been experienced in the business volumes of sectors such as market, logistics and cargo and on the other hand, the serious contraction, especially in service sector created difficult questions and problems to solve, in terms of labor law.

According to data of the Unemployment Insurance Fund, employers' first reaction against Covid-19 Pandemic is "layoff or unpaid leave". After the statements of Ministry of Family, Labor and Social Services that make it easier to benefit from short-time working allowance, it can be said that employers tend to send their employees to short-time working. It can be said that the postponement of other periodical transactions besides Social Security Insurance premiums and tax debts with Law No. 7226 and 7244 has been effective in this orientation. In addition to these, some of the methods followed by employers include requests for discount from workers' wages, reduction of shifts, move into rotative/short-time working system and working from home/teleworking practices.

With the onset of the Covid-19 Pandemic, the developments in the field of labor law can be listed as follows;

- *Lay-offs (termination of employment contracts by employers),*
- *Imposing unpaid leave (on the employer's initiative, without agreement)*
- *Short-time working allowance demands,*
- *Transition to working from home / teleworking,*
- *Working time reductions, transition to short-time working ,*
- *Avoiding work due to not taking occupational safety measures,*
- *Wage reduction requests,*

- *Extending the durations in collective labor relations.*

a. Lay-offs (termination of employment contracts by employers)

It is possible to say that the most preferred way for employers is the termination of employment contracts at the beginning of the Pandemic against the difficulties in employment caused by Pandemic Period. Numerical data about unemployment insurance, also prove this. During this period, in March 2020, unemployment insurance allowance demands approached 600,000. Taking unregistered employment and severe conditions for benefiting from unemployment insurance in Turkey into consideration, it is possible to say that millions of terminations happened. Although a termination ban was imposed on employers with Law No. 7244, it has been observed that there were many terminations until 17.04.2020, when this Law entered into force. In addition, since the termination ban imposed by the law was limited to 3 months and it was increased to six months by the President- it is likely that new terminations will occur after the ban period expires. This situation may cause serious problems in post-pandemic working relationships.

b. Imposing unpaid leave

In the Labor Law No. 4857, it was not regulated to impose the unpaid leave to the employees with employers' unilateral declaration of will which means an employer should not impose unpaid leave without the approval of the employee. Although with the agreement of the parties it is possible to go on unpaid leave, when an unpaid leave was taken despite the employee's consent, it was considered an unjust termination of the employer. The Court of Cassation also held the same view with its decisions. In the first days of the Pandemic, it was known that workers did not (could not) respond negatively to requests from their employers for unpaid leave, at least in order to protect their labor relations and maintain their contracts even if they were suspended. Employees who did not want to be unemployed, often preferred to remain silent rather than terminate the contract or prosecute the employer. Law No. 7244 which was put into effect in April 2020, authorizes employers to impose their employees partially or completely on unpaid leave and even it has specially protected this authority with its "leaving for unpaid leave does not give the employee the

right to terminate the contract with a valid reason." expression (article 9). Even though the same Law provides financial support through the practice of cash wage support from 17.04.2020 to benefit employees who sent on an unpaid leave (article 7).

On the other hand, during this period, due to the curfew imposed on those with chronic diseases, pregnant and over 65 employees and those under 20; the practices of paying half wages for seven days based on force majeure and then, short-time working, in the absence of conditions for short-time working, imposing unpaid leave to these employees have been widely encountered. Employees who are working in workplaces where short-time working is not applied for and employees who do not have short-time working allowance conditions are entitled to cash wage support when they are taken on unpaid leave. As the support is less than their normal wages, the employers can also pay additional support to these employees, if they wish. Considering the conditions of this period, such a payment made by the employer can even soften the strained relations that may occur.

c. Short-time working allowance demands

The reason lying behind the short-time working arrangement is that the employers who have stopped their work due to crisis or compelling reasons or whose work is significantly disrupted do not fulfill their wage obligation to their employees because of these reasons. For this purpose, the legislator has regulated the short time working allowance to operate within the unemployment insurance. Before the effects of the Pandemic, benefiting from the short-time working allowance was tied to very difficult and strict conditions. In order to benefit from this allowance, the employer whose job stops or decreases significantly due to crisis or force majeure must apply to Employment Institution, and the workplace must exceed the compliance inspection made by the inspectors; after this stage, employees who are declared premiums for at least 600 days in the last 3 years and who work continuously for the last 120 days could benefit from short-time work allowance (Law no 4447 additional article 2). Due to the unexpected emergence of the Pandemic and the probable crisis / force majeure wave, The Ministry has provided the addition of temporary article 23 to the Unemployment Insurance Law No. 4447, with Law No. 7226, with an approach that will prevent discussions before they arise. Thus, the short time working allowance conditions were changed

starting from 29.02.2020, to be valid until 30.06.2020. Afterwards, the President extended this period until 31.12.2020. In addition, with the Law No. 7252, the President was given the authority to extend the short time allowance, which can also be on a sectoral basis.

According to the special provision entered into force from beginning of March 1st, 2020; it was found sufficient to work subject to service contract for the last 60 days before short-time working started and to have been insured for 450 days in last three years and paid unemployment insurance premium, in order to benefit from allowance for short-time working with force majeure caused by Covid-19. Following this, another step was taken to facilitate the process. With this amendment, which was introduced by Law No. 7244 and will be valid during the epidemic regarding short-time working allowance, provision of “For the short-time working practices due to force majeure because of new coronavirus (Covid-19), short-time payment is made in line with the declaration of the employers, without waiting for the completion of the convenience determination by the inspectors.” (transitional article 23) has been added to Law No. 4447 .

When the statistics are examined, it can be said that the short time working allowance put into action by the legislative and executive organs against the Pandemic has an important function. While there were 17,862 employees benefitting from short-time working allowance in February 2020, this number increased to 96,636 in March 2020 and to 2,590,589 in April 2020 . It is possible to say that behind this huge increase, besides facilitating the conditions for benefiting from short time working allowance, there is also the need for this allowance. Herein, it should be emphasized that despite the enormous increase in the number of beneficiaries, there was only a decrease of TL 2,000,000 in the Unemployment Insurance Fund. This amount is 1.5% of the fund size (133,222,637 TL) . Thereby, it can be said that there is no need to worry that short-time working allowance payments will consume unemployment insurance funds.

d. Orientation to Home / Remote / Tele Working

An important development created by the Pandemic in working relationships is the widespread use of home / remote / telework practices. On the one hand, the curfew imposed on people with chronic diseases or over 65 years of age, and in the face of the high risk of infection of Covid-19,

employers implemented home/tele work practices in jobs and workplaces that are suitable for qualifications. Presidential Circular, which envisions flexible working models such as remote working for public employees, has also been effective in implementing this practice.

Remote working is regulated in Article 14 of the Labor Law. Accordingly, remote work is a written business relationship based on the principle that the employee fulfills her job at home or outside the workplace with technological communication tools within the scope of the work organization created by the employer. On the other hand, the Turkish Code of Obligations, with the title of "home service contract", "is the contract under which the employer undertakes to see the work given by the employee in his own home or elsewhere, in person or with family members for a fee".

The most common method of remotely during the Pandemic has been to continue these works from outside the office (from home), especially employees who work as office staff and do an essential part of their work with computer help in the office. Actually, the transition to this way of working due to the Pandemic is based on a temporary purpose, and this purpose can be associated with occupational health and safety measures and the employer's obligation to take care of the worker. In this sense, when the risk of getting sick disappears or falls to the level that does not prevent normal work, the employer may ask their employees to return to the office and do their work in the office. In this way, it is sufficient to use the instruction authority granted to him within the scope of the right of management, and thus can re-function the work. The employee must follow this instruction in the event of normal conditions. There is no doubt that the employee is not obliged to follow such instructions before the expected improvement in health conditions occurs. In such a case, the instruction to return to the old working order may result in the implementation of The Labor Law a. 22 by making a fundamental change because the working (health) conditions are not provided.

e. Reduction in work hours, implementation of part-time work

The narrowing of the operation and service area of the enterprises due to Pandemic has also had an effect on business relations. Many employers have offered their workers to work for less time / part-time, and some of them have gone to reduce or work in shifts. The reasons for employers

resort to this method include an effort to overcome the economic problems caused by the Pandemic by shrinking or reducing the cost of workers by reducing capacity. One method of reducing costs is to reduce the working time of on-hand employees, i.e. to work part-time, instead of dismissing workers. It is clear that this practice will also result in a reduction in the employee's wages depending on the reduction in working time. Therefore, such demands of the employer are technically a fundamental change in the contract of the service. The employer who wants to make a fundamental change in the labor contract in Turkish Law must inform the employee in writing and obtain the written consent of the employee. It is likely that employees will accept this offer and the offer to return to normal work when the Pandemic ends, especially if it accurately and realistically explains the reasons for such change to the worker and specifically declares that this situation is temporary. As a matter of fact, Pandemic practices confirm this prediction. In contrast, if the employee does not accept the offer of a lesser period/part-time work made by the employer is combined with the termination ban imposed on the employers by Law No. 7244, a very difficult situation arises. It is likely that the employer will be subject to a termination ban in such a case, as the employee's refusal to accept the offer of a lesser period/part-term work by the employer may not be considered a violation of the rules of morality and goodwill. If the employee does not accept the employer's offer without a reasonable excuse at such an extraordinary time, it is a way to be considered by the employer to send the employee for unpaid leave. This opportunity brought by Law No. 7244 is a way to be considered especially in terms of workers who bring economic burdens to the employer for full-time work.

f. Avoiding work for the lack of measures of occupational safety

According to Article 13 titled "Right to Avoid from Working"(22) of the Occupational Health and Safety Law No. 6331, Employees who face serious and imminent danger can contact the board or the employer in the workplace where the board is not present to request that the situation be determined and that the necessary measures be taken. The board gathers urgently and the employer makes its decision immediately and determines the situation with the minutes. The decision is reported in writing to the employee and the employee representatives. If the board or employer decides on the employee's request, the employee may refrain from working until necessary

measures are taken. Employees' pay during the period of avoiding work and other rights arising from the law and the labor contract are reserved. In cases where serious and imminent danger is unavoidable, employees leave the workplace or danger zone without having to follow the procedure above and go to the designated safe place. Employees' rights cannot be restricted due to their action.”

One of the frequently encountered problems during the pandemic period has been the exercise of the right to avoid working due to lack of measures of occupational safety. Indeed, being infected with the Covid-19 virus, which poses an extremely serious and imminent danger, is a significant danger that employees may face in their workplace. In this sense, the risk of infection of Covid-19 poses an imminent and serious danger. Employees have also tried to use their right to avoid from working by operating the process in Article 13 of Law No. 6331 in many workplaces. Employers, on the other hand, took numerous measures in parallel with the decisions of the Ministry of Family, Labor and Social Services, Scientific Board of the Ministry of Health such as social distancing, fever precautions/measurements, workplace sterilization, etc. to prevent workers from being infected. One point encountered at this point is that the employee is avoiding work, even though the employer has reported that adequate and necessary measures have been taken in his or her own way. The contagious and deadly nature of Covid-19 may have unsettled some workers and led them not to choose to go to work. In this case, it may be preferable to encourage these workers to use paid leave instead of considering the worker's concern as a justifiable reason for termination in the meaning of the Labor Code a.25/2 and to go on the path of unpaid leave if this offer is not accepted. However, this situation may cause the employee to settle for cash wage support and will not be able to qualify for his or her normal wage because he avoids working.

g. Request for discounts on Wages

Wage is one of the essential elements of the employment contract. According to article 22 of the Labor Law, “ The employer can only make a substantial change in working conditions created by the employment contract or the personnel regulation as an annex to the employment contract and similar resources or workplace practice by notifying the employee in writing. Changes that are not made in accordance with this form and are not accepted in writing by the worker within six

working days do not bind the worker. If the employee doesn't accept the arrangement proposal within this period, the employer may terminate the employment contract by explaining in writing another reason for the termination, and to comply with the notice period. In this case worker can file a lawsuit according to the provisions of articles employment security. Parties can always change the working conditions of mutual agreement. Changes in working conditions can't be put into effect retroactively.''

Another issue frequently encountered during the Pandemic period is the offer of employers whose activity volume has shrunk to reduce the wages of workers whose work doesn't change. The pandemic conditions are the justification for this proposal, which is mostly offered by the employers due to the decrease in their own income and the workers are demanded of a reduction in wage. As we have stated the employee is not obliged to accept the 'change in wage' proposal, which is the essential element of the employment contract and the refusal of this proposal by the employee doesn't constitute a justified reason for the termination of the employment contract. Although this is the case, it is also possible for the employee who evaluates the situation of the employer to accept this offer in accordance with the provision '...the parties can always change their working conditions by agreeing between them.''

h. Extension of Periods in Collective Labour Relations

Most of the activities regarding collective labour law are carried out jointly by the parties and in common places. In this sense, it is very difficult to carry out collective bargaining, mediation, strike, strike voting and similar issues during the pandemic period when curfews and travel restrictions are experienced. On the other hand, minimizing the activities in the judiciary and enforcement offices with the recommendation of the Board of Justices and Public Prosecutors also prevented the application of judicial remedies in collective labor relations processes. Although the problems caused by this situation were initially tried to be eliminated with a letter titled 'Coronavirus Measures' of the General Directorate of Labor dated 23.03.2020, as this letter wasn't sufficient, a provision was added to the Law No. 7244 to extend the periods of collective labor law for three months. In this sense, in terms of collective labor law, any period has been

postponed for three months as of 17.04.2020, when Law No. 7244 entered into force. The suitability of the law and the relief it brings is found very correct in our opinion.

4. POSSIBLE PROBLEMS AND SOLUTIONS IN THE FIELD OF LABOR AND SOCIAL SECURITY LAW AFTER THE PANDEMIC PERIOD

According to a report published by the International Labor Organization in April 2020, 1.25 billion people may face the risk of losing their jobs after the Covid-19 Pandemic. In the same Report, it is pointed out that the most risky sectors are accommodation, catering services, retail sales and some manufacturing activities, and it is stated that the governments make very serious resource transfers to prevent unemployment in these sectors. ILO states that the results of these resource transfers should be monitored carefully.

A study on the number of unemployed caused by the Covid 19 Pandemic has not yet been published in Turkey. However, experts state that this number may increase to 7.5 million. Possible problems and solution suggestions after the Pandemic will be discussed in detail below but it should be emphasized that; In the solution of problems, methods that are based on social dialogue, focus on proactive regulations, ensure harmony between short and long term goals, reduce problems with sustainable social policies and strengthen our social bond should be preferred. It should be emphasized that the initiative of “democratizing work.org”, which was created by thousands of intellectuals with the aim of democratizing work and workplaces after the Pandemic, decommodification of work and environmental sustainability, made similar proposals.

In our opinion, the most important labor law problem that will arise after the Pandemic period will be unemployment and its consequences. Termination lawsuits and litigation processes seem to keep agenda busy for a long time. In addition to the changes in the structure of the job/ work, the gaps in the legislation the needs arising in the collective labor law and the developments regarding the social security funds are among the remarkable points. All these problems and our views on the solution are discussed in detail below.

a. The termination ban on employment contracts should continue for a few months; the short time working allowance and cash wage support applications related to this context should be reviewed.

The termination ban which imposed on the employer (and partially on the employee) with the Law No. 7244 of 17th April 2020 has been beneficial and it has protected the employees from the destructive effects of the Pandemic. In this way, the industrial relationship has become able to be kept alive and in parallel, cash wage support was provided to the workers. However, as it is already known, the termination prohibition involves a period of 3 months; but the President has been given the authority to extend this period for another three months (No. 4857 Turkish Labor Code Provisional § 10). In this context, it can be said that "the termination ban supported by cash wage support has postponed some of the terminations for three months". Exactly at this point, the termination ban that will be extended at the end of three months may have a deterrent effect on employers, and termination may be removed from the agenda due to an expansion in the economy in this process.

On the other hand, the sudden removal of the termination ban may create a serious workload pressure on the courts. Besides, the employee who has to live with an income below his standards, with the cash wage support now may be in even a more severe situation by being subject to termination. With the regulation that has been brought by the Law No. 7244, the business relationship is preserved as well as no additional burden is imposed on the employer. Therefore, the continuation of the implementation is not going to create any difficulties for the employers.

In light of this, it should be emphasized that the cash wage support, which is also named as "Covid Allowance" by some authors, has been very low when the living conditions of the country and the size of the unemployment insurance fund that was the source of the support. In order to end the controversies on this issue and to provide a decent income for the employee on unpaid leave, it would be accurate to equate the cash wage support with the short time working allowance and to raise both payments to the minimum wage level. As a matter of fact; Unemployment Insurance Fund contains a lot more of resources than that can cover these amounts, considering that these payments will be made temporarily.

In addition, it should be noted that although the Ministry has made facilitation in terms of benefiting from short time working allowance, these facilitated conditions did not work with those who were a typically employed, seasonally employed, recent recruits and so forth. Presumably, it should be ensured that the conditions for benefiting from the short working allowance are reduced as much as possible and that as many people as possible make use of this payment. By this means, it will be possible to approach the welfare state ideal. As another opinion, in case the legislator extends the short time working and unpaid leave periods (which was realized with the Law No. 7252 published in the Official Gazette dated 28th July 2020 the extension authority was extended until the middle of 2021), temporary/exceptional practices should not be allowed to be customized, by dint of strict supervision, and allowances and supports to be given to the employee should be increased to a level that suits human dignity.

b. Employment should be encouraged with Social Security Premiums and Tax Advantages.

In Turkey, employment growth has been fostered for several years with using various instruments. Among these, social security premium incentives, tax deductions and exceptions are at the forefront. Moreover, these incentives were implemented in general, regional or sectoral crises within the country, not in periods such as pandemics affecting the whole society, and were mostly financed by unemployment insurance funds formed by the employee/employer/state trio.

The Pandemic crisis has deeply affected the entire people and caused a serious risk of unemployment. Despite the termination ban, a serious unemployed mass has emerged since the crisis began to show its effect. Even if the termination ban is extended, it is still possible that a significant number of employees will become unemployed after the ban ends. Thus, in such a period, along with the continuation of the aforementioned termination ban, employment augmentation can be achieved by using tax and insurance premium incentives and exceptions, affecting both previous and post periods of the ban. It is better stated that Turkey has actually a pretty solid experience in this regard as well. In fact, the lawmaker has provided social security premiums for the employers of the workplaces where the short time working and unpaid leave applications has ended with the Law No. 7252 on 28th July 2020, for three months, except not exceeding the date 25th December 2020, limited to employees who received short work allowance

and cash wage support. Accordingly, all of the shares of the insured party and the employer's above mentioned employees' lower degree income dependently calculated social security contribution premiums will be covered by the unemployment insurance fund (Law No 4447 Provisional § 26).The President is authorized to extend this period up to six months.

These measures may be implemented -with the term of starting to employ after the Pandemic through methods such as tax or insurance premium deduction for employers who employ a certain number of workers, covering the premiums partially or completely by the government, exempting some expenses from tax, reducing tax rates.

c. Flexible work models that ensure the continuity of the employment relationship should be developed.

One of the reasons behind the Labor Code No. 4857 was the need for flexibility in employment relations. In order to meet this need, the lawmaker has implemented regulations which was not included in the previous Labor Law No.1475 such as temporary employment relationship (§ 7),part-time employment contract (§ 13), on-call work and remote work (§ 14), over-time work and work for free time in return (§ 41) equalization time (§ 63), compensatory working (§ 64) and finally short-time working which was regulated in Labor Code but then transferred to the Unemployment Insurance Code (Annex §2, Code No. 4447).

Employment-friendly labor law inevitably requires flexibility in certain areas, specifically in this branch of law. Nevertheless, blockage of flexible working methods in production relations can increase informal work. Likewise, while applying to the flexibility in individual labor law, the areas that will be subject to flexibility should be carefully selected in accordance with the conditions and needs of the country, and the limits of the flexibility should be determined with the minimum mandatory rules that protect the employee. While doing this, some assurances should be provided to the employee and the employees should not remain completely unprotected, also called; the "Flexicurity Principle" should be applied.

The Pandemic Period is one of the periods when the need for flexibility is felt most clearly. Duringthe Pandemic Period, legislative and executive bodies have offered flexible labor law

instruments to the interest of employees and employers by reshaping them according to the recent needs and often making them easier. These include arrangements for short time working, and compensatory working.

In addition, employers have frequently applied to these models such as partial employment contract, offset applications, remote employment contract.

In our opinion, these flexibility practices regulated in the laws played important roles during the Pandemic Period; even if it caused a regression in wage and working conditions when compared to the previous period, but at least it maintained the employment relationship and ensured the continuation of this relationship. During a pandemic, what is essential is to maintain employment in general and the relationship itself between the employer and employee when taught that this is a temporary period. In this context, flexible working models have played an extremely useful role. What needs to be done is to develop flexible working models that can be applied not only during Pandemic Periods, but in all compelling reasons and force majeure, and to support them with a sound secondary legislation.

d. Legislation should be developed and shortnesses in law should be completed.

Another fact that emerged during the Pandemic Period is that there are some shortnesses in the legislation, and the new regulations are not linked with the old provisions.

One of the most important legal problems in practice has arisen when the employer can make additional payments to the worker on his own initiative in the workplaces where short time working is applied. Indeed, there is no consensus among both the doctrine and the practitioners on whether the employer can add to the short time working allowance, which may be quite lower than the normal wage of the worker. In our opinion, it would be appropriate to put this issue on a legal basis.

A similar situation is also valid in the cash wage support brought to our legislation by Law No. 7244. The situation of the employer, who had to send his employee on unpaid leave with the authorization of the law, but who would like to make additional payments to his worker in cash

wage support is also uncertain. There is no gap in the article 7 of the Law No. 7244 regulating the cash wage support. According to the 3rd paragraph of Article 10 of the Procedures and Principles issued by the Ministry of Family Labor and Social Services authorized by the same article, "The cash wage support pay is collected from the employers who cause excess and undue payment, together with the legal interest to be charged from the date of payment." Although this regulation does not explicitly prohibit making additional payments, it disturbs the employers, and employers who want to pay the cash wage support in good faith avoid making this payment. However, in our opinion, there is no obstacle for the employers to pay support on their own initiative to workers who receive cash wage support as well as workers who receive short time working allowance. However, as we have stated, the best way is to put this clearly on a legal basis.

Another issue that has been discussed is about whether the employer can apply for short time working before going on unpaid leave. So much so, some authors even claim that the difference between the cash wage support that workers will receive after unpaid permit and the short time working allowance can be asked from employers as compensation. Although we think that such a compensation lawsuit is not possible and the reasons behind the two payments are very different, we believe that it would be right to deal with the issue with a legislative arrangement.

A similar legal deficiency arises from the fact that both allowances are not clearly associated with unemployment insurance. Indeed, the source of funding for short time working allowance and cash wage support is the unemployment insurance fund, but it is not clear whether these two payments will be deducted from the unemployment benefit period. Although the 7th paragraph of the Additional Article 2 of the Law No. 4447, which regulates the normal-term short time working allowance, includes the provision that "... the President is authorized to extend the duration of the short time working allowance up to six months and to determine whether it will be deducted from the unemployment allowance". It should be clearly regulated whether the short time working allowance, which was rearranged and subjected to new conditions due to the pandemic, and the cash wage support, which is a brand new application, will be deducted from the unemployment benefit period.

In addition, the issue of whether this infection of workers are infected with the Covid-19 virus in the workplace will be considered a work accident / occupational disease or disease has also led to

discussions due to the deficiency in the legislation. The SGK issued a Circular for notifications regarding the infection in question “with provision within the scope of the disease” and this Circular further fueled the discussions. If there is no change in the legislation on the subject, these discussions will be reflected in the judiciary and will keep the courts busy for a long time. In our opinion, this infection of the worker infected in the workplace is unquestionably a work accident. Although it is difficult to prove that the infection is contracted in the workplace, this difficulty should not change the fact that the infection that occurs in the workplace is a work accident. The Supreme Court deemed the infection occurring in a similar situation as a work accident.

Finally, let us state that the authorization granted to the employer with the Law No. 7244 to “take his / her worker on leave, partially or completely free of charge” and it should remain as a precaution specific to the Pandemic Period, as it seriously disturbs the balance between the parties against the worker, and should be removed from the implementation at the end of the period. On the contrary, leaving unpaid permit only to the initiative of the employer and making it permanent will create a situation in contradiction with Article 22 of the Labor Law.

Apart from these concrete examples, legislative changes that will make flexible working models functional should be made urgently and put into practice.

e. Information and infrastructure should be developed for online work and secondary legislation should be put into force.

One of the important developments brought about by the Covid-19 Pandemic in working life has been the widespread use of telework, which is a special type of remote working. According to the article 14/4 of the Labour Law, “Remote work is a business relationship established in writing based on the principle that the employee fulfills his job at home or outside the workplace with technological communication tools within the scope of the work organization created by the employer.” Although it was defined like this, teleworking is the type of work that became widespread in this period.

It is possible to define teleworking as “work carried out within the framework of the organization created by the employer, in a location away from the workplace, in accordance with the terms of

the employment contract with the employer and using communication technologies (telephone, computer, internet)". The person who does this kind of work is called "teleworker".

The curfew restrictions put into force by the Pandemic Period (especially pregnant women who are banned from going out, workers with chronic illnesses, workers under 20 and over 65), the close contact transmission of Covid-19 and the necessity of social distancing accordingly, many employers and workers were pushed to teleworking.

While this is the case, with a significant number of employees and employers are far from technical information to allow the telework, Internet infrastructure is not adequate and does not satisfy the needs of Turkey's legislation on such studies.

Indeed, a significant number of workers whose work is suitable for telework have been caught unprepared for such work. On the other hand, this transformation has led to the danger of some professions becoming "obsolete", and some workers have come under constant pressure for "Lifelong Learning" to renew their knowledge and skills and even their identities. In this sense, in the Post-Pandemic Period, it is of great importance that workers who are suitable for telework should undergo renewal / technology training.

Another problem with telework is the inadequacy of the legislation. The first international legal document on telework is the "Framework Agreement on Telework", which has been prepared and accepted by the European Union and social partners. The Agreement was prepared and put into effect on 16 July 2002 by the social partners ETUC, UNICE, UEAPME and CEEP organized at the European level, in accordance with the procedure within the framework of Paragraph 2 of Article 139 of the Rome Agreement. The Convention is also recognized as a creative and participatory example of social dialogue at European level. In our country, teleworking is among the types of teleworking and it entered our legislation only in 2016. Although, with the 2016 amendment, in the employment contract regarding telework; "... the description of the job, the way it is performed, the duration and place of the work, the matters regarding the payment of wages and wages, the equipment provided by the employer and the obligations regarding their protection, the provisions regarding the communication of the employer with the worker and the general and special working conditions." Even though (article 14 / 5) statement is included and it is stated that the details of the subject will be regulated by a regulation (article 14 / final), the said regulation

has not been issued yet. In view of the increasing importance of this type of study, in our opinion it will be appropriate to regulate the issue in detail with secondary legislation and urgently.

f. Occupational Health and Safety Legislation Must Be Revised

One of the most important obligation of the employer arises from the employment contract is the “obligation to protect employee”. The nature of this obligation requires the employer to take occupational health and safety measures; it requires every effort to make the work in a healthy and safe environment.

According to the 4th Article of the Occupational Health and Safety Law No. 6331 regulating the issue “ the employer shall have duty to ensure the safety and health of workers in every aspect related to work. In this respect; the employer shall:

- a) take the measures necessary for the safety and health protection of workers, including prevention from occupational risks and provision of information and training, as well as provision of the necessary organization means and shall ensure that these measures are adjusted taking account of changing circumstances and aim to improve existing situations.
- b) Monitor and check whether occupational health and safety measures that have been taken in the workplace are followed and ensure that nonconforming situations are eliminated,
- c) Carry out a risk assessment or get one carried out,
- d) Take into consideration the worker's capabilities as regards health and safety where he worker,
- e) Take appropriate measures to ensure that workers other than those who have received adequate information and instructions are denied access to areas where there is life-threatening and special hazard.

Due to Covid-19 Pandemic, while the employer may choose to take all necessary precautions within the scope of Article 4 in order not to expose his workers to the risks arising from the virus,

they may choose to continue the production / service; realizing that they cannot fight it, they may prefer to isolate the workplace environment from workers. By not exposing employees to this virus (risk) in the workplace, and preventing this disease from turning into a work-related health problem, employer can remove all employees from the workplace. Both of these decisions are the decisions that the employer will take within the scope of the obligation to protect, and both are steps that can be taken to eliminate the Covid-19 risk. For that reason, failure to take these steps will be deemed a breach of the duty of surveillance, and when the appropriate causal link is established with the business, it will lead to the consequences attached to it. The fact that it affects the whole world and that a solution cannot be found yet, it cannot be a reason for the employer to remain inactive by seeing Covid-19 inevitability or force majeure. The obligation of protecting the worker expects the employer to do one's share.

A legal amendment regarding the employer's obligation to protect and the Covid-19 relationship is not required from our standpoint. Because it would be better to fill the obligation of protection which is an abstract and dynamic concept, and the employer's obligation to take occupational health and safety measures with judicial decisions according to the current requirements. With the mentality to contrary, determining the limits of this obligation with a legal regulation will leave the code inadequate in the event of unexpected new needs. In our opinion, the biggest problem about occupational health and safety legislation during the Pandemic Period was experienced regarding the employee's "right to avoid working". According to the 13th article of the Law No. 6331 regulating the subject ‘

(1) Workers who are exposed to serious and imminent danger shall file an application to the committee or the employer (in the absence of such a committee) requesting an identification of the present hazard and measures for emergency intervention. The committee shall convene without delay and the employer shall make a decision immediately. The decision shall be communicated to the employee and employee's representative in writing.

(2) In the event that the committee or the employer takes a decision that is supportive of the request made by the employee, the employee necessary measures are put into practice. The employee shall be entitled payment during this period of abstention from work and his/her rights arising under the employment contract and other laws shall be reserved.

(3) In the event of serious, imminent and unavoidable danger; employees shall leave their workstation or dangerous area and proceed to a place safety without any necessity to comply with the requirements in the first paragraph. Workers may be placed at any disadvantage because of their action.

(4) Where the necessary measures are not taken despite the requests by employees, workers under labor contract might terminate their employment contract in accordance with the provisions of the law applicable to them. As for the workers under collective bargaining agreement, the abstention period as defined in this article shall be deemed as actual work time.’’

With this provision of law, a procedure that can be considered long and often far from responding to the urgency of the incident is arranged. The right to avoid from working, which is one of the most fundamental rights reflecting the preventive character of occupational health and safety, should be encouraged due to its potential to prevent further damages by preventing accidents and diseases, and the exercise of the right should be facilitated. This perceptive is primarily valid in the Covid-19 Pandemic, which is the biggest occupational health problem faced by the business world in the world. According to the regulation of the law, in the presence of serious and imminent danger, the worker may apply to the occupational health and safety committee or the employer; the committee will convene urgently and make a decision, the situation will be notified to the worker in writing, and in case the committee or the employer make a decision in the direction of the employee's request, the employee may abstain from working until the necessary measures are taken. Even the employees of employers who do not take measures will be able to terminate their employment contracts with just cause.

In our opinion, this arrangement is far from functionality. First of all; despite the request of the worker, if the committee or employer does not make a decision, the way to go is not clear. Secondly, the exercise of the right to protection of the contract is not guaranteed; although the termination of the employment contract seems to be an assurance, it leaves the worker unemployed as a result. The worker may well be subject to discriminatory treatment or even termination because of her/ his avoidance of work. Thirdly, the scope of law did not associate the issue with public authorities and left the process to the initiative of the employer. In the light of all these

explanations, legal regulations and changes should be made that can make the right to avoid working, which can be beneficial in pandemic periods, in terms of occupational health and safety.

g. The Needs of Collective Labor Law Must Be fulfilled

With the serious emergence of the Pandemic effect, there was a serious confusion in collective labor law. In particular limitations experienced in social areas and transport led to hesitation on how to run the processes related to collective labor law. In this sense; the operation of authority process, conducting of collective bargaining process, the union leadership and the gathering of General Assembly, organizing the mediation talks, performing a strike ballots, and other issues such as going on a strike and lockout. In the face of these effects, first the Ministry and then the Parliament by an Act resorted to postponing the processes regarding collective labor law. It should be emphasized that when these temporary regulations, which do not rely on a strong legal basis and seek a remedy for daily needs, were made inexperienced, hesitations in both the doctrine and the application increased even more.

According to the provision of Law No. 7244 on Collective Labor Law

"The deadlines for giving authorization determinations within the scope of the Law No. 6356 on Trade Unions and Collective Bargaining Agreement, making collective bargaining agreements, resolving collective labor disputes, and strike and lockout have been extended for three months from the date of entry into force of this article. The President is authorized to extend the three-month period mentioned in this paragraph up to three months from the end. "

The wording of the article has caused serious problems. For example, the strike vote must be made within six working days after the application is made to the relevant authority. (6356 s. K. m. 61/1). From the meaning of the article, it cannot be understood whether this period has been extended by 6 working days + three months or has been postponed.

Likewise, according to the provision 60/1 of the Law No. 6356 " The decision to strike ... can be taken within sixty days from the date of notification of the dispute report and can be put into effect within this period on a date to be notified to the other party six business days in advance. In the event that the strike decision is not taken or the date on which the strike will be implemented is not notified to the other party within this period, the authority to conclude a collective labor agreement becomes void." According to this provision, it is not understood when a union that declared a strike will put into effect and when it can implement a strike decision. Moreover, the sanction of the article is the loss of authority.

In our opinion, what needs to be done right after the Pandemic is to make the collective labor law processes online as soon as possible. Making the legislation suitable for online transactions and accelerating the processes should be the primary goal. In fact, union membership of the judgment to be made via e-devlet (e-state) (6356 p. Law m.17 / 5) was the first step in this direction. It is possible to continue this. Moreover, as we mentioned above; The operation of authorization processes, collective bargaining, union management and general assembly meetings, mediation negotiations, strike voting and even strike and lockout applications can be easily carried out online. What needs to be done is to put provisions on online transactions in Law No. 6356 and secondary legislation and to encourage unions to take action according to these provisions.

h. Social insurance (especially unemployment insurance) funds should be particularly protected.

One of the most important problems of the Turkish Social Security System is that the funds in the system are redirected to activities out of purpose through politics. In addition, political interventions against the autonomy of social security institutions and implicit transfer of funds by investing social security funds in low-interest government bonds are among the common practices.

The Unemployment Insurance Fund was one of the most discussed funds during the Pandemic Period. During this period, the Fund was the source of the commonly used unemployment allowance, short-time working allowance and cash wage support.

Unemployment insurance and unemployment insurance fund in Turkey are managed by an autonomous agency consisting of workers, employers and government representatives. Although it is managed in an autonomous and tripartite structure, the misuse of the unemployment insurance fund and the continuous changes in the law are criticized. This situation also conflicts with the autonomous administration. Despite the parties' strong opposition, the sources of funds are used out of purpose with the laws enacted and this situation creates suspicion that the Unemployment Insurance Fund will fail like other funds. While the Unemployment Insurance Fund was established, the incomes were kept high and the unemployment insurance allowance was low so that the funding source was not exhausted quickly. As a result, the fund has accumulated. The state uses this accumulation in the fund in other areas than the purpose of the fund. However, access to unemployment insurance should be facilitated, there is a need to increase the amount of unemployment benefit and extend its duration. As seen in other fund examples in the past, this fund source is also in danger of being wasted by deviating from its purpose. Therefore, the fund should not be allowed to be used in other areas. Representatives should be especially careful in this regard. Because, during the Pandemic Period, the financial needs of workers and employers were provided by unemployment benefits, short-time working allowances, employment supports and cash wage support and by unemployment insurance. In the future at the time of a probable crisis and the political and preservation of the populist purpose, funds to be able to use the same source as the force majeure period, protection with robust security and prevention of losing value against inflation, if possible, should be managed by professional managers.

5. CONCLUSION

The Covid 19 Pandemic, which emerged in China in the beginning of 2020 gradually spread all over the world and reached at enormous levels and caused social problems as well as economic ones. Unemployment and corresponding consequences are leading socioeconomic problems. Unemployment may be both cause and consequence of Turkey's economic contraction however it also brings legal problems in all cases.

With the onset of Covid 19 Pandemic, the states have tried to prevent growth of damage by reacting rapidly to problems that arise and have tried to generate temporary solutions. However obscurity of Post Pandemic forces the states severely.

With the effects of Pandemic started to be felt also in Turkey, there have been numerous and significant developments related to Labor and Social Security Law. In this sense, it's possible to say that especially the legislative and executive organs show an important reflex to avoid increase of these problems and damage that occurred and significant progress has been made through that reflex. At this point, it is necessary to emphasize that, in the crisis periods based on compelling reasons/force majeure the intervention of states appear in the form of preventing economic problems and enforcing the social support program to that end. The level of that intervention is closely related to economic richness of the states. Hence, it is also necessary to evaluate sufficiency of the economic programs that put into practice by our state against Covid 19 Pandemic in this context.

With the arising of 2020 Covid 19 Pandemic, there has been a huge wave of dismissal (termination of labor contracts) in Turkey, besides that again high amounts of giving unpaid leave cases were encountered. On the other hand, applications of short term working allowance and implementations of cash wage support have become widespread, amount of employees who incline to/are directed to working from home /teleworking have reached great dimensions. Demands of working hours reduction and salary reductions that come from employers, accompanying part time working and enforcements of similar flexible working have become widespread. The right to refrain from working has started to be implemented because of not taking the occupational safety measures. There was a confusion in collective labor relations at first, but the problems that arose were temporarily resolved with the intervention of executive organ first and then the legislative.

Scientists predict that the effects of the Pandemic will abate in the second part of 2020 and will end in 2021. However this situation doesn't mean that there will be no problems or the problems will end in the Labor and Social Security Law. In this situation, what needs to be done on the basis is to determine the measures that will eliminate the negative consequences of 2020 Covid 19 Pandemic and afterwards in case same situation happens again, before possible problems arise, to determine measures to prevent it and apply them.

In our opinion, what needs to be done firstly is continuing of termination prohibition of labor contracts for a while; reviewing the short term working allowance and implementations of cash wage support related this. Secondly, employment should be protected and increased by tax and premium incentives. Thirdly, efforts should be made to develop flexible employment models that ensure the very beneficial consequences during the Pandemic Period. Fourthly, the legislation that cought unprepared to pandemic periods should be reviewed according to requirements of the period and the deficiencies should be eliminated. Fifthly, information resources and infrastructure should be developed for online working which was the rising employment model of Pandemic Period and also secondary legislation should be constituted. Sixthly, Occupational Health and Safety legislation should be reviewed. Seventhly, infrastructure and legal regulations should be made for the online process of Collective Labor Law on the internet. And finally, social security funds, notably the unemployment insurance fund, that expected to be a resource for economic problems happened in these periods should be protected and it should be to kept away from political intervention.

In addition to being a dangerous and mortal epidemic that humanity never expected, The Covid 19 Pandemic has also caused enormous problems in the field of Labor and Social Security Law. Finding solutions to these problems is not simple at all, however our solution suggestions related to these problems can be a starting point.

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Topic: Economic Consequences of Coronavirus Covid-19: The Global And Local Economic Landscape

INTRODUCTION:

These last months, the copacetic outbreak of the novel Corona Virus had a tremendous impact and repercussions over all of the aspects, of the globe, as an entity and as we know it.

It became, a psychological and sociological phenomenon as well as an economic, social and political debate.

However, the world and its population are learning how to cope with this virus with time, governments, NGOs and even individuals are heavily implicated in reducing to a minimum the deaths and critical cases caused by the virus as well as in maintaining the sanitarian issue as a priority and also in uniting people and raising awareness and consciousness.

Meanwhile, it is believed that the long-term effect and the gravest one of this catastrophe, is that harm done by the cataclysm on the economic landscape. Companies are going bankrupt; jobs are being suppressed and shortage on many essentials are growing by the day in many countries all over the globe.

PART1: THE EFFECT OF THE COVID-19 ON THE GLOBAL ECONOMY

(Aisha Al-Misnad 201601532) :-

In this part, my role is to explicitly demonstrate the effect of the outbreak of the coronavirus on the global economy and to underline the gravity of such an impact on countries and populations.

First of all, it judicious to define what economy means, how wealth is calculated and what are the standards with which growth or recession are measured? what legal basis does the global economy rely on and what is the importance of a global economy at least from a Qatari point of view.

Surely, to respond to those questions one need to be an expert in economy and in order to have an accurate answer the response may take days of never-ending explanations.

Thus, I will try to simplify my explanation to a maximum.

An economy is the large set of inter-related production and consumption activities that aid in determining how scarce resources are allocated. In an economy, the production and consumption of goods and services are used to fulfill the needs of those living and operating within it.

To keep it simple I will put this definition in other words, the more there is a production of demanded goods the more there is wealth, the more wealth an economy has the more stable and happier the society that lives within it will be.

The global economy is simply the inter connection of different economies around the globe, its goal is to profit from the production of the goods that others can produce either better than you or cheaper than you. It relies basically on the UN convention of human rights and on the treaties signed between countries bilaterally.

The global economy as defined in a “simplistic and caricatural manner” above, can be seen as based upon the transportation and open boundaries. Hence the coronavirus outbreak affected the global economy in its core, forcing countries to close borders and to restrain the incoming and outgoing flux of people led to reducing the amount of export and import all around the globe.

The ignorance of the mechanism of transmission of this virus, also led to an exaggerated panoply of precaution measures forcing many industries and labels to shut-down due to the impossibility of operating whilst respecting these health measures.

Crowded places such as: indoor coffees, bars, restaurant, night clubs, spas, malls and barbershops are all seen as highly risked places and thus were shut down for several months and their activity was hugely reduced when they reopened.

In this perspective, many viable sectors of the economy, were heavily affected, tourism, services and even heavy industries are all shrinking by the day

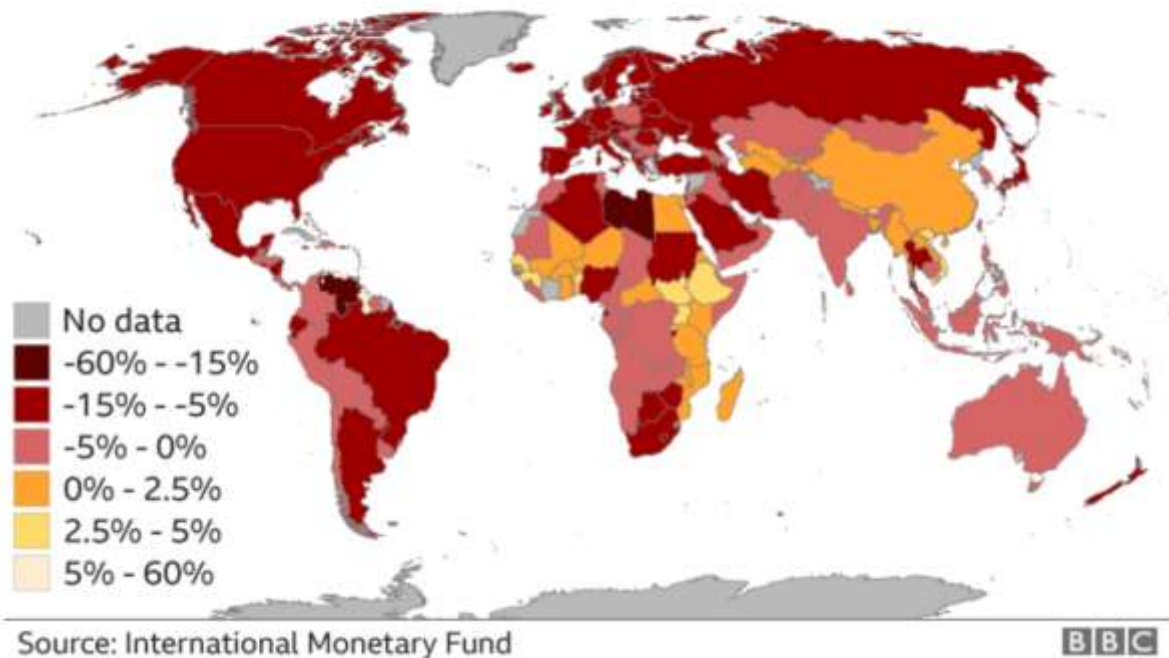
Retelling all of this in numbers is undoubtedly more choking. According to the IMF for example the unemployment in USA, France and Italy grew by 7%, 2% and 3 % respectively.



Before continuing on giving numbers I must define what GDP stands for because it is believed to be the most trustworthy indicator of the health of a given economy.

The Gross Domestic Product (GDP) is the monetary value of all finished goods and services made within a country during a specific period. GDP provides an economic snapshot of a country, used to estimate the size of an economy and growth rate.

Real GDP growth, Q1 2020



According to the world economic forum, the American GDP fell at a 32.9% annualized rate, recording the deepest decline since records began back in 1947.

The ongoing coronavirus pandemic will haunt the US economy for a decade, wiping close to \$8tn off economic growth, according to new projections released by the Congressional Budget Office (CBO).

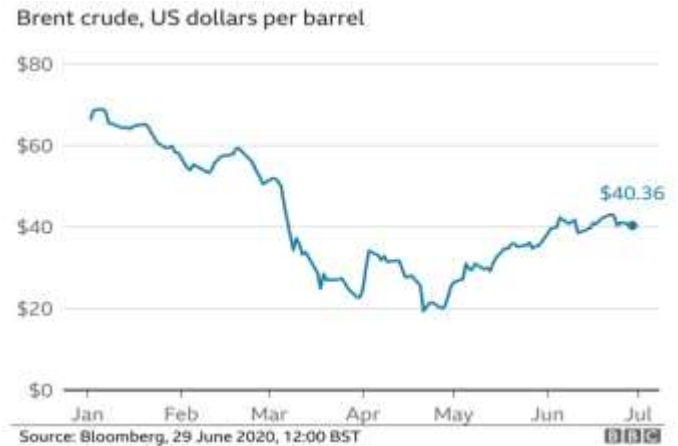
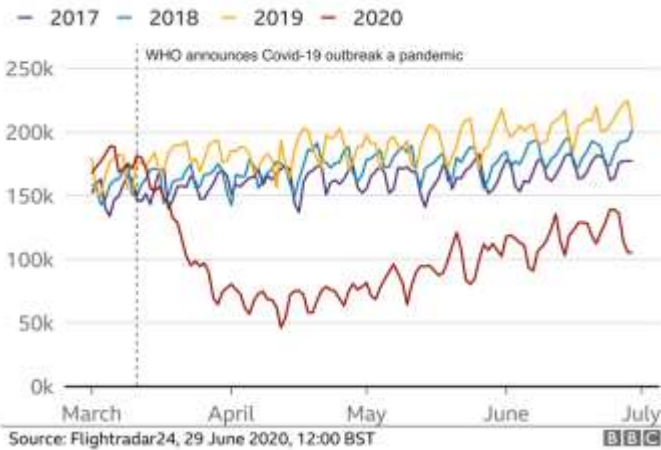
Take France for example, due to the outbreak of coronavirus (COVID-19), the gross domestic product of France decreased 14.1 percent in 2020. The largest decrease might be registered if a second wave of infections, with renewed lockdowns, hits the country before the end of 2020.

The INSEE The National Institute of Statistics and Economic Studies in France declared that there are more than 1.5 million jobs suppressed in the country due to the outbreak of the covid19.

The travel industry and oil field were also hit severely.

PRICE OF
A
BARREL
OF OIL

NUMBER OF DAILY FLIGHTS



All of this will surely fire back towards our local economy in Qatar, the oil shrinking the energy consumption recession the decrease in the travel industry etc... can be all but good for our nation.

[PART2: THE LOCAL ECONOMY POST-COVID19](#)

[\(Aisha Al-Jarboei 201605669\):-](#)

In order to apprehend the actual impact of coronavirus on the local economy of Qatar, one should know how does our economy function and on what it is based.

The economy of Qatar is believed to be one of the richest in the world based on GDP per capita according to the IMF (international monetary fund). Qatar is considered as a developing high-income country.

The GDP of Qatar is divided as following, income from agriculture: 0.2%, industry: 50.3%, services: 49.5%.

Petroleum and natural gas are the cornerstones of Qatar's economy and account for more than 70% of total government revenue, more than 50% of gross domestic product, and roughly 85% of export earnings.

As described above, the oil industry worldwide and the global consumption of energy is decreasing tremendously, creating a shortage and incline in the demands and thus a decline in the production, as explained any decrease in the production of

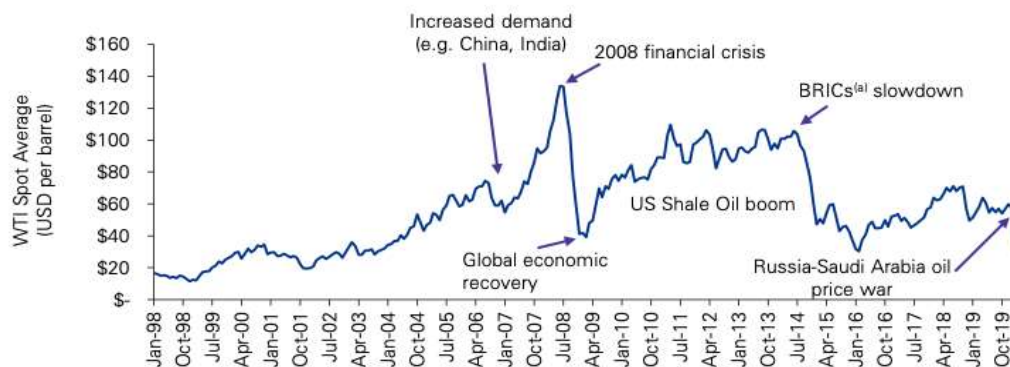
these key sectors will implicate a decrease in the income and thus the wealth and the economy overall.

The decrease in oil prices is also causing natural gas prices to fall, given energy demand as a whole is being impacted. Exports of LNG to China are being allocated to new buyers to absorb the additional supply that has come online in the last few years.

Low oil and gas prices, lockdown and the restriction to mobility across countries will delay several oil and gas upstream projects.

New projects were already being delayed due the low gas prices amid a growing glut.

Price of crude oil (2005 – 2020)



Note: (a) Brazil, Russia, India and China
Source: Bloomberg, KPMG Analysis

Energy Minister and CEO of Qatar Petroleum, Saad Sherida Al-Kaabi, has announced a 30% cut in its expenses this year, in view of the fall in the price of black gold and gas in recent months.

Demand is depressed, and storage is too high creating a serious dilemma in the energy field about the actions to be taken and the forecast of this vital sector.

In addition to the energy field, Qatar's economy relies on the service sector the aviation industry, tourism and sports.

The transportation sector as a whole witnessed a significant reduction in the movement of people and merchandise, while aviation came to an almost standstill. According to a Google data analysis on Qatar, the movement of people dropped by 60% around public transport hubs.

Flight demands were frozen for several months, forcing Qatar Airways to opt for a recession plan and tending towards cutting a substantial number of jobs, estimations went to forecasting a release of 20% of the company staff and 65% in the annual number of flights.

Tourism and sports will also be affected since crowds are no more allowed, the important sports events are to be held without public presence and even though boundaries are open again people are afraid to travel.

In order to understand the actual impact of MERS-CoV on Qatar's local economy, one must know how our economy works and what it is based on. Qatar's economy is believed to be one of the richest in the world based on GDP per capita according to the International Monetary Fund, which is considered a developing country with high incomes.

- ✓ 0.2% income from agriculture:,
- ✓ 50.3% industry:,
- ✓ 49.5% Services:

Oil and natural gas are the cornerstone of the Qatari economy, accounting for more than 70% of total government revenues, more than 50% of GDP, and about 85% of export earnings. As described above, the worldwide oil industry and global energy consumption are declining significantly, leading to a decrease in demand and thus a decline in production, as explained by any decrease in production of these key sectors will lead to a decline in income and thus wealth and the economy in general. The drop in oil prices is also causing natural gas prices to fall, as energy demand as a whole is affected. LNG exports to China are allocated to new buyers to

accommodate the additional online supply of the past few years. But with the outbreak of the virus it was seen as follows:

- Low oil prices due to Corona pandemic led to lower oil and gas prices
- Many oil and gas exploration projects in Qatar have already been delayed due to low gas prices amid growing glut and closures and restrictions on movement across countries
- Reduced expenditures by 30% this year 2019-2020, due to lower prices and lower incomes respectively announced by The Minister of Energy and Ceo of Qatar Petroleum, Saad Sherida Al Kaabi
- In light of the decline in the prices of black gold and gas in recent months where demand has been low, storage is extremely high which has created a serious energy dilemma about the actions to be taken and the outlook of this vital sector.
- Sports economy and sports tourism: The sports sector, like other sectors and human activities, has been negatively affected by the Corona pandemic and the various activities that have been suspended. Sport, as an economic industry with a market value of \$470 billion, has been severely affected by the suspension of activities, and its operators, whether athletes, administrators or clubs, have experienced difficulties and challenges during the break.. The Qatar Olympic Committee announced the fifth extension to suspend sports activity until May 31st, in line with the preventive measures taken by the state to curb the spread of the coronavirus. Decisions have also been issued in many countries to suspend sports activity and postpone all league matches or other activities, while some national federations preferred to organize their matches behind closed doors without a mass presence.

- The transport sector as a whole has seen a significant decline in the movement of people and goods, while flights have almost stopped. According to google data analysis on Qatar, people's traffic has decreased by 60% around public transport hubs. Flight orders have been frozen for several months, forcing Qatar Airways to opt for a recession plan and tend to cancel a large number of jobs and stop flights around the world, and estimates went on to predict the launch of 20% of the company's employees and 65% of the annual number of flights. There is no doubt that tourism and sports will also be affected, since crowds are no longer allowed, and despite the fact that the border swells again, people are afraid to travel.
- We do not lose sight of the stock exchange, which witnessed a decline in morning trading, under the pressure of a collective decline of sectors, influenced by the increased fears of "Corona" and its emergence. For example, the industry fell 2.08%, with several shares issued by investors declining by 6.56%.. Banking and Financial Services shares fell 1.27%, down 2.07% from 11 of the 13 listed shares in the sector, most notably the national sector, the largest percentage weight in the general index.
- Qatar prohibits all restaurants and cafes from submitting applications and those who violate this prohibition will be subject to legal accountability," which crippled restaurant transactions, including the announcement of the closure of Friday's restaurants in Qatar.

PART3: DOMESTIC SUPPORT POST COVID19

(Haya Al-Mousa 201104221) :

The amendment No. (17) that was issued in 2020 regarding determination of the minimum wages and the laws that facilitated the employee to be transferred between the employers surely reserve right of the injured employee to be fulfilled by the employer , especially as result of the crisis, unless the employer adheres to pay

financial dues of the employee, in line with Qatar Vision 2030. These laws are deemed new and important step in course of the reforms that were conducted to the labor market and would benefit the employers, employees and country alike during this exceptional period. In addition, the country took many actions to confront the economic crisis resulting from the spread of Coronavirus, where the country provided subsidy valued 75 billion Qatari riyal for the private sector to mitigate the damages caused to the companies in order to help them to overcome this crisis and to continue their works and achieve growth. The small and medium companies were also exempt from the damages that has been caused by this pandemic from the rental value. Moreover, guarantees valued 3 billion Qatari riyal were allocated for the local banks in order to grant concessional loans without commissions or charges to the companies that has been affected by this crisis to support the salaries and rents. The Qatari Law has defined the small and medium projects: as companies that have been established in accordance with the Qatari laws, in which size of the labour force is not more than 250 employees and their annual return does not exceed 100 million Qatari riyal and they include three categories:

- 1- Microenterprise: the companies that have been established in accordance with the Qatari laws, in which size of the labour force is not more than 10 employees and their annual return does not exceed one million Qatari riyal.
- 2- Small enterprises: the companies that have been established in accordance with the Qatari laws, in which size of the labour force is not more than 50 employees and less than 11 employees and their annual return does not exceed 20 million Qatari riyal.
- 3- Medium enterprises: the companies that have been established in accordance with the Qatari laws, in which size of the labour force is not more than 250 employees and less than 51 employees and their annual return is not less than 20 million Qatari riyal.

Bankruptcy of the companies and debt rescheduling

The bankruptcy is that the company declare that it is not able to fulfill its obligations towards the creditors, whereupon, the company liquidates all of its properties and bank accounts to pay these liabilities and obligations as much as possible, then, of course the company get out from the labor market. Dr. Mohammed Al-Khulaifi dean of College of Law at Qatar University mentioned in his book "Features of Bankruptcy Regulation in Qatari Trade Law" that the bankruptcy is limited to the merchants only and the bankruptcy is collective system to liquidate funds of the merchant debtor that fails to pay his commercial debts. Merchant's bankruptcy shall not be declared, except under judicial judgment issued by the competent court. Although the matter is difficult for the merchant that will declare his bankruptcy, however the bankruptcy paves him the way that may help him to get back on his feet and to revive again. He compared between the Bankruptcy Law in most of countries of the world and American Bankruptcy Law, whereas the latter has different view to the bankruptcy, as the Bankruptcy Law described the bankruptcy as encouraging the insolvent debtor to continue his efforts related to the business through granting him an opportunity to help him to practice his business, while the bankruptcy in most of the countries is deemed a stigma for the creditor merchant and evidence for his failure. As for the American Law, it grants the full protection for the individuals and companies insolvent to repay their debts. Therefore, we find the diversity in provisions of the Federal Bankruptcy Law, specifically in those related to provisions of Law of restructuring debts of the insolvent debtor.

There is the so-called the Bankruptcy Law that includes the companies and institutions that are unable to repay the debts owed by them. In general, the Bankruptcy Law provides for the companies the opportunity to start again, through the exemption from the debts that cannot be repaid during this period. When one of the large companies declare its bankruptcy, the main reason for the restructuring is

due to its financial system and an opportunity that it gets from the country to protect it from the creditors. Avianca Colombia Airline, which is the second oldest airline in the world is one of the international companies that declared its bankruptcy as result of this pandemic, where this company declared its bankruptcy, after it failed to pay its bonds on time, whereas the airlines were the first victims as result of this crisis, where they were unable to withstand without the government assistances.

PART4: WHAT POSITIVE TO EXTRACT FROM THIS CATASROPHE FROM A LOCAL POINT VUE (Shaikha Al-Muhannadi 201605365) :

In this part I will try to extract any positive outcome that this outbreak could potentially engender.

As Abraham Lincoln once said quote: “he who perpetually chooses to see the dark side of matters will be forever doomed to its darkness”

In this sense, despite all the drawbacks that this catastrophe engendered one can enumerates some beams of hope and positiveness from an economic perspective as following :

- For instance, the financial services sector in Qatar is better shielded than in the 2008 financial crisis by stronger capitalization, a wider use of digital solutions and their expected role in transferring money from the government to distressed companies.
- Also several schemes about foreseeing and intercepting any possible shortage in oil and petrol reserves especially in the western block of the world, are being studied meticulously and seriously in the energy producing companies, in order to be the first supplier.

In addition to this, Qatar demonstrated a well establish economy and financial system, a great network throughout the globe and a good reputation in the global community, such things prevented it from going to the abyss and showed how still our country can stand in times of crisis, this is something to be cherished and praised and could be a foundation stone to build on. Therefore , we would like to draw attentions to some features as mentioned below :

1. In 2018 Qatar public debt was 93,011 million dollars, has increased 9,931 million since 2017.This amount means that the debt in 2018 reached 48.63% of Qatar GDP, a 1.12 percentage point fall from 2017, when it was 49.75% of GDP.The debt grew more due to the blockade done by the neighbor countries, however the coronavirus outbreak could be used since the global financial institutions are leaning on their requirements for lending developing countries money and are rescheduling the terms of payment for many nations.

International organizations and governments have sought to adopt a range of expansionary economic policies in the form of grants and loans, as well as increased government spending, expansion of tax credits, and lower interest rates.

2. The International Monetary Fund (IMF) has announced \$50 billion in emergency financing facilities, which are designed to help low-income countries and emerging markets, as they seek to contain the negative economic effects of the spread of the virus. Many governments and central banks in developed countries have announced a range of different policies that will provide liquidity to companies and individuals affected by the spread of the new CORONA virus
3. Also the ratio of dead per number of infected was one of the smallest in the world, in fact our health system and infrastructure was tested to its limited during the peaks of infections both citizens and residents were devoted to the cause this showed us that what we had was founded on solid bases.

4. Many other sectors such as pharmaceuticals, telecommunications, and e-commerce companies have benefited: manufacturers of masks, gloves, and hand sanitation fluids have recovered, and individuals have been quick to purchase these goods in an effort to protect themselves and their families from contracting the virus. E-commerce companies such as commercial giant Amazon have benefited under the umbrella of beneficiaries of the spread of the virus, as with restrictions on gatherings in many countries, online shopping has become the only refuge for many people. Benefiting pharmaceutical companies that produce antiviral vaccines such as the emerging coronavirus.
5. With restrictions on the movement of people as well as entertainment such as cinemas and theatres, demand is expected to increase for online applications, as well as online entertainment providers
6. States and economic institutions will need a set of policies that will mitigate the negative economic effects of the spread of the new CORONA virus
Companies such as airbus, bowing and many other worldwide multinationals are following this optic, which could be used by our country in terms of renegotiating contracts and signing treaties and deals.
7. Qatar Airways has taken, since the beginning of the outbreak of the new Corona epidemic (Covid-19), many steps and preventive measures, as well as its adoption of a new trade policy with clear objectives and milestones to ensure the reduction of operational losses and to preserve the rights of travelers affected by any repercussions resulting from the crisis. Observers believe that the national carrier of the State of Qatar is managing the Corona crisis efficiently and clearly aimed at reducing the cost of losses resulting from the crisis and taking measures to preserve liquidity, in comparison with its counterparts from global carriers, many of which have been severely affected by the activity, especially the competing carriers operating in the Middle East region that have suspended their flights. As a result of

"Corona" and global government restrictions. Qatar Airways is still flying planes despite the crisis, but at only 40% of normal traffic. In statements made by His Excellency Mr. Akbar Al Baker, CEO of Qatar Airways, to Reuters: "The national carrier of the State of Qatar has received many requests from governments around the world and embassies in certain countries asking Qatar Airways not to stop flights. We will continue flying as long as there is a need and we have requests to transport stranded people to their home countries, provided that the airspace and the airport are open. "Qatar Airways is currently operating flights to Europe, Asia and Australia, to transport passengers stranded due to the Corona virus, with many countries closing their borders. On February 7, 2020, the Qatar Airways and the Chinese Embassy in Doha announced the launch of the "Safe Passage" initiative to transport medical aid by air to China. The Qatari carrier is the first international airline to volunteer to fly emergency relief aid planes to China. The national carrier of the State of Qatar currently operates its flights to a large number of destinations thanks to the advanced air purification systems in its modern aircraft, and thermal checks for its employees at the airport, which contributed to the reunification of thousands of travelers with their families and loved ones. Qatar Airways Group said that total revenue increased by 6.4% to 51.1 billion riyals in the fiscal year ended March 2020. On March 6, 2020, Qatar Airways launched a new trade policy that gives travelers great flexibility in line with their travel plans, due to the repercussions of Corona. Passengers who have booked or will book their tickets for travel until 30 June 2020 can change their travel plans without any additional fees by changing the reservation dates or replacing tickets with a travel voucher valid for a whole year, as this policy applies if the change or replacement takes place three days before the date Departure.

8. For me the most positive thing to constate and to enjoy was the response of our country to this cataclysm and the union that reigned in our society, it showed us how

well organized the country were during the outbreak, new technology were used efficiently (ihtiraz for example) even better and in more intelligent ways than that used in the advanced countries, civism and awareness rose within us and the respect of precaution measures was quasi perfect.

Law Clinic- faculty of law- Qatar university- Qatar

Final Report

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**Topic: Modifications of Employment Contracts to Address
Coronavirus Covid-19.**

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Fall 2020

(Jawaher AlHajri) The impact of Coronavirus on employment contracts, employers and workers:

During the covid-19 pandemic high numbers of employment contracts have been affected. Supreme Committee for Crisis Management and the special authorities worked hard to prevent the economic crisis that impact the employment contracts and taking measures for workers rights, the employer, and employee in general equally.

The permanent constitution of the state of Qatar gave importance to expats that guarantee their rights, the basic general principles governing labor law:

-The employee–employer relationship shall be based on the ideals of social justice and shall be regulated by the Law. (Article 30)

-All persons are equal before the Law and there shall be no discrimination whatsoever on grounds of gender, race, language or religion. (Article 35).

-Individuals have the right to communicate with public authorities. (Article 46)

This allows the worker or other foreigners to deliver any complaint or demand, as is the case for citizens.

-Every person who is a legal resident of the State of Qatar shall enjoy the protection of his person and property in accordance with the provisions of the Law. (Article 52)

-Qatar efforts during the covid-19 pandemic that Shed light on employment contracts, employer and employees labor relationship:

There are procedures and efforts that the Ministry of Administrative Development, Labor and Social Affairs took to ensure that workers and the employers have their rights that can be affected during the covid-19 pandemic.

The Ministry of Administrative Development, Labor and Social Affairs cooperated with specialized authority to take all necessary measures to protect workers and

ensuring their basic rights. They developed a clear policy to ensure prompt response and effective implementation to these measures.

First: the state's efforts in financial terms for the private sector:

-They provided employers in the private sector with Financial incentives estimated 75 billion Qatari riyals, in a way that guarantees workers rights to get their salaries without harming the employer with what is stated in the employment contract between the worker and the employer in implementing it.

-Qatar Development Bank launched a program (National guarantee) to respond to the repercussions of Corona virus for the private sector by allocating guarantees to local banks, worth 3 billion riyals to grant soft loans without interest or fees for private companies that are affected by short-term payment difficulties In order to help them to pay employees salaries according to the wages protection system for a period of three months, paid on a monthly basis, As well as paying rent dues (factories, business facilities, warehouses, workers accommodation) for a period of three months, to be paid on a monthly basis.

-The point of these exceptional measures so that companies activity that are affected by corona pandemic keep moving forward, and help them to apply to the bank to enable it covering workers salaries.

-Law No. 18 of 2020 amending certain provisions of Labor Law No. 14 of 2004. This Law prescribe stricter penalties for employers who fail to pay their workers salaries specially during the corona pandemic, and the increasing of the number of labor dispute resolution committees worker cases.

Second: The state's efforts in the contractual relationship between employers and employees:

All sectors, activities and services that have followed government instructions are permitted to suspend their activities, In view of the precautionary measures to combat the spread of the Covid-19 virus, an agreement should be made between

employers and workers provides that worker has unpaid leave or annual leave or reduce working hours or reduce wages temporarily subject to other conditions:

-In cases where they provide food and / or housing (directly or paying allowances) they must continue to provide free food and adequate housing to the workers. These benefits cannot be reduced or canceled.

-Workers who are isolated, quarantined, or who receive treatment continue to receive their basic wages and allowances, regardless of whether they are entitled to sick leave or not.

-Employers may terminate employment contracts, but it must be done in full compliance with the provisions of the labor law and contract, including the notice period and payment of all outstanding dues, including the return ticket to the homeland.

-During this period, and even in cases in which workers' contracts are terminated, employers remain responsible for providing workers with adequate food and housing free of charge, or equivalent cash allowances, until the worker's repatriation procedures are secured at the employer's expense.

(Maha AlMohannadi) The extent to which the health and safety rules contained in the Qatar Labor Law agree with the convention of the International Labor Organization:

-In this part of this report it will be concerned to clarify International agreements particularly (International Labour Organization) especially what it contains, what it organized, and what rights do it protects in terms of workers in particular, their health and safety at work, As well as clarifying the health and safety rules contained in Qatar Labor Law No. 14 of 2004 and their compatibility with International Labour Organization conventions and with the domestic law of the State of Qatar, especially when we talk about the employer's obligation to provide health and safety to the

worker, and mainly when we are talking about the epidemic that the world is witnessing today, which is Covid-19, And the extent of the impact on employment contracts and workers.

-To be able to clarify the agreements, first, we have to mention the permanent constitution of the State of Qatar and what was stipulated in Article 6 “ The State shall respect international charters and conventions and shall strive to implement all international agreements, charters and conventions to which it is party.”

-Firstly, Concerning the compatibility between them, a study was conducted on the provisions of international agreements, In order to be able to clarify the extent to which the health and safety rules contained in the Qatari Labor Law are consistent with the International Labour Organization agreement regarding the employer’s obligation to provide health, safety and security to the worker during his work and through research we found the following:

-Convention No. 161 - 1985: Convention on occupational health services.

This agreement discussed the issue of how to protect the health of the worker from dangers or epidemics, especially with regard to dangerous work in which the worker is exposed to a great degree of danger that may negatively affect him and his life seriously, This is fully consistent with what was stated by the Qatari legislator, as the Qatari legislator was seriously concerned about the safety and health of the worker within the work environment, and the Qatari legislator stated in Chapter Ten, Safety, Occupational Health and Social Care in Articles 99 and 100 of the Qatari Labour Law No. 14 of 2004, which stipulated in Article No. 99 “The Employer or his representative shall inform each Worker, on commencement of work, of the risks of Work, and what may develop thereof, and shall inform him of the preventive measures to be taken for the protection thereof. Detailed instructions shall be affixed in a conspicuous place stating the professional health and safety means for protection

of the Workers from the dangers to which they may be exposed during the performance of their Work”.

And also what is stipulated in Article No. 100 “The Employer shall take all precautionary measures for protecting the Workers during the Work from any Occupational injury or disease that may arise from the Work performed in his Establishment or from any accident, fire, defect or breakdown in the machinery and equipment.

The Employer shall not charge his Workers or deduct from their Remuneration any amount for providing these precautions.

In the event that the Employer refrains from taking the aforesaid precautions or in the case of existence of forthcoming danger which threatens the health or safety of the Workers, the Department shall raise the matter to the Minister to pass a resolution for partial or total closure of the Work site or to suspend of one or more machines from work until the causes of the danger cease to exist. In this case, the Employer shall be obliged to pay the Remuneration of the Workers in full during the closure or suspension period”.

-Secondly, Convention No. 130 - 1969: Agreement on medical care and sickness benefits.

This agreement came to regulate the issue of the necessary health care for workers during the period of illness or in normal circumstances, this is in addition to talking about the subsidies granted to the worker during the period of his illness, which is also confirmed by the Qatari legislator in the provisions of the Qatari Labour Law No. 14 of 2004 in Article No. 102 “The Minister shall, after coordination with the competent authority, issue the necessary decisions for regulating the appliances relating to occupational health and safety in the Establishments as well as specifying and regulating the services and precautionary measures for protecting the Workers during the course of Work from the dangers of work and machinery, methods and

complexity thereof and organizing of preventive measures for occupational diseases”.

As well as what stipulated in Article No. 104 “The Employer who employs a number of Workers ranging from five to twenty-five shall prepare for them a first aid box supplied with the medicines, tools and equipment to be specified by the Competent Medical Authority. The box shall be placed in a conspicuous location in the Establishment and close to the hands of the Workers. The use of the box shall be entrusted to a Worker trained in providing medical first aid.

If the number of the Workers exceeds twenty-five, a box shall be allotted for each group of a number ranging from five to twenty-five Workers. If the number of the Workers of the Establishment exceeds one hundred, the Employer shall appoint a full-time medical nurse in the Establishment in addition to the first aid boxes.

If the number of the Workers in the Establishment exceeds five hundred, the Employer shall arrange for them a clinic wherein at least one physician and medical nurse shall be employed”.

And that is what we see very important, especially as we are facing Covid-19 this period.

Furthermore, what we see in the below article is not only the workers exposure to occupational diseases, but also the risk of what are workers facing these days such as Covid-19 virus, which must be provided by the employer for periodic examination of workers when they are in work, which guarantees the safety and health of the worker.

Article No. 105 “Periodical medical examinations shall be made of the Workers exposed to the risk of occupational diseases in different activities. These examinations shall be made at intervals commensurate with the risk of the Work, in accordance with the rules decided by the competent authorities. Such rules shall specify the types of examinations and the intervals at which they are made.

The Employer shall keep the results of these examinations in the special files of the Workers. And if the medical examination reveals infection of the Worker by any occupational disease, the Employer shall notify the Department thereof within three days from date of knowing the result of the checkup”.

-Finally, Convention No. 155 - 1981: Convention on Occupational Safety and Health and the Work Environment.

This international agreement, which we can say that it brought together all topics, regulated everything related to occupational safety and health for the worker and how to maintain the health of the worker, in addition to the methods used by the employer to protect workers from the dangers of the profession, and there is no doubt that this matter was not neglected by the legislator The Qatari labor law has organized an entire section in the Qatari Labour law under the name of occupational safety and health, which is from Articles 99 and beyond of the Qatari Labour Law.

-In sum, the Qatari Labor Law has paid full attention to the issue of the health and safety of the worker at work, and the health and safety of the worker was among the first concerns of the Qatari legislator, as happened in the international community and in the international agreements concluded by the International Labor Organization, which was not contradicted by Qatari legislation but rather codified in a conservative manner The right of the worker so that the worker can do his currency to the fullest, and this is evidenced by the extent of the impact of the Corona virus epidemic on work contracts, the most important of which is the changes that took place in work contracts to confront the virus.

International Labour Organization conventions ratified by the State of Qatar?

1- International Labour Conference Convention No. 29 - Convention relating to forced or compulsory labour (international).

2- Convention on the Abolition of Forced Labour - Convention 105 (international).

3- Instrument for Amending the Constitution of the International Labour Organization.

4- The Arab Agreement for the Transfer of Inmates in Punitive and Correctional Institutions in the Framework of the Implementation of Criminal Judgments (regional).

(Fatma AlRumaihi) The labor law and the extent to which it protects the rights of both the worker and the employer:

44 Article

The Employer shall undertake to enable the Worker to perform the Work and provide all the necessary requirement therefore and if the Worker attends the place of Work and is ready to do the Work but he fails for reasons beyond his control to do the Work, he shall be considered to have actually done the Work and so be entitled to the advantages accruing therefrom.

-We can apply this article in the ambient conditions while corona virus is spread all around the world, the employer should enable the worker to do his work. If the employer did not do that by not taking the precautionary measures, and the worker was ready to do the work; the law considered him as he did the job and deserved the advantages accruing therefrom.

Article 82

The Worker shall be entitled to sick leave with pay for each year of his service. This sick leave shall not be granted unless after the expiry of three months from the date of commencement of his work for the first time, provided that the Worker proves his sickness by a medical report issued by the competent physician approved by the Employer.

The Worker shall receive his full Remuneration if the period of the sick leave did not exceed two weeks. If the sick leave extends thereafter the Worker shall be paid half of his Remuneration for other four weeks. The extension of the sick leave thereafter shall be without Remuneration until the Worker resumes his Work or resigns or his service is terminated for health reasons.

The service of the Worker may be terminated at the end of the twelfth weeks of the sick leave if it has been proved by a report issued by the Licensed Physician that the Worker is unable to resume his Work at that time.

If the Worker resigned by reason of sickness, and with the approval of the Licensed Physician, before the end of the six weeks to which the Worker is entitled as sick leave with pay, the Employer shall pay to him the balance of his entitlements. This provision shall also apply in the event of death by reason of sickness before the end of the aforesaid six weeks.

The previous provisions shall not prejudice the right of the Worker in his entitlements to an end of service gratuity. The sick leave for the twelve-week period taken by the Worker shall not be deemed to constitute an interruption of his Continuous Service.

-In this article, we assume that the worker is infected with the virus outside of work, so he deserves a medical certificate of his infection two weeks' remuneration, and if the treatment period required more than two weeks, he is entitled to half his remuneration after two weeks. But the question then arises; about the quarantined because he exposed with someone with covid, is his vacation considered a sick leave? from my legal perspective, his exposed with someone with covid does not confirm his injury, and therefore the medical certificate on his sick leave is not available, so he is not entitled to his remuneration at that time.

The Employer shall take all precautionary measures for protecting the Workers during the Work from any Occupational injury or disease that may arise from the Work performed in his Establishment or from any accident, fire, defect or breakdown in the machinery and equipment.

The Employer shall not charge his Workers or deduct from their Remuneration any amount for providing these precautions.

In the event that the Employer refrains from taking the aforesaid precautions or in the case of existence of forthcoming danger which threatens the health or safety of the Workers, the Department shall raise the matter to the Minister to pass a resolution for partial or total closure of the Work site or to suspend of one or more machines from work until the causes of the danger cease to exist. In this case, the Employer shall be obliged to pay the Remuneration of the Workers in full during the closure or suspension period.

-We can apply this article in the current situation, where the employer should take all precautionary measures to safe the workers' health.

Article 101

The Worker shall not commit any action or omission with the intention of obstructing the execution of the instructions of the Employer concerning safeguarding the health of the Workers or securing their safety or with the intention of damaging or causing the breakdown of any appliances or equipment prepared for this purpose.

The Worker shall use the protection equipment and the uniform prepared and provided to him by the Employer and shall obey all the Employer's instructions aimed at protecting the Worker from injuries and diseases.

-This article protects the employer right in the current station by obligating the worker to execution of the instructions of the employer concerning safeguarding the health of the workers.

If the worker neglect to take precautionary measures he will be obstructing the employer instructions and he will be responsible about it.

Article 109

The Worker who sustains an Occupational Injury shall have the right to receive treatment appropriate to his situation at the cost of the Employer in accordance with the decision of the Competent Medical Authority.

The Worker shall receive full Remuneration throughout the period of treatment or for a period of six months, whichever of the two is less. If the treatment continues for more than six months, he shall receive half of his Remuneration until proof of cure or permanent incapability is stated, whichever of the two is earlier.

-From a legal perspective, I see that an employee being infected with the Coronavirus while performing his work and because of his performance is considered a work injury. Whereas the conditions for a work injury are:

1. That it is located in the worker's body, and it is equal to whether the injury is perceptible or imperceptible. Dr. Ali Hussein رحمه الله, gave an example of an imperceptible injury that it may be nerve damage. Corona virus is considered an imperceptible infection, as what happens to the body is internal.

2. That the damage comes from an external influence. The virus is transmitted across surfaces and people. It may infect him from work surfaces or from fellow workers who are infected. Dr. Ali Hussein رحمه الله, gave an example of the external influence, which is the death of the worker as a result of a sunstroke while he is at work. I think

that in the current situation, the risk of having the virus exceeds the possibility of heatstroke.

3. That the accident that caused the harm to the worker occurred suddenly, and what is meant to describe the sudden is a description of the accident that occurs the injury and not the injury itself. It is sufficient for the accident to be a sudden in this way, no matter when does the injury ensue after a long or short period.

(Rouda Al-Shammari) procedures that have been made in some countries of the world to limit the effects of a virus Corona on work contracts:

The researcher needs in order to reach useful results in the research works he provides, which are commensurate with the nature of the treated topic, and in order to reach the best results in this research, we have to look at some laws, procedures and amendments that have been made in some countries of the world to limit the effects of a virus Corona on work contracts in order to benefit from them and provide appropriate protection for workers in light of the Corona pandemic, which paralyzed many businesses and prevented many workers from working in various parts of the world, which in turn led to difficulty in adhering to work contracts and granting wages and salaries, which made many countries take appropriate procedures and adjustments in this matter.

In this part, I will discuss some of what countries have done in order to limit the impact of the pandemic on workers' contracts, as many countries issued ministerial decisions, and some issued instructions, and some are discussing a draft law amending the articles of the labor law..

The State of Qatar is always proactive in observing workers' rights by implementing many procedures, reforms and instructions issued by the Ministry of Labor and Social Development, and the State of Qatar has also issued Decree Law No. (19) of 2020 amending some provisions of Law No. (21) of 2015 Regulating the entry, exit

and residence of expatriates. Which takes into account the right of an expatriate to work to move to work for another employer, as well as prohibiting the work of foreign workers with the recruiter without concluding a work contract.

The Gulf region has different characteristics from the rest of the Arab region, due to the predominance of foreign workers in the labor market, which contributes to the existence of many risks for workers in obtaining their salaries. Therefore, some Gulf states resorted to amending labor laws and making ministerial decisions.

For example, the Kuwaiti Cabinet approved in principle a draft law adding a new article to the labor law that allows companies to negotiate with their employees to reduce their salaries during crises and disasters, as well as granting them leave with a lower salary. This reminds us of what Qatar did to guarantee the right of the worker and the employer who were affected by this pandemic , through making Ministerial instructions to the affected sectors, allowing employers and workers to make an agreement that workers take unpaid leave or annual leave, reduce working hours, or agree to reduce wages temporarily According to specific conditions.

The Kingdom of Saudi Arabia, the United Arab Emirates and the Sultanate of Oman took the same approach, issuing decisions permitting an agreement to reduce the salary while respecting the contractual balance.

In Egypt during the Corona pandemic, Article number 41 of the Labor Law was used , It grants the employer the right to reduce the salaries of workers by up to half "temporarily", in the event that workers are unable to carry out their duties and job responsibilities due to the occurrence of force majeure cases, "Corona virus one of them", unless otherwise agreed in the signed work contract With the employee or company policies, it should be noted that employers may not implement the terms of the employment contract in cases of force majeure - provided that they are on a temporary basis and do not diminish the rights of the employees. In Qatar article number 44 of the Labor Law is similar but the difference from my point of view is

that article number 44 did not consider the employer side which may affect the contractual balance.

In UK, the government has announced a guarantee of 80% of the salaries of workers, who are prevented by the Corona crisis from going to work, with a maximum of 2,500 pounds per month, which helps not to inflate labor disputes regarding the fulfillment of wages. Similarly, in Qatar the government made a ministerial decision stating that Employers and workers of expatriates. cannot agree to reduce food or housing allowances, and workers who are isolated, quarantined, or who are receiving treatment continue to receive their basic wages and allowances, regardless of whether or not they are entitled to sick leave.

As for USA, it has provided support to medium and small companies on the condition of preserving employment, as this contributes to maintaining contractual obligations and respecting them. Similarly Qatar helped the private sector by supporting and providing financial and economic incentives in the amount of 75 billion Qatari riyals to the private sector affected by the precautionary measures to deal with the Corona pandemic (Covid-19), this helps the employer to adhere to the work contract, and if there are amendments to it, they will not be harmful to the worker .

In conclusion , We find that what the Corona pandemic caused in terms of stopping and paralysis for business, which greatly affected workers, employers and business owners in most parts of the world, has caused some work contracts to be modified by issuing laws and decisions that allow them to be carried out, but we need to respect the principles of the law and contractual balance if the work contract amended . Through the above comparison work, it becomes clear to us the extent of our need for international cooperation in terms of workers' rights and how to achieve justice for them in light of the Corona pandemic and other future emergency conditions.

(Asma Al-Mohannadi) The possible solution that can be taken through the corona virus situation to reach the equality between both the employee and employer rights:

In this part of the report we will present some of the possible solution that the country can do through the corona virus situation to reach the equality between both the employee and employer rights and to avoid any serious damages for both of them. Moreover, as we can see from the ruled laws of labor in Qatar country that the legislator was putting the most articles in favor of the employee as he consider as the weaker side in the employment contracts such as the article n.4 in Qatari Labor law no.14 of 2004 that says: “ The rights prescribed by this Law represent the minimum rights of the Workers. Therefore, any conditions contrary to the provisions of this Law, even if made prior to its effectiveness, shall be and void unless they are more advantageous to the Worker. Any release, compromise or waiver of the entitlements prescribed herein for the Worker shall be deemed and void.” This article discuss that all the rights that has been ruled in this law is the minimum limit of rights for the employee and the employer cannot give him less than this limit even if he have the employee agreement in the contract to reduce this rights or it will be a breach of a jus cogens norm but all of this doesn't mean that we can neglect the employer rights too. going back to our main point we will present now the possible solutions that can be taken and explain them a bit. And these solutions are:

1.Entitle the employee with the half wage temporary until the corona virus situation finish, because what is happening consider as a force majeure that is none of the employee or employer fault so we cannot put the responsibility on one side without the other or the contract will be exhausting for this side and it is not fair. Entitle the employee with the half wage will be suitable specially that he is ready to work but he cannot because of a satiation that he cannot control and about the employer paying the whole wage without having the work done will be unjust for him too. As we can

see that some of the legislators has already this solution in their laws such as the Egyptian labor law that says in article n.41: "...but if he attended and prevented him from commencing his work a force majeure beyond the control of the employer, he shall be entitled to half his wage."

2.Allow the employee and employer bargain over the contract and add some solution for special cases like corona virus such as counting the situation days that the employee didn't work in from the annual leave days and reduce the amount of the wage or working hours and what is suitable for both sides. And as we mention before in the past parts of the report Qatar country has taken this as a solution and they announce it as a ministerial instruction.

3.Prevent the unfair termination of employment contract if it wasn't according to the labor law and even if the employer terminate the worker and it was according to the law he still should pay for the basic living expenses for the employee in this rough circumstances

(and this from the precautionary measures that Qatar did as we mention before in the report).

4.If the work doesn't stop through this corona virus situation the employer shouldn't take the benefits such as reduce the wage or change the contract, like the hospitals the employees they didn't stop working through this tragedy so the new instructions should be applied on the suitable cases and not all of them or it can cause damages for the weaker side of the contract the employee.

5.Allow the temporary suspension of the employment contract If it will not cause damages for both sides or if the contract hasn't even start yet, and this solution will be way more better than terminate the employee because in this case the employer will lose an experienced and well performing employee and the employee will lose his job and his source of income permanent.

6. Allow the employer to pay less than the actual amount in case of decreasing the working hours because of partial curfew or quarantine that the country impose. And in this solution we see that we should take care of the employer too because making him exhausted can lead to a serious damages to the country as he consider a contributor in the country economy or services and to the other hundreds of employees that work under his business too.

7. Try to develop some rules and law that can handle situations like corona virus and protect the rights of the employment contract sides to avoid any similar tragedy in the future.

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Social Responsibility and the Culture of Voluntarism: A Role for Civil Society and the Private Sector

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The responsible for commercial enterprises have been developed in our modern era as it was limited to one perspective, which is the state and commercial institutions whose only mission is profit-making.

However, responsibility has become an integral responsibility between the governmental and private sectors and institutions of civil society, as result, we find the state bears a responsibility to provide the required information to companies, motivates them to work in the field of community service. This by providing the

required facilities for them to implement their social programs. The private sector has a social responsibility represented in its response to the institutions of service Society to achieve sustainable social development achievements and contribute to the stability of societies.⁵⁷⁵

Therefore, commercial enterprises should go on the line that the government wants to achieve. A clear example of this is the role played by the state is going on a precautionary approach towards all civil challenges and work to preserve the environment.

Our society needs in our time to the existence of community participation in which companies and all institutions participate in society, whether it is a public or a private sector, to have among its priorities the effective contribution in community participation

The commercial enterprises play their role towards social responsibility which ensures to a large extent the support of all members of society for their goals and development message, recognition of their existence, and the contribution to the success of their goals according to what was planned. It also contributes to complement the needs of society and its necessary life and living requirements.

The basic principles of the United Nations Global Convention about Corporate Social Responsibility are:

Human Rights

Principle 1: Commercial Enterprises should support the protection of human rights internationally declared and respect it.

Principle 2: It must ensure that they are not involved in human rights violations.

⁵⁷⁵Ghanem Mohamed Hassan. El Kaliouby Khaled Mohamed (2010); Social Psychology - theoretical rooting and field studies, 1st Edition, Jeddah, Al-Shukry Library

Operating standards

Principle 3: Commercial Enterprises must respect the freedom of association organizations and effectively recognize collective bargaining right.

Principle 4: They must eliminate all aspects of forced and compulsory labor;

Principle 5: They must eliminate child labor effectively;

Principle 6: They must eliminate discrimination in employment and occupations fields.

The environment

Principle 7: Commercial Enterprises should encourage following a precautionary approach to all environmental challenges.

Principle 8: They should implement initiatives to widen the responsibility for the environment;

Principle 9: They must encourage the development of environmentally friendly technologies and diffuse it.

Anti-Corruption

Principle 10: Commercial Enterprises should fight against corruption in all its forms, including extortion and bribery. The web site of the Global Compact Initiative provides more information about the initiative, including instructions about joining it.

Commercial institutions and their role in preserving the environment:

Protecting the environment with all its components and elements against the dangers of pollution which threatens to go all kinds of life in it has become an issue of global

dimensions and the world has alerted it to that, so international agreements and laws issued with one goal of preserving the environment and protecting it from pollution have become a common human heritage.

This came at the present time the whole world is suffering from the Corona epidemic that affects humans and causes the death of many people, and that civil society institutions have an effective role in preserving the environment in general and by following precautionary measures to preserve the environment as well as limit the spread of the Corona epidemic.

Accordingly, the problem that we will address through this topic lies in: What is the role of non-governmental commercial enterprises in the field of environmental protection and preservation?

The role of commercial institutions in education and environmental development:

What has been achieved in this field including the private sector in government agencies and their preservation especially the growing environmental environment. This example appears, and its appearance in a program of signs appearing in a program of brands in the implementation program after having successfully implemented effective programs and signs in the implementation. Environmental management and exploitation.

Therefore, due to the exacerbation of problems in the environment and after the 1972 Stockholm Conference recognized the necessity of concern for the protection of the environment. then many conferences and seminars were held in various regions of the world, and the Belgrade Charter that emerged from the international symposium held in the Yugoslav capital in October 1975 was A comprehensive framework that defined the foundations of work in the field of environmental education followed by

the Arab Environmental Education Symposium that was held in Kuwait in November 1976 and the International Conference held in the Soviet Tbilisi in October 1977.

Therefore, the role of commercial and non-commercial non-governmental institutions has emerged. Which works to sensitize the public and decision-makers about environmental problems. These institutions also communicate information related to the environment and the reality of their problems to the public as they are without distortion or distortion. They also warn the public opinion and the people's forces of everything that may cause Environment destruction.

Initiatives taken by commercial enterprises:

This role came through the work carried out by commercial establishments while they deal with the public, so they worked on the following:

1- Contribute to spreading environmental awareness:

This is through holding educational seminars and conferences that work to educate the public about the importance of preserving the environment, especially if there is an epidemic like Corona that affects humans.

2- The prominent role of commercial enterprises in environmental work:

This was evident in the role that Qatari commercial companies played an effective role in community participation over recent decades, and the emergence of the effective role during the current time came with the emergence of the Corona pandemic and the economic, social and other problems faced by society.

Although, the Qatari government has made official efforts in treating the infected and developing legislation that limits the spread of this epidemic there is a role that non-governmental institutions had to play.

We review here some of what institutions and companies have done to contribute to facing the Coronavirus and work to reduce the burden on community members in the following points:

- Financial financing for community initiatives and to help those affected by the epidemic through a direct donation to finance these campaigns and work to spread awareness in the community of the dangers of the disease and the methods of its spread.
- It provides free community services and is carried out by the institution or company in its field of specialization. Through awareness services, providing volunteers, and providing technical or technical services according to the specialization of each company.
- Raising donations for the benefit of non-profit organizations such as food banks, homeless shelters, and other important initiatives that the community needs.
- Exempting the company's customers from some of the cost of the service or product.

Such as reducing rents or delaying their collection to alleviate some of the suffering of the tenants in this difficult period in which the work is completely stopped and the entry of individuals.

The International codes obligating companies to respect human rights

Respecting human rights as an implicit obligation:

The generality of texts of some international conventions allows companies to be held accountable for violating human rights, which is considered as an implicit obligation imposed by these texts.

For example, the Universal Declaration of Human Rights recognizes the responsibility of every member of society and his role to respect these rights without distinguishing between a natural and a legal or artificial person.

This commitment finds support in some international conventions that obligate state governments to fight against any violation of human rights by any individual, group, organization, or project, which allows companies to be expanded within the bodies that the state is obligated to ensure respect for human rights.

Respecting human rights as an explicit obligation:

The report of the United Nations Subcommittee for Human Rights detailed the elements of companies' commitment around respecting human rights in 2003. The report of the Special Representative of the United Nations Secretary-General about Human Rights in the field of transnational corporations and business enterprises, John Reggie, in 2008 to include a study about the position of companies in respecting Human rights and a recommendation to support these rights in the field of business enterprises via a specific framework for cooperation between companies and governments which known as the framework of protection, respect, and equity.

This framework based on three pillars:

The first one: the state's responsibility to protect and fight against human rights violations by others, including commercial enterprises, through appropriate policies, regulations, and court rulings.

The second pillar: the corporate responsibility to respect human rights, which means that commercial enterprises must do with duly diligence to avoid other rights violations and address the negative effects that they participate in.

The last one: the need to increase the opportunities for victims of corporate human rights violations to access effective judicial and non-judicial equity

Labor standards:

The International Labor Organization organizes labor standards in order for both men and women to get suitable work that benefits society, at the same time preserving their security, dignity, freedom, and justice, as labor standards are the ones that clarify and reveal the appropriate work measurement in light of the outbreak of the Coronavirus. Labor standards are represented in preserving the basic and main principles of safety and security or work regulations, as well as the protection of labor rights and non-discrimination, that for ensuring workers and employers, as well as governments, maintain appropriate work during Corona pandemic. There are many labor standards that the International Labor Organization has put in relation to workers, social and wage protection as well as cooperation in Work to consider the measures that can contribute in methods based on man to deal with the crisis and find a way to recover from.

Principle 3: Commercial Enterprises must respect the freedom of association organizations and effectively recognize collective bargaining right.

The recognition of the right in collective bargaining is a key principle and one of the working rights. It is one of the categories that form the Declaration of Fundamental Principles and Rights at Work that was declared by the International Labor Organization in 1998. Collective bargaining is considered as an institution that governs the workplaces and the labor market, and more recently, the role of collective negotiations was emerged as a result of Increasing inequality and

instability at work, as collective bargaining contributes to achieving equality of wages, and reducing the obstacles that workers face at their workplaces.

Collective bargaining has many benefits. It helps in improving wages and working conditions. It has a great and effective role in helping institutions to deal with economic crises, as the Corona pandemic affects economic systems, collective bargaining reduces this effect and makes labor relations more stable and productive. It also benefits workers to receive a fair percentage of the profit without affecting badly the employers in achieving the desired profit goals.

Principle 4 Elimination of all forms of forced and compulsory labor:

Despite an almost universal prohibition of forced labor, but there are many victims who need help without punishment who commit that. It must respond to the law execution in order to protect the human rights of these victims and the punish those who do so. As stated in Article 25 of Convention No. 29 of 1930 that The prohibition of forced labor is enforceable through imposing penalties, but the International Labor Organization sees that imposing a fine or staying a short period in prison is not a deterrent to this kind of crimes. Labor Organization emphasized the role of governments in combating and struggle against forced and compulsory labor, as provided in the convention, defining forced and compulsory labor as all actions or services raped by any person under threat with any punishment, this person did not volunteer to perform with voluntarily. But there are exceptions such as military service, ordinary civilian obligations.

Principle 5 must eliminate child labor effectively:

Convention No. 182 of 1999 at the General Conference of the International Labor Organization, where the worst forms of child labor were adopted and its elimination, which requires taking comprehensive and immediate actions with focusing on basic education and the need to rehabilitate these children and integrate them into society.

This convention also recalls the declaration of the labor organization for International Principles and Fundamental Rights at Work in 1998. We have witnessed obvious changes in global awareness regarding child labor, and there was a consensus on the importance of getting rid of this process. Labor standards developed by the International Labor Organization and its procedures for work have also contributed with a great role in eliminating and getting rid of child labor.

Principle 6 Elimination of Discrimination in the Field of Employment and Occupations:

The International Labor Organization adopted Convention No. (111) of 1958 concerning discrimination in the field of employment and occupations, as it put into account the Philadelphia Declaration, that affirms that all human beings have the right to work in order to achieve material well-being regardless to belief, color or gender in light of the provision of freedom, dignity and economic security, as stated in Article 1 under the term convention, the word "discrimination" includes:

- a) Any distinction, exclusion, or preference on the basis of race, color, gender, political opinion, national origin or social origin, and explains the cessation or lessening of equality of opportunities or dealing in terms of employment and occupation, which may be determined by the named member after consulting with the representative organizations for employers and workers, if any, and with other appropriate bodies. Article 2 clarified that each member undertakes in respect of this convention that it is in effect to develop and implement a national policy that aims to achieve equality of opportunities and treatment through methods that harmonize the country and its customs in terms of employment and profession, aiming to eliminate any discrimination in this field.

Fighting Corruption:

All countries around the world do their best and exert tremendous efforts to fight corruption, as it is a structural and international phenomenon that penetrates all political, economic, and legal life fields in all countries around the world.

One of these efforts, the most important of which is the United Nations Convention against Corruption, which is the first legally committed instrument against corruption internationally

As Egen Peter (former World Bank Manager) founded Transparency International in 1933, he founded it also as an international non-governmental community organization, which undertook to fight corruption.

The State of Qatar is considered one of the leading countries in fighting corruption as it signed, in 2007, on the United Nations Convention against Corruption, which sets the establishment of an independent body in this regard. An Emiri decision was issued concerning establishing the "National Committee for Integrity and Transparency" in the same year, which includes representatives of " Qatar Central Bank", "The Public Prosecution", The Ministries of Economy, Trade and Foreign Affairs, and Qatar Petroleum.

And also one of the most important decisions is the Emir of the country, Sheikh Tamim bin Hamad Al Thani, decision to establish the Sheikh Tamim Award for Combating Corruption, which is awarded simultaneously with the celebration of the International Anti-Corruption Day on the ninth of December.

Facing corruption in the light of the global Corona crisis

The International Monetary Fund has approved nearly \$ 15 billion as emergency financing for more than 65 countries,

The International Monetary Fund expects non-governmental groups to monitor the utilizing of funds informally, as part of fighting corruption strategy.

The loan guarantees special conditions for transparency, such as publishing the names of the companies that own the contracts and their owners, and the auditing report after ending the loan term.

The International Organization for Integrity in Sports announced awards for integrity in sport, which is considered as a step towards integration in building a structure for integrity in sport and protecting integrity in global sport to improve and enhance fighting corruption in sports in the State of Qatar.

The issuance of Article 11 of Cabinet Resolution No. 18 of 2020 to issue a charter of conduct and integrity for public employees is considered one of the mechanisms for fighting against administrative and financial corruption, which included awarding gifts and other benefits that the employee could be obtained, and obligated the public employee not to request, or set condition, or accept presents, gifts, privileges, benefits for himself or for others which may have a direct or indirect impact on his performance and job duties. By issuance of this charter by the State of Qatar proving its seriousness endeavors in fighting against corruption on the local scale.

Cabinet approval of a draft memorandum of understanding in the field of enhancing the prevention of corruption between the Administrative Control and Transparency Authority in the State of Qatar and the French Anti-Corruption Authority in the French Republic

A memorandum of understanding was signed between the Administrative Control and Transparency Authority in the State of Qatar and the Anti-Corruption Commission in Palestine in the field of combating and preventing corruption.

Community initiatives undertaken by Qatari companies to confront the crisis resulting from Coronavirus Covid-19:

Qatar Airways sent five air cargoes carrying 300 tons of medical supplies donated by the company to Beijing and Shanghai, China, and provided free 500,000 bottles of hand sanitizer and face masks, which amounted to 2.5 million.

On March 12, 2020, Vodafone allowed its workers to work remotely and encouraged its customers to use electronic means to renew their subscriptions, and it also sent its products to its customers at their homes instead of visiting its various branches.

Al-Athba Poultry and Quail Farm provided 10 tons of fresh chicken free of charge to aid in the quarantine efforts.

Al-Aker Foodstuff Company provided meals to quarantine places, medical staff, and security men, free of charge.

Al-Wajba Dairy Company introduced its products to hotels that were used as places of sanitation, under the supervision of the Ministry of Public Health.

The Qatari Printing Company distributed 60 thousand paper cups to residents of Doha without any compensation.

The Retaj Salwa resort has also allocated 90 villas and 78 rooms for the state to use as quarantine places free of charge.

Several companies, including Katara, Msheireb Real Estate, Mall of Qatar, Ezdan Mall and Woqod, have exempted store and restaurant owners from paying the rent until the crisis ends.

And on May 6, 2020, Ooredoo Telecom distributed gifts in Ramadan in small quantities, taking into account the instructions issued by government regarding social distancing.

Community initiatives undertaken by companies and individuals “The initiative to support and contribute to individuals and companies in

combating the emerging corona virus epidemic, Covid-19,” as they made financial contributions, real estate contributions and service contributions to the state:

Financial Contributions:

Qatar National Bank, Muhammad Abdulrahman Al-Bahr and Sons Company, Masraf Al-Rayan, Real Estate Savings Company, Nasser Bin Faleh Al Thani Group, Ibn Ajayan Projects, Homeland Lover: Nasser Muhammad Al-Othman, Al-Maliki Holding Group.

Real estate contributions:

Katara (Movenpick Hotel Doha), Messilah Resort, Simaisma Resort, Aspire Zone Foundation, Regency Group Holding Al Asmakh, Saeed Salem Al Banaid Al Mohammadi, Al Emadi Real Estate Projects.

Service contributions:

Dental Specialist Center, Oryx Auto Maintenance, Dr. Jumaa Nasser Al-Kaabi Law Firm, Al-Aseelah Center for Consulting and Services, Tadawi Medical Complex, Lebanese Village Restaurant, Mr. Jose, Afia Poultry Company, Luqaimati Sweets Corporation

The concept of infectious diseases

(Mariam Almarri)

Infectious diseases are diseases that are transmitted from one person to another or to a group of people and the cause of them is a microorganism. It is either a virus, bacteria, fungus or parasite

The most famous virus at the present time is Corona virus, also known as the Middle East virus, and it is a coronavirus that infects the respiratory system.

Covid-19 crisis:

The Coronavirus crisis has raised several legal problems related to the extent of responsibility of a person who becomes ill for transmitting it to other people,

Regulations of Qatar's Penal Code No. 11 of 2004: Article 253

According to the Penal Code, “anyone who intentionally commits an act that spreads an infectious disease or an epidemic is punishable ...

A penalty of imprisonment for a term not exceeding three years, and a fine not exceeding ten thousand riyals, or one of these two penalties, shall be inflicted on whoever causes by mistake the spread of an infectious disease or an epidemic.

The penalty shall be imprisonment for a period not exceeding seven years, and a fine not exceeding twenty thousand riyals, if the act results in the death of a person.

The crisis also raised a question about the failure of medical staff to provide medical assistance due to the failure of hospitals to protect them from diseases and epidemics and to take the necessary measures to do so.

Doctor's responsibility:

The responsibility of the doctor is determined from two main parts, namely

The first is the responsibility of the doctor to perform the work assigned to him according to his specialization and the nature of his work, and this is an obligation for him to carry out his work in the manner specified by the law and according to what the administrative authority in which he works is assigned to him. For disciplinary punishment

As for the second part, it is determined that the state must provide the doctor with the necessary protection so that he performs his medical work without the risk of contracting infectious diseases. With chronic diseases

Law No. (9) of 2020 amending some provisions of Decree Law No. (17) of 1990 regarding the prevention of infectious diseases.

The duty to inform stipulated in the previous article rests on every doctor who examined the injured or suspected of having an infectious disease, the injured, the head of his family or whoever is sheltering him, the director of the university, institute or school or his representative, and the direct boss at work if The injury occurred or was suspected of having occurred while it was being performed, and it is the duty of the expatriate, whether the injured or suspected of being infected, inside the country or abroad, whenever this comes to the knowledge of any of them.

Without prejudice to any severer penalty stipulated in any other law:

1- Violation of the provisions of Articles (3), (4), (6 bis) shall be punished.

With imprisonment for a term not exceeding three years and a fine not exceeding (200,000) two hundred thousand riyals, or one of these two penalties.

2- Violation of the provisions of Articles (15 / last paragraph), (16), (17), shall be punished by imprisonment for a period not exceeding a month and a fine not exceeding (10,000) ten thousand riyals, or one of these two penalties.

The second requirement

Prevention of infection with the Coronavirus

The ease of transmission of the virus between humans through exposure to coughing or by touching things. Currently, there are no vaccines to protect against infection with the Coronavirus, but the risk of infection can be reduced by:

- Wash hands and avoid touching the face if the hands are unwashed. Avoid close contact with people who suffer from the symptoms.

How the criminal law dealt with the phenomenon of infectious disease. .(Sara alhenzab)

The first requirement

Criminal legislation

Legislation had to be put in place to address this phenomenon in society, especially if a phenomenon such as the Corona virus was one of the most infectious diseases in our modern era, especially if this disease was not able to doctors to put an end to its spread by discovering a treatment or a vaccine that is done by the method of limiting its spread And treatment of cases that afflict it.

And there was an obligation on the state to have criminal legislation that sets controls governing human behavior because one of the characteristics of the legal rule is that

it is a rule that governs the behavior of individuals in society and according to which individuals' money and rights and duties are determined.

The legislation that governs individuals in the field of infectious diseases should have been criminal legislation, because of the special nature of this legislation in the penalties that are included in the legal rule and why this part

Among the characteristics it has, namely: -

- 1 - It is a penalty of a case nature, meaning that it inflicts on the individual violating the provisions of the legal rule in his life.
- 2 - The penalty that the legal rule outlaws against its provisions is of a material nature where the required deterrence is achieved from behind its existence.
- 3 - This penalty is based on the expectation of the public authority, assisting in that with the legitimate power it has armed with the law.

The State of Qatar was a forerunner in developing legislations that deal with the spread of infectious diseases. [Law No. 17 of 1990 regarding the prevention of infectious diseases](#) was based on the issuance of the legislature on many legislations, namely: -

- 1 - The amended provisional statute, [especially articles \(23\), \(27\), \(34\) thereof](#)
- 2 - [Decree-Law No. \(11\) of 1968](#) regarding health precautions to prevent infectious diseases.
- 3- [Law No. \(5\) of 1970](#) defining the powers of ministers and specifying the functions of ministries and other government agencies, and the amending laws thereof
- 4- Qatar Penal Code promulgated [by Law No. \(14\) of 1971](#) and the amending laws thereof,
- 5 - [Law No. \(1\) of 1985 in the matter of animal health, as amended by Law No. \(3\) of 1990 AD,](#)

6 - Decision of the [Minister of Public Health No. \(4\) of 1988](#) regarding vaccination and immunization of children against some infectious diseases.

7 - The proposal of the Minister of Public Health,

8- Draft Decree-Law submitted by the Council of Ministers.

This law came including three main chapters stated in

Chapter Two: Health measures to prevent infectious diseases.

Chapter Three: Vaccination against infectious diseases

Chapter Four: General Provisions This chapter includes evidence that this law is criminal and the legislator in it instigated the necessity to follow all measures that limit the spread and spread of infectious diseases in society. Article 20 of this law came to stipulate: -

The director and employees of the competent health authority, each within his jurisdiction, shall have the capacity of judicial control officers to prove violations of the provisions of this law and the decisions implementing it.

They shall have the right at any time to enter homes and places suspected of having the disease and take the necessary measures to prevent its spread, including isolating patients and their contacts, conducting the necessary vaccination, and disinfecting homes, furnishings, clothes, luggage, means of transportation, etc. They may seek the assistance of the police if necessary.

• [21 Article – rate](#)

[Article 21 - \(Amended By Law 9/2020\)](#)

[Business start date: 3/26/2020](#)

Without prejudice to any more severe punishment stipulated in any other law:

1- Violation of the provisions of [Articles \(3\), \(4\), \(6 bis\), \(7 / second and third paragraphs\), \(8\), \(11\)](#), and the actions and measures taken by the Council of

Ministers in accordance with the provisions of Article (10 / last paragraph)), With imprisonment for a period not exceeding three years and a fine not exceeding (200,000) two hundred thousand riyals, or one of these two penalties.

2- Violation of the provisions of Articles (15 / last paragraph), (16), (17), shall be punished with imprisonment for a period not exceeding one month and a fine not exceeding (10,000) ten thousand riyals, or one of these two penalties.

The same penalties shall be imposed on violating the decisions issued in implementation of the provisions of the articles referred to in the previous two clauses.

The same penalties shall be imposed on violating the decisions issued in implementation of the provisions of the articles referred to in the previous two clauses.

The second requirement

Qatar's efforts in the Corona pandemic (Reem Almudahka)

The laws and resolutions governing how to deal with the Corona crisis were issued by His Highness Prince Sheikh Tamim bin Hamad Al Thani, Law No. 9 of 2020, by amending some of the provisions of Decree No. 17 of 1990 on the prevention of infectious diseases.

By law, decree No. (17) of 1990 had been amended in the following texts:

4 Article:

“The statutory notification referred to in the previous article shall be the duty of every doctor caring for and involved in the examination and investigation of patients diagnosed with an infectious disease, or in those patients in whom such a diagnosis is suspected. This requirement to notify the relevant authorities shall also be the responsibility of the individual’s close family, their landlord, or those with whom they share accommodation, the director of the university, college or school where the infected person may study; or their line manager if they are in employment and it appears that this infection may have been connected to the person’s employment or place of study. The foreign patient’s sponsor shall inform the relevant authorities if it is thought the infection occurred in the state or abroad”.

21 Article: “Without prejudice to any more severe penalty provided by another law” The penalty of imprisonment for a period not exceeding two months and a fine of not more than three thousand Riyals, or one of said penalties, shall apply to whoever infringes the provisions of Articles 3 ,4, 7(2-3),8 and 11. A penalty of imprisonment for a period not exceeding one month and a fine of not more than two Thousand (2000) Riyals or one of said penalties, shall apply to whoever violates the provision of Articles 15(3), 16 and 17.

(njoud alshahwani)

furthermore, supreme committee for crisis management published several new decisions to control corona virus (covid-19) in state of Qatar:

First:

The Cabinet at its regular meeting decided to extend the work of the cabinet decision issued at its regular meeting (12) for 2020 held on 3/18/2020, according to which it was decided, among other things, to reduce the number of employees present at the workplace of government entities.

Second:

also decided to reduce the number of workers present in the workplace in the private sector to 20% of the total number of workers in each entity, and 80% of the rest of the workers start their work remotely from their homes. The Ministry of Commerce and Industry shall in coordination with the concerned entities, determine the necessary activities exempted from this decision.

Third:

-The working hours for employees and workers located in their workplace in the government and private sectors are six working hours per day, starting from seven in the morning until one in the afternoon.

-Stores selling foodstuff, pharmacies and restaurants that do deliveries are excluded from this decision.

- All meeting held for employee and workers in government and private sectors shall be made using modern technical means

Fourth:

- Temporary stopping of home services system provided by cleaning and hospitality companies.

- Reducing the number of workers who are transported by buses to half the capacity of the bus, taking precautionary measures.

– The Ministry of Trade and Industry continues to intensify inspection procedures for food and food outlets to ensure that they comply with health requirements and preventive and precautionary measures and measures, including leaving the safe distance between shoppers.

And because the Corona pandemic has appeared and spread in all countries of the world recently, it was necessary for governments to work to limit the spread, that's why we see:

- 1- The direct text in the Qatari Penal Code criminalizing transmission of disease, whether by direct or indirect
- 2- injury and the transmission of an infectious disease consider as a risk crime and not a crime of harm, so that the crime is considered complete as soon as the disease is transmitted without waiting for the result.

Through our simplified research, we see the importance of a deterrent criminal punishment for anyone who infects others with any of the infectious diseases, Because this affects society with all its components and directly affects public health, because the spread of disease and describing it as an epidemic leads to the disruption of all common interests in society.

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Observance of Rules of International Human Rights Law **in Addressing the Coronavirus Crisis**

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Introduction:

The National Human Rights Committee of the state of Qatar expresses its satisfaction with the precautionary measures taken by the State of Qatar to contain

the spread of Coronavirus and stresses the importance of concerted efforts of the Government and all segments of society to accord priority to the right to the health for all and ensure respect for human rights without discrimination.

The National Human Rights Committee has followed with interest the extensive precautionary measures being taken by the Government to promote prevention and protect society from possible implication, since the first cases were registered until now. The NHRC stresses the importance of awareness campaigns by the ministries of health and the interior, and other concerned parties to sensitize the population about the importance of staying home more often and avoiding public gatherings, beside other measures aiming at providing adequate means to contain the spread of this epidemic.

The NHRC urges the competent authorities to move forward with its measures within the framework of supporting response to the coronavirus outbreak in conformity with human rights standards and in a manner commensurate with public health risks.

The NHRC notes that the measures and restrictions taken are exceptional measures justified as reasonable, necessary and proportionate in the light of the present circumstances, while stressing the importance of ensuring access to food, water and basic needs and providing health care and services for all without discrimination, including measures to enhance protection of the most vulnerable groups in this exceptional circumstance, especially for people with chronic health conditions, the elderly and people with disabilities, as well as expatriate workers.

Main Body:

- **National human rights committee:**

In light of the evolution underway in the state of Qatar, priority has been given to promotion and consolidation of state of law, rights, freedoms and institutions; In this

regard, the NHRC was established in accordance with Decree Law No. (38) for the year 2002.

The NHRC was re-organized in accordance with Decree law no. (17) for the year 2010, thereby consolidating NHRC independence as a permanent official body headquartered in the city of Doha with a separate legal personality and an independent budget; this Decree also specified the objectives and mandates of the NHRC.

At the international level, the NHRC was accredited A status by the International Coordinating Committee of National Human Rights Institutions for the Protection and Promotion of Human Rights (ICC) which is a representative body of national human rights institutions drawn from all regions of the world; the NHRC is also a member in the Sub-Committee on Accreditation (SCA) of the International Coordinating Committee (ICC) which is responsible for the accreditation and classification of national Committees all over the world. The NHRC is entitled to participate in the ICC and in its regional sub-group, the Asia Pacific Forum as of March 2012 for a period of 3 years.

Protect human rights and protect their dignity, mobilize the capabilities of society to understand and exercise their rights and duties, apply the values of social justice and tolerance, promote equality and non-discrimination, stop human rights violations, announce positions and prepare periodic reports that promote human rights in the State of Qatar.

The National Human Rights Committee of Qatar is neither a governmental entity nor a civil society institution, it is a national official committee of a special nature and it can neither be described as an administrative entity in its narrow sense nor a decision-making body. On one hand, The NHRC is considered to be an advisory body concerned with human rights at the national level of authorities and

administrative bodies in the state; On the other hand, it receives and investigate complaints from individuals or groups.

Objectives

- Awareness and education on human rights for the various parties and grouser international covenants on human rights and national laws.
- Strengthening and empowering individuals through training programs and other activities to identify, prioritize and defend their rights and seeking to ensure its respect.
- Expanding the human rights network at the national, regional and international levels.
- Monitoring and reporting human rights violations.
- Providing information and legal and social support services for victims of human rights violations.
- Spreading and developing the culture of human rights and defending these rights.

Mandate of the Committee

- Achieve the objectives embodied in international conventions and treaties on human rights to which Qatar is a party and the recommendation on the accession to other conventions and charters.
- Advise concerned bodies in the state on matters related to human rights and freedoms
- Investigate violations of human rights and freedoms, if any, coordinate with the competent authorities to take necessary actions and suggest suitable means to deal with such violations and avoid their occurrence
- Put forward proposals for stakeholders on the existing legislation and draft laws, and their relevance to the provisions of international conventions on human rights to which Qatar is a party

- Monitor the human rights situation, prepare and submit related reports to the Council of Ministers
- Monitor what might be raised about the human rights situation and coordinate with concerned bodies to address them
- Take part in the preparation of national reports to be submitted to the state and international bodies concerned with human rights and coordinate with the concerned authorities to respond to them
- Cooperate with international and regional organizations concerned with human rights and freedoms and participate in related international forums.
- Raise awareness and enriches education on human rights and freedoms.
- Conduct field visits to penal, detention, health and education facilities, correctional institutions and labor communities, and to monitor the human rights situation there
- Coordinate and cooperate with the concerned authorities of human rights in the state in terms of their reference and roles.
- Hold and the organize conferences, seminars and courses on topics related to human rights and freedoms and coordinate with the concerned authorities in this regard if necessary.
- Contribute to the preparation and research programs related to human rights and participate in its implementation

- **The right to education:**

Article 49 of the Qatari constitution states:” Education is the right of every citizen and the state seeks to achieve Public education is compulsory and free, according to the laws and regulations in force in the country “.

Following the closure of all public and private schools and universities on March 10, 2020 to control the COVID-19 outbreak, the Ministry of Education and Higher

Education (MOEHE) acted swiftly in designing an effective alternative to the physical classroom, ensuring that all students are able to continue their learning and not fall behind in their studies.

The Ministry of Education and Higher Education launched a new online learning platform called “[Mzeed](#)”. This platform offers digital and interactive resources prepared by a qualified team of teachers, early education mentors and curricula specialists. Students can find many resources on this platform including interactive books, textbooks in PDF format, video, audio and many other digital learning materials that enrich the student’s education. Through this platform, the Ministry aims to boost the learning process of the students by providing explanation in an interesting and interactive way, without the constant need to connect to the internet. The Ministry also launched the platform of “[Qlearning](#)” facilitating and supporting all distance learning services. To visit this portal.

For students who did not have the equipment or access to e-learning, the Ministry, through its collaborations with the telecommunications networks in Qatar, has provided computers, tablets, laptops and hundreds of broadband devices for Internet access to students who needed them for home-based learning.

On the same note, the Ministry issued circular to the university presidents regarding the gradual attendance. According the circular, 30% of students will attend to campus daily from September to November, with the blended learning being deployed. Exam attendance will be considered in the assessment scores, as needed. Universities are urged to take all COVID-19 protective measures and ensure that a minimum safe distance of 1.5 meters is maintained between students. Relevant comprehensive awareness for both students and employees should be initiated in coordination with the MOPH.

Instructions for Students Who are Most at Risk of Contracting COVID-19

As per the announcement of the Higher Committee for Health and Safety dated 27 August 2020 regarding the implementation of the hybrid learning model in Fall 2020 and as part of QU endeavors to keep its students and community members healthy and safe while serving the public interest of students and the educational process, we would like to highlight the following instructions for students who are most at risk of contracting COVID-19 and its complications:

1. Midterm and the final exams for all courses will be conducted on campus regardless of the teaching method of these courses (online or on campus), Qatar University will provide students who are most at risk of being infected by COVID-19 and its complications with separate premises and halls that will be prepared with all precautionary and preventative measures. The University will send those students the guidelines and instructions that should to be followed during these exams.
2. Students who are most at risk of contracting COVID-19 and its complications and are enrolled in courses conducted on campus should request an exception from attending classes on campus and a designated committee will review each case, take the appropriate decision and notify students.

Therefore, students who are eligible to apply for the exception request, are required to fill in the online exemption from attending classes on campus, taking into consideration the following points:

- The student should attach a health certificate approved by the Ministry of Public Health, which clearly states that s/he is suffering from a chronic disease or a health condition that may make her/him more likely at risk from the novel coronavirus (COVID-19) or its complications.
- All requests will be submitted to the committee which will review them and take appropriate decision for each case.

- The approved period from which the student will be exempted from attending will be the period mentioned in the medical certificate.
 - If a student from these categories decides to attend classes on campus without making arrangements with the instructor or if s/he does not disclose her/his health status, s/he will be responsible for his safety.
 - No requests of exemption from attendance due to normal illnesses will be considered. All absences due to normal illnesses will be counted within the maximum limit allowed by the attendance and absence policy.
 - The period of absence due to infection with the coronavirus (COVID-19) or due to quarantine after returning from travel, will be counted within the maximum limit allowed by the attendance and absence policy (25%), not in addition to it.
 - No student with an EHTERAZ status other than green will be allowed to enter the university buildings. The student must apply for exemption from the lectures.
 - Students who wish to be exempted from attendance are advised to read the Frequently Asked Questions through the [COVID-19 updates website](#) to understand the study mechanism and how to compensate for the lectures they will miss.
3. We wish to emphasize that the University will implement all precautionary or preventative measures that protect its students from coronavirus (COVID-19) inside study halls and laboratories (such as maintaining safe distance between seats, wearing masks at all times, providing sterilizers in laboratories, and other precautionary measures).

As part of Qatar University efforts to carry out a smooth educational process during Fall 2020 semester, and in light of the current health situation in the country and worldwide and the State's plan regarding COVID-19, and as part of the preparations for fourth phase that is expected to start in 1 September 2020, Qatar University decided to commit to the following instructions regarding the teaching method during Fall 2020. These instructions will remain effective until further notice.

Teaching Guidelines

- Classes will continue according to the announced Fall 2020 calendar with no changes.
- All academic policies and procedures suspended during Spring 2020 are reactivated.
- Teaching will continue to be online except for students enrolled in some specific courses. Faculty members teaching these courses will communicate directly with their students to notify them that teaching will be on campus.

These courses include:

- Graduate studies courses (diploma, masters and doctoral degrees). Face-to-face teaching on campus will start on Tuesday, 1 September 2020.
- Practical laboratory courses that require students to attend physically and perform hands-on experiment in the laboratory. Departments offering these labs will monitor the teaching process in light of the announced safety measures by the University. Students will attend these courses on campus starting from Sunday, 6 September 2020.
- Graduation and research projects, as well as courses of special nature that require students to attend on campus following the approval of the College Dean. Academic departments ensure that all safety measures announced by the university are applied.

- Internship, fieldwork, preceptorship, and clinical practice courses. Colleges are to develop a mechanism in coordination with the training bodies and according to the safety measures announced by the relevant authorities.
- Main (midterm and final) exams for all courses will be conducted on campus regardless of the teaching method of these courses (online or on campus). A plan for conducting midterm and final exams will be developed and shared early enough before the exam date with making sure that all safety measures are applied.
- Office hours will be provided online by faculty members
- Library, learning centers and student services (academic advising, career services, student learning support, student counseling, special needs services and financial aid services) will continue to provide their services online and face-to-face whenever is possible. Additional details regarding these services will be announced later.

It is also important to stay updated regarding the different announcements and instructions that will be sent out later from different sectors and departments such as the Student Affairs Sector, Campus Facilities and General Services Department, etc. Given the nature of the pandemic, all plans remain subject to reviews and updates according to the directives received from the relevant authorities. It also requires members of QU community to show understanding, cooperation and flexibility in order for the University to be able to deal effectively with this reality in order to overcome the potential challenges.

- **The right to litigation:**

Article 39 Constitution of the State of Qatar:” An accused person is presumed innocent until convicted before a court of law, wherein the necessary guarantees of the right of self-defense are secured “.

135 Article Constitution of the State of Qatar:” Access to justice shall be guaranteed to all people. The Law shall specify the procedures and manner of exercising this right “.

The Judicial Authority derives its existence and identity from the Permanent Constitution of the State of Qatar, which gives the judiciary the sole authority to achieve justice, independently of all other authorities. It has sole jurisdiction over legal matters, to achieve justice and guarantee the rights and liberties of society. The rule of law constitutes the basis of government in Qatar. Pursuant to Article 135 of the Constitution, the right to resort to the judiciary is guaranteed for all people. Every citizen and resident in Qatar has the right to resort to the courts. The judiciary has general jurisdiction over criminal, civil, commercial, family, inheritance, administrative and other disputes, except sovereign acts and nationality matters. Judicial authority is independent and vested in courts of different types and degrees (Article 130 of the Constitution).

Innovative online hearing connects participants remotely during times of social distancing

The Qatar International Court and Dispute Resolution Centre (QICDRC) held its first fully remote hearing on 7 and 8 April, with judges, court staff and lawyers all appearing from different locations across four different countries, ensuring that access to justice is maintained during the novel Coronavirus (COVID-19) pandemic. The hearing was livestreamed to allow members of the public to observe proceedings.

The QICDRC routinely employs state-of-the-art technology to ensure efficient and cost-effective access to justice. Since its launch in 2018, the eCourt system has offered users a paperless e-case management solution that covers the full court process lifecycle – from case filing to issuance of a judgment.

Commenting on the online hearing, Faisal al-Sahouti, CEO of the Qatar International Court, said: “As we continue to navigate the unique challenges and preventive measures posed by the COVID-19 pandemic, the Qatar International Court remains steadfast in its commitment to serve as a platform for timely and important legal decisions.”

“We are well-equipped to face current challenges and adapt our digital systems where necessary to ensure a full online-based format for our users. Our first fully remote hearing has been a great success, and we will continue to rely on the eCourt system to keep important channels of communication open and deliver seamless legal and judicial services right to our users’ homes,” he added.

eCourt can be accessed from any portable electronic device to retrieve case files, attend virtual court hearings, and send or receive communications from anywhere in the world. Available in both English and Arabic, eCourt is integrated with the Qatar International Court’s virtual hearing capabilities.

- **The right to health:**

Qatar has set Ehteraz application to watch the statuses inside the country and if the person was infected the Ehteraz application turn into red color, and if the person was suspect it turn into gray color, also if the person was in quarantine it turn into yellow and gray, and if the person was not uninfected the Ehteraz application still in green color therefore this application helps us to avoid infected and suspects people And all community members were obligated to download the application and activate it on smart phones when leaving the house for any reason in the State of Qatar Starting

from May 22, 2020, this program includes the number of active cases, recovery and death It has a hotline for inquiries, technical information and health information The location service will also be activated to know the location of the person if he is not in quarantine.

Home Quarantine Checklist for returning travelers:

1. Have suitable housing conditions with the availability of their own room and linked bathroom.
2. Must sign an undertaking (including all the family members and household helpers living in the same house) to abide by the rules of home-based quarantine.
3. Must watch a video clip and review the pamphlet on Home Quarantine.
4. Must apply preventive measures at home to protect the others.
5. Have a swab taken on day 5 or 6 of their arrival at the designated Covid19 Quarantine Center.
6. Must answer the phone calls from the public health team after being discharged to Home Quarantine.
7. Must agree to receive a visit from the public health team every 2-3 days.
8. Must inform the public health team if any symptoms developed (fever, cough, body aches, change in taste or smell).
9. Must download the Ehteraz app.
10. Should not receive visitors while under home quarantine.

Statistics consist of the beginning of the increase to the point of decline, the number of active cases 2843, critical cases 48, closed cases 118680, the rate of injuries amounted to 4.33%, the recovery rate of 97.49% and the death rate 0.17%, the total number of examinations amounted to 685,839.

On March 24, 2020, His Excellency Dr. Ali bin Fattis Al-Marri, Attorney General, issued a decision to establish the Health Prosecution, as part of the precautionary

and preventive measures taken by the state in order to preserve public health and the safety of society. The decision to establish the Health Prosecution comes within the deterrent measures against violators of public health laws, while the new prosecution office is competent to investigate and act in all health-related crimes, especially those that violate the provisions **of the following laws:**

1. Law No. 11 of 1982, the constitution, curative institutions.
2. Law No. 2 of 1983 regarding the practice of the professions of human medicine and dental medicine and surgery, and its amendments.
3. Law No. 3 of 1983 regulating the profession of pharmacy, intermediaries, and agents of pharmaceutical factories and companies, and its amendments.
4. Decree-Law No. 17 of 1990 regarding the prevention of infectious diseases.
5. Law No. 3 of 2014 Concerning the Packaging and Serving of Human Food.
6. Law No. 15 of 2015 regulating the transfer and transplantation of human organs.
7. Law No. 16 of 2016 regarding mental health.

The decision stipulated that all reports of health crimes before all other prosecutions will be referred to the Health Prosecution unless they have been disposed of.

The decision clarified that the Health Prosecution office is headed by a public prosecutor with the rank of prosecutor or above and is assisted by a sufficient number of public prosecutors and assistant prosecutors.

Controlled Lifting of COVID-19 Restrictions plan

The COVID-19 Qatar National Response Plan sets out the actions required to ensure that the health, well-being and prosperity of Qatar's people are protected by taking action to prepare for, monitor, respond and recover from any outbreak of COVID-19. Action taken under the National Response Action Plan has been timely, proportionate and effective. There has been a low number of deaths; and sufficient healthcare capacity has been available to treat all of those who are infected.

This response will continue with the setting of clear conditions for the re-opening of the country through the evidence-based, gradual and controlled lifting of restrictions imposed in response to the COVID-19 pandemic. The lifting of COVID-19 restrictions plan aims to restore normal life while continuing to protect the people, society and economy of Qatar.

COVID-19 restrictions affect the whole of society. This plan for the controlled lifting of restrictions requires a whole Government approach, with national coordination and decision-making. Well evidenced decisions will be implemented in a carefully coordinated timetable with strict monitoring and reporting.

Government Ministries and other National bodies lead their sectors. They are responsible for ensuring a continuing response to Covid-19 while devising and implementing their detailed sector plans to lift restrictions in accordance with this plan.

Restrictions will be gradually lifted in four phases in accordance with a set timetable. Decisions to initiate phases will be informed by meeting pre-defined evidential criteria and the consideration of wider factors.

The order of lifting will reflect a balance between the continuing protection of the public and the restoration of social and economic life. In the event of further outbreaks, restrictions may be reimpose.

The plan is based on an evaluation of the relative healthcare risks and societal and economic benefits. It takes into account of wide cross-Government consultation and the evaluated experience of other countries.

The Provisional timetable for the lifting of restrictions is as follow:

1. Phase 1: 15th June.
2. Phase 2: 1st July.
3. Phase 3: 28th July.
4. Phase 4: 1st September.

Conclusion:

the NHRC will intensify its work in coordination with the competent bodies, to carry out field visits to designated quarantine spots, places of detention, and workers' accommodation, to ensure compliance with international human rights standards.

At the same time, the NHRC commends community awareness and the wide response of citizens and residents to the precautionary measures and calls for strengthening a spirit of solidarity between civil society institutions, the private sector and other stakeholders, and those involved in awareness-raising activities and preventive efforts.

References:

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