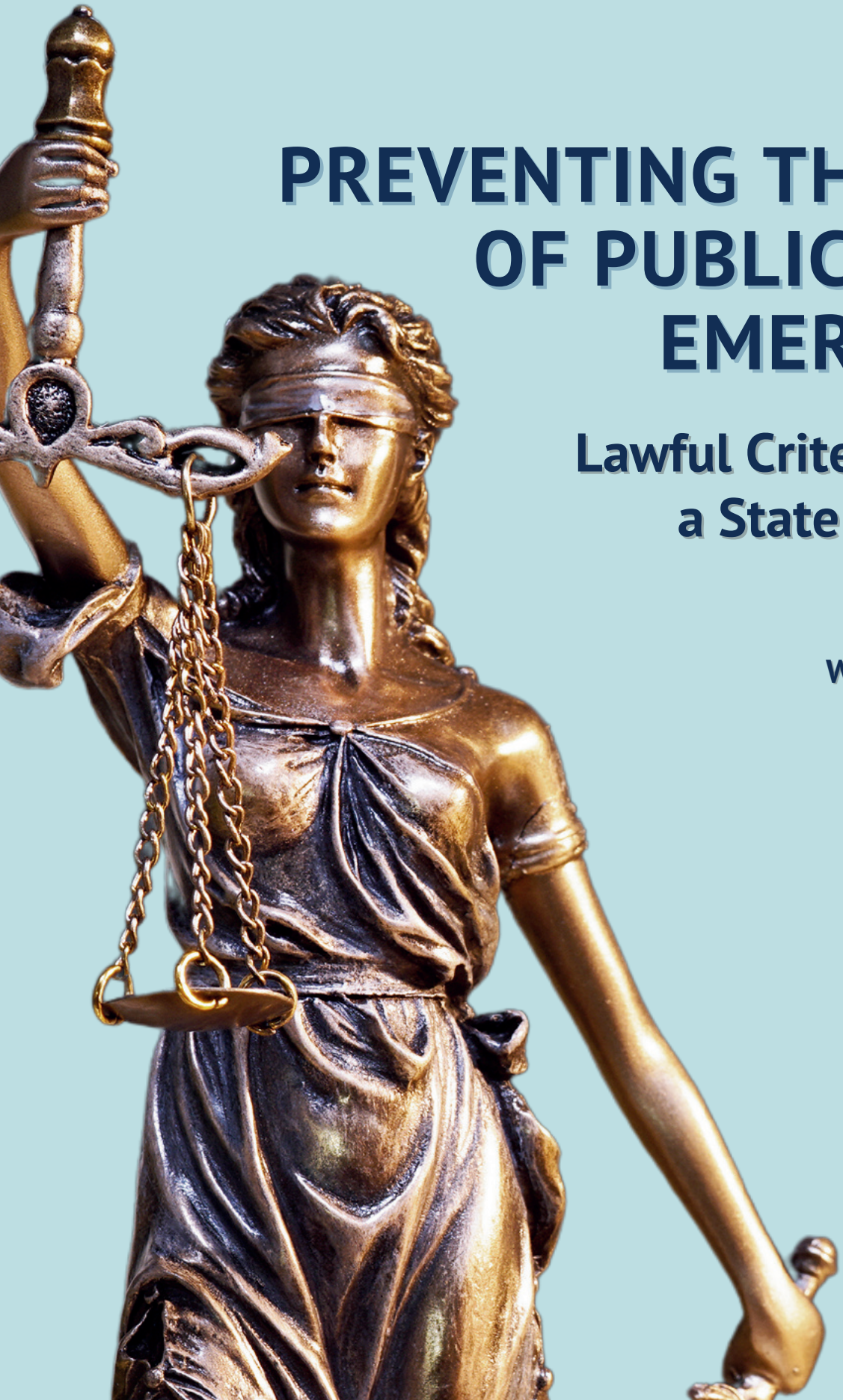
LEGAL BRIEF



PREVENTING THE ABUSE OF PUBLIC HEALTH EMERGENCIES

Lawful Criteria to Declare a State of Emergency

WITH PUBLIC INTEREST RECOMMENDATIONS

February 2024

World Council For Health

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Preventing the Abuse of Public Health Emergencies

Lawful Criteria to Declare a State of Emergency

"Knowledge makes a man unfit to be a slave."
— **Frederick Douglass**

Contents

Throughout history, it is evident that one of the principal tools employed by tyrannical governments to deny people their basic human rights and freedoms has been the baseless declaration of a state of emergency. Unsurprisingly then, the central legal instrument abused by governments during the COVID-19 pandemic was the declaration of an illicit state of emergency, which granted governments and their public health authorities extensive powers. This led to and facilitated unjustifiable gross violations of fundamental human rights for almost three years.

This *ultra-vires* abuse of authority would not have been practically possible had the general public, legal practitioners, health practitioners, politicians, and the media been adequately informed regarding the requirements of International Human Rights Law (IHRL) and the benchmarks needed to declare a legitimate state of emergency.

The purpose of this document is:

a) to inform and educate the general public, legal practitioners, health practitioners, and government officials about how to ascertain the presence or absence of a *bona fide* (genuine) public health emergency.
b) to set out the legal criteria and minimum thresholds necessary to declare a legitimate state of emergency.
c) to show that these criteria were never met at any time during the COVID-19 era.
d) to prevent the future abuse of emergency provisions.
e) to highlight that certain *jus cogens* norms and fundamental human rights can never be violated, not even during a declared state of emergency, for example, "the right to be free from medical experimentation without free and informed consent."

I. Summary

The abuse of emergency provisions over the past three years has again brought to the world's attention the complicated relationship between the declaration of a 'state of emergency' and the protection of essential human rights. Controversially, the World Health Organization (WHO), an agency of the United Nations, 'declared' COVID-19 a pandemic on March 11, 2020. This was followed by many countries across the world instituting severe emergency measures, resulting in widespread violations of basic human rights. Governments abused the declaration of a state of emergency, revealing a brash and cavalier indifference towards IHRL and the lawful limits to policymaking.

Indeed, emergency measures were misused "as a nefarious government technique, rather than an exceptional temporary measure."[1] Unlawful COVID-19-related pseudo-legal emergency regulations breached the fundamental human rights of billions of people globally.

The IHRL standards that authorities need to follow are clear regarding how limitations on essential human rights should be handled during public health emergencies. The requirements for any emergency measures derogating from covenant obligations are that they should, *inter alia*:

- respond to a genuine, imminent, and immense public or social need;
- be imposed by law and not imposed arbitrarily;
- be balanced and proportionate to the threat;
- be strictly required by the demands of the situation;
- be no more restrictive than needed to accomplish the purpose; and
- be non-discriminatory to any specific group.[2]

The international public health community should employ evidence-based policies to control the spread of disease and safeguard the public's health without infringing basic human rights. From a legal perspective, there was no justification to respond differently to COVID-19 than to other transmissible diseases with similar crude mortality rates, such as certain types of influenza and other respiratory diseases.

Human rights standards and principles contained in the **International Covenant on Civil and Political Rights (ICCPR)**, the **Siracusa Principles** (attached hereto **Annexure A**), and the **Paris Minimum Standards** (attached hereto **Annexure B**), specific to public health emergencies, comprise effective, practical criteria that State Parties need to observe to in order to honor their treaty obligations with regard to protecting and ensuring the basic human rights of all within their national borders.

Article 4(1) of the ICCPR explicitly determines that:

> In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the State Parties to the present Covenant may take measures derogating from their obligations under the present Covenant **to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law** …

The International Law Association **Paris Minimum Standards** of Human Rights Norms in a State of Emergency further define a public emergency as:

> an exceptional situation of crisis or public danger, actual or imminent, which affects the whole population or the whole population of the area to which the declaration applies and constitutes a threat to the organized life of the community of which the State is composed.

Prior to the declaration of a state of emergency, the onus is on the government to show that the public health crisis *'*threatens the life of the nation*'* and that this threat meets the following key criteria:

- It must be actual or imminent;
- Its effects must involve the whole nation;
- The continuance of the organized life of society must be endangered; and
- The threat or crisis must be exceptional in that the ordinary measures or controls for the preservation of public health, order, and safety are undoubtedly inadequate.[3][4][5][6][7][8]

A public health emergency that does not meet any one of the above criteria or *desiderata* would not constitute a legitimate threat to 'the life of the nation'. Any human rights-infringing public health measures instituted pursuant to such a public health emergency would be illegitimate in terms of normative standards of international human rights.

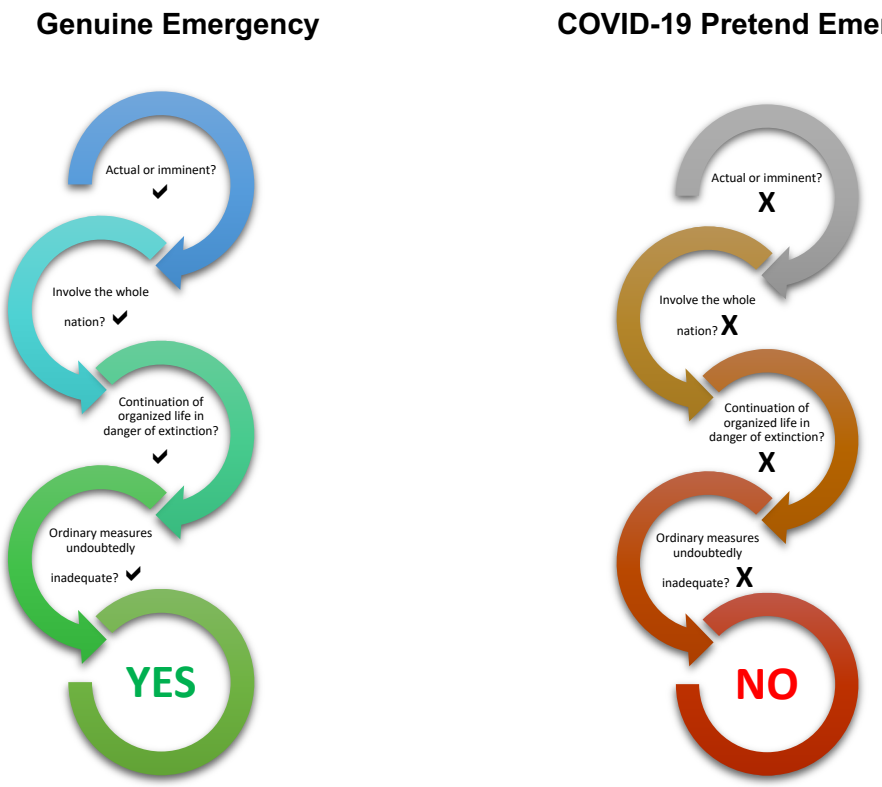

Figure 1: Decision Tree Determines a Legitimate State of Emergency: Yes or No.
Source: Dr W van Aardt (2022) COVID-19 Lawlessness

Certain fundamental human rights can never be suspended under any circumstances, not even during a lawful state of emergency. **Article 4 of the ICCPR** specifies a list of fundamental human rights from which no derogation is allowed. This list includes, *inter alia*:

- The right not to be arbitrarily deprived of life;
- The right not to be subjected to torture;
- The right not to be subjected to cruel, inhuman or degrading treatment or punishment; and
- The right not to be subjected to medical or scientific experimentation without free and informed consent.

Other *jus cogens* norms include prohibitions on crimes against humanity, war crimes, genocide, and slavery.[9]

It is of critical importance that these international norms are publicized widely and built into decision-making by State Parties when measures to prevent the spread of low-risk infectious viruses are instituted in the future.

The government is the entity primarily responsible for preserving human rights in the national sphere as well as on the international level. All States have a legal obligation to enact public policy that protects, respects, and ensures fundamental human rights in line with their international treaty obligations.

Bolstered by the recommendations of the WHO, numerous governments – almost all of them State Parties to the **ICCPR** (ratified by 173 governments worldwide, including the United States

of America, the United Kingdom, and all European Union Member States) – decided to take unbalanced, illegal, and oppressive public health actions that disregarded the following rights of citizens:

- The right to life;
- The right to freedom from medical experimentation without free and informed consent;
- The right to freedom of movement;
- The right to the equal protection of the law; and
- The right to freedom of thought, conscience, and religion.

Rudimentary requirements for the declaration of a lawful state of emergency were never met. This should never be allowed to recur. The systematic violation of human rights undermines national security and public order and constitutes a threat to international peace and stability.[10]

The inexplicable silence and inaction from major human rights NGOs, the United Nations Human Rights Commission (UNHRC), and other regional human rights judicial forums in the face of the most pervasive abuse of emergency declarations and egregious violation of international human rights law by G20 nations and other states, is a cause for extreme concern. It is indicative that the current IHR juridical order and its various checks and balances are severely compromised and not functioning as they should. This demands an independent review and investigation.

From a practical standpoint, the rampant abuse of emergency measures since the onset of the COVID-19 pandemic has confirmed the view that, *de facto*, there "are no ultimate institutional safeguards available for ensuring that emergency powers be used for the purpose of preserving the rule of law."[11] This can only be assured by the people's own knowledge of the law, proactive legal action, and their determination to ensure that their governments do not abuse discretionary power by imposing self-serving, biased, or arbitrary limitations on fundamental human rights.

II. State of Emergency and International Human Rights Law

A. IHRL Derogation Provisions

When a country is involved in a legitimate life-and-death struggle for survival, few will demand that it avoids taking extraordinary emergency measures, in the best interests of its population. But how exactly is the existence of a genuine and lawful public health emergency determined in terms of IHRL?

State of emergency or 'derogation provisions' in IHRL allow governments to legitimately suspend certain human rights guarantees to confront a genuine crisis "that threatens the life of the nation."[12] [13] [14] [15] [16] IHRL derogation provisions have been described as a 'necessary evil' given that emergency derogations are intentional acts by governments to disregard recognized international human rights legal duties in response to exceptional situations.[17] However, derogation conditions in the ICCPR restrain the actions of national authorities, as IHRL obligations may only be limited to responding to a specific state of emergency that is both temporary in nature and that threatens the day-to-day functioning of the State.[18]

Article 4(1) of the ICCPR explicitly determines that:

> In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the State Parties to the present Covenant may take measures derogating from their obligations under the present Covenant **to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law** and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

Article 15 of the European Convention contains a similar provision:

> In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under [the] Convention **to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.**

IHRL uses a combination of regulations and open-textured standards to monitor derogation in the time of public health emergencies. Some legal requirements are purely rule-based, including the legal duties *erga omnes* that States publish an official notice of derogation, abstain from discrimination, and fulfill their other IHRL legal obligations.[19] [20] These rules limit the options available to State Parties and aim to provide the three public interest criteria of "predictability, stability, and constraint" during public health emergencies.[21]

The UNHRC issued a General Comment on Article 4 in 1981 that was very concise, comprising only three articles mainly reiterating the terms of Article 4 of the ICCPR.[22] The Comment does not indicate how to ascertain the presence of an emergency but makes clear that emergency measures taken must be of an ***"*exceptional and temporary nature***"*** and that "**in times of emergency, the protection of human rights becomes all the more important, particularly those rights from which no derogations can be made*."*[23]

In 2001, an updated General Comment was released, which was considerably extended to 17 paragraphs with more detailed information.[24] This subsequent UNHRC Comment deals mainly with actions taken in reaction to an emergency and also does not consider specifically what establishes, or how to ascertain the existence of, such an emergency. Notably, the UNHRC Comment determines that, *"*Not every disturbance or catastrophe qualifies as a public emergency which threatens the life of the nation*."*[25] It further states, "If State Parties consider invoking article 4, … they should carefully consider the justification and why such a measure is necessary and legitimate in the circumstances*."*[26]

In April 2020, the OHCHR released a Statement entitled *"*Emergency Measures and COVID-19 Guidance*"* that also did not define the criteria of a 'threat to the life of a nation' but did highlight that:

> Emergency powers should be used within the parameters provided by international human rights law, particularly the **International Covenant on Civil and Political Rights (ICCPR)**, which acknowledges that States may need additional powers to address exceptional situations. Such powers should be time-bound and only exercised on a temporary basis with the aim to restore a state of normalcy as soon as possible.
>
> The suspension or derogation of certain civil and political rights is only allowed under specific situations of emergency that 'threaten the life of the nation'. Some safeguards must be put in place, including the respect of some fundamental rights that cannot be suspended under any circumstance.[27]

Through the General Comments, the UNHRC acknowledges the independent right of the government to determine the presence of a public health emergency allowing for **Article 4** to be invoked.[28] The UNHRC leaves the early determination of a national state of emergency to the State Party by only requiring that the government "carefully consider" the ***necessity, legitimacy, and justification*** of such a measure.[29] Derogation provisions further acknowledge the principal obligations of the State as the guardian of society and that, in extraordinary circumstances, several human rights guarantees may need to be suspended, **within defined parameters**, **while still meeting essential human rights legal obligations.**[30]

B. Margin of Appreciation

In determining whether a lawful 'public emergency' exists, the ICCPR allows derogation only when existing conditions pose a tremendous and provable threat to the life of the nation.[31] Because the ICCPR does not describe key terms such as 'life of the nation', national agencies and international courts are pressed to apply judgment in establishing whether a specific emergency qualifies as an emergency "threatening the life of the nation."[32]

To determine both the presence of such an emergency and the characteristics and extent of derogations required to triumph over it, States have a wide margin of appreciation.[33] However, States do not enjoy unrestricted power in this regard but are subordinate to IHRL as set out in various binding treaties ratified by States around the globe.[34]

The **European Court of Human Rights** (ECtHR) held that:

> It falls in the first place to each Contracting State, with its responsibility for the life of [its] nation, to determine whether that life is threatened by a 'public emergency' and, if so, how far it is necessary to go in attempting to overcome the emergency. In this matter, authorities have a wide margin of appreciation. Nevertheless, the States do not enjoy an unlimited power in this respect.[35]

The 'margin of appreciation' that is recognized *"*varies depending upon the nature of the right and the nature and ambit of the restriction.*"*[36] An equilibrium must be attained between the public interest and the individual's interest. Where the limitation is to a human right important to a free and democratic society, a much greater level of justification is necessary;[37] so too, where an emergency regulation impedes intimate aspects of private life. Conversely, "in areas such as morals or social policy, greater scope is allowed to the national authorities."[38] [39]

The 'margin of appreciation' is the discretion left to a particular State to implement its protective plan of action in the way it sees fit or, in short, "the amount of latitude left to national authorities.*"*[40] Importantly, under the 'margin of appreciation' legal standard, the *"*burden lies on governments to justify emergency declarations during ex post facto judicial review.*"*[41] [42] The absence of such a rational justification would be an adequate ground for making a determination that IHRL has been transgressed.

For example:

- In the case of *Brannigan & McBride v. United Kingdom*, it was held that the United Kingdom had abused its emergency powers since there was no satisfactory justification for the actions that were taken.[43]

- In the case of *Aksoy v. Turkey*, the ECtHR deduced that certain emergency actions that were taken *"*exceeded the government's margin of appreciation due to the fact that it could not be said to be strictly required by the exigencies of the situation.*"*[44]

In each of these instances, the court accepted the legitimacy of the government's primary role in establishing temporary emergency measures, but also emphasized that national authorities must be able to offer *reasonable and sensible* justifications. These judgements highlight the principle that governments ultimately carry the burden to demonstrate credible and rational grounds for any declared 'threat to the life of the nation' and to justify why the actions they have taken to confront the emergency are *necessary and reasonable*.[45]

The 'margin of appreciation' doctrine respects this designation of power, ensuring that international tribunals give a degree of deference to the context-sensitive decisions of national decision-makers during a state of emergency.

However, international courts should intervene:

- if and when national authorities neglect to motivate and support their human rights derogations with rational, reasonable, and common-sense deliberation supported by objective facts and data;
- if governments' behavior reflects a pattern of illogical and abusive conduct; or
- if corporate corruption and conflicts of interest have compromised their fiduciary duty.

Therefore, a nation's authority to derogate from human rights legal obligations during public emergencies is conditional upon the State serving as an *honest, honorable, and faithful* guardian of its people.[46] [47]

For this delegation of authority to function appropriately, national authorities need to adhere to international human rights norms and criteria. Deference to State derogations is not acceptable if circumstances indicate that State Parties misuse emergency powers for political and financial exploitation of its population.

The critical question that needs to be addressed is whether the threat posed by COVID-19 represented a public health emergency that threatened the life of the nation.

C. When does a Public Health Emergency Threaten the Life of a Nation?

With regards to what constitutes an emergency that 'threatens the life of a nation', the **European Court of Human Rights** (ECtHR) held that it should be:

> an exceptional situation of crisis or emergency which affects the whole population and constitutes a threat to the organized life of the community of which the State is composed.[48] [49] [50]

In the *Denmark, Norway, Sweden, and the Netherlands v. Greece case*, the ECtHR gave some guidance and held that, for a public emergency to threaten the life of a nation:

a) it must be imminent or actual;
b) it must affect the entire population; and
c) the continuance of the organized life of the community must be threatened.[51]

The Court emphasized that the emergency or threat must be extraordinary, in that "the normal measures or restrictions permitted by the Convention for the maintenance of public safety, health, and order are plainly inadequate."[52]

The ECtHR highlighted the extraordinary character of a public health emergency as being a situation where 'normality' is indisputably a practical impossibility, and the normal day-to-day life of society cannot be followed.[53] Although set forth during a quasi-judicial proceeding and formally lacking legal precedential authority, the criteria in the Greek case were confirmed as influential precedents in later cases and commonly perceived to give direction to States.[54]

An authoritative interpretation of the IHRL derogation provisions under the ICCPR has also been provided in the American Association for the International Commission of Jurists (AAICJ) **Siracusa Principles**.[55] With regards to what constitutes a "public emergency which threatens the life of a nation," the Siracusa Principle determines that:

> A threat to the life of the nation is one that:
>
> a) affects the whole of the population and either the whole or part of the territory of the State;
>
> and
>
> b) threatens the physical integrity of the population, the political independence or the territorial integrity of the State, or the existence or basic functioning of institutions indispensable to ensure and protect the rights recognized in the Covenant.[56]

With regards to implementing a public emergency that threatens the life of a nation, the Siracusa Principles further comprise the following general principles:

- The scope of a limitation to a right shall not be interpreted to jeopardize the essence of the right concerned.
- All limitation clauses shall be interpreted strictly and in favor of the rights at issue.
- Laws imposing limitations on the exercise of human rights shall not be arbitrary or unreasonable.
- Every limitation imposed shall be subject to the possibility of challenge to and remedy against its abusive application.
- Whenever a limitation is required in the terms of the Covenant to be 'necessary', this term implies that the limitation: (a) is based on one of the grounds justifying limitations recognized by the relevant article of the Covenant; (b) responds to a pressing public or social need; (c) pursues a legitimate aim; and (d) is proportionate to that aim. Any assessment as to the necessity of a limitation shall be made on objective considerations.
- In applying a limitation, a State shall use no more restrictive means than are required for the achievement of the purpose of the limitation.
- The burden of justifying a limitation upon a right guaranteed under the Covenant lies with the State.
- Derogation from rights recognized under international law in order to respond to a threat to the life of the nation is not exercised in a legal vacuum. It is authorized by law and as such it is subject to several legal principles of general application.
- A proclamation of a public emergency shall be made in good faith based upon an objective assessment of the situation to determine to what extent, if any, it poses a threat to the life of the nation.

- A proclamation of a public emergency and consequent derogations from Covenant obligations that are not made in good faith are violations of international law.
- The provisions of the Covenant allowing for certain derogations in a public emergency are to be interpreted restrictively.
- In a public emergency, the rule of law shall still prevail. Derogation is an authorized and limited prerogative to respond adequately to a threat to the life of the nation. The derogating State shall have the burden of justifying its actions under law.

The focus on 'objective assessment' leaves open the possibility for a treaty-monitoring forum to become involved in judgement of the existence of a public health emergency, removing the exclusive ability of the State in adjudicating this important issue.[57]

The International Law Association (ILA's) **Paris Minimum Standards of Human Rights Norms** in a state of emergency define a public emergency as:

> … an exceptional situation of crisis or public danger, actual or imminent, which affects the whole population or the whole population of the area to which the declaration applies and constitutes a threat to the organized life of the community of which the State is composed.

Additionally, the Paris Minimum Standards, were intended to help ensure that, even in situations where a *bona fide* declaration of a state of emergency has been made, the State Parties concerned will refrain from suspending those basic human rights that are regarded as non-derogable that include:

- The Right to Legal Personality and Recognition as a Person before the Law
- Freedom from Slavery or Servitude
- Freedom from Discrimination to the Equal Protection of the Law
- The Right to Life
- The Inherent Right to Liberty and Security of the Person
- Freedom from Torture or to Cruel, Inhuman or Degrading Treatment or Punishment
- Freedom from Medical or Scientific Experimentation without Free and Informed Consent
- The Right to Fair Trial and *Habeus Corpus*
- Freedom of Thought, Conscience and Religion
- The Right to Legal Remedy and an Independent and Impartial Judiciary.

The Paris Minimum Standards are unambiguous that "[d]uring the period of the existence of a public emergency the state … may not derogate from internationally prescribed rights which are by their own terms 'non-suspendable' and not subject to derogation."

D. COVID-19 did not Meet the Basic Criteria of a Genuine Emergency 'Threatening the Life of the Nation'.

International human rights prescriptions are precise that a public health calamity that 'threatens the life of the nation' must endanger or compromise some vital element of statehood or survival of the general population and contain the following key criteria:

a) It must be actual or imminent.
b) Its effects must involve the whole nation.
c) The continuation of the organized life of society must be in danger of extinction.

d) The threat or emergency must be extraordinary in that the ordinary measures or controls for the protection of public health, order, and safety are undoubtedly inadequate.

In practice, each criterion should be assessed cumulatively, and failure of an emergency to meet any one of the thresholds will preclude the declaration of a state of emergency. In other words, for a public health emergency to be genuine, the following four questions need to be answered affirmatively supported by actual facts and data.

a) Is the threat actual or imminent?
b) Does the threat involve the whole nation?
c) Is a continuation of the organized life of society in danger of extinction?
d) Is the threat so extraordinary that the ordinary measures for the protection of public health and order are undoubtedly inadequate?

A public health emergency that does not meet any one of the above *desiderata* would not constitute an authentic and legitimate threat to 'the life of the nation'. Any public health regulations contravening human rights that are enacted pursuant to such a pseudo or manufactured public health emergency would be illegal in terms of IHRL normative standards.[58]

a) Criterion 1: Was the threat from COVID-19 actual or imminent?

From the factual evidence hereinafter, it is indisputable that the threat from COVID-19 was neither actual nor imminent in relation to the alleged scale and severity used as justification to enact a state of emergency.

The primary rationalization for COVID-19 emergency measures that were initially implemented was the predictive modeling compiled by Imperial College London. After that, nonsensical and arbitrary increases in positive Reverse Transcription-Polymerase Chain Reaction (RT-PCR) test results were abused to extend existing emergency measures or institute additional ones.[59] Although major policy decisions need model input, models are meaningful only to the extent that outputs are valid, accurate, transparent, based on truthfully documented sources, thoroughly assessed, objectively peer-reviewed, and that they produce fairly dependable projections.

Many States around the world misused predictive modeling and limited statistics to defend their emergency regulations, projecting *inter alia* more than two million COVID-19-related deaths in the United States, 500,000 in the United Kingdom, 375,000 in South Africa, and 100,000 in Sweden before the end of 2020. By August 2020, it had become glaringly obvious that the expected crude mortality rates, and thus the 'threat to the nations' were extremely speculative, demonstrably incorrect, and massively overestimated.[60] [61] [62] [63] [64] [65] [66]

According to the US Centers for Disease Control and Prevention (CDC) and the WHO, by December 31, 2020, 352,225 Americans out of a population of 331,515,730 (0.10%) had died as a result of COVID-19.[67] [68] In the United Kingdom, at the end of 2020 the official death toll stood at 72,548 out of a population of approximately 66 million citizens (0,10%).[69] By December 31, 2020, South Africa, with a population of 60 million, recorded 28,033 deaths (less than 0,04%), and Sweden, with a population of 10.4 million, recorded 9,654 deaths. (less than 0.09%)[70] [71] In principle, predictive modeling can never be used as justification for an emergency, as such modeling is, by its very nature, highly speculative. Furthermore, it has become clear that corrupt

role-players exploited and profited from COVID-19, funding institutions conducting the modeling and manipulating predetermined outcomes.

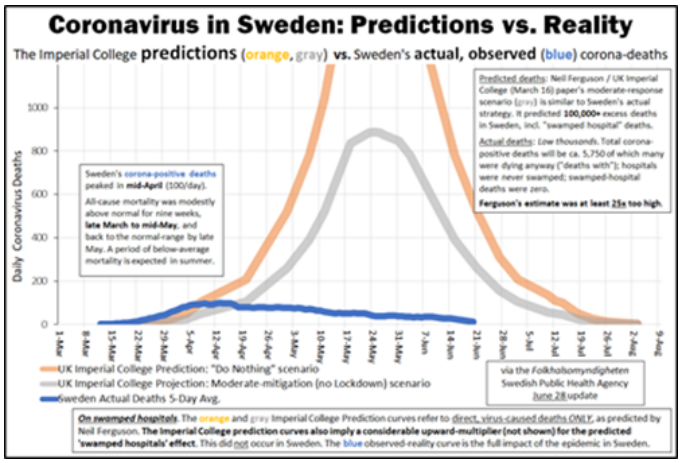

Figure 2: Coronavirus in Sweden: predictions vs. reality
Source: Swedish Public Health Agency (Folkhalsomyndigheten)

Following the initial declaration of a state of emergency, most governments used arbitrary increases in the number of positive PCR tests (which amplify fragments of live or dead virus found in nose and throat swabs) as justification to extend or implement new emergency regulations. This was fundamentally flawed and unjustifiable, since:

- The PCR tests have a questionable record of providing false and unreliable results.[72]
- The PCR tests for COVID-19 were known to generate many false-positive results by reacting to DNA material that was not specific to SARS-CoV-2. [73] [74] [75] [76] [77] [78]
- The cycle threshold (CT) values of the PCR tests are completely incorrect at 35 cycles. It was extensively documented and acknowledged that any test using a CT value over 35 was theoretically meaningless.[79] [80] [81] The CDC itself acknowledged that tests over 28 cycles did not produce dependable positive results and were therefore unacceptable. Notwithstanding this, virtually all the labs in the United States and the United Kingdom ran their PCR tests above 35 and at times as high as 45 cycles.[82] [83] [84] This alone invalidated over 90% of the alleged positive COVID-19 cases.
- The Corman-Drosten article that was the source of every COVID-19 PCR test globally is suspicious. The genome of the SARS-CoV-2 virus was allegedly sequenced by Chinese researchers in December 2019 and made public on January 10, 2020. Less than 14 days later, Christian Drosten and colleagues had supposedly used the genome to create laboratory analysis for COVID-19 PCR tests. They authored a research article, "Detection of 2019 novel coronavirus (2019-nCoV) by real-time RT-PCR," which was submitted for peer review on January 21, 2020, and officially accepted on January 22. This implies that the manuscript was 'peer-reviewed' in less than two days, whereas this process typically takes a minimum of weeks, and often months.[85] [86]
- The CDC conceded that PCR tests "may not indicate the presence of an infectious virus," yet it was extensively misused to do exactly that in the case of COVID-19. A

research report produced by Collateral Global and academics at the University of Oxford in February 2022 determined that as much as one-third of all positive PCR cases may not have been infected with SARS-CoV-2 at all. [87] [88]

- There was tremendous corruption, exploitation, breach of fiduciary duties, and glaring conflicts of interest. Those who profited from the PCR tests were the same groups incessantly promoting testing and the continuation of emergency measures.[89] [90] [91]

The substantial proportion of asymptomatic COVID-19 infections, the well-known incidence of acute comorbidities, and the potential for false-positive tests rendered the positive PCR results and death numbers extremely unreliable and most definitely not sufficiently credible to justify a lawful and genuine state of emergency. [92]

Additionally, COVID-19 mortality numbers were exaggerated and are therefore misleading. The definition of what constituted a 'COVID-19 death' was changed to include a 'death by any cause within 28, 30, or 60 days of a positive test'. If test results were not obtainable, even 'probable' or 'presumed' COVID-19 deaths could be included.[93]

Public health bureaucrats from Germany, Italy, the United Kingdom, the United States, and many other countries followed this intentionally deceptive and nonsensical practice. Removing the distinction between 'dying of COVID-19' and 'dying of something else after testing positive for COVID-19' (and in the USA, including those who were 'presumed' to have died of COVID-19) resulted in these deaths being conspicuously over-counted. Grouping these statistics together increased the apparent impact of the disease and was often used, together with positive PCR test records, to defend emergency regulations. In the United Kingdom, for example, in January 2022, the UK Government released statistics revealing that between February 2020 and December 2021 in England and Wales there were only 6,183 "deaths caused solely by COVID-19."[94]

In the United States, a peer-reviewed study by Ealy, *et al*. entitled "COVID-19 Data Collection, Comorbidity & Federal Law: A Historical Retrospective" was published in October 2020 in the journal *Science, Public Health Policy, and The Law* . The authors concluded that:

> The CDC has advocated for social isolation, social distancing, and personal protective equipment use as primary mitigation strategies in response to the COVID-19 crisis, ... These mitigation strategies were promoted largely in response to projection model fatality forecasts that have proven to be substantially inaccurate. The CDC published guidelines on March 24, 2020 that substantially altered how the cause of death is recorded exclusively for COVID-19 … As a result, a capricious alteration to data collection has compromised the accuracy, quality, objectivity, utility, and integrity of their published data.[95]

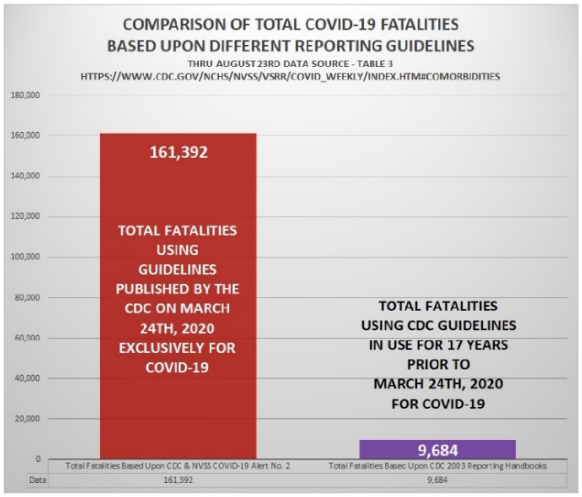

Figure 3: COVID-19 Using the March 24 Exclusive Guidelines vs Using the 2003 Guidelines. Had the CDC used the 2003 guidelines, total COVID-19 deaths would have been approximately 16.7 times lower than reported.
Source: Ealy *et al*. (2020)

b) Criterion 2: Did the threat from COVID-19 involve the whole population?

From the facts set out below, it is incontestable that at no stage did the threat from COVID-19 involve the whole population. Following some uncertainty in early 2020 concerning the infection fatality and crude mortality rates of COVID-19 in different sections of the population, it soon became glaringly obvious that COVID-19 only posed a risk to a tiny proportion of the populace that belonged to one of the vulnerable groups.

Infection fatality rates for COVID-19 depended mostly on age and underlying health conditions. By August 2020, it was apparent that the absolute risk of COVID-19 was very low for individuals younger than 65 years.[96] [97] Dr John Ioannidis, a former Stanford University professor who has contributed to evidence-based medicine, epidemiology, and clinical research, is one of the most published and influential scientists in the world. In a peer-reviewed study published by Elsevier in *Environmental Research* in September 2020, he noted that:

> People <65 years old have very small risks of COVID-19 death even in pandemic epicenters and deaths for people <65 years without underlying predisposing conditions are remarkably uncommon. Strategies focusing specifically on protecting high-risk elderly individuals should be considered in managing the pandemic.[98]

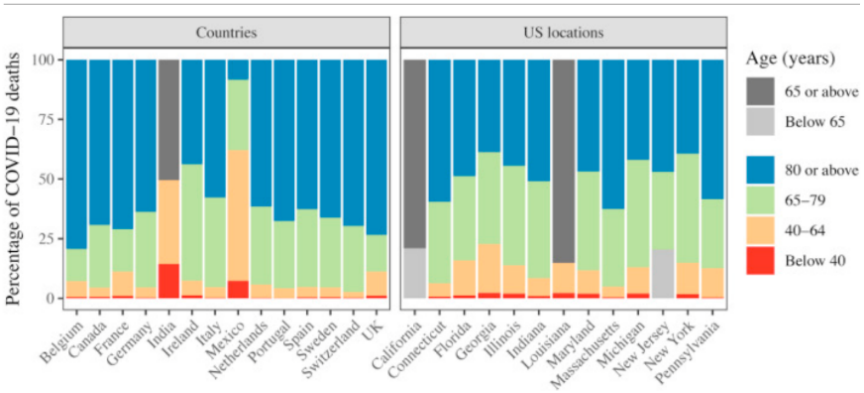

Figure 4: Proportion of COVID-19 deaths by specific age group category.
Source: Ioannidis *et al*. 2020. Population-level COVID-19 mortality risk for non-elderly individuals overall and for non-elderly individuals without underlying diseases in pandemic epicenters. Environmental research, 188, p.109890.

Recovery rates and fatality rates are reciprocal ways of looking at the available data. If a fatality rate is 0.018%, as for the age demographic 0 to 19 years, then the reciprocal recovery rate is 99.982%. Based on recovery rate data from August 2020, it was also apparent that individuals between the ages of 0 to 19, 20 to 49, and 50 to 69 years were at particularly low risk of death due to COVID-19.

COVID-19 Recovery Rates By Age - Thru August 23rd

Date	August 23rd	August 16th	August 9th	August 2nd
Age 0 to 19	99.982%	99.981%	99.980%	99.978%
Age 20 to 49	99.72%	99.72%	99.72%	99.71%
Age 50 to 69	97.31%	97.31%	97.28%	97.29%
Age 70+	82.43%	82.43%	82.15%	80.95%

Table 1: Recovery Rates by Age Compared to Preceding Weeks.
Source: Ealy *et al*. (2020) COVID-19 Data Collection, Comorbidity & Federal Law: A Historical Retrospective. *Science, Public Health Policy, and The Law*. 2:4-22.

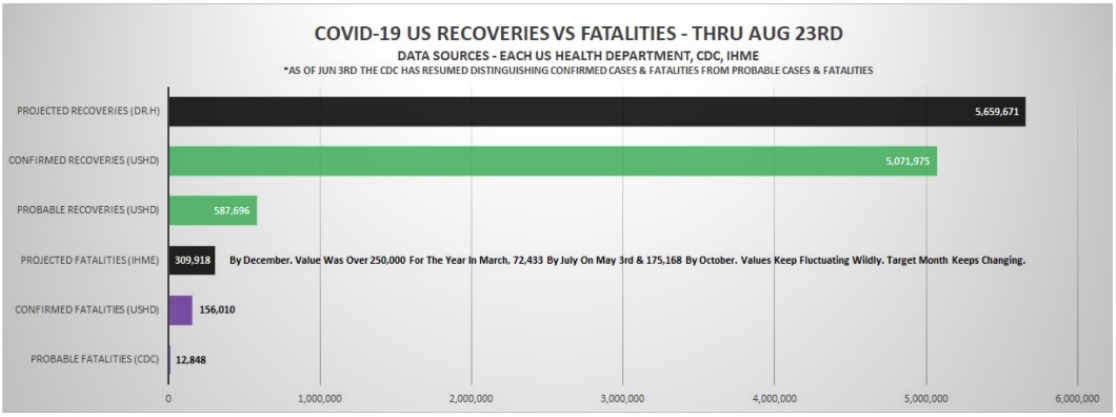

Figure 5: Confirmed Recoveries vs. Confirmed Fatalities. (as of 8.23.2020).
Source: Ealy *et al*. (2020)

In their peer-reviewed study from 2020, Ealy *et al.* noted that:

> The age 70+ demographic makes up the largest percentage of fatalities (72.9%). This is alarmingly disproportionate to their relatively small percentage of cases (12.7%) and thus defines them as a high-risk population. The opposite is true for the age 0 to 19 demographic, which makes up a small percentage of fatalities (0.0554%).

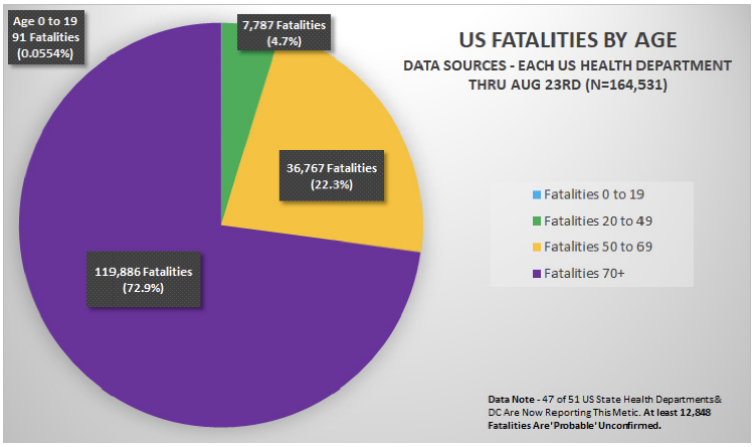

Figure 6: US Fatalities by Age.
Source: Ealy *et al*. (2020)

As at February 2021, when most UN Member States were continuing to implement harsh lockdowns, travel bans, and other repressive emergency measures, the global infection fatality rate (IFR) was approximately 0.15%, with 1.5 to 2 billion infections.[99] Since the second half of 2020, it had already been well-known - researched, documented, and published - that the COVID-19 crude mortality rate varied between 0.003% and 0.3% and that more than 99% of people were at no risk of death or severe illness from COVID-19.[100] [101]

Country	Case Fatality	Crude Mortality
United States of America	1.6%	0.22%
United Kingdom	1.5%	0.21%
South Africa	3.1%	0.15%
Ethiopia	1.8%	0.005%
Sweden	1.3%	0.14%
France	1.6%	0.17%
India	1.3%	0.03%

Table 2: COVID-19 case fatality and crude mortality rates
Source: Johns Hopkins University, Mortality Analysis (November 2020)

c) Criterion 3: Did COVID-19 threaten the continuance of the organized life of the community at any stage?

The facts presented below are self-evident: it is incontrovertible that COVID-19 never threatened the continuance of the organized life of the community. The threat from COVID-19, as perceived and conveyed by most State Parties around the world, was related to a threat that the capacity of intensive care units and healthcare providers to handle patients would be overwhelmed. The main line of reasoning used to justify emergency actions was that 'flattening the curve' would avoid a sudden flood of COVID-19 cases and shield healthcare providers from collapse.

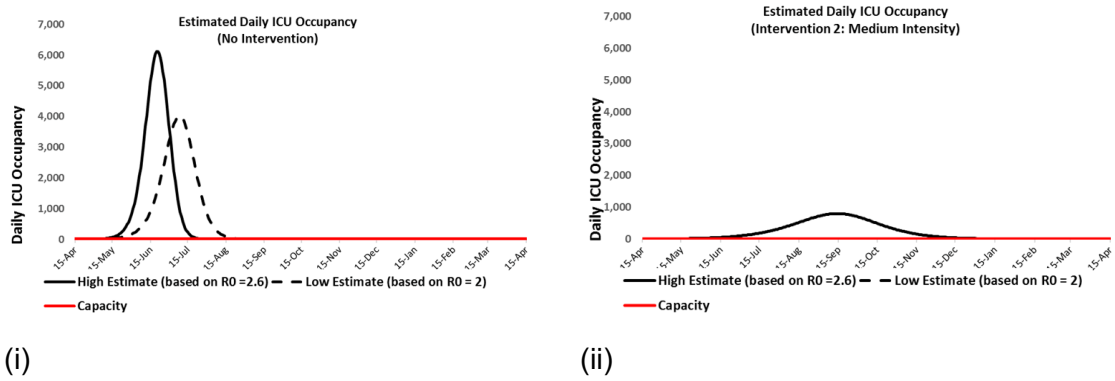

Figure 7: CDC Details of estimated demand for ICU beds assuming different levels of: i) Numbers infected per infectious person (Ro); ii) effectiveness of community interventions.
Source: USA CDC

However, none of the various healthcare providers were ever close to collapse at all. What is crucial to note is that States were dealing with the "concern about capacity, rather than the actual effect of COVID-19 on capacity."[102] Thus, what was feared was an extremely narrow and restricted 'potential ICU capacity crisis' rather than "an emergency threatening the continuance of all elements of the organized life of the community."[103]

The 'ICU capacity crisis' could have been easily managed through other ordinary measures, such as the expansion of ICU capacity by the allocation of additional government resources to healthcare providers, as was accomplished in New York City with the placement of the Comfort hospital ship and the transformation by the Army Corps of Engineers of the 1,800,000-square-foot Jacob K. Javits Convention Center into a substitute care facility for more than 2,000 non-COVID-19 patients.[104] Underscoring the fact that healthcare systems were never close to being overrun, in both the United Kingdom and United States, millions were wasted on temporary emergency hospitals that were never used.[105] [106]

The Associated Press reported that:

> When virus infections … fell short of worst-case predictions, the globe was left dotted with dozens of barely used or unused field hospitals. Some public officials say that's a good problem to have — despite spending potentially billions of dollars to erect the care centers — because it's a sign the deadly disease was not nearly as cataclysmic as it might have been.[107]

To meet the criterion of "an emergency threatening the continuance of all elements of the organized life of the community," the threat should be so immense and overwhelming that the day-to-day life of the country's residents is affected in such a material way that normalcy is no longer possible.[108] This is an incredibly high criterion to meet as it implies that ordinary regulations, ordinary measures, and State institutions are no longer capable of controlling civil society.[109] This was most certainly not the case with COVID-19.

It was established early on in the pandemic that most deaths from COVID-19 would have followed as part of the 'normal' risks faced by individuals, predominantly the elderly and those with lingering medical problems. According to the US CDC, 94% of Americans who died with COVID-19 had other "types of health conditions and contributing causes." Data on coronavirus-related deaths from the week ending February 1, 2020, through August 22, 2020, showed that "for 6 percent of

the deaths, COVID-19 was the only cause mentioned." In other words, 94% of Americans who died from COVID-19 had contributing conditions.[110]

Across the world, COVID-19 did not have any significant impact on excess mortality, life expectancy, and mortality curves, and as such could not have affected **any** "elements of the organized life of the community" as all working-aged people were able to carry on with their duties and responsibilities as under normal conditions.[111] [112]

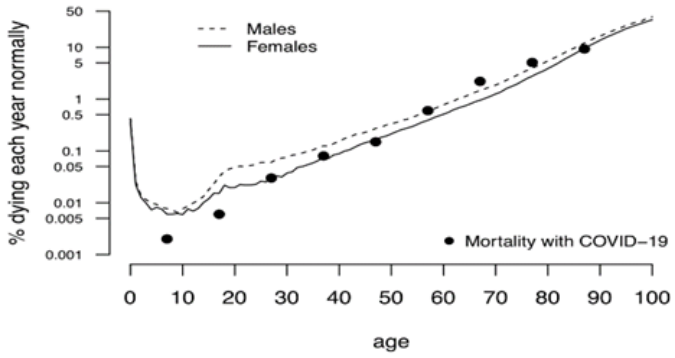

Figure 8: COVID-19 impact on life expectancy in England and Wales
Source: David Spiegelhalter, ONS, Imperial College London

The numbers of US deaths from or with COVID-19 (dark grey) and from all other causes (light gray), per age group, from February 2020 to February 2021, are depicted below:

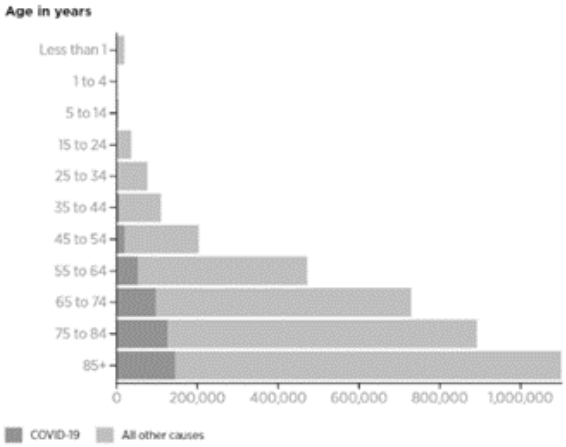

Figure 9: US deaths from or with COVID-19 compared with all other causes.
Source: CDC, USA Facts

The following graph depicts the number of deaths worldwide by cause in 2019.

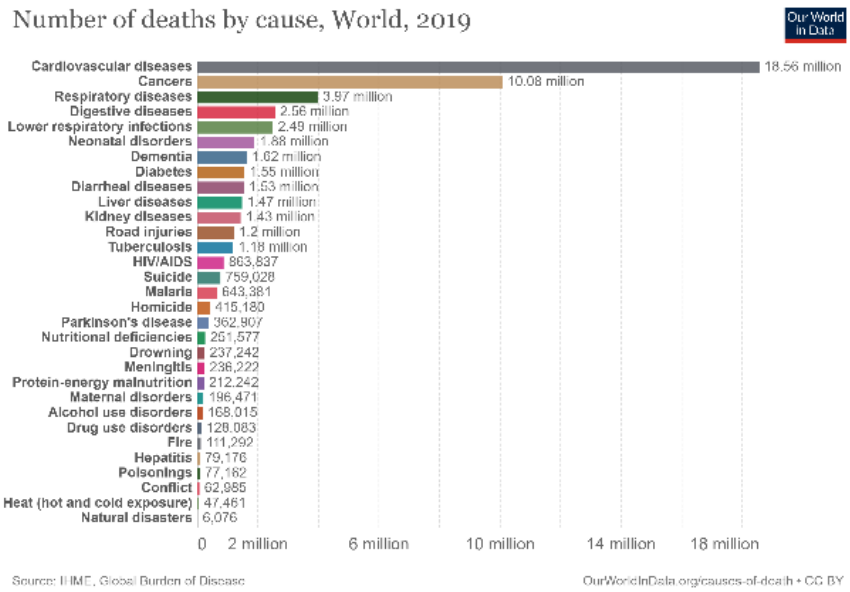

Figure 10: Number of deaths by cause 2019
Source: Our World in Data

Our World in Data published datasets that reveal that 58.8 million people died in 2019, the year preceding COVID-19. The largest fatal disease by far was cardiac disease – responsible for more than 18.5 million deaths, or around a third of all deaths that year. Cancers killed in excess of ten million individuals, or around one in six people, making it the second leading cause of death in the world. Respiratory infection killed 3.97 million individuals; lower respiratory diseases killed 2.49 million individuals.

Johns Hopkins University data shows that COVID-19 caused 1.88 million deaths globally in 2020. It is obvious that there were several other causes of death, such as cardiac disease, cancer, and other respiratory disorders, that had a notably larger impact on humanity than COVID-19, yet none of these triggered any emergency measures. If a state of emergency was not required for individuals dying from cardiovascular disease, diabetes, cancer, the flu, or other respiratory illnesses, which caused substantially more deaths than COVID-19, then there was no justification nor basis to enact emergency measures for COVID-19.[113]

d) Criterion 4: Was the COVID-19 crisis so exceptional that normal measures for public health and safety were inadequate?

It is not possible to contemplate a reasonable *raison d'état* based on the notion that a virus with an infection fatality rate of less than 0.15% was such an exceptional crisis that conventional and ordinary public health and safety actions were plainly inadequate.

The COVID-19 crisis was not exceptional in that normal measures for public health and safety were plainly adequate. Numerous ordinary measures could have been taken to successfully overcome the COVID-19 public health threat, such as:

- Making cheap and effective prophylactics and early treatment protocols available.[114] [115] [116] [117] [118] [119] [120] This was done in Uttar Pradesh, India's most populous State with 230 million people, which was nearly COVID-19-free following the proactive use of Ivermectin, included in home healthcare kits in 2021.[121]
- Adopting a 'protect the vulnerable' approach.[122]
- Increasing the ICU capacity by allocating resources to field hospitals.
- Following the Swedish approach.[123]
- Following a natural herd immunity approach.[124]

From the straightforward evaluation set out in 2.4.1. to 2.4.4 above, it is abundantly clear that COVID-19 never posed a threat to the life of the nation as it did not even meet one of the four international human rights thresholds.

	Criterion 1: Is the threat actual or imminent?	Criterion 2: Does the threat involve the whole nation?	Criterion 3: Is the continuation of the organized life of society in danger of extinction?	Criterion 4: Is the threat so extraordinary that the ordinary measures for the protection of public health and order are undoubtedly inadequate?	FINDING ✔ X
Example A: Genuine Emergency	YES	YES	YES	YES	✔
Example B: Not Emergency	YES	YES	YES	NO	X
Example C: Not Emergency	YES	YES	NO	NO	X
Example D: Not Emergency	YES	NO	NO	NO	X
Example E: Covid-19: Not Emergency	NO	NO	NO	NO	X

Table 3: Criteria to determine a legitimate emergency.
Source: Dr W van Aardt (2022) COVID-19 Lawlessness.

Without doubt, if the general public, legal practitioners, health practitioners, politicians and the media had been equipped with the necessary knowledge of the actual common-sense IHRL requirements to declare a legitimate state of emergency, corrupt international and national public health agencies would not have been able to swindle their way into declaring a manufactured emergency, leading to arguably some of the most pervasive and severe violations of fundamental human rights in history.

Since the COVID-19 crisis did not meet the legal conditions of an emergency 'threatening the life of a nation', all derogation measures such as school closures, travel restrictions, small business closures, lockdowns, mask mandates, harmful vaccine mandates, and isolation mandates, were illegal breaches of the ICCPR.

III. Conclusion and Recommendations

Respect for fundamental human rights is needed to ensure minimum worldwide public legal order. Non-adherence to IHRL norms and contempt for human rights have led to the current state of lawlessness and insecurity that some refer to as the 'new normal'. Under IHRL normative standards, national authorities have a legal duty to respect, protect, and fulfill the human rights of all citizens.

When corrupt public bureaucrats, at the behest of their corporate paymasters, ignore their duty to protect those in their country from human rights abuses and exploitation, through the declaration of illicit emergencies and enabling of arbitrary pseudo-health mandates, they breach their international obligations *erga omnes.* They should be held responsible and prosecuted to the full extent of the law.

The illegitimate declaration of national emergencies resulting in the deprivation of vital human rights, witnessed on a monumental scale across the globe in the name of COVID-19 public health, should never be accepted again. Only with the firm foundation of a minimum global legal order, where States honor IHRL norms and their international legal obligations, can the world be shaped to achieve security and full enjoyment of human rights by all.

The 'paradoxical phenomenon' of the state of emergency reached its maximum worldwide deployment during the COVID-19 pandemic, with nearly all United Nations Member States declaring a state of emergency. In the West, in particular, IHRL norms were *de facto* abolished and negated with impunity by State aggression. While disregarding international law externally, and producing a state of emergency internally, these States still absurdly claimed to be complying with the law. The only purpose of these attempts 'to reinsert a legal vacuum into the legal order' was to protect illegal sovereign aggression at all costs.[125]

IHRL, objectively interpreted and applied, does indeed expose the illicit actions of modern-day COVID-19 totalitarians. The bias inherent in individual countries determining what constitutes an emergency that poses 'a threat to the life of the nation' proved catastrophic during the COVID-19 era. Government bureaucrats abused emergency declarations to the detriment of human rights protection around the globe. "There is a fine line between governments' *bona fide* actions to secure the safety of the people, and governments' *male fide* actions illegitimately abusing public health derogation provisions."[126] But that line is clear.

Determining whether a situation constitutes a public emergency 'threatening the life of the nation' is seen predominantly as a political decision. However, declaring a state of emergency has substantial legal ramifications that too often have a disastrous adverse impact on fundamental human rights.[127] Human rights derogation can only be acceptable as a very temporary measure, allowing States to safeguard fundamental human rights. It should never be used by national authorities and their corrupt corporate sponsors to advance their political and financial agendas in a manner that endangers human rights.

Considering the 0.15% infection fatality rate of COVID-19, it is glaringly obvious that COVID-19 never constituted a threat to the life of any nation. The position held by most many State Parties that COVID-19 represented a public health emergency threatening the nation did not meet the minimum standards established in IHRL. If a disease with a crude mortality rate similar to that of influenza and other respiratory diseases can be abused to justify gross violations of fundamental

human rights, then States *de facto* and *de jure* have latitude to scorn all international human rights obligations with impunity. Sadly, this is precisely what took place.

The artificially manufactured COVID-19 crisis has been widely used to defend pervasive human rights violations.[128] To inhibit future abuse, ethical, uncompromised, objective, neutral, and independent international monitoring bodies must be involved in determinations of public emergencies. This is crucial to avoid the subjectivity that appears to have defined the existence of threats from COVID-19. The systematic violation of human rights undermines national security and public order and constitutes a threat to international peace and stability.[129]

The silence and inaction of the UNHRC, regional human rights judicial forums, Human Rights Watch, and Amnesty International in the face of the most ubiquitous exploitation of emergency declarations and egregious violations of international human rights law by G20 nations is both incomprehensible and a cause for extreme concern. It indicates that the present IHR judicial order and its various checks and balances have been severely compromised and are not functioning as intended.[130]

As noted by Dr Willem van Aardt (Extraordinary Research Fellow, North-West University):

> When *jus cogens* norms are practically annulled, as *de facto* occurred during the past two and a half years, it is not that there is a "juridical void" but rather that political tyrants "deactivated and deposed the law" through unlawful State action ... The current "space devoid of law" needs to be brought back and reinstituted into the international juridical order through the effectual implementation and adjudication of International Human Rights Law. A law that exists but is no longer practiced or effected no longer has meaning and serves as the gateway to injustice.[131]

From a practical standpoint, the widespread misuse of emergency measures during the course of the COVID-19 pandemic has confirmed the view that, *de facto,* there "are no ultimate institutional safeguards available for ensuring that emergency powers be used for the purpose of preserving the Constitution."[132] The only thing that can guarantee this is the people's own knowledge of the law, proactive legal action, and their determination to ensure that their governments do not abuse their discretionary power by imposing self-serving, biased, or arbitrary limitations on fundamental human rights.

Recommendations:

1. Develop educational materials and campaigns through the WCH network regarding the criterion for a legitimate State of Emergency and explain how it was not met during the COVID-19 pandemic.
2. Establish IHRL early monitoring panels to monitor adherence to IHRL and alert WCH members, the public at large, the legal community, health practitioners, and politicians of IHRL violations.
3. Establish IHRL legal activism groups to take proactive legal action in the event of future abuse.

"The limits of tyrants are prescribed by the endurance of those whom they oppress."

– Frederick Douglass

IV. List of References and Legal Resources

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