

# UNPRECEDENTED LEGAL MEASURES IN THE WAKE OF CORONA VIRUS: THE UGANDAN PERSPECTIVE

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## **Abstract**

The Corona Pandemic is one of the problems which continues to affect the globe as the death tolls and the numbers of infected people keep increasing. It is against this backdrop that States have evoked Public Health Law as a measure of protecting their citizens. In light of the above, this article examines International, Regional and Ugandan Public Health regimes in the fight against COVID-19. In order to control the spread of the Corona virus the government of Uganda introduced measures such as lockdowns restriction of movement, curfew and closing borders, bars, shopping malls and non-food markets. Enforcement of these measures and laws has been characterized by violence, brutality and excessive use of force from police and other security agencies. This has raised a lot of debate about the protection of human rights in the wake of the COVID 19. The article also examines the impact of such measures on human rights and seeks to assess their justification. The article underscores the fact that derogation from human rights during public health emergencies should be guided by the international and regional human rights regimes to which Uganda is a party. The article thus discusses the international and regional human rights instruments in relation to public health law and underscores the need to strike a balance in order to respect human rights.

**Key Words:** Corona virus, COVID 19, derogation, epidemic, human rights, infectious diseases, international human rights instruments, limitations, pandemic, restrictions.

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## 1. INTRODUCTION

COVID 19 is a novel epidemic which has affected the whole globe thus forcing nations to adopt rudimentary measures in order to curb its spread. The objective of this study is to analyse the measures undertaken by States in the prevention of COVID 19 and the assess the impact these have had on human rights. The research focuses on Uganda though examples are drawn from the African region as whole. It has been noted that, while States have the obligation to protect the right to health of all individuals within their territory,<sup>1</sup> this has to be done in line with international standards. Through Library research, the researcher has noted that enforcement of COVID laws and guidelines in Uganda was carried out in violation of human rights. It is noteworthy that most human rights are not absolute and thus may be suspended in some circumstances.<sup>2</sup> The challenge is that implementation of derogation guidelines tends to desecrate human rights in most cases as was the case in the Coronavirus prevention strategy adopted by States, Uganda inclusive. It has also been noted that, while it is important to safe guard the right to health through evoking public health law, restrictions on human rights should not be excessive.

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<sup>1</sup> Human Rights Watch, Human Rights Dimensions COVID-19 Response Report, Mar 19, 2020, Available at: <https://www.hrw.org/news/2020/03/19/human-rights-dimensions-covid-19-response>, accessed on 11 April 2020.

<sup>2</sup> United Nations (UN) Office of the High Commissioner for Human Rights, Human Rights: Handbook for Parliamentarians, Available at: <https://www.ohchr.org/Documents/Publications/HandbookParliamentarians.pdf>, Accessed 26 April 2020. UNODC, Limitations Permitted by Human Rights Law, Available at: <https://www.unodc.org/e4j/en/terrorism/module-7/key-issues/limitations-permitted-by-human-rights-law.html>, Accessed 26 April 2020.

## 2. INTERNATIONAL LAWS ON THE RIGHT TO HEALTH

The right to the highest attainable standard of health is guaranteed for everyone by the International Convention on Economic Social Cultural Rights and other International Human Rights Instruments.<sup>3</sup> In line with the above, State parties are specifically obliged to take steps in the “prevention, treatment and control of epidemic, endemic, occupational and other diseases.<sup>4</sup> While protecting the right to health, States have to undertake measures to ensure that there is equal accessibility to quality medical services and information.<sup>5</sup>At regional level, The African Charter on Human and People’s Rights (ACHPR) categorically provides for the right to health in Article 16. However, the rights to

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<sup>3</sup> Article 12(1) UN, General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, U.N.T.S, Volume 993, provides that, “the States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” See also: Article 25(1) of the UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), Available at: <https://www.refworld.org/docid/3ae6b3712c.html>, Accessed 12 April 2020. It provides that, “everyone has the right to a standard of living adequate for the health of himself and of his family, including food, clothing, housing and medical care and necessary social services.” Article 5 (e) (iv) UN General Assembly, International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195, Available at: <https://www.refworld.org/docid/3ae6b3940.html>, Accessed 12 April 2020. Articles 11(1)(f) and 12 of the UN General Assembly, Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979, A/RES/34/180, Available at: <https://www.refworld.org/docid/3b00f2244.html>, Accessed 12 April 2020. Art 24 UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, Available at: <https://www.refworld.org/docid/3ae6b38f0.html>, Accessed 12 April 2020. See also: ICESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12), Available at: <https://www.refworld.org/pdfid/4538838d0.pdf>, Accessed 11 April 2020.

<sup>4</sup> Art 12(2)(c) ICESCR.

<sup>5</sup> *J O O (also known as J M) v Attorney General & 6 others* [2018] eKLR, paras 57 and 58. *Kanyamugule and Anor v Attorney General and 3 Ors*, Civil Suit No. 285 of 2011, [2015] UGHCCD 98 30 September 2015.

life and access to information are indispensable in the realisation of health and these are also protected in the ACHPR.<sup>6</sup>

The Corona virus disease first broke out in China in 2019 and thus earned the name COVID 19.<sup>7</sup> According to Human Rights Watch, the virus spread to 150 States by March 2020.<sup>8</sup> The paragraphs below analyse the justifiable parameters of derogation from human rights, attention is paid to the COVID 19 situation.

### 3. DEROGATION FROM HUMAN RIGHTS

International human rights law permits derogation in case of a crisis<sup>9</sup> and the procedures for this are clearly spelt out in the ICPR and the Siracusa-principles on derogation.<sup>10</sup> Derogation clauses are, however, temporary in nature and should be lifted once the emergency comes to an end.<sup>11</sup> Restrictions on human rights

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<sup>6</sup> Arts 4 and 9 ACHPR.

<sup>7</sup> Human Rights Watch, p.2.

<sup>8</sup> *Ibid.*

<sup>9</sup> Schreuert, C., "Derogation of Human Rights in Situations of Public Emergency: The Experience of the European Convention on Human Rights," *The Yale Journal of World Public Order*, Vol. 9:113, 1982, p.113. Siracusa-principles: Available at: <https://www.icj.org/wp-content/uploads/1984/07/Siracusa-principles-ICCPR-legal-submission-1985-eng.pdf>, Accessed 26 April 2020. UN Human Rights Committee (HRC), CCPR General Comment No. 29: Article 4: Derogations during a State of Emergency, 31 August 2001, CCPR/C/21/Rev.1/Add.11, Available at: <https://www.refworld.org/docid/453883fd1f.html>, Accessed 26 April 2020.

<sup>10</sup> *Ibid.*, paragraph 39(a)(b) provides, "A State party may take measures derogating from its obligations under the International Covenant on Civil and Political Rights pursuant to article 4 (hereinafter called "derogation measures") only when faced with a situation of exceptional and actual or imminent danger which threatens the life of the nation. 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."

<sup>11</sup> Emilie, M., pp. 674 and 84. Schreuert, C., p. 116. Siracusa Principles, para 2.

should have *legality*, *necessity* and *proportionality*<sup>12</sup> and need to be backed by scientific evidence.<sup>13</sup> For derogation to be deemed necessary, there should be a “public emergency threatening the life of the nation.”<sup>14</sup> Such emergency has to be one which affects the whole nation.<sup>15</sup> Restrictions on human rights during times of emergence have also to be proportional to the objective. The notion of *proportionality* thus requires that the measures imposed only have application to rights which are necessary to overcome such crisis.<sup>16</sup> In addition, the measures adopted must be the only way to cope with the emergency and should not be excessive. Checks and balances have to be put in place<sup>17</sup> and the measures must also be respectful of human dignity.<sup>18</sup> In addition, there should not be any form of discrimination based on race, gender,

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<sup>12</sup> Higgins, R.M.A., Derogations under Human Rights Treaties, *British Yearbook of International Law*, Volume 48, Issue 1, 1976, pp. 281–319.

<sup>13</sup> HRW, Human Rights Dimensions of COVID 19 Response, p. 1, Available at: <https://www.hrw.org/news/2020/03/19/human-rights-dimensions-covid-19-response>, Accessed 26 April 2020.

<sup>14</sup> Schreuert, C., p. 122. Higgins, R. M.A., pp. 301-02. The European Court on Human Rights has defined this to mean “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.” See also: *Siracusa principles*, paragraph 2.

<sup>15</sup> Schreuert, C., p. 124. *The Greek Case*, 1969 [THE GREEK CASE] Y.B. EUR. CONV. ON HUMAN RIGHTS 1(Eur. Comm’n on Human Rights) p. 32, It was held that, “...it must be actual or imminent... its effects must involve the whole nation... The continuance of the organised life of the community must be threatened. The crisis or danger must be exceptional, in that the normal measures or restrictions, permitted by the Convention for the maintenance of public safety, health and order, are plainly inadequate.

<sup>16</sup> Schreuert, C., p. 116.

<sup>17</sup> *Ibid.* p. 126. *Ireland v. United Kingdom* [1978] 2 E.H.R.R. 25, pp. 93-97.

<sup>18</sup> Schreuert, C., p. 116. HRW, para 3. African Commission on Human and Peoples’ Rights, Press Statement on human rights based effective response to the novel COVID-19 virus in Africa, Available at: <https://www.achpr.org/pressrelease/detail?id=483>, Accessed 11 April 2020.

sexual orientation or any other grounds.<sup>19</sup> In other words, the measures should not target minority groups or individuals.<sup>20</sup>

*Legality.* requires that the restrictions on human rights be prescribed by law and should not be arbitrary or unreasonable.<sup>21</sup> They should also be clear and accessible to everyone and there should be adequate safeguards and effective remedies against illegal or abusive imposition or application of limitations.<sup>22</sup> UN Commission on Human Rights has noted that:

“Public health may be invoked as a ground for limiting certain rights in order to allow a State to take measures dealing with a serious threat to the health of the population or individual members of the population. These measures must be specifically aimed at preventing disease or injury or providing care for the sick.”<sup>23</sup> Due regard shall be had to the International Health Regulations of the World Health Organization.<sup>24</sup>

Derogations have to be made known to the UN Secretary General.<sup>25</sup> Such notifications should provide all relevant details, including the rationale for the restrictions, the measures taken, plus the rights affected.<sup>26</sup> There should be both internal and international supervision to avoid abuse.<sup>27</sup> The Courts, public and

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<sup>19</sup> Art 2 of the African Charter.

<sup>20</sup> HRW, p. 3.

<sup>21</sup> UN Commission on Human Rights, paragraphs 16 and 17.

<sup>22</sup> *Ibid.*, para 18.

<sup>23</sup> *Ibid.*, para 25.

<sup>24</sup> *Ibid.*

<sup>25</sup> Article 4(3) ICPR.

<sup>26</sup> Schreuert, C., p. 114 and 119. See also: Art 4(3) ICPR.

<sup>27</sup> *Ibid.*, p. 114 & 128.

international human rights bodies have a supervisory role in such situations.<sup>28</sup> It follows from the discussion that States measures in curbing the Corona Pandemic have to be in tandem with all the above. Having discussed the international and regional legal framework and the parameters of derogation, the next paragraphs focus on the derogation from human rights in relation to COVID 19.

### 3.1 Derogation from Human Rights in Cases of Public Health Emergency

Is COVID 19 a public health emergency that warrants derogation from human rights? To answer the above question, COVID 19 is now a global phenomenon and has been declared by the United Nations and WHO as a global Pandemic.<sup>29</sup> By 12 April 2020, there were 1, 696, 588 confirmed cases and 105, 952 registered deaths worldwide.<sup>30</sup> Out of the numbers reported, 880,106 case were from Europe, 573,940 in Americas and 9,728 in Africa.<sup>31</sup> Based on the high numbers of deaths registered and cases confirmed positive, COVID 19 has thus gained status of a public health emergency.<sup>32</sup>

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<sup>28</sup> *Ibid.*, p. 121.

<sup>29</sup> WHO, Corona Virus Disease (COVID 19) Pandemic: Rolling Updates on Corona Virus Diseases 10 April 2020, Available at: [https://twitter.com/WHO/status/1237777021742338049Corona\\_Pandemic?s=20](https://twitter.com/WHO/status/1237777021742338049Corona_Pandemic?s=20), Accessed 11 April 2020.

<sup>30</sup> WHO, Coronavirus (COVID-19), 12 April 2020, Available at: <https://who.sprinklr.com/>, Accessed 11 April 2020.

<sup>31</sup> WHO, Coronavirus (COVID-19), 12 April 2020, Available at: <https://who.sprinklr.com/>, Accessed 11 April 2020.

<sup>32</sup> WHO, Covid-19 Public Health Emergency of International Concern-(PHEIC) Global Research and Innovation-forum, Available at: [https://www.who.int/publications/m/item/covid-19-public-health-emergency-of-international-concern-\(pheic\)-global-research-and-innovation-forum](https://www.who.int/publications/m/item/covid-19-public-health-emergency-of-international-concern-(pheic)-global-research-and-innovation-forum), Accessed September 28 2020.

Having concluded that COVID 19 has been declared a public emergency, the article analyses the legal framework which is applicable to this situation. As has been discussed in the previous paragraphs, international Human Rights Law permits derogation from human rights whenever it is necessary to protect public health, order, safety, morals and national security.<sup>33</sup> This article, nevertheless, focuses on public health as the point of discussion. Public Health has been defined to mean: “preventing disease and promoting good health within groups of people, from small communities to entire countries.”<sup>34</sup> Public health aims at prolonging the healthy life of individuals.<sup>35</sup> The primary role of promoting and protecting the right to health lies with the government and this is derived from an electoral process.<sup>36</sup>

It follows therefore that democratically elected governments may, in the interest of protecting public health, suspend human rights in case of a threat to life.<sup>37</sup> In such circumstances, public good

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<sup>33</sup> HRW, p. 1. See Also: Human Rights Watch, Human Rights Dimensions COVID-19 Response, Available also at: <https://reliefweb.int/report/world/human-rights-dimensions-covid-19-response-enru>, Accessed 11 April 2020. UN Commission on Human Rights, The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, 28 September 1984, E/CN.4/1985/4, Available at: <https://www.refworld.org/docid/4672bc122.html>, Accessed 11 April 2020.

<sup>34</sup> Willard, M.E., Basic Concepts of Public Health, Jones and Bartlett Publishers, p. 35.

<sup>35</sup> *Ibid*, p. 35.

<sup>36</sup> Gostin, L.O., A Theory and Definition of Public Health Law, Georgetown University Law Center, 2000 Working Paper Series, in Public Law and Legal Theory, Working Paper No. 242580, p. 3, Available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=242580](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=242580), Accessed 11 April 2020.

<sup>37</sup> UN Commission on Human Rights, paragraph 21. And should not “not impair the democratic functioning of the society”. A democratic State has been defined to mean, “a society which recognizes, respects and protects the human rights set forth in the Charter of the United Nations and the Universal Declaration of Human Rights.”



overrides individual interests.<sup>38</sup> This has come to be termed as *derogation from human rights*.<sup>39</sup> The salient goal for such derogation is to achieve protection of health and life.<sup>40</sup> Scholars against derogation contend that it undermines human rights and may be abused by States.<sup>41</sup> Others scholars are of the view that sovereign States can restrict human rights provided they disclose this and conform to procedures set out in international human rights law.<sup>42</sup>

### 3.2 Derogation from Human Rights in the Wake of Corona

With the current COVID 19 crisis, the world has witnessed States derogate from the international human rights regime in protection of their citizens. According to Amnesty International, the measures taken are unprecedented and include national lockdowns, imposed by countries such as Kenya, South Africa, Rwanda, and Uganda.<sup>43</sup> Restriction of movement was adopted by many states and this was coupled with closure of borders and the air space.<sup>44</sup> The measures above have been criticized, because of the impact they have on human rights and the economies of

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<sup>38</sup> *Ibid*, p.6.

<sup>39</sup> HRW, p. 1.

<sup>40</sup> *Ibid*, p. 7, Willard provides that, "health is seen as a foundation for personal well-being and the exercise of social and political rights; and (2) a theory of democracy, whereby the primary role of government is seen as achieving health, safety, and welfare for the population. p. 7.

<sup>41</sup> Joseph, S., Schultz, J., and Castan, M., *The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary* 2 ed, Oxford University Press, 2005, p. 824. Emilie, M., *Emergency and Escape: Explaining Derogations from Human Rights Treaties*, International Organization, 65, Fall 2011, pp. 685-87.

<sup>42</sup> Emilie, M., p. 680.

<sup>43</sup> Amnesty International, *COVID-19 as an Emergency Human Rights Issue*, 1 April 2020, Available at: <https://www.amnesty.org/en/latest/news/2020/04/covid19-as-an-emergency-human-rights-issue/>, Accessed 11 April 2020.

<sup>44</sup> *Ibid*

States.<sup>45</sup> The question of discussion is whether the securitization measures adopted by Uganda in the fight against COVID 19 are justified?

## 4. THE UGANDAN PERSPECTIVE

### 4.1 Legal framework

Uganda is a signatory to the ICESCR, ICPR, African Charter and other instruments on human rights.<sup>46</sup> Consequently, Uganda has obligations to protect human rights.<sup>47</sup> Not to deviate from the discussion, she is expected to protect and promote the right to health for all citizens and foreigners in the country. Uganda received her first COVID 19 case on 21<sup>st</sup> March 2020 and has since reported 8, 808 positive cases.<sup>48</sup> Against this backdrop, Uganda, like most of the countries in the world, adopted unprecedented measures in the fight against COVID 19. The President has powers in the 1995 Constitution to order for a state of emergency with approval of Parliament.<sup>49</sup> However, no state of emergency was declared in Uganda during the Corona virus period. What has been in place has been de facto state of emergency in which the executive makes directives minus the involvement of parliament.<sup>50</sup>

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<sup>45</sup> Zane, D., Corona virus: What African Countries are Doing to Help to eat Amid the Lockdowns, BBC 27 April 2020, Available at: <https://www.bbc.com/news/world-africa-52426040>, Accessed 11 April 2020.

<sup>46</sup> Katono, E.H., "Protection of Refugees Right to Work in the East African Community, Case Study of Kenya, Uganda and Tanzania," Ph.D. Thesis, University of Dar es Salaam, 2019, p. 194.

<sup>47</sup> *Ibid.*

<sup>48</sup> Ministry of Health Uganda, Available at: <https://www.health.go.ug/covid/>, Accessed 6 October 2020.

<sup>49</sup> Art 110 (1) Constitution of Uganda provides that, "*the President may, by proclamation declare that a state of emergency exists in Uganda, or any part of Uganda – which render necessary the taking of measures which are required for securing the public safety.*" See also: Art 110(3) Constitution.

<sup>50</sup> Art 110 (2) Constitution, states inter alia that, "during any period when a state of emergency declared under this article exists, the President shall submit to

The Presidential directives were later formalized in Rules and Orders as will be seen later. Some of the measures introduced included: closing of borders, banning public gatherings, suspension of asylum procedures for a period of 30 days,<sup>51</sup> restricting movement of refugees within and outside the country, suspension of public transport, nationwide lockdown (limiting movement of people coupled with curfew), closure of schools, bars and public places.<sup>52</sup> The COVID 19 measures in Uganda are enforced through various laws including among others: the Public Health Act 1935, Public Health (Control of COVID - 19) Rules and through Guidelines issued by the Ministry of Health.<sup>53</sup>

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Parliament at such intervals as Parliament may prescribe, regular reports on actions taken by or on behalf of the President for the purposes of the emergency.” Musiime, M., Uganda’s De facto State of Emergency to Address Covid 19, 11 June 2020, Available at: <https://www.asf.be/blog/2020/06/11/ugandas-de-facto-state-of-emergency-to-address-the-covid-19-pandemic/>, 6 October 2020.

<sup>51</sup> Okiror, S., “In the News: Uganda Suspends Refugee Arrivals as Corona virus Cases Rise,” *The New Humanitarian*, (Uganda) 25 March 2020, Available at: <https://www.thenewhumanitarian.org/news/2020/03/25/uganda-coronavirus-refugees-asylum-seekers>, Accessed 11 April 2020.

<sup>52</sup> Daily Monitor, “Museveni Suspends Public Transport for 14 days,” *The Daily Monitor* (Uganda), 25 March 2020, Available at: <https://www.monitor.co.ug/news/national/museveni-suspends-public-transport-for-14-days-/688334-5504246-wtum70z/index.html>, Accessed 11 April 2020.

<sup>53</sup> The Public Health Act, Cap. 281, The Public Health (Notification of COVID – 19) Order, Statutory Instrument No.45 2020, Available at: <https://ulii.org/ug/legislation/statutory-instrument/2020/45>, Accessed 11 April 2020. The Public Health (Control of COVID - 19) Rules 2020 Statutory Instrument No. 11 2020. Circular Letter No. 3 Guidelines on Preventive Measures against Corona Virus (COVID 19), 25 March 2020, Available at: <https://www.health.go.ug/covid/document/circular-letter-no-3-of-2020-guidelines-on-preventive-measures-against-corona-virus-covid-19/>, Accessed 11 April 2020. Ministry of Health, Covid-19 Guidelines for Safe Mass Gatherings, Available at: <https://www.health.go.ug/covid/document/covid-19-guidelines-for-safe-mass-gatherings/>, Accessed 11 April 2020. Ministry of Health, More guidelines on COVID19, Preventive Measures and the need for a Shut down, Available at: <https://www.yowerikmuseveni.com/more-guidelines-covid19-preventive-measures-and-need-shut-down>, Accessed 11 April 2020.

As per section 11 of the Public Health Act, the Minister is granted powers to make Rules in relation to public health. Part IV of the Act grants powers to the minister in relation to prevention and suppression of infectious diseases. the minister is also granted power to enforce precautions at boarders.<sup>54</sup> Based on the above provisions, COVID 19 was declared a notifiable disease in Uganda through the Public Health (Notification of COVID – 19) Order. Consequently, the Public Health (Control of COVID - 19) Rules were enacted to guide the fight against the pandemic in Uganda. Several directives were also issued by the President thereafter; notable among these were the restriction on movement of persons and vehicles.<sup>55</sup>

The above measures have obviously affected people in Uganda, which leads to the discussion of their justification. Are they in line of the derogation parameters mentioned earlier? The government introduced the measures above to protect people within Uganda from COVID 19 which has now been declared a pandemic. The public was notified about the restrictions through the radio, newspapers, television and social media. Some of the measures were in place for a limited period of time. The restrictions on

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<sup>54</sup> “For the purpose of preventing the introduction of infectious disease into Uganda the Minister may by statutory order— (a) regulate, restrict or prohibit the entry into Uganda or any part of Uganda of any person or of persons of any specified class or description or from any specified country, locality or area; (b) regulate, restrict or prohibit the introduction into Uganda or any specified part of Uganda of any animal, article or thing; (c) impose requirements or conditions as regards the medical examination, detention, quarantine, disinfection, vaccination, isolation or medical surveillance or otherwise of persons entering, or the examination, detention or disinfection or otherwise of such persons as aforesaid or of articles or things introduced into Uganda or any part of Uganda.”

<sup>55</sup> Sebwami, J., “Breaking! Uganda Covid-19 Cases Rise to 48 after Three out of 419 tests done on Friday Return Positive,” *PML Daily* (Kampala), 4 April 2020, Available at: <https://www.pmldaily.com/news/2020/04/breaking-uganda-covid-19-cases-rise-to-48-after-three-out-419-cases-tested-on-friday-return-positive.html>, Accessed 25 April 2020.

movement applied to everyone within Uganda (both nationals and foreigners). Howbeit, the right to asylum as will be seen later is affected.

Aside from the above, several other rights have been affected and these include among others: the rights to education and work following the closure of schools and businesses. As discussed earlier, some rights may be suspended for a limited time for the sake of public health as long as the derogation parameters are fulfilled. Thus, the suspension of some rights above may be justifiable.<sup>56</sup> Nevertheless, certain rights cannot be suspended and should remain in force at all times and these include: right to life, thought, conscience, religion, freedom from torture, degrading treatment or punishment, servitude or slavery and due process rights.<sup>57</sup> These rights are considered to be “indispensable for the protection of the human being.”<sup>58</sup>

#### **4.2 Enforcement of the Directives and Guidelines**

Following the President’s directives, Ugandans (journalists inclusive) experienced brutality at the hands of police, the military forces and Local Defence Unit (LDUs) while enforcing curfew.<sup>59</sup> BBC reported cases of Ugandans who were killed by the

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<sup>56</sup> UN Human Rights Committee CCPR General Comment No. 27: Art 12 (Freedom of Movement), 2 November 1999, CCPR/C/21/Rev.1/Add.9, paras 2 and 4, Available at: <https://www.refworld.org/docid/45139c394.html>, Accessed 26 April 2020.

<sup>57</sup> Art 4 ICPR. Oràà, J., Human Rights in States of Emergency in International Law, Oxford University Press, New York, 1992, p. 94.

<sup>58</sup> *Ibid.*

<sup>59</sup> HRW, Uganda: Respect Rights in COVID-19 Response Ensure Security Forces Refrain From Violence, Abuse April 2, 2020, Available at: <https://www.hrw.org/news/2020/04/02/uganda-respect-rights-covid-19-response>, Accessed 11 April 2020. Sabano, J., COVID-19: “Two Shot for Defying Presidential Directives,” The Daily Monitor (Kampala), 27 March 2020, Available at: <https://www.monitor.co.ug/News/National/Two-shot-Mukono-defying-presidential-directives/688334-5505644-aro68b/index.html>, Accessed 11 April 2020. New Vision,

law enforcement agencies while implementing COVID 19 guidelines.<sup>60</sup> Female street vendors in Kampala and other areas were brutalized.<sup>61</sup> Security operatives are reported to have raided a homes and beaten people.<sup>62</sup> In Kyengela, a suburb in Kampala, police officers raided a home and arrested 19 LGBTI youth who were charged with “engaging in negligent act likely to spread infection of disease.”<sup>63</sup> According to the civil society, COVID 19 prevention was used as a pretext to harass and discriminate against LGBTI people.<sup>64</sup>

While the police and the army have apologized and even prosecuted some of the errant officers, the above incidents ignited

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10 Police Officers Held for Torturing Women over Breaking Curfew, *The New Vision* (Kampala), 7 April 2020, Available at: [https://www.newvision.co.ug/new\\_vision/news/1517669/ugandan-police-held-torturing-women-breaking-curfew](https://www.newvision.co.ug/new_vision/news/1517669/ugandan-police-held-torturing-women-breaking-curfew), Accessed 11 April 2020. Committee to Protect Journalists, Ugandan Security Personnel Enforcing COVID-19 Measures Assault Journalists, 22 April 2020, Available at: <https://cpj.org/2020/04/ugandan-security-personnel-enforcing-covid-19-meas.php>, Accessed 26 April 2020.

<sup>60</sup> BBC, Uganda- Where Security Forces May be More Deadly than Coronavirus, Available at: 23 July 2020, <https://www.bbc.com/news/world-africa-53450850>, Accessed 08 October 2020. Kiggundu, E., Shoot to Kill: LDUs Kill More Ugandans than Coronavirus as Lockdown Bites, *Nile Post* (Kampala), 14 July 2020, Available at: <https://nilepost.co.ug/2020/07/14/shoot-to-kill-ldus-kill-more-ugandans-than-coronavirus-as-lockdown-bites/>, Accessed 08 October 2020.

<sup>61</sup> Semakula, E., Gender, Police Brutality and Public Health in Uganda During the COVID 19 Pandemic, Institute for African Women in Law, Available at: <https://www.africanwomeninlaw.com/post/gender-police-brutality-and-public-health-in-uganda-during-the-covid-19-pandemic>, Accessed 08 October 2020.

<sup>62</sup> Daily Monitor, Elegu Locals Accuse Forces Brutality, *Daily Monitor* (Kampala), 07 April 2020, Available at: <https://www.monitor.co.ug/News/National/Elegu-locals-accuse-forces-brutality/688334-5516804-icokkaz/index.html>, Accessed 08 October 2020.

<sup>63</sup> Civil Rights Defenders, Uganda: COVID 19 as Pretext to Harass LGBTI Community and Journalists 27 April 2020, Available at: <https://crd.org/2020/04/27/uganda-covid-19-used-as-pretext-to-harass-lgbti-community-and-journalists/>, Accessed 06 October 2020.

<sup>64</sup> *Ibid.* Art 3 ICPR.

debate particularly on the violation of human rights.<sup>65</sup> The police have been criticized for violation of LGBTI people and women's rights. Such brutality is indeed an infringement of the Articles 1, 2 of the Convention Against Torture,<sup>66</sup> Article 24 the 1995 Constitution of Uganda<sup>67</sup> and section 4 of the Prevention of the Prohibition of Torture Act,<sup>68</sup> which prohibit torture and degrading treatment or punishment. The Acts are also a violation of the right to dignity.<sup>69</sup> It is noteworthy that derogation from the above is not permitted<sup>70</sup> not even in the Corona virus outbreak (*emphasis added*). The brutality against journalists limits the freedom of expression and to access information which is vital to the right to health.<sup>71</sup> The National Association of Broadcasters condemned

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<sup>65</sup> Rukare, D., COVID-19 and Human Rights: What to look out for, The New Vision, 8 April 2020, Available at: [https://www.newvision.co.ug/new\\_vision/news/1517682/covid-19-human-rights-look](https://www.newvision.co.ug/new_vision/news/1517682/covid-19-human-rights-look), Accessed 25 April 2020. NTV, Uganda Human Rights Commission receives 128 Complaints, Available at: <https://www.ntv.co.ug/news/national/Human-rights-commission-receives-128-complaints/4522324-5533280-ymcjf1z/index.html>, Accessed 25 April 2020.

<sup>66</sup> UN General Assembly, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85, Available at: <https://www.refworld.org/docid/3ae6b3a94.html>, Accessed 11 April 2020.

<sup>67</sup> The 1995 Constitution of Uganda, Cap 1.

<sup>68</sup> Prevention and Prohibition of Torture Act, No. 3 of 2012.

<sup>69</sup> *State v Makwanyane & Another* (CCT3/94) (1995) ZACC 3, the Constitutional court in South Africa held that, "the importance of dignity as a founding value of the new Constitution cannot be over emphasized. Recognizing a right to dignity is an acknowledgement of the intrinsic worth of human beings; human beings are entitled to be treated as worthy of respect and concern. This right therefore is the foundation of many other rights that are specifically entrenched in the Constitution."

<sup>70</sup> Article 4 ICPR. Article 2 of the Convention against Torture states *inter alia* that, "no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture."

<sup>71</sup> HRW, pp. 3 and 4. Human Rights Network for Journalists-Uganda Report, 24 March 2020, Available at: <https://lib.ohchr.org/HRBodies/UPR/Documents/session12/UG/HRNJ-Uganda HumanRightsNetworkJournalists-eng.pdf>, Accessed 26 April 2020.

such brutality towards journalist and stated that such acts jeopardize the efforts in the fight against COVID 19.<sup>72</sup> The question which arises is whether the acts above can be blamed on the [Ugandan government? The answer is in the affirmative, the Inter-American Court of Human Rights, held that,

when a State allows private persons or groups to act freely and with impunity to the detriment of the rights recognised, it would be in clear violation of its obligations to protect the human rights of its citizens.<sup>73</sup>

The restrictions on movement and transport also prevented people with health conditions from accessing medical services as they were required to obtain permission from the Resident District Commissioners (RDCs).<sup>74</sup> Although the requirement to obtain permission to travel to the health centres from the RDC was lifted, some lives had been lost. The New Vision Newspaper reported that deaths of pregnant mothers increased to 115 from 92 percent during the lockdown.<sup>75</sup> This was an infringement on the rights to life and health.<sup>76</sup>

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<sup>72</sup> Kahungu, M., "COVID-19, Media Condemns Latest Assault of Journalists," *The New Vision* (Kampala), 6 April 2020, Available at: <https://www.monitor.co.ug/News/National/Covid-19--Media-condemns-latest-assault-of-journalists/688334-5514814-veliiia/index.html>, Accessed 26 April 2020.

<sup>73</sup> *Velásquez Rodríguez v Honduras*, Judgment of July 19, 1988, Series C, No. 4. See also: *The Social and Economic Rights Action Center and the Center for Economic and Social Rights v Nigeria*, (Communication No. 155/96), paras 57 - 60.

<sup>74</sup> Action for Rural Women's Empowerment, *et.al.*, Civil Society Response to President Museveni's Directive that Pregnant Women will No longer be Banned from Using Transport to seek Health Services during COVID 19 Lockdown, Available at: <https://healthgap.org/press/civil-society-response-to-president-musevenis-directive-that-pregnant-women-will-no-longer-be-banned-from-using-transport-to-seek-health-services-during-covid-19-lockdown/>, Accessed 26 April 2020.

<sup>75</sup> Kyotalengerire, A., "Why March Registered Upsurge in Pregnant Women's Deaths," *The New Vision* (Kampala), 15 July 2020, Available at:



Regarding the closure of borders, it is important to note that Uganda is a signatory to the Refugee Convention,<sup>77</sup> the Protocol of 1967<sup>78</sup> and the OAU Convention Governing the Specific Aspects of Refugee Problem in Africa.<sup>79</sup> Consequently, Uganda has obligations to protect refugees<sup>80</sup> and to ensure that they are not refouled or sent back to where they are likely to experience persecution.<sup>81</sup> Scholars have criticised the closure of asylum procedures in the wake of the Corona pandemic.<sup>82</sup> The question which arises is, can a State override or suspend access to asylum rights in case of public health? Or is Uganda's suspension of asylum justified?

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<https://www.newvision.co.ug/news/1522709/march-registered-upsurge-pregnant-women-deaths>, Accessed 6 October 2020.

<sup>76</sup> Arts 6(1) ICPR, 12 ICESCR, 16 ACHPR, 25(1) UDHR.

<sup>77</sup> UN, General Assembly, Convention Relating to the Status of Refugees, 28 July 195, U.N.T.S., Volume 189.

<sup>78</sup> UN General Assembly, Protocol Relating to the Status of Refugees, 31 January 1967, United Nations, Treaty Series, vol. 606, p. 267, Available at: <https://www.refworld.org/docid/3ae6b3ae4.html>, Accessed 11 April 2020.

<sup>79</sup> Organization of African Unity (OAU), Convention Governing the Specific Aspects of Refugee Problems in Africa ("OAU Convention"), 10 September 1969, 1001 U.N.T.S. 45, Available at: <https://www.refworld.org/docid/3ae6b36018.html>, Accessed 11 April 2020.

<sup>80</sup> Article 2 Refugee Convention.

<sup>81</sup> *Ibid.*, Article 33. See also: Article 3 CAT. Article 14 Universal Declaration of Human Rights. Article 12(3), African Charter on Human and Peoples' Rights ("Banjul Charter"), 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), Available at: [www.refworld.org/docid/3ae6b3630.html](http://www.refworld.org/docid/3ae6b3630.html), Accessed 11 April 2020. *Hirsi and Others v. Italy*, 22 June 2011, Application No. 27765/09, paragraphs 4.1.1- 4.2.3. *M.S.S. v. Belgium and Greece*, Application No. 30696/09, Council of Europe: European Court of Human Rights, 21 January 2011, paragraphs. 286, 298, 315, 321 and 359.

<sup>82</sup> Nkuningiri, F., Impact of the Corona virus on Asylum: Is Uganda's suspension of access to Asylum a breach of her international obligations? Available at: <https://fausewan.blogspot.com/2020/04/impact-of-coronavirus-on-asylum-is.html?m=1>, Accessed 11 April 2020.

To answer the questions raised, the Corona virus itself is an international protection crisis<sup>83</sup> thus governments have a duty to protect public health. However, the obligations towards refugees and asylum seekers also remain.<sup>84</sup> With the pandemic, it has become increasingly difficult to strike a balance between access to asylum and public health.<sup>85</sup> Many countries, Uganda inclusive, have pronounced lockdowns, closed their borders and suspended international travels.<sup>86</sup> Canada,<sup>87</sup> Cyprus, Hungary,<sup>88</sup> Malaysia,<sup>89</sup> Mexico, United States of America<sup>90</sup> closed borders and thus limited asylum rights.<sup>91</sup>

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<sup>83</sup> Triggs, G., We Can Secure Both Public Health and Rights of Refugees to Protection, Andrew & Renata Kaldorcentre 8 April 2010, Available at: <https://www.kaldorcentre.unsw.edu.au/publication/we-can-secure-both-public-health-and-rights-refugees-protection>, Accessed 12 April 2020.

<sup>84</sup> *Ibid.* Naohiko, O., Refugee livelihoods and the private sector: Ugandan Case study, Refugee Studies Centre: Working Paper Series No. 86, November 2012, p. 6.

<sup>85</sup> *Ibid.*

<sup>86</sup> *Ibid.*

<sup>87</sup> Austen, I., "In Shift, Trudeau Says Canada Will Return Asylum Seekers to U.S.," *The New York Times* (Canada), 20 March 2020, Available at: <https://www.nytimes.com/2020/03/20/world/canada/trudeau-asylum-seekers-coronavirus.html>, Accessed 11 April 2020.

<sup>88</sup> Monella, M.L., "Orban Uses Corona Virus as Excuse to Suspend Asylum Rights," Available at: <https://www.euronews.com/2020/03/03/orban-uses-coronavirus-as-excuse-to-suspend-asylum-rights-in-hungary>, Accessed 21 April 2020.

<sup>89</sup> Irwin, L., "In the News: Rohingya Boat Rescued After Weeks At Sea," *The New Humanitarian*, (Bangkok) 16 April 2020, Available at: <https://www.thenewhumanitarian.org/news/2020/04/16/Bangladesh-Rohingya-boat-rescued>, Accessed 21 April 2020.

<sup>90</sup> Greene, E., US and Mexico Are Blocking Kids From Asking for Asylum Because of Corona Virus, 16 April 2020, Available at: <https://theintercept.com/2020/04/16/coronavirus-mexico-border-children-asylum/>, Accessed 21 April 2020. Hesson T., U.S. Deports 400 Migrant Children Under the New Corona Virus Rules, Reuters, 7 April 2020, Available at: <https://www.reuters.com/article/us-health-coronavirus-usa-deportations/u-s-deports-400-migrant-children-under-new-coronavirus-rules-idUSKBN21P354>, Accessed 21 April 2020.

<sup>91</sup> Reidy, E., and Rosenberg, M., The COVID 19 the Excuse? How Migration Policies Are Hardening Around the Globe, *The New Humanitarian*, (Bangkok) 17 April 2020, Available at: <http://www.thenewhumanitarian.org/analysis/2020/04/17/coronavirus-global-migration-policies-exploited>, Accessed 21 April 2020.

The Office of the Prime Minister which is mandated by law to protect refugees went ahead to suspend registration of new arrivals.<sup>92</sup> Such blanket measures have been deemed to be an infringement of non-refoulement.<sup>93</sup> The Refugee Convention only provides three exceptions to refoulement, namely: where a refugee is a danger to the security of the country, or having been convicted of serious crime by a final judgment and if he or she constitutes a danger to that community.<sup>94</sup> While it is within the mandate of Uganda to control entry of non-nationals particularly in the interest of public health, the blanket measures adopted in the COVID prevention are contrary to access to asylum.<sup>95</sup>

It has been noted that displaced people are the most affected during any crisis.<sup>96</sup> UNHCR thus advises States to undertake screening and testing at borders points or reception centres and

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<sup>92</sup> Ampuire, P., Covid-19 Amid Increasing Restrictions UNHCR Appeals against Denying Asylum Seekers Passage, 31 March 2020, Available at: <https://www.softpower.ug/covid-19-amid-increasing-restrictions-unhcr-appeals-against-denying-asylum-seekers-passage>, Accessed 11 April 2020.

<sup>93</sup> *Ibid.*

<sup>94</sup> Art 33 Refugee Convention. UN High Commissioner for Refugees, Key Legal Considerations on access to territory for persons in need of international protection in the context of the COVID-19 response, 16 March 2020, Available at: <https://www.refworld.org/docid/5e7132834.html>, Accessed 12 April 2020.

<sup>95</sup> UNHCR has noted that, "however, imposing a blanket measure to preclude the admission of refugees or asylum-seekers, or of those of a particular nationality or nationalities, without evidence of a health risk and without measures to protect against refoulement, would be discriminatory and would not meet international standards, in particular as linked to the principle of non-refoulement. In case health risks are identified in the case of individual or a group of refugees or asylum-seekers, other measures could be taken, such as testing and/or quarantine, which would enable authorities to manage the arrival of asylum-seekers in a safe manner, while respecting the principle of non-refoulement. Denial of access to territory without safeguards to protect against refoulement cannot be justified on the grounds of any health risk."

<sup>96</sup> Refugees International, Covid-19-and The Displaced Addressing the Threat of the Novel Corona Virus in Humanitarian Emergencies, 30 March 2020, Available at: <https://www.refugeesinternational.org/reports/2020/3/29/covid-19-and-the-displaced-addressing-the-threat-of-the-novel-coronavirus-in-humanitarian-emergencies>, Accessed 11 April 2020.

that denial of the right to seek asylum should not be an option.<sup>97</sup> UNHCR has therefore appealed to States to carry on with their obligations towards refugees and asylum seekers.<sup>98</sup>

However, Uganda has not always closed borders or denied refugees entry; she has previously been lauded for her progressive refugee laws and policies.<sup>99</sup> The pandemic is a challenge to the World and in Africa it has been predicted that the situation could be worse.<sup>100</sup> COVID 19 is a novel phenomenon that has claimed thousands of lives and thus every country is doing their best to deal with it. The situation calls for international solidarity, adoption of human rights-based approaches and inclusive responses.<sup>101</sup>

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<sup>97</sup> UNHCR, Key Legal Considerations on Access to Territory, p.1.

<sup>98</sup> *Ibid.*

<sup>99</sup> Katono, E.H., p. 194. See also: BBC, Uganda: One of the Best Places to Be a Refugee, 13 May 2016, Available at: <http://www.bbc.com/news/36286472>, Accessed 11 April 2020. Gouby, M., What Uganda's Struggling Policy means for the Future of Refugee Response, The New Humanitarian, 22 November 2017, Available at: <https://www.newsdeeply.com/refugees/articles/2017/11/22/whatugandas-struggling-policy-means-for-future-of-refugee-response>, Accessed 11 April 2020.

<sup>100</sup> Graeme, W., Think 168,000 Ventilators Is Too Few? Try Three, The Atlantic, 10 April 2020, Available at: <https://www.theatlantic.com/ideas/archive/2020/04/why-covid-might-hit-african-nations-hardest/609760/>, Accessed 11 April 2020.

<sup>101</sup> Funk, A., Fighting Covid-19 Shouldn't Mean Abandoning Human Rights, 09 April 2020, Available at: <https://www.wired.com/story/opinion-fighting-covid-19-shouldnt-mean-abandoning-human-rights/>, Accessed 11 April 2020. Government of Canada, Human rights implications of COVID-19, April 8, 2020, Available at: <https://www.canada.ca/en/global-affairs/news/2020/04/human-rights-implications-of-covid-19.html>, Accessed 11 April 2020. Kansal, N., and Agarwal, A., Health Care is a Human Right and Migrants are no Exception, The Star, 23 December 2018, Available at: <https://www.thestar.com/opinion/contributors/2018/12/23/health-care-is-a-human-right-and-migrants-are-no-exception.html>, Accessed 11 April 2020. See also: Naccarato, L., Doctors urge Ottawa to Extend Health Care Coverage to Irregular Migrants, CBC, 29 December 2019, Available at: <https://www.cbc.ca/news/canada/toronto/doctors-appeal-to-feds-health-care-rights-for-migrants-1.4961178>, Accessed 11 April 2020. Wright, T., Canada Violated Rights of Irregular Migrant by Denying her Essential Healthcare, UN

## 5. CONCLUSION

This article has examined the laws surrounding the fight of COVID 19. It has examined the restrictions imposed by Uganda and other States in order to protect their citizens against the pandemic. It has been argued that while international law permits suspension of human rights, this can only be done in tandem with the notions of legality, necessity and proportionality. It has been noted that while Uganda enacted several laws during the fight against COVID 19, and that while suspension of certain rights like education, work and movement may be justified, suspension of asylum procedures is a violation of the non-refoulement principle. In addition, the high handedness and violence towards those who breach the COVID 19 laws and guidelines (especially curfew hours) is a violation of the right to dignity and freedom from torture. It is also cruel and inhumane and a breach of International human rights. It has finally been noted that inclusive approaches have to be adopted in the fight against the novel COVID 19 pandemic and that the situation calls for international solidarity.

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Human Rights Committee, The Canadian Press, 15 August 2018, Available at: <https://tgam.ca/2C9bH1S>, Accessed 11 April 2020. Chen, B.Y.Y., We must not exclude irregular migrants from health care, The Globe and Mail, 1 October 2018, Available at: <https://tgam.ca/2UCy4Up>, Accessed 11 April 2020. Amnesty International, People with irregular status have the right to access essential health care, Canada Amnesty International, 14 August 2018, Available at: <https://bit.ly/2Mss6nW>, Accessed 11 April 2020.