



## **Strengthening the Rule of Law and Good Governance amid COVID-19 Pandemic in the Global South**

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## STRENGTHENING THE RULE OF LAW AND GOOD GOVERNANCE AMID COVID-19 PANDEMIC IN THE GLOBAL SOUTH

John Funsho Olorunfemi\* & Chidiebere Geoffrey Udeokechukwu\*\*

### Abstract

*Disproportionate curtailment measures against the COVID-19 pandemic alongside compulsory vaccination (in the midst of rumours and conspiracy theories) have contributed to vaccination hesitancy, data and surveillance monitoring without due regard to civil and political rights. The absence of due regard to these rights by governments, undermine the observance of rule of law and good governance. Consequently, there have been sweeping implications on public order and security, disruption of electoral process and the right to dignity through torture and unlawful use of force. Socio-economic rights violations, relaxation of public procurement mechanisms, lack of capacity to deliver essential services, disinformation, perversion of justice, and gender-based violence have also overwhelmed the entire global health care system. The paper assesses curtailment measures against COVID-19 pandemic and its impact on rule of law and good governance in the Global South towards a better COVID-19 stimulus and recovery packages. It adopts doctrinal research method by relying on relevant statutes, international instruments, judicial decisions and literature. It finds that the discriminatory, inequitable curtailment measures and insufficient governmental social protections and economic supports, constitute “multiplier threat” that produces structural violence against vulnerable, marginalised communities and foreign nationals. The pandemic has created scientific uncertainty that necessitates global solidarity and scientific precautionary measures through digital and telemedicine leading to important health management. The paper calls for international democracy support for electoral reforms and United Nations oversight mechanisms for rule of law and good governance to promote transparency and accountability in the management of COVID-19 pandemic.*

**Keywords:** COVID-19; curtailment measures; good governance; rule of law

### 1. Introduction

The Covid-19 pandemic exacerbated structural inequalities and human rights violations worldwide. The catalyst for this exacerbation is presumably the nature of response to the crisis by the governments, especially in the global south. It is easy to imagine that a faithful application of the tenets of the rule of law and good governance would have and can still mitigate the harsh impacts of the pandemic; therefore, the importance of the rule of law in addressing Covid-19 challenges cannot be overemphasised.

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Human rights are at the frontline in the fight against Covid-19.<sup>1</sup> Hence, focusing on the needs of people, and the institutions and norms regulating relations between States and individuals, the rule of law enables and facilitates good governance and is a precondition for security, justice, and equality.<sup>2</sup> The rule of law safeguards human rights standards and an independent judiciary in order to prevent the arbitrary and abusive exercise of power. It protects legitimate justice processes and results, including through fair laws and policies, effective, accessible, and accountable institutions and by ensuring people and groups are empowered to realize their rights.<sup>3</sup> While the relevance of the rule of law (in theory) cannot be downplayed, reality presents a far cry from what should be obtained.

With the dawning of this new reality as presented by the Covid-19 pandemic, the relevance of the rule of law, (especially as states respond to the crisis) is unavoidably germane; multiple times over. The jurisprudence behind this reasoning is this: that in a state of emergency (like that of the Covid-19 crisis), respect for the tenets of the rule of law will positively optimise a regime's reaction accordingly. Respect for the rule of law in times like this, means that human needs are at the forefront of any government's effort to curtail the deadly effects of the virus.

The statistics of casualties has been staggering and really frightening since the outbreak of the Coronavirus pandemic; cumulating to deaths of more than 6 million people as at 11 April 2022.<sup>4</sup> This has raised concerns that led governments to take urgent and aggressive action to stop the spread of the virus.<sup>5</sup> The effects of the pandemic have not only overwhelmed the health care systems but other areas of the global economy<sup>6</sup> have been drastically strained

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<sup>1</sup> See generally: United Nations, 'COVID-19 and Human Rights We are all in this together' (Report on Human Rights and Covid-19, 2020) <[https://www.un.org/victimsofterrorism/sites/www.un.org.victimsofterrorism/files/un\\_-\\_human\\_rights\\_and\\_covid\\_april\\_2020.pdf](https://www.un.org/victimsofterrorism/sites/www.un.org.victimsofterrorism/files/un_-_human_rights_and_covid_april_2020.pdf)> accessed 23 October 2021.

<sup>2</sup> IDLO, 'Rule of Law and Covid-19: Policy Brief', (2020) <[https://www.idlo.int/sites/default/files/pdfs/publications/idlo-rule\\_of\\_law\\_and\\_covid19-policy\\_brief-final.pdf](https://www.idlo.int/sites/default/files/pdfs/publications/idlo-rule_of_law_and_covid19-policy_brief-final.pdf)> accessed 23 October 2021.

<sup>3</sup> Ibid.

<sup>4</sup> As at 11 April 2022, 6,179,104 deaths had been reported to the World Health Organisation (WHO). 'WHO Corona Virus (Covid-19) Dashboard' *World Health Organisation* <<https://covid19.who.int/>> accessed 11 April 2022. According to the John Hopkins Corona Virus Resource Centre, there have been 6,142,999 deaths as of 11 April 2022. Johns Hopkins University and Medicine 'Corona Virus Resource Centre' <<https://coronavirus.jhu.edu/>> accessed 11 April 2022 .

<sup>5</sup> Human Rights Watch, 'Human Rights Dimensions of Covid-19 Response' (19 March 2020) <<https://www.hrw.org/news/2020/03/19/human-rights-dimensions-covid-19-response>> accessed 3 October 2021.

<sup>6</sup> The economic damage wrought by the outbreak of the Covid-19 pandemic unfortunately represents arguably, the worst economic shock the world has experienced

including the legal system, domestic mechanisms of governance and other aspects of life. As a consequence, the world faces varying degrees of challenges occasioned by the outbreak of this virus which once was novel, but now, is enjoying phases of resurgence and mutations.<sup>7</sup>

In the global south,<sup>8</sup> these challenges have been manifested as disproportionate curtailment measures against Covid-19 which have contributed

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in decades. According to the World Bank, (as of June 2020) the pandemic and resulting efforts to contain it, caused a drastic plunge in the demand for oil; and also a crash in oil prices. The World Bank 'The Global Economic Outlook during the Covid-19 Pandemic: A Changed World' (8 June 2020) <<https://www.worldbank.org/en/news/feature/2020/06/08/the-global-economic-outlook-during-the-covid-19-pandemic-a-changed-world>> accessed 1 October 2021.

<sup>7</sup> The Delta variant of coronavirus continues to rampantly spread and dominate across the world and fresh worries have cropped up with the emergence of a variant which has come to be known as the 'Mu' variant, which, according to some medical experts, is worrying. While it has been branded as a 'Variant of Interest' by the WHO, latest reports have noted that the variant is making its presence felt internationally, and has spread to over 49 US states and 40 different countries worldwide. See 'Coronavirus: Is The 'Mu' Variant Deadlier Than Delta? Decoding All Known COVID-19 Mutations Circulating Right Now' (September 9, 2021) *Times of India* <[https://m.timesofindia.com/life-style/health-fitness/health-news/coronavirus-is-the-mu-variant-deadlier-than-delta-decoding-all-known-covid-19-mutations-circulating-right-now/amp\\_etphotostory/86063698.cms](https://m.timesofindia.com/life-style/health-fitness/health-news/coronavirus-is-the-mu-variant-deadlier-than-delta-decoding-all-known-covid-19-mutations-circulating-right-now/amp_etphotostory/86063698.cms)> accessed 30 September 2021. On 26 November, the WHO designated the newly identified coronavirus variant, B.1.1.529, named Omicron as a variant of concern which was reportedly discovered in South Africa, Botswana, Hong Kong and Belgium which has led reports of new travel bans by United States and United Kingdom especially against travellers from South Africa, Botswana, Zimbabwe, Namibia, Lesotho, Eswatini, Mozambique and Malawi. David McKenzie and others, "Omicron, a new Covid-19 variant with high number of mutations, sparks travel bans and worries scientists" *CNN*, 27 November 2021, <<https://edition.cnn.com/2021/11/26/africa/new-covid-variant-discovered-south-africa-b11529-intl/index.html>> accessed 27 November 2021. The data shown here were accurate as at the time of publication. Since Covid-19 data changes rapidly, it is recommended that resource sites like WHO, John Hopkins University and Medicine be regularly visited for updates on Covid-19 data.

<sup>8</sup> The Global South has traditionally been used to refer to underdeveloped or economically disadvantaged nations by intergovernmental development organizations, specifically the Non-Aligned Movement members. These countries are those who tend to have unstable democracy, are in the process of industrializing, and frequently face colonization by Global North countries (especially by European countries). The second definition uses the Global South to address populations that are negatively affected by capitalist globalization. 'Global South Countries 2021', *World Population Review* <<https://worldpopulationreview.com/country-rankings/global-south-countries>> accessed 1 October 2021. Even though the impact of the pandemic has been felt globally and all countries have been guided in their responses by the directives of the WHO, the jurisdictional scope of this paper is limited to the global south which is experiencing

to vaccination hesitancy, data and surveillance monitoring without due regard to economic, civil and political rights. Yet most countries have neglected these obligations posed by the challenges in their respective responses to the pandemic. This neglect has been manifested through failures to establish effective testing, contact tracing, social distancing, isolation, and quarantine policies. This clearly undermines observance of the rule of law and good governance with sweeping implications on public order, security and the right to dignity through torture and unlawful use of force. These discriminatory and inequitable curtailment measures, alongside insufficient government social protections, and economic support constitute a multiplier threat that produces structural violence<sup>9</sup> against vulnerable, marginalised communities and foreign nationals. Several attempts have been made in literature on the assessment of the challenges posed by the Covid-19 Pandemic on every aspect of life. Tom Bernes and others examine the challenges of the Covid-19 Pandemic on the Global health and expose the inefficiency of relevant international institutions such as the G20, the European Union and the WHO to address the issues arising from the Pandemic. It is therefore suggested that international cooperation is considered in a world that will continue to be deeply interconnected<sup>10</sup>

In a collection of essays<sup>11</sup>, some experts examine beyond the COVID-19 crisis and the potential challenges and opportunities in the post-COVID-19 world designed to offer new perspectives on the post-pandemic future. The experts find that International cooperation could mean increased solidarity and therefore, there is a foremost need for debt write downs to enable countries (of the global south) to grow out of the crisis.

Thomson and Eric explain the nature of the COVID-19 and curtailment measures against the pandemic and find that there are unmistakable regressions

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more biting effects of the pandemic. However, references have been made to the experiences of some countries in the global north from comparative perspectives.

<sup>9</sup> Structural violence can assume patterns of differences within large-scale social structures, differences of power, wealth, privilege, education and health that are unjust and unequal. Violence in this context thrives in a society where institutions and policies are designed in a way that creates barriers or inequitable access to a range of goods and services for some people but not others. See United Nations Children Fund, '*Structural Violence against Children in South Asia*', UNICEF, Kathmandu, 2018, 2.

<sup>10</sup> Tom Bernes, 'Challenges of Global Governance Amid the COVID-19 Pandemic' [https://cdn.cfr.org/sites/default/files/report\\_pdf/challenges-of-global-governance-amid-the-covid-19-pandemic.pdf](https://cdn.cfr.org/sites/default/files/report_pdf/challenges-of-global-governance-amid-the-covid-19-pandemic.pdf) Accessed 16 April 2022.

<sup>11</sup> The Global Risks Advisory Board of the World Economic Forum's Global Risks Initiative, *Challenges and Opportunities Post COVID 19*, [https://www3.weforum.org/docs/WEF\\_Challenges\\_and\\_Opportunities\\_Post\\_COVID\\_19.pdf](https://www3.weforum.org/docs/WEF_Challenges_and_Opportunities_Post_COVID_19.pdf) 11. Accessed 16 April 2022.

into authoritarianism in governmental efforts to contain the virus.<sup>12</sup> A report by the *Human Rights Watch* notes the obligations of Governments across jurisdictions to take effective steps for the prevention, treatment and control of the COVID-19 Pandemic. The report recommends that emergency declarations should not be used as a cover for repressive action or to quash dissent under the guise of protecting health<sup>13</sup>.

An OECD Report examines from Socio-economic and health fronts the probable effects of the COVID-19 pandemic on Effective implementation of the African Continental Free Trade Area (AfCFTA) and the African Union's productive transformation agenda which can strengthen regional value chains and reduce vulnerability to external shocks, advance the digital transition, and build economic resilience against future crises. On the health front, greater capacities to test, protect, treat and cure are essential.<sup>14</sup>

After discussing the challenges, opportunities, socio-political dynamics the impact on constitutionalism and rule of law as a result of the COVID-19 crisis in North African Countries, some experts recommends some measures that can be taken to mitigate the negative effect of the covid-19 pandemic on well-being of North African people.<sup>15</sup>

Although the foregoing works have made beneficial contributions by addressing future recovery plans, later developments arising after the first wave of the pandemic and the new variants, the important discovery of the covid-19 vaccines and the development on the use of information technology among others could not be captured by the aforementioned attempts as elaborately discussed in this paper.

This paper fills the gap by also considering the developments after the first wave of the pandemic by analysing the application of relevant national laws, international instruments and judicial decisions within the Global South. It assesses curtailment measures against the COVID-19 pandemic and its impact

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<sup>12</sup> Stephen Thomson and Eric C Ip, COVID-19 emergency measures and the impending authoritarian pandemic, *Journal of Law and the Biosciences*, 7 (1) January-June 2020, lsaa064, <https://doi.org/10.1093/jlb/lsaa064>.

<sup>13</sup> *Human Rights Watch*, 'Human Rights Dimensions of Covid-19 Response' (n 5)

<sup>14</sup> OECD, 'COVID-19 and Africa: Socio-economic implications and policy responses' 7 May 2020 <<https://www.oecd.org/coronavirus/policy-responses/covid-19-and-africa-socio-economic-implications-and-policy-responses-96e1b282/>> accessed 27 November 2021.

<sup>15</sup> J De Mesquita and A Kapilashrami, and B. Meier, 'The Impact of the COVID-19 Pandemic on Constitutionalism and the Rule of Law in North African Countries' 30 June 2020. <<https://www.idea.int/sites/default/files/publications/the-impact-of-the-covid-19-pandemic-on-constitutionalism-and-the-rule-of-law-in-north-african-countries-en.pdf>> accessed 27 November 2021.

on rule of law and good governance in the Global South towards a better COVID-19 stimulus and recovery packages.

To accomplish this task, The paper proceeds from introductory remarks under Section 1 to examines the responses of various countries to the COVID-19 pandemic and gives situation reports on cases of excessive use of force, discriminatory and inequitable measures across the jurisdictions under section 2. Section 3 reviews the effects of the curtailment measures on rule of law and good governance, While Section 4 discusses the application of the Siracusa Principle on limitations to derogations permitted to manage public health emergencies, while Section 5 contains the concluding remarks and proffers suggestions that can strengthen the rule of law and good governance amid COVID-19 pandemic.

## 2. Responses to the Covid-19 Pandemic in the Global South

The Covid-19 pandemic has confronted governments with a challenge of mammoth proportions. Various governments have always played interventionist roles in responding to public health emergencies. The points in favour of government response to mitigate the harshness of Covid-19 pandemic include employment of tax relief measures,<sup>16</sup> release of disaster relief funds inform of wages through Unemployment Insurance Fund (UIF),<sup>17</sup> relaxation of emergency procurement procedures<sup>18</sup> and provision of funding to small businesses.<sup>19</sup> However most of these measures have been severely criticised as discriminatory socio-economic relief or palliatives especially against foreign nationals and the less privileged. This is because most of the measures which are expected to be targeted at the vulnerable groups in the allocation of resources used criteria such as race, gender, disability and rural status to prioritise the socio-economic needs of vulnerable groups.<sup>20</sup> Other measures, some of which allegedly offend respect

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<sup>16</sup> Somboon Weerawutiwong, 'Legal and tax relief measures on COVID\_19 pandemic' PWC, 2021 <<https://www.pwc.com/th/en/tax/legal-and-tax-relief-measures-on-covid-19-pandemic.html>> accessed 27 November 2021.

<sup>17</sup> SARS, 'Unemployment Insurance Fund' *South African Revenue Service* 12 October, 2021 <<https://www.sars.gov.za/types-of-tax/unemployment-insurance-fund>> accessed 27 November 2021.

<sup>18</sup> Kerry Kopke, 'Streamlining public procurement processes during COVID-19: Balancing efficiency and accountability' *COVID-19 Africa Public Finance Response Monitor* (2020) <<https://www.cabri-sbo.org/uploads/files/Documents/Streamlining-public-procurement-processes-during-COVID-19-Balancing-efficiency-and-accountability.pdf>> accessed 27 November 2021.

<sup>19</sup> SBA, 'COVID-19 Economic Injury Disaster Loan' *US. Small Business Administration*, 2021 <https://www.sba.gov/funding-programs/loans/covid-19-relief-options/eidl> accessed November 27, 2021

<sup>20</sup> Justice Alfred Mavezenge (ed), *COVID-19 Pandemic and Socio-Economic Rights*, (Juta and Company Ltd, 2020), <<https://www.kas.de/documents/275350/0/ESR+and+COVID+19+Book.pdf/0db2503c->

for human rights, the tenets of democracy and good governance have also been taken in various parts of Africa and across the globe.<sup>21</sup> Certain governments have been accused of using the COVID-19 pandemic as a pretext to consolidate political power undemocratically or impose undue restrictions on the exercise of civil and political rights.<sup>22</sup> Legislation has reportedly been enacted in Hungary allowing the Prime Minister to rule indefinitely and the employment of unorthodox surveillance in Israel.<sup>23</sup> In this section, the response measures of some countries have been highlighted. The countries include Nigeria, Angola, Kenya, Egypt, Cambodia, South Africa and Jordan. The listed jurisdictions have been selected on the basis of being countries of the global south. As noted, the global south traditionally refers to underdeveloped or economically disadvantaged nations. These countries are those who suffer unstable democracy, are in the process of industrializing, and frequently face colonization by Global North countries (especially by European countries). The situations in China and Thailand have been considered not only because the origin of the pandemic can be traced to China but the discussion has been taken from comparative perspectives.

### **2.1 Excessive Use of Force**

Several security agencies were empowered to enforce the lockdown throughout the States of the federation.<sup>24</sup> In Nigeria, insecurity and alleged excessive use of force by security agents comprise the major factors that militate against the safety of the indigenes.<sup>25</sup> And predictably, there were spates of killings reportedly perpetrated by security agents in the guise of enforcing lockdown compliance.<sup>26</sup>

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e0d8-472b-6c43-7f12f3794237?version=1.0&t=1611901569173> accessed 14 September 2021.

<sup>21</sup>Herbert smith freehills ‘Covid-19: Initial Responses of Certain African Countries (Africa)’, Thomas Herman and others (eds), 22 May 2020. <<https://www.herbertsmithfreehills.com/latest-thinking/covid-19-initial-responses-of-certain-african-countries-africa>> accessed 7 August 2021.

<sup>22</sup>CRS, ‘Global Democracy and Human Rights Impacts of COVID-19: In Brief,’ *Congressional Research Service*, 26 June 2020 <<https://sgp.fas.org/crs/row/R46430.pdf>> accessed 14 September 2021.

<sup>23</sup>Yoni Ish-Hurwitz, ‘COVID-19 is revealing gaps in our human rights’ 27 April, 2020. <[https://apolitical.co/en/solution\\_article/covid-19-is-revealing-gaps-in-our-human-rights](https://apolitical.co/en/solution_article/covid-19-is-revealing-gaps-in-our-human-rights)> accessed 20 September 2021.

<sup>24</sup>*Freehills n 21*.

<sup>25</sup>Favour C Uroko, Chinyere T Nwaoga, ‘Human Rights Abuses in Local Government Areas in Nigeria during the Coronavirus Disease 2019 Pandemic: Faith-based Organisations as Agents of Transformation’ (2021) 2 (a) *Journal of Local Government Research and Innovation*, 25, DOI: <<https://doi.org/10.4102/jolgr.v2i0.25>> accessed 17 October 2021.

<sup>26</sup>On the 2nd of April 2021, a 28 year old man was killed by the army in Warri for violating the lock down mandate. 14 days later in Aba, a tricycle commuter reaped the



According to the National Human Rights Commission (NHRC), security services killed about 30 people and unlawfully extorted, detained, tortured, or mistreated dozens more over the first five weeks of lockdown enforcement.<sup>27</sup> A civil society organisation<sup>28</sup> expressed particular concern over the decision by state authorities in Rivers State to demolish two hotels because they allegedly continued to operate despite the governor's executive order prohibiting hotel operations during the lockdown.<sup>29</sup> Reacting to the demolitions, (socio-economic rights and accountability project) SERAP accused the governor of using COVID-19 to perpetrate human rights violations, branding his actions as an 'executive rascality'.

Authorities in Angola struggled to contain the spread of the pandemic despite declaring a partial lockdown in late March 2020. But many Angolans, especially street traders, broke the lockdown rules to earn some money.

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same fate. Bereaved families were left to grieve without recompense or redress while security personnel continued unabated, their spate of human rights violations. See Uroko and Nwaoga (n 18) 2. The Lekki tollgate massacre is an unforgivable despotic response by the government to the agitations of the Nigerian youths against police brutality which grew worse during the lockdown. In the days that preceded the 'Black Tuesday' (10 October 2021), a nationwide protest against the excesses of the disbanded Special Anti-Robbery Squad (SARS) had attained global recognition; thanks to the hashtag end SARS tweet (#endSars) that trended on Twitter for days. On the 20 October 2020, the Nigerian Army allegedly fired live ammunition on unarmed young protesters at Lekki tollgate. See 'Black Tuesday at Lekki Toll-gate', (23 October 2020) *Vanguard* <<https://www.vanguardngr.com/2020/10/black-tuesday-at-lekki-toll-gate/>&gt; accessed 20 October 2021; Stephanie Busari, Nimar Elbagir, Gianluca Mezzofiore and Katie Polglase, 'How a Bloody Night of Bullets and Brutality Quashed a Young Protest Movement', (19 November 2020) *CNN* <<https://edition.cnn.com/2020/11/18/africa/lagos-nigeria-lekki-toll-gate-feature-intl/index.html>> accessed 20 October 2021; 'End SARS Protests: People 'Shot Dead' in Lagos, Nigeria' (21 October 2020) *BBC* <<https://www.bbc.com/news/world-africa-54624611>> accessed 20 October 2021.

<sup>27</sup> 'National Human Rights Commission Press Release on COVID-19 Enforcement So Far Report on Incidents of Violation of Human Rights', (April 15, 2020) *NHRC* <<https://www.nigeriarights.gov.ng/nhrc-media/press-release/100-national-human-rights-commission-press-release-on-covid-19-enforcement-so-far-report-on-incidents-of-violation-of-human-rights.html>> accessed 15 October 2021; Stephen Thomson and CIP Eric, 'COVID-19 Emergency Measures and the Impending Authoritarian Pandemic', (2020) 7(1) *Journal of Law and the BioSciences*, 1-33, 5 <<https://doi.org/10.1093/jlb/ljaa064>> accessed 20 October 2021.

<sup>28</sup> The Socio-Economic Right and Accountability Project (SERAP).

<sup>29</sup> Kayode Oyero, 'SERAP threatens to sue Wike over hotels' demolition', (10 May 2020) *The Punch*, <<https://punchng.com/serap-threatens-to-sue-wike-over-hotels-demolition/>> accessed 18 October 2021.

Government forces reacted with excessive use of force, which in some cases, sadly resulted in the killings of innocent unarmed civilians.<sup>30</sup>

In September 2020, a medical doctor died in police custody after being detained for not wearing a face mask inside his car. Also in Angola at the oil rich enclave of Cabinda, authorities had cracked down on peaceful protesters and activists. They had continued forced evictions and demolitions without the necessary procedural guarantee or the provision of alternative adequate housing even during the lockdown.<sup>31</sup>

In Kenya, in response to the Covid-19 pandemic, the president on the 27th of March 2020 invoked the Public Order Act to impose restrictions, including a three-month nationwide curfew between 7pm and 5am. Three days later, 13-year-old Yassin Moyo was shot dead by a police officer in Eastlands in Nairobi while he was playing on his balcony after the 7pm curfew. On 27th of March 2020, a police officer beat journalist Peter Wainaina with a baton while he filmed a police assault on commuters, as they rushed them to board a ferry ahead of the curfew. In the month that followed, Michael Njau, a social justice activist, his cousin and a taxi driver disappeared while travelling from Thika to Nairobi. Two days later, police discovered their abandoned car. There was no evidence to implicate the police, but Michael Njau's colleagues said he had received threats for his work on police killings. The whereabouts of the men remained unknown even at the end of 2020. Police intimidated, harassed and attacked journalists and bloggers as a means to silence them. On 29 March 2020, three journalists were arrested for allegedly violating the Covid-19 curfew, despite their legal exemption from curfew restrictions. Several bloggers and journalists were arrested and charged under the Computer Misuse and Cybercrimes Act for publishing what the government deemed to be misleading information about COVID-19.<sup>32</sup>

There were unfortunate reports of police misconduct in South Africa between 25 March and 5 May 2020, brought before the Independent Police Investigative Directorate (IPID). These complaints totalled 828 and sadly, they included 16 deaths in police custody; 32 deaths caused by police action; eight

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<sup>30</sup> 'World Report 2021: Angola: Events of 2020' (2021) *Human Rights Watch* <<https://www.hrw.org/world-report/2021/country-chapters/angola>> accessed 18 October 2021.

<sup>31</sup> Shivani Chaudhry and others, 'Forced Evictions in India in 2020: A Grave Human Rights Crisis During the Pandemic', September 2021 <[https://www.hlrn.org.in/documents/Forced\\_Evictions\\_2020.pdf/](https://www.hlrn.org.in/documents/Forced_Evictions_2020.pdf/)> accessed 25 September 2021.

<sup>32</sup> Collaboration on International ICT Policy for East and Southern Africa (CIPESA), 'How the Covid-19 Fight Has Hurt Digital Rights in East Africa', January 2021 <[https://cipesa.org/?wpfb\\_dl=427/](https://cipesa.org/?wpfb_dl=427/)> accessed 20 September 2021.

incidents of rape by police officers; 25 accounts of torture in custody; and 589 assaults.<sup>33</sup>

The Egyptian government arrested workers who expressed safety concerns or criticised the administration's handling of the pandemic and detained them pending investigations on charges related to terrorism and spread of false news.<sup>34</sup> Sometime in February 2020, the Egyptian Health Ministry sent doctors and medical teams to a quarantine facility without informing them that their transfer was part of the COVID-19 response or of the risks entailed. The medical team had revealed that they were 'tricked' into the assignment.<sup>35</sup>

At the start of 2020, there were protest movements in Algeria, Lebanon and Iraq. These campaigns continued until the outbreak forced a suspension of the protests. However, peaceful protesters were beaten, arrested and, at times, prosecuted for participating in protests.<sup>36</sup>

A wave of unprecedented authoritarian governance swept through China in the periods that followed the outbreak of the virus. Instances of high profile and disproportionate curtailment measures by governments in the global south include the periods when China's government initially withheld basic information about the virus from the public, under-reported cases of infection, downplayed the severity of the infection, and dismissed the likelihood of transmission between humans. Also, people were detained for spreading information about the epidemic on social media and media reporting was significantly curtailed. There was lockdown of tens of millions of people in Wuhan and other locations, which was further buttressed by an uncompromising use of quick response code technology, facial recognition cameras, drones, and other means, to closely monitor the whereabouts of citizens.<sup>37</sup> Many residents in cities under quarantine expressed difficulties in obtaining medical care and other life necessities. These difficulties caused a man with kidney disease to jump to his death from his apartment balcony after he could not get access to health facilities for dialysis.<sup>38</sup> Authorities had also reportedly employed various

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<sup>33</sup> Amnesty International, 'South Africa 2020' <<https://www.amnesty.org/en/location/africa/southern-africa/south-africa/report-south-africa/>> accessed 2 October 2021.

<sup>34</sup> Amnesty International, 'Human Rights in Middle East and North Africa - Review in 2020', <<https://www.amnesty.org/en/location/middle-east-and-north-africa/report-middle-east-and-north-africa/>> accessed 16 October 2021.

<sup>35</sup> Human Right Watch, 'Human Rights Dimensions of Covid-19 Response', (n 5).

<sup>36</sup> Amnesty International, 'France: Thousands of Protesters Wrongly Punished under Draconian Laws in Pre and Post COVID-19 Crackdown', 29 September 2020 <<https://www.amnesty.org/en/latest/news/2020/09/france-thousands-of-protesters-wrongly-punished-under-draconian-laws-in-pre-and-post-covid19-crackdown/>> accessed 23 October 2021.

<sup>37</sup> Thompson and Eric (n 27) 5.

<sup>38</sup> Human Right Watch, 'Human Rights Dimensions of Covid-19 Response' (n 5).

intrusive containment measures comprising barricading shut, the doors of suspected infected families with metal poles. The authorities did little to combat discrimination against people from Wuhan or Hubei province who travelled elsewhere in China.<sup>39</sup> In January 2020, Li Wenliang, a doctor at a hospital in Wuhan where infected patients were being treated, was summoned by police for ‘spreading false rumours’ after he warned of the new virus in an online chat room. He died in early February from the virus.<sup>40</sup>

In Cambodia, concerns were expressed because of how aggressively the government pursued those who spoke out freely about the virus. Cambodian authorities reportedly made a series of arrests on charges of spreading ‘fake news’ related to Covid-19.<sup>41</sup>

Further, in Thailand, medical personnel were alleged to have been threatened with disciplinary action – including termination of employment contracts and revocation of their licenses – for speaking out about the severe shortage of essential supplies in hospitals across the country.<sup>42</sup>

## **2.2 Poor Distribution of Palliatives**

Palliatives donated by companies via corporate citizenship schemes were hoarded by some government officials. The distribution of the few that were released led to overcrowding, which became counterproductive to the main reason for imposing the lockdown.

## **2.3 Relevant Legislative Efforts**

Femi Gbajabiamiala, the speaker of the Federal House of Representatives in Nigeria, sponsored the ‘Control of Infectious Disease Bill, 2020’, which was set to replace the extant Quarantine Act<sup>43</sup>. The proposed bill sought a penalty of between ₦200,000 (Two Hundred Thousand Naira) and ₦5,000,000 (Five million Naira) plus jail terms for violators of Covid-19 curtailment directives as opposed to the ₦500 fine from the previous Quarantine Act. A similar Public Health Emergency Bill, 2020 is also pending before the Nigerian Senate. The measures in the bill were seen as means to further contain the coronavirus

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<sup>39</sup>Ibid.

<sup>40</sup>Stephanie Hegarty, ‘The Chinese doctor who tried to warn others about coronavirus’ 6 February 2020 <<https://www.bbc.com/news/world-asia-china-51364382>> Accessed 23 October 2021.

<sup>41</sup>Michael A Weber Maria A. Blackwood, Tomás F Husted, Thomas Lum and Derek E Mix, ‘Democracy and Human Rights Impacts of COVID 19: In Brief’ (2020) Congressional Research Service prepared for members and committees of Congress, <<https://crsreports.congress.gov/product/details?prodcode=R46430>> accessed 27 November 2021.

<sup>42</sup>Human Right Watch, ‘Thailand-Covid 19 Clamp down on Free Speech’, 25 March 2020 <<https://www.hrw.org/news/2020/03/25/thailand-covid-19-clampdown-free-speech/>> accessed 15 September 2021

<sup>43</sup>Cap Q 2, Laws of the Federation of Nigeria (LFN).

pandemic in a country of nearly 200 million. However, the Civil Society Legislative Advocacy Centre (CISLAC), and 39 other non-profit organisations operating in Nigeria including Amnesty International decried the bill, noting that it violated key principles of unambiguous legislative drafting, leaving a significant amount of discretion on the implementing authorities and limiting the rights of citizens and relevant institutions. Many Nigerians thought that the bills was draconian in nature and was also plagiarised from the Singapore Infectious Diseases Act 1977.<sup>44</sup>

In Jordan, authorities issued decrees or legislation citing a state of emergency that criminalised legitimate expression about the pandemic. These were promptly implemented, with prosecutions for ‘spreading false news’ or ‘obstructing’ government decisions.<sup>45</sup>

In April 2020, the Cambodia parliament unanimously passed a state of emergency law, which allows the king to declare a state of emergency in situations of war, pandemics, and 'national chaos'. This gives the government the prerogative to place bans or limits on movement and gatherings, the new emergency law also authorises the government to restrict the dissemination and broadcast of information, engagement in digital surveillance, and imposition of penalties on violators of the law.<sup>46</sup>

#### **2.4 Disregard to the Rights of Foreigners**

The lockdown witnessed the authorities’ failure in South Africa to abide by their constitutional and international legal obligations towards refugees, asylum-seekers and undocumented migrants. The government’s COVID-19 aid programmes and social relief arrangements were made only for people with national identity documents. Only *spaza* shops owned by nationals were allowed to operate during the period when lockdown was most strictly enforced.<sup>47</sup>

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<sup>44</sup> Ruth Olurounbi, 'Coronavirus: Nigeria's Proposed COVID-19 Law Tears the Country Apart' (15 May 2020) <<https://www.google.com/amp/s/www.theafricareport.com/27969/coronavirus-nigerias-proposed-covid-19-law-tears-the-country-apart/amp/>> accessed 18 October 2021.

<sup>45</sup> Amnesty International, 'Human Rights in Middle East and North Africa - Review in 2020' (n 34).

<sup>46</sup> Reuters Staff, 'Cambodia adopts law to allow for emergency powers to tackle coronavirus' 9 APRIL 2020 <https://www.reuters.com/article/us-health-coronavirus-cambodia-idUSKCN21S0IW/> accessed 15 September 2021

<sup>47</sup> Ferdinand C. Mukumbang and others, 'Unspoken inequality: how COVID-19 has exacerbated existing vulnerabilities of asylum-seekers, refugees, and undocumented migrants in South Africa', 20 August 2020 <https://equityhealthj.biomedcentral.com/articles/10.1186/s12939-020-01259-4/> Accessed 10 September 2021

## 2.5 COVID-19 Vaccinations

In spite of the alleged side effect of COVID-19 vaccines<sup>48</sup> which has led to vaccination hesitancy,<sup>49</sup> covid-19 vaccination appears to enjoy global support as governments across jurisdictions have made Covid-19 vaccination mandatory. In Nigeria, as of 27 March 2022, a total of 31, 391, 732 doses of the vaccine have been administered.<sup>50</sup> The Federal Government and some state governments have made COVID-19 vaccination compulsory for Nigerians at the risk of prohibition from all public places and gatherings.<sup>51</sup> This directive has been attacked by Trade Unions including Nigerian Medical Association (NMA) and The Joint Health Sector Unions (JOHESU), just as the federal High Court sitting in Port Harcourt had granted an ex parte injunction restraining the Edo State Government from implementing its decision to sanction persons that

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<sup>48</sup>Celeste McGovern 'Nobel Prize Winner: Mass COVID Vaccination an 'Unacceptable Mistake' 19 May 2021, *Life Site*, <<https://www.lifesitenews.com/news/nobel-prize-winner-mass-covid-vaccination-an-unacceptable-mistake-that-is-creating-the-variants>> accessed 19 November 2021.

<sup>49</sup>Olusoji S Olatunji and others, "'Infodemic' in a Pandemic: COVID-19 Conspiracy Theories in an African Country' (2020) 3(4) *Social Health and Behaviour* 152-157, <<https://www.shbonweb.com/article.asp?issn=2589-9767;year=2020;volume=3;issue=4;spage=152;epage=157;aulast=Olatunji>> accessed 19 November 2021; David Robert Grimes, 'Medical Disinformation and the Unviable Nature of COVID-19 Conspiracy Theories' (2021)16 (3) *PLoS ONE* e0245900. <doi:10.1371/journal.pone.0245900, <<https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0245900>> accessed 19 November 2021.

<sup>50</sup>WHO 'WHO Corona Virus (Covid-19) Dashboard' <<https://covid19.who.int/region/afro/country/ng>> accessed 13 April 2022.

<sup>51</sup>Chukwuma Muanya and others 'FG Moves to Make COVID-19 Vaccination Mandatory for Civil Servants' *The Guardian*, 03 September 2021 <<https://guardian.ng/news/fg-moves-to-make-covid-19-vaccination-mandatory-for-civil-servants/>> accessed 24 November 2021; Omeiza Ajayi, 'COVID-19: FG to Bar Unvaccinated Workers from Work by Dec 1' *Vanguard* (31 October 2021) <<https://www.vanguardngr.com/2021/10/breaking-covid-19-fg-to-bar-unvaccinated-workers-from-work-by-dec-1/>> accessed 24 November 2021; Osahon Osahon, 'COVID-19 Vaccination: Civil Servants Barred From Edo Secretariat' *Niger Delta Today* 15 September 2021, < <https://www.nigerdeltatoday.com/covid-19-vaccination-civil-servants-barred-from-edo-secretariat/>> accessed 24 November 2021; FEMI AJASA, 'EXCLUSIVE: Ravaged by Covid-19, GTBank imposes mandatory vaccination for staffers, threatens to slash salaries by 50%' <<https://thenewsguru.com/nigeria-news/exclusive-ravaged-by-covid-19-gtbank-imposes-mandatory-vaccination-for-staffers-threatens-to-slash-salaries-by-50/>> accessed 24 November 2021.

have not taken COVID-19 vaccination.<sup>52</sup> In the same vein, other countries such as Italy, Greece, France, Germany, United States, China, and Austria, among others, have made digital vaccine certificates a mandatory requirement for access to workplaces and public gatherings as well as imposed various sanctions against those who have not been vaccinated.<sup>53</sup> In contrast, on a more liberal note, Singapore has directed that unvaccinated people should henceforth bear their own medical expenses except those who are exempted as a persuasive move to encourage massive taking of the COVID-19 vaccines.<sup>54</sup>

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<sup>52</sup> Compulsory vaccination: NMA, JOHESU kick as FG threatens sanction <https://punchng.com/compulsory-vaccination-nma-johesu-kick-as-fg-threatens-sanction/>; *Charles Osaretin v. Governor of Edo State* (2021) FHC/PH/FHR/266/2021. <<https://www.thisdaylive.com/index.php/2021/09/01/court-stops-obaseki-from-enforcing-compulsory-covid-19-vaccine-directive/>> accessed 16 November 2021.

<sup>53</sup> Jonathan Franklin and Sylvia Poggioli, 'Italy Is Making COVID-19 Health Passes Mandatory For All Workers' 17 September 2021, <<https://www.npr.org/sections/coronavirus-live-updates/2021/09/17/1038240183/italy-vaccine-health-pass-for-employees>> accessed 17 November 2021; Chico Harlan and Stefano Pitrelli, 'Italy begins enforcing one of the world's strictest workplace vaccine mandates, risking blowback', <[https://www.washingtonpost.com/world/europe/italy-vaccination-mandate-workers/2021/10/15/d1b045e2-2d99-11ec-b17d-985c186de338\\_story.html](https://www.washingtonpost.com/world/europe/italy-vaccination-mandate-workers/2021/10/15/d1b045e2-2d99-11ec-b17d-985c186de338_story.html)> accessed 17 November 2021; ROME — Italy pushed into new territory for a Western democracy on Friday, enforcing a stringent workplace vaccination rule that was dramatically reshaping society even as the morning shift began. Everywhere from offices to factories, workers faced a new requirement for entering and earning a paycheck: They had to first flash the QR code of a government-issued health pass. [https://www.washingtonpost.com/world/europe/italy-vaccination-mandate-workers/2021/10/15/d1b045e2-2d99-11ec-b17d-985c186de338\\_story.html](https://www.washingtonpost.com/world/europe/italy-vaccination-mandate-workers/2021/10/15/d1b045e2-2d99-11ec-b17d-985c186de338_story.html)> accessed 17 November 2021. 'Chinese authorities say unvaccinated parents can't send children to school' *BBC News*, 16 July 2021 <https://www.bbc.com/news/world-asia-china-57859356>> accessed 19 November 2021; 'Vaccinate or resign, Zimbabwe tells government workers' *African News* <<https://www.africanews.com/2021/09/08/vaccinate-or-resign-zimbabwe-tells-government-workers/>> accessed 19 November 2021.; 'President Joe Biden said he'd order all executive branch employees, federal contractors and millions of health-care workers to be vaccinated against the coronavirus, and that his administration would issue rules requiring large private employers to mandate shots or testing' <<https://www.bloomberg.com/news/articles/2021-09-09/biden-to-sign-order-requiring-vaccines-for-federal-workers>> accessed 19 November 2021.; Ros Krasny and Jonathan Tirone 'Austria Orders Lockdown for Unvaccinated as COVID Cases Climb' <<https://www.bloomberg.com/news/articles/2021-11-14/austria-prepares-to-lock-down-unvaccinated-as-covid-cases-spike>> accessed 19 November 2021.

<sup>54</sup> Jason Dasey and staff "Unvaccinated patients in Singapore will have to pay their own medical bills from next month as the island nation tries to come to grips with a worrying COVID-19 caseload" <<https://www.abc.net.au/news/2021-11-09/singapore-to-bill-unvaccinated-covid-19-patients/100606366>> accessed 19 November 2021.

Apparent from the preceding paragraphs in this section is the truth that regimes in the global south largely responded to the crisis of the pandemic in manners that showed little or no respect for human rights. It is obvious that a government's disregard for human rights is a primal attribute of non-adherence to tenets of the rule of law and good governance. This section goes far beyond this motive to underscore the organic and global importance of human rights; especially in the global south. Once more, in political climates where rule of law and good governance thrive, it boils down to how the ruling regime regards human rights. Unfortunately, more is desired from regimes in the global south, in this respect.

### 3. Impact of Covid-19 on the Rule of Law and Good Governance

The previous section is a catalogue of case studies detailing the authoritarian response of regimes to the crisis of the pandemic which constituted a multiplier threat that produce structural violence against vulnerable marginalised communities and foreign nationals. In essence, as far as the global south is in issue, structural violence was a direct consequence of the response of the government to Covid-19 in the global south; or better still, it would be more appropriate to surmise that the problem of structural violence was exacerbated by the response of regimes in the global south, to the crisis of the pandemic.

According to Lutz Oette, Covid-19 sheds light on systemic institutional defects and the bitter realities of uneasy lives, usually manifested in weak public health architecture and overpopulated prisons which are fertile grounds for infections. The securitisation of the pandemic reviews these structural issues which mostly affected the vulnerable, poorest and disenfranchised.<sup>55</sup> Nigeria suffered a serious economic downturn aggravated by the lockdown phases without corresponding adequate relief measures. And what was the resultant effect? Hunger, of course! Some people were forced by the necessity of hunger to damn the lockdown mandate. This resulted in iniquitous repercussions in ensuring rights to adequate food, education, housing, standards of living, and physical and mental health.<sup>56</sup> These seeming disobedient citizens were mostly those ranked at the lowest rungs of society's ladder.

In South East Asia, the virus exposed the weak social protection for urban poor, especially migrant workers, while for many African people working in the

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<sup>55</sup> Eliana Cusato, 'Beyond War Talk: Laying Bare the Structural Violence of the Pandemic' (3 May 2020) *Blog of the European Journal of International Law* <<https://www.ejiltalk.org/beyond-war-talk-laying-bare-the-structural-violence-of-the-pandemic/>> accessed 22 October 2021.

<sup>56</sup> De Mesquita, and others (2021) 'Strengthening Human Rights in Global Health Law: Lessons from the COVID-19 Response' *Journal of Law, Medicine & Ethics*, 49(2), 328-331. <doi:10.1017/jme.2021.47>



informal sector social distancing is a luxury that can hardly be afforded.<sup>57</sup> Covid-19 exposed the ineptitude of regimes towards the welfare of the citizenry. All the sovereignties discussed in the previous section were quick to employ despotic tactics in curtailment attempts. Consequently, there were spates of utter disregard for the rule of law and good governance which ideally essentialize derogable and non-derogable rights.<sup>58</sup>

The responses have produced unprecedented pressure on democratic systems globally and have disproportionate impact on the most vulnerable and marginalized populations.<sup>59</sup> Other effects of the impact of Covid-19 pandemic on rule of law and good governance include restrictions on rights and consolidation of power by autocrats and provision of reliable and accessible information, among others.

The Covid-19 pandemic undermines the rights to health and life, human rights that underlie public health, and international assistance and cooperation. Covid-19 challenged the foundations of human rights in global health governance. The failure to guarantee determinants of health on the basis of equality and non-discrimination has shaped the unequal distribution of infections and deaths in the Covid-19 pandemic, placing increased burdens on vulnerable and marginalized communities. Such health measures have inequitably affected (and at times selectively targeted) marginalised and vulnerable groups, with violations of civil and political rights resulting in discrimination, incarceration, violence, and exploitation.<sup>60</sup> However, many high-income states have failed to comply with their trans-boundary obligations, enacting nationalist measures that restrict the international flow of essential goods.<sup>61</sup> This neglect of global health governance in confronting a global health

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<sup>57</sup>Addisu Lashitew, 'Social Distancing Unlikely to Hold up in Africa without a Safety Net for Micro-entrepreneurs' 9 April 2020 <https://www.brookings.edu/blog/africa-in-focus/2020/04/09/social-distancing-unlikely-to-hold-up-in-africa-without-a-safety-net-for-microentrepreneurs/> Accessed 16 January 2022.

<sup>58</sup>See International Covenant on Civil and Political Rights, (ICCPR) G.A. Res. 2200 A (XXI), U.N. GAOR, 21st session, Supp. No. 16, U.N. Document A/6316 (1966). Art 4.

<sup>59</sup>USAID, 'Covid-19: Democracy, Human Rights, and Governance Issues and Potential USAID Responses' *USAID's Centre of Excellence on Democracy, Human Rights, and Governance*, April 2020, <[https://www.usaid.gov/sites/default/files/documents/1866/COVID\\_USAID-DRG-Issues-and-Potential-Responses.pdf](https://www.usaid.gov/sites/default/files/documents/1866/COVID_USAID-DRG-Issues-and-Potential-Responses.pdf)> accessed 27 November 2021.

<sup>60</sup>Efrat Shadmi and others 'Health equity and COVID-19: global perspectives' *International Journal for Equity in Health*, (2020) 19:104 <<https://equityhealthj.biomedcentral.com/track/pdf/10.1186/s12939-020-01218-z.pdf>> accessed 27 November 2021.

<sup>61</sup>UN Committee on Economic and Social and Cultural Rights, 'Statement on the Coronavirus Disease (COVID-19) Pandemic and Economic, Social and Cultural Rights', 17 April 2020 <<http://digitallibrary.un.org/record/3856957>> accessed 27 April 2021.

threat has led to devastating COVID-19 inequities and limited vaccine access, as high-income states have blocked waivers of intellectual property rights and failed to adequately fund and supply the COVAX Initiative.<sup>62</sup>

The lack of equipment and supplies to test for and protect against COVID-19 will lead countries to re-examine their supply chains for critical health and livelihood related products.<sup>63</sup> The COVID-19 pandemic which has challenged the multilateral system and global solidarity on an unprecedented scale can if properly managed promote harmony and synergy between the north and global south with charity organisations in China already distributing masks to European governments, as Europe and the United States have been doing in developing countries for years.<sup>64</sup>

Apart from the impact of Covid-19 on women,<sup>65</sup> around the world, more than 1.5 billion children are impacted by school closures<sup>66</sup> most of whom are largely drawn from the developing countries with low technology that would have supported e-learning during the lockdown. Sexual and gender-based violence (SGBV), incidences of political violence and protest, social unrest and violence by state forces, social cohesion, armed actors and peace processes, criminal violence and organised crime usually prevalent during a pandemic like Covid-19 are widely considered as threats to instability and social cohesion.<sup>67</sup> This is because the hoodlums and terrorist groups usually have a field day due

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<sup>62</sup>LO Gostin and SA. Karim, and BM Meier, 'Facilitating Access to a COVID-19 Vaccine through Global Health Law,' *Journal of Law, Medicine & Ethics* 48, no. 3 (2020): 622–626, <<https://doi.org/10.1177/1073110520958892>> accessed 27 April 2021.

<sup>63</sup>OECD, 'COVID-19 and Africa: Socio-economic implications and policy responses' 7 May 2020 <<https://www.oecd.org/coronavirus/policy-responses/covid-19-and-africa-socio-economic-implications-and-policy-responses-96e1b282/>> accessed 27 November 2021.

<sup>64</sup>Michael Igoe and Vince Chadwick, 'After the pandemic: How will COVID-19 transform global health and development?' *Devex* 3 April 2020 <<https://www.devex.com/news/after-the-pandemic-how-will-covid-19-transform-global-health-and-development-96936>> accessed 13 September 2021

<sup>65</sup>UN Women, 'COVID-19 and its economic toll on women: The story behind the numbers' 16 September 2020 <<https://www.unwomen.org/en/news/stories/2020/9/feature-covid-19-economic-impacts-on-women>> accessed 13 September 2020.

<sup>66</sup>James Elder, 'More than 1.5 billion children are out of school around the world, due to COVID-19' UNICEF 04 June 2020 <<https://www.unicef.org/esa/stories/vlog-2-more-15-billion-children-are-out-school-around-world-due-covid-19>> accessed 27 November 2021.

<sup>67</sup>H Marquette and S Herbert, 'COVID-19, governance, and conflict: emerging impacts and future evidence needs' March 2021 <https://gsdrc.org/publications/covid-19-governance-and-conflict-emerging-impacts-and-future-evidence-needs/> accessed September 14 2021.

to the absence of law enforcement agents who have been diverted to enforce the curtailment measures.<sup>68</sup>

#### 4. Enforcement of Rule of Law and Good Governance during Covid-19 Era

The previous section holds a detailed catalogue of utter disregard for the rule of law and good governance by states in responding to the crisis of the pandemic. While this paper enjoins states to ensure the protection and enforcement of the rule of law and good governance within their respective sovereignties, it is clear that collaboration within the international community is much needed to actualise the enforcement/application of the rule of law in responding to the Covid-19 pandemic. This necessitates the call for international democracy support for electoral reforms and United Nations (UN) oversight mechanisms for rule of law and good governance to promote transparency and accountability in the management of Covid-19 pandemic that will strengthen Covid-19 response architecture.<sup>69</sup>

Non-state actors have a crucial role to play (both locally and internationally) in ensuring that the rule of law is respected by regimes in the global south. The preamble of the Universal Declaration of Human Rights enjoins every organ of society to promote respect for human rights and freedoms through progressive means in order to secure their universal and effective recognition and observance, both among the peoples of the Member States themselves and among other peoples of territories under their jurisdictions.<sup>70</sup> The rule of law primarily encapsulates respect for human rights. Non-state actors can only encourage respect for these human entitlements through lobbying and suits against regimes as well.<sup>71</sup> Also, even in genuine cases of emergency, the European Commission has always maintained that State security and public safety can only be effectively guaranteed in a democracy which fully respects the rule of law.<sup>72</sup>

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<sup>68</sup>J De Mesquita and A. Kapilashrami, and B Meier (n 15).

<sup>69</sup> R Youngs and E Panchulidze 'Global Democracy & Covid-19: Upgrading International Support' (2020) <<https://www.idea.int/sites/default/files/publications/global-democracy-and-covid-19.pdf>> accessed 27 November 2021.

<sup>70</sup>Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR), preamble, in, 'Role of Non State Entities' *Icelandic Human Rights Centre* <<https://www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/human-rights-actors/the-role-of-non-state-entities>> accessed 23 October 2021.

<sup>71</sup>Council of Europe, 'Human Rights Activism and the Role of NGOs' <<https://www.coe.int/en/web/compass/human-rights-activism-and-the-role-of-ngos>> accessed 27 November 2021.

<sup>72</sup>Council of Europe, 'The impact of COVID-19 on human rights and the rule of law - Our action' <<https://www.coe.int/en/web/human-rights-rule-of-law/covid19>> accessed 27 November 2021.

This is necessary because the moral content of a law can be assessed as a reflection of societal ideals through its commitment to the respect for human rights in order to ascertain whether such measures accord with standard global practice. Based on scientific evidence of the health emergency, the enforcement of restrictions on certain rights which should be time specific can be lawfully justified under the doctrine of necessity and proportionality without compromising the right to human dignity.<sup>73</sup>

Sometimes, these responses amount to extreme and extraordinary measures that derogate from and limit the fundamental rights of the citizens. But these derogations and limitations may be legal.<sup>74</sup> In the ICCPR, derogations are allowed in times of public emergencies that threaten the life and official existence of the nation. In the International Covenant on Economic, Social and Cultural Rights,<sup>75</sup> the right to health requires states to take legal and policy measures to respect, protect, and fulfil determinants of health. There is also a further obligation to prevent, treat, and control infectious diseases; and make health services available, accessible, acceptable, and of good quality.<sup>76</sup> The right to health is guaranteed under article 12 and it entails governmental control over the spread of communicable diseases through restrictive measures for the protection of public safety. States Parties to the ICCPR Covenant may take measures derogating from their obligations under the treaty. But these derogations must be strictly required by the situation, consistent with other obligations under international law, and non-discriminatory. States parties are prohibited in these instances to derogate from their obligations to respect certain rights which include the rights to life, freedom of thought, conscience and religion, as well as against slavery, torture, and cruel, inhuman, or degrading treatment or punishment etc.<sup>77</sup> According to the UN Office of the High Commissioner for Human Rights (OHCHR), any restriction must be interpreted strictly and in favour of the right in issue.<sup>78</sup>

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<sup>73</sup> Yoni Ish-Hurwitz 'COVID-19 is revealing gaps in our human rights' 2020. <[https://apolitical.co/en/solution\\_article/covid-19-is-revealing-gaps-in-our-human-rights](https://apolitical.co/en/solution_article/covid-19-is-revealing-gaps-in-our-human-rights)> accessed 24 September 2021.

<sup>74</sup> Thomson and Eric, (n 21) 3.

<sup>75</sup> International Covenant on Economic, Social and Cultural Rights (ICESCR) 2000 UN Doc E/C.12/2000/1

<sup>76</sup> UN General Assembly, *International Covenant on Economic, Social and Cultural Rights* (New York: United Nations, 1966); UN Committee on Economic, Social and Cultural Rights, General Comment 14 on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health (art 12 of the International Covenant on Economic, Social and Cultural Rights) (Geneva: United Nations; 2000), UN Doc E/C12/2000/1.

<sup>77</sup> ICCPR art 4.

<sup>78</sup> Michael A Weber and others (n 41) 2.

However, a public health emergency like the Covid-19 pandemic is not a license for governments to forgo their obligations to uphold fundamental rights and liberties.<sup>79</sup> In line with this, and similar to article 12 (2) (c) of the ICESCR, the Siracusa Principles<sup>80</sup> provide that the ‘severity, duration, and geographic scope’ of any emergency measure that derogates from civil and political rights must be ‘strictly necessary’ to the relevant public health threat, and ‘proportionate to its nature and extent’.<sup>81</sup> By extension, the Principles also mandate that steps taken to counter serious threats to the health of the population ‘must be particularly targeted at preventing diseases or injuries or providing care for the sick and injured’,<sup>82</sup> and that a proclamation of public emergency and consequent derogations ‘that are not made in good faith are violations of international law.’<sup>83</sup> Unfortunately, the Covid-19 outbreak produced derogations that were made in bad faith.

This better approach is for the UN and the WHO to collaborate and fashion out necessary model legislation that specifies human rights to be adopted and rectified by nation states.<sup>84</sup> As seen in the Covid-19 response, public health emergencies can create scientific uncertainty and demand global solidarity, and it is necessary for global health law to elaborate relevant human rights principles to shape contemporary public health practice.<sup>85</sup> This agreement provides a pathway for the WHO to support human rights accountability in the Covid-19 response which will be critically important as UN treaty bodies resume review processes and the UN Human Rights Council provides oversight through the universal periodic review.<sup>86</sup>

A South African case which illustrates judicial attitude to cases of brutality and torture under the guise of curtailing the COVID-19 pandemic is *Khosa v Minister of Defence and Military Veterans*<sup>87</sup> where the deceased Mr Collins Khosa was murdered and two others were injured by security agents. While reiterating that South Africans live in an open and democratic society under the rule of law, the South African High Court presided by Fabricius, J held that the

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<sup>79</sup>Thompson and Eric, (n 21) 3.

<sup>80</sup>Endorsed by the UN Commission on Human Rights in 1984.

<sup>81</sup>UN Commission on Human Rights. The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, UN Doc E/CN 4/1985/4 (28 Sept. 1984), Principle 51.

<sup>82</sup>Ibid, principle 25.

<sup>83</sup>Ibid, principle 62.

<sup>84</sup>J De Mesquita and A Kapilashrami, and B Meier (n 15).

<sup>85</sup>BM Meier and H Huffstetler, and R Habibi, ‘Human Rights Must Be Central to the International Health Regulations,’ *Health and Human Rights Journal* (blog), 26 August 2020, <<https://www.hhrjournal.org/2020/08/human-rights-must-be-central-to-the-international-health-regulations/>> accessed 27 April 2021.

<sup>86</sup>J De Mesquita and A Kapilashrami and B Meier (n 15).

<sup>87</sup>21512/2020 [2020] ZAGPPHC 147.

Bill of Rights is a modern and effective tool and it must be used without fear or favour where appropriate within the bounds of the Constitution. The Court further held that security forces are only entitled to use the minimum force that is reasonable to perform an official duty. Adding that the provisions of the South African constitution protect human dignity and freedom, the obligation of this State and all its organs to respect, protect, promote and fulfil the rights in the Bill of Rights.

Surveillance monitoring has been employed to detect, isolate, test, and manage cases, monitor trends in Covid-19 deaths, identify follow-up and quarantine of contacts, among others.<sup>88</sup> This at times, requires the downloading of certain apps which may entail the purchase of a new smartphone to be able to cope with technological advancement on telemedicine and this could disproportionately affect those with lower socio-economic status and those who are older and who may not have adequate internet access.<sup>89</sup> In Qatar any defaulter risks up to three years in prison and a fine of QR200,000 (US\$55,000). Digital Surveillance can be linked to the medical records of members of the public in violation of their right to privacy guaranteed under article 12 of the Universal Declaration of Human Rights (UDHR) article 17 of the ICCPR<sup>90</sup> and article 8 of the European Convention on Human Rights<sup>91</sup> as adumbrated in the European Court of Human Rights case in *Satakunnan v Finland*<sup>92</sup> where the court considered the right to freedom of expression and right to a private life under articles 10 and 8 of the ECHR respectively. The Court also considered whether the restrictions applied met the “necessary in a democratic society” standard, and whether the domestic courts struck a fair balance between the right to freedom of expression and the right to respect for private life and held that the interference with the applicants’ right to freedom of expression was “necessary in a democratic society” and that the Finnish authorities had acted within their margin of appreciation.

An Israeli High Court has declared illegal the use of digital surveillance during the Covid-19 pandemic, which used national security legal authority for the Ministry of Health to implement the digital tracking of individuals, because such executive orders lack legislative scrutiny that would have been present

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<sup>88</sup>World Health Organization, ‘Global Surveillance for COVID-19 Caused by Human Infection with COVID-19 Virus: Interim Guidance’ March 20, 2020, 1. <<https://apps.who.int/iris/bitstream/handle/10665/331506/WHO-2019-nCoV-SurveillanceGuidance-2020.6-eng.pdf?sequence=1&isAllowed=y>> accessed 20 November 2021.

<sup>89</sup>International Telecommunication Union, *Measuring Digital development: Facts and Figures 2019* (Geneva: International Telecommunication Union, 2019).

<sup>90</sup>G A Res 217A (III) (1948) art 12; International Covenant on Civil and Political Rights, G A Res 2200A (XXI) (1966) art 17.

<sup>91</sup>European Convention on Human Rights, European Treaty Series No. 5 (1950) art 8.

<sup>92</sup>931/13 (27 June 2017).

through legislative approval.<sup>93</sup>The provisions of a new telecommunications law which permits states authority to monitor data for the purposes of contact tracing have been declared unconstitutional in Slovakia.<sup>94</sup>

In holding that there is a clear interference with the right to privacy and the right to the protection of personal data, the court observe that the proportionality of the measures are to be determined by the minimum requirements for the length, method of storage of information and data obtained, their use, third party access to them, procedures to protect data integrity and confidentiality, and their destruction, in such a way that individuals have sufficient safeguards against the risk of their abuse and arbitrariness.

## 5. Conclusion

This paper assesses the curtailment measures against Covid-19 pandemic and its impacts on rule of law and good governance in the Global South. It reveals that the response of regimes towards addressing issues of the pandemic adopted a largely authoritarian approach, made manifest in discriminatory, inequitable curtailment measures and insufficient governmental social protections and economic supports conspired to constitute 'multiplier threats' that have exacerbated structural violence against vulnerable, marginalised communities and foreign nationals. In addition, the pandemic has created scientific uncertainties that necessitate global solidarity and scientific precautionary measures through digital and telemedicine leading to important health management. This paper catalogues situation reports that detail the despotic response of regimes to the crisis of the pandemic. The paper goes far beyond this motive to underscore the organic and global importance of human rights; especially in the global south.

It is likely that the Coronavirus has come to stay; and therefore, regimes (particularly governments in the global south) should see the need in recognising the importance of the rule of law in addressing the challenges of this global pandemic. A faithful adherence to the tenets of the rule of law will certainly facilitate good governance. And since human rights are at the forefront of the fight against Covid-19, governments cannot afford (in theory) to disregard non-negotiable importance of the rule of law especially in the fight against a global health hazard. This paper draws to a close by advocating for

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<sup>93</sup>N Bandel, 'Israel's Top Court: No Shin Bet Tracking of Coronavirus Patients Without Knesset Oversight,' *Haaretz* (March 19, 2020). <https://www.haaretz.com/israel-news/.premium-israel-s-top-court-no-shin-bet-tracking-of-coronavirus-patients-without-knesset-ove-1.8690253> accessed 20 November 2021.

<sup>94</sup>*Group of 34 deputies of the National Council of the Slovak Republic vs. National Council of the Slovak Republic*. Constitutional Court of the Slovak Republic, PL. ÚS 13/2020-103

<[https://www.venice.coe.int/files/EmergencyPowersObservatory/attachments/Slovakia\\_Decision\\_CC.doc](https://www.venice.coe.int/files/EmergencyPowersObservatory/attachments/Slovakia_Decision_CC.doc) > accessed 20 November 2021.

international democracy support for electoral reforms and United Nations oversight mechanisms for rule of law and good governance to promote transparency and accountability in the management of the pandemic towards a better Covid-19 stimulus and recovery packages.<sup>95</sup> This will encourage the local production of drugs and medical equipment.<sup>96</sup>

There is a need for the various governments to enact laws to create the legal framework for effective response to the pandemic.<sup>97</sup> Apart from developing Covid-19 national action plans and policies, efforts should be geared at enhancing government communications, accountability, and transparency in health and public social services. Since enormous resources are required to curtail Covid-19 pandemic, effective monitoring mechanisms should be established to curb any possible misappropriation of funds and other corrupt related practices.<sup>98</sup>

Reforms for the improvement of access to justice to minimize risks of Covid-19 in prisons and detention centres are necessary for the protection of public safety without compromising the tenets of rule of law and good governance.<sup>99</sup> Responses to the Covid-19 pandemic must include necessary electoral reforms that will foster strong democratic institutions and electoral processes modified to suit necessary compliance with curtailment

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<sup>95</sup>OECD 'Building back better: A sustainable, resilient recovery after COVID-19' 5 June 2020 <<https://www.oecd.org/coronavirus/policy-responses/building-back-better-a-sustainable-resilient-recovery-after-covid-19-52b869f5/>> accessed 27 November 2021; Anthony Nyong, Manish Bapna, Joel Jaeger and Ella Clarke, 'Nigeria Moves Toward a Sustainable COVID-19 Recovery' World Resources Institute, 14 January 2021 <<https://www.wri.org/insights/nigeria-moves-toward-sustainable-covid-19-recovery>> accessed 27 November 2021.

<sup>96</sup>M Igoe and V Chadwick, 'After the pandemic: How will COVID-19 transform global health and development?' *Devex* 13 April 2020 <<https://www.devex.com/news/after-the-pandemic-how-will-covid-19-transform-global-health-and-development-96936>> accessed 27 November 2021.

<sup>97</sup>Charmaine Rodrigues, 'Legal Approaches to Responding to Emergencies: Covid-19 as a Case Study' *Constitutional INSIGHTS* 6 September 2021, <https://www.idea.int/sites/default/files/publications/legal-approaches-to-responding-to-emergencies.pdf> accessed 27 November 2021.

<sup>98</sup>Jorge Florez, 'COVID-19 Transparency and accountability in Africa: our work and reflections to date' *Global Integrity*, 9 September 2021, <<https://www.globalintegrity.org/2021/09/09/covid-19-transparency-and-accountability-in-africa-our-work-and-reflections-to-date/>> accessed 27 November 2021; B Hyland-Wood, J Gardner, J Leask, *et al.* 'Toward effective government communication strategies in the era of COVID-19' *Humanit Soc Sci Commun* 8 30 (2021). <<https://doi.org/10.1057/s41599-020-00701-w>> accessed 27 November 2021.

<sup>99</sup>UNODC, 'Ensuring Access to Justice in the Context of COVID 19' May 2020, <[https://www.unodc.org/documents/Advocacy\\_Section/Ensuring\\_Access\\_to\\_Justice\\_in\\_the\\_Context\\_of\\_COVID-191.pdf](https://www.unodc.org/documents/Advocacy_Section/Ensuring_Access_to_Justice_in_the_Context_of_COVID-191.pdf)> accessed 14 September 2021.



measures.<sup>100</sup> Necessary, lawful, and proportionate curtailment measures in exceptional circumstances on a ‘fact-specific’ basis should have regard to due process and procedural justice.<sup>101</sup> It is a given to conclude that government responses to Covid-19 pandemic have culminated into the regression of governance to authoritarianism and the best way to redress this wrong is not just by the making of laws through the parliament but by ensuring that there is an independent judiciary to checkmate the excesses of the executive perpetrated under the guise of enforcing the curtailment measures.

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<sup>100</sup> R Youngs and E Panchulidze, ‘Global Democracy & Covid-19: Upgrading International Support’ 24 June 2020 <<https://www.idea.int/sites/default/files/publications/global-democracy-and-covid-19.pdf>> accessed 14 September 2021.

<sup>101</sup> Thomson and Eric (n 21).