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THE LEGAL IMPACT OF COVID-19

12 February 2021

Introduction

The Africa Committee, Eurasia Russia Committee, Europe Committee and Middle East Committee are pleased to present this joint newsletter on the legal impact of COVID-19. The pandemic has shaken publics across the world and set in train massive political, economic and legal challenges. This newsletter looks at some of the legal responses to COVID-19 across these four regions. As the pandemic has been a constantly evolving crisis—with a first wave in the spring of 2020, a lull over the summer and a devastating second wave in the autumn with new virus variants, the contributors present a view of national responses in a given window of time. They address many of the critical issues raised by the virus and provide valuable background and reference points for both practitioners and researchers. We thank all of the authors for their contributions.

James Henry Bergeron, Newsletter Editor

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SECTION I - AFRICA

COVID-19: The Economic Impact on Africa and the AfCFTA

Angela Gallerizzo, Esq., Co-Chair, Africa Committee

The COVID-19 pandemic is expected to cause major disruptions in trade throughout the African continent and roughly \$80 billion in output losses in 2020 alone.¹ “The shock to African economies is expected to come in three waves: 1) lower trade and investment from China; 2) lowered demand as a result of lockdowns in OECD countries; and 3) a continental supply shock affecting domestic and intra-African trade.”² The crisis will significantly increase the number of people living in poverty on the continent by nearly 30 million.³ Many African countries could see rising food price inflation as supply chains are affected, greatly increasing the food insecurity for many people.⁴ The decline in crude oil prices could also cause “commodity-sensitive African economies to suffer large disruptions to trade and exchange rate stability.”⁵

The implementation of the African Continental Free Trade Area (“AfCFTA”), the world’s largest free trade zone since the establishment of the World Trade Organization in 1994, is expected to alleviate “the negative effects of COVID-19 on Africa’s economic growth by supporting regional trade and value chains, and reducing trade costs.”⁶ The AfCFTA’s Secretary General believes that “implementing Africa’s free trade pact is the best stimulus for post-COVID-19 recovery.”⁷

The implementation of the AfCFTA was delayed due to the COVID-19 pandemic, and was not put into effect as planned on July 1, 2020; but it was understood that “best practice would be for countries to continue progress in their national plans to liberalize goods and services in order to establish a new implementation date as circumstances allow.”⁸ In this interim period, the Secretary General of the AfCFTA Secretariat indicated that members’ heads of state agreed to establish trade corridors to enable the transit of essential goods necessary to combat the pandemic, and that these products were to get priority transit through borders.⁹ He also indicated that the African ministers of trade explored the possibility of temporarily reducing duties on

these essential products so that they become more affordable and accessible to all people.¹⁰

After months of the delay, the AfCFTA has now officially launched on January 1, 2021, but full implementation of the trade deal is expected to take years.¹¹ The implementation of the AfCFTA is set to “provide a path for further integration and growth-enhancing reforms for African countries.”¹² By integrating a patchwork of regional agreements, and harmonizing standards and border procedures across the continent, the AfCFTA could help African countries overcome the economic impacts from COVID-19 as well as increase their ability to bounce back from future economic shocks.¹³ The Secretary General of the AfCFTA Secretariat has explained that “accelerating Africa’s economic development will help to reshape supply chains, to establish regional value chains, and to boost manufacturing of essential products; and the increase in intra-African trade through the implementation of the AfCFTA is what will drive economic development post COVID-19.”¹⁴ The AfCFTA is expected to boost Africa’s income by roughly \$450 billion, with most of the income gains to come from measures that simplify customs procedures.¹⁵ A reduction in both tariff and non-tariff barriers to trade will likely boost income by roughly \$153 billion.¹⁶ Additionally, “trade-facilitation measures that simplify procedures, lower compliance costs, and make it easier for African businesses to integrate into the global supply chains,” would provide for an additional \$292 billion.¹⁷

While some may believe that the “delay in implementation of the AfCFTA caused the trade pact to suffer a setback, Africa is [now presented with the opportunity] by the pandemic to kickstart the process of intra-African trade for the larger African market, starting with essential products needed to combat the pandemic, because there is now a high demand for them due to COVID-19.”¹⁸ Thus, even in the midst of this global health and economic crisis, there is still hope for a successful outcome for Africa.¹⁹

¹ World Bank, “Trade Pact Could Boost Africa’s Income by \$450 Billion, Study Finds,” Washington, D.C., July 27, 2020 (hereafter “World Bank”), available at, <https://www.worldbank.org/en/news/press-release/2020/07/27/african-continental-free-trade-area>.

² OECD Policy Responses to Coronavirus (COVID-19), “COVID-19 and Africa: Socio-Economic Implications and Policy Responses, May 7, 2020 (hereafter “OECD”), available



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at, <http://www.oecd.org/coronavirus/policy-responses/COVID-19-and-africa-socio-economic-implications-and-policy-responses-96e1b282/>.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ World Bank, *supra*; CNBC, “What You Should Know About Africa’s Massive, 54-Country Trade Bloc,” July 11, 2019, available at <https://www.cnbc.com/2019/07/11/africa-free-trade-what-is-the-afcfta.html>.

⁷ United Nations, Africa Renewal, “AfCFTA: Implementing Africa’s Free Trade Pact the Best Stimulus for Post-COVID-19 Economies, May 15, 2020 (hereafter, “U.N. Africa Renewal”), available at <https://www.un.org/africarenewal/magazine/may-2020/coronavirus/implementing-africa’s-free-trade-pact-best-stimulus-post-COVID-19-economies>.

⁸ OECD, *supra* n. 2.

⁹ U.N. Africa Renewal, *supra* n. 7.

¹⁰ *Id.*

¹¹ Aljazeera, “After months of COVID delays, African free trade bloc launches,” January 1, 2021, available at <https://www.aljazeera.com/economy/2021/1/1/after-months-of-covid-delays-african-free-trade-bloc-launches>.

¹² World Bank, *supra* n. 6.

¹³ *Id.*

¹⁴ U.N. Africa Renewal, *supra* n. 7.

¹⁵ World Bank, *supra* n. 6.

¹⁶ *Id.*

¹⁷ World Bank, *supra* n. 6.

¹⁸ The Standard, “Urgency Mounts on Africa to Hasten Continental Free Trade Area to Counter Tough Times,” Xinhua, July 30, 2020, <https://www.standardmedia.co.ke/business/article/2001380691/urgency-mounts-on-africa-to-fast-track-continental-free-trade-area-to-counter-tough-times>.

¹⁹ *Id.*

Law Enforcement During COVID-19 in Sub-Saharan Africa

Mankah Bi Fombang, Senior Secretary, Lex:Lead

Since late 2019, the world has been plagued with a global health crisis, which rapidly evolved into a pandemic. Sub-Saharan Africa has been hurtling to curb the spread of the disease by implementing emergency measures, and “... law enforcement services play a crucial role in contributing to

the effort to control the disease, promoting safer communities, and fighting criminals who take advantage of the outbreak.”²¹ Many countries have entrusted the police and other law enforcement agencies to protect citizens during the pandemic; however, there has been a drastic increase in concerning reports of the police and other law enforcement agencies resorting to excessive force and brutality in their engagement with citizens while enforcing lockdown or curfew measures. This has raised concern within both individual African countries and the international human rights community, with many organizations such as Amnesty International, Human Rights Watch, and the United Nations High Commissioner for Human Rights condemning the human rights violations perpetrated by law enforcement during this pandemic.²²

Human Rights Instruments Governing Law Enforcement

It is globally recognized that law enforcement officials have a duty to uphold and respect the rule of law and fundamental human rights in carrying out their duties. Some international human rights instruments that are relevant to law enforcement and govern their functions include (but are not limited to), the *Universal Declaration of Human Rights*, *International Covenant on Civil and Political Rights*; the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*; the *Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment*; the *UN Code of Conduct for Law Enforcement Officials*; and the *UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*.

Within the African context, the most relevant instrument is the *African Charter on Human and Peoples’ Rights*.³ which recognizes the same rights as other international human rights instruments, such as the rights to dignity, to life, and to freedom from torture and other ill-treatment. Moreover, the Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa is one of the special mechanisms overseen by the African Commission on Human and Peoples’ Rights, and it is tasked with examining “the situation of persons deprived of their liberty within the territories of States Parties to the African Charter on Human and Peoples’ Rights.”⁴ Additionally, the African Policing Civilian Oversight Forum in collaboration with the Commonwealth Human Rights Initiative, East African Community, and East African Police Chiefs Cooperation Organisation developed the *Common Standards for Policing* in the East African region, which is a training manual for police officers in the EAC region and subsequently led to the



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“development of model standard operating procedures for arrest and detention, stop and search, use of force and public order management.”⁵

Cases of Human Rights Violations

In spite of the numerous human rights instruments and guidelines governing law enforcement and their functions, engagement with citizens during this COVID-19 pandemic by law enforcement in many African countries has come under serious criticism. According to the National Human Rights Commission report, in Nigeria, at least 18 cases involved extrajudicial killings of civilians; 33 involved cases of torture, inhuman and degrading treatment; and 27 involved cases of violation of the right to freedom of movement, unlawful arrests and illegal detentions, by security forces while enforcing lockdown and curfew measures.⁶ In Kenya, the Independent Policing Oversight Authority stated that 15 deaths and 31 incidents of injuries to civilians were connected to the police and senior state officials while enforcing curfew measures.⁷ In South Africa’s townships, aggressive force and brutality have been used by the South African Police Services in townships and the South African National Defence Force, even relating to instances of petty lockdown infractions; this has resulted in the deaths of at least 10 people and others sustaining injuries.⁸ In Uganda, the army and the local defense units beat, shot, and arbitrarily detained people across the country, while enforcing the country’s lockdown measures.⁹

Furthermore, freedom of expression has come under attack, with the media facing police brutality and attacks during this COVID-19 period. In Kenya, 22 journalists who were reporting on the excessive use of force by the police against citizens, and the implementation of curfew measures have been attacked since the advent of the first COVID-19 case in March.¹⁰ In Uganda, the Ugandan Human Rights Network for Journalists reported that, since the lockdown measures were implemented in March, 12 cases of assault by security forces against journalists have been recorded, which involved these officials slapping, punching, kicking, and beating the journalists.¹¹ Moreover, in Somalia, the Somali Journalists Syndicate noted that journalists in both Mogadishu and Hargeisa were arbitrarily arrested, intimidated, threatened, and detained while trying to cover COVID-19 stories.¹²

These are just a few cases demonstrating the prevalence of police brutality and other violations of human rights by law enforcement agencies during this COVID-19 period, and it is troubling to see that the people tasked with controlling efforts to curb the disease and protecting civilians at the same time, have proven to be perpetrators of these violations. This therefore raises questions about the extent of the powers of law enforcement in the conduct of their new role of curbing the spread of the disease, and the acceptable limits on the basic rights of the citizens.

Response to Human Rights Violations

The right to human dignity, right to life, and right to freedom from torture and other ill-treatment are fundamental rights, and they should not be curtailed during a time of crisis. Subduing citizens to comply with lockdown or curfew measures through the use of excessive force and brutality is therefore in direct violation of these rights. Although the accountability institutions of countries such as South Africa, Nigeria, and Kenya have stated that ongoing investigations into police and law enforcement brutality are taking place,¹³ there seems to be an accountability gap when it comes to enforcing sanctions against the perpetrators. Certain reasons for this include the absence or lack of knowledge of effective complaint channels; racial and gender discrimination; corruption; lack of clear response regulations on appropriate measures; and lack of guidelines pertaining to the investigation of allegations of violations by law enforcement officials and forces during this period.

Conclusion

The world is facing an unprecedented crisis, and human rights are key in shaping a state’s response to this pandemic. Although human rights law recognizes that state emergencies may call for certain limits to be placed on the exercise of certain human rights, there is however an obligation that these restrictions are implemented in a legal and proportionate manner. With the police and other law enforcement agencies playing a crucial role in enforcing measures to curb the spread of the disease, it is therefore very imperative that their responses are shaped by and respect human rights and the rule of law; and in order to achieve this, African states should embark on providing appropriate training for law enforcement on appropriate and legal responses as they take up this new role, and have clear



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operational guidelines or regulations that govern police and law enforcement.

¹INTERPOL-*COVID-19 Crimes*, <https://www.interpol.int/en/How-we-work/COVID-19>.

²Aljazeera, "UN raises alarm about police brutality in Covid-19 lockdowns," April 28, 2020, available at <https://www.aljazeera.com/news/2020/04/raises-alarm-police-brutality-covid-19-lockdowns-200428070216771.html>;

Human Rights Watch, Otsieno Namwaya "Kenyan Police Abuses could Undermine Coronavirus Fight," March 31, 2020, available at <https://www.hrw.org/news/2020/03/31/kenya-police-abuses-could-undermine-coronavirus-fight>; Reuters, Stanis Bujakera and Ayenat Mersie, "In parts of Africa, police are accused of excessive force amid coronavirus lockdowns", April 10, 2020, available at <https://af.reuters.com/article/idAFKCN21S0R5-OZATP>.

³Available at https://au.int/sites/default/files/treaties/36390-treaty-0011_-_african_charter_on_human_and_peoples_rights_e.pdf.

⁴Special Rapporteur on Prisons and Conditions of Detention and Policing in Africa, available at <https://www.achpr.org/specialmechanisms/detail?id=3>.

⁵*Common Standards for Policing in East Africa*, available at https://www.humanrightsinitiative.org/publications/police/common_standards_for_policing_in_east_africa.pdf, CHRI/APCOF 2010; also see <https://apcof.org/projects/previous-projects/>.

⁶National Human Rights Commission Report on Incidents of Violation of Human Rights, April 15, 2020, available at <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>; DW, *COVID-19*, Isaac Mugabi, April 20, 2020, "Security forces in Africa Brutalizing civilian under lockdown," available at <https://www.dw.com/en/covid-19-security-forces-in-africa-brutalizing-civilians-under-lockdown/a-53192163>;

ARTICLE 19, May 01, 2020 "Nigeria: COVID-19 responses should not be used to violate the right to life and intimidate journalists," available at <https://www.article19.org/resources/nigeria-covid-19-response-should-not-be-used-to-violate-the-right-to-life-and-intimidate-journalists/>; *see also* BBC, Nduka Orjinmo, June 05, 2020, "#WeareTired: Nigerian Women speak out over wave of violence."

⁷AA, June 02, 2020, "15 killed by Kenyan police enforcing COVID-19 curfew," available at <https://www.aa.com.tr/en/africa/15-killed-by-kenyan-police-enforcing-covid-19-curfew/1862803>.

⁸Atlantic Council, Katie Trippe, June 24, 2020, "Pandemic Policing: South Africa most vulnerable face a sharp increase in police-related brutality," available at <https://www.atlanticcouncil.org/blogs/africasource/pandemic-policing-south-africas-most-vulnerable-face-a-sharp-increase-in-police-related-brutality/>.

⁹Human Rights Watch, April 02, 2020, "Uganda: Respect Rights in COVID-19 Response," <https://www.hrw.org/news/2020/04/02/uganda-respect-rights-covid-19-response>.

¹⁰Human Rights Watch, Najma Abdi, May 04, 2020, "Protect Kenya's Journalists Reporting on COVID-19," available at <https://www.hrw.org/news/2020/05/04/protect-kenyas-journalists-reporting-covid-19>.

¹¹DW, Anabel Hernandez, April 24, 2020, "Ugandan journalists 'assaulted by security forces' amid coronavirus lockdowns," available at <https://www.dw.com/en/ugandan-journalists-assaulted-by-security-forces-amid-coronavirus-lockdowns/a-53235644>.

¹²Human Rights Watch, May 02, 2020, "Somalia: Spate of Arrests, Intimidation of Journalists," available at <https://www.hrw.org/news/2020/05/02/somalia-spate-arrests-intimidation-journalists>.

¹³Atlantic Council, Katie Trippe, June 24, 2020, "Pandemic Policing: South Africa most vulnerable face a sharp increase in police-related brutality," available at <https://www.atlanticcouncil.org/blogs/africasource/pandemic-policing-south-africas-most-vulnerable-face-a-sharp-increase-in-police-related-brutality/>; ARTICLE 19, "Nigeria: COVID-19 response should not be used to violate the right to life and intimidate journalists," available at <https://www.article19.org/resources/nigeria-covid-19-response-should-not-be-used-to-violate-the-right-to-life-and-intimidate-journalists/>; Human Rights Watch, April 22, 2020, "Kenya: Police Brutality During Curfew," available at <https://www.hrw.org/news/2020/04/22/kenya-police-brutality-during-curfew>.



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How Extralegal Norms in Ghana's Informal Economy Are Affecting Vulnerable Contractual Parties During the Pandemic

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COVID-19 has left countries reeling with shrinking economies amid the rising cost of mitigating the pandemic's effects. Whereas almost everything has been affected, different people, differently placed, have unequal capacities to adapt sustainably in a pandemic world. In Ghana's informal economy, extra-legal norms are raising the cost of the pandemic for vulnerable and weaker parties in contractual relations.

Informality in developing countries has deep roots and has proven resilient despite periodic optimism that it will disappear. Three reasons account for this. First, the absence of rules where they are needed. Second, a lack of enforcement where rules exist. Third, where compliance with formal rules is inconvenient or costly, some actors feel a need to operate in the shadows of the law. As Harvard University Professor Martha Chen wrote about the informal economy, "on average, earnings are low and risks are high" and employees there have no protections "to deal with the economic risks and uncertainty they face."¹ For instance, although the Ghana Labour Act of 2003 requires written contracts for non-casual workers and social security for employees, a 2014 study revealed that 70% of employment contracts in the informal economy are unwritten and only 29% of employers provide social security for their employees.² The onset of the pandemic has brought to the fore some of the challenges that parties with weak bargaining power face in the informal sector.

The Coronavirus pandemic has led to lockdowns, border closures and restrictions on a range of activities. In contractual relations, these could constitute *force majeure*—unforeseen circumstances that make the performance of contractual relations impossible or significantly alter the nature of contractual obligations. For a party to be protected by a *force majeure* plea, the agreement in which they have acquired an obligation must have a provision contemplating *force majeure* and its effect on the contract. In a sector where written contracts are not the norm, this kind of protection is non-existent. Further, even though the

common law doctrine of frustration is codified into statute in Ghana, informal contractual relations are still unlikely to be litigated in court for reasons of high cost and time.

Consequently, in the absence of adequate regulation, informal economies have evolved their own extralegal³ and makeshift norms that allocate benefits and costs to different actors. Some of these extralegal norms, such as paternal reliance of employees on employers or crude market realities in the rent industry, directly undermine formal legislation and ensure that weaker parties are saddled with deadweight losses in addition to being in a weaker position to assert their rights.

A January 2020 report by WIEGO revealed that a staggering 89% of employment in Ghana is informal.⁴ This involves a wide variety of economic activity from production to service delivery. Typical settings of Ghana's informal economy in towns and cities involve streets with over-concentrated small- and medium-scale enterprises—mobile money and food vendors, electronic shops, pharmacies, supermarkets, salons, laundry services, pubs, and mom-and-pop stores that line up along open drains. Amid honking cars in heavy traffic, pedestrians and hawkers jostle to navigate the clogged street sides during rush hours.

Take for example, Groove Café. After two years of preparation, "Kito" opened this pub in January 2020. Groove Café is located in Kotei, a university township bordering the Kwame Nkrumah University of Science and Technology. The area of Groove Café is roughly the same as a standard basketball court. Three months into operation, Kito's pub was weaving itself into the nightlife of the off-campus university community of thousands of students.

In March, the pub's growth was truncated when COVID-19 restrictions were imposed after the detection of the virus in Ghana. This handed a double whammy of misfortune to businesses like Kito's. Beyond being unable to open for several months, those businesses have been slow in returning to pre-pandemic levels since the restrictions in Ghana were relaxed.

Informal sector activities for reasons discussed earlier are unregulated. Thus, for example, requirements like the Labour Act's protections for employees—written contracts, rules on termination, social security, and clear conditions of service do not apply there. In this vein, a *force majeure*-like disruption of contractual obligations has added to the complexity of informal contractual relations. When it comes to employment, extralegal



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solutions that mimic formal sector responses like layoffs, furloughs, and pay-cuts have been used in response to the pandemic. However, because these measures are not based on contracts guided by statute, statutory protections for employees have no practical use. Kito has furloughed his employees; he explained, “they are at home but I still have to take care of them. As a business owner, you cannot ignore your employees in times like this. I cannot give them their full pay but I make sure I give them something every month.” The Labour Research and Policy Institute in Ghana has estimated that there are about 500,000 job losses directly linked to the pandemic—100,000 in the formal sector and 400,000 in the informal economy.⁵

Away from informal employment, the pandemic has heavily affected the rental industry for residential and business tenants alike. When the university closed down in March, students returned to their original homes; at the same time, businesses that rely on the student market during the school year, having endured a lockdown, have since faced low patronage. The rental industry in Ghana is one area where even though rules exist, they are not enforced. For example, a six-month statutory cap on rent advances⁶ has seen no enforcement. Regulation has ceded territory to the market, which charges anything between one and three years’ rent advance. Kito paid three years’ advance for a lease to operate. But, by the end of 2020, Groove Café will have been open for only five months out of twelve.

In spite of available legal protections, actors in the informal economy such as Kito do not utilize them. Litigation is viewed as a drastic step in informal norms. In business tenancy, tenants who want to remain over the long-term view litigation as a deal-breaker in landlord-tenant relations. Thus, weaker parties, will rather absorb losses than take a step that could unravel the power dynamic in ongoing contractual relations, given the backlash that could come from landlords.

The law aims for efficiency as a distributional goal in unperformed contracts where neither party is at fault. This is about making sure that no party benefits or suffers unfairly. The doctrine of frustration and *force majeure* provisions are some of the tools used to achieve that goal. Government’s power to regulate is also how that balance is enforced. Thus, in the absence of regulation, however, informal norms give stronger parties the edge in insulating

themselves at the expense of weaker ones as the rent industry allows. In labor, it weakens employee protections and creates patronage in what otherwise would be legal relations—a situation that has been exacerbated greatly by COVID-19 pandemic.

¹Chen, Martha, *Informality and Social Protections: Theories and Realities*, IDS BULLETIN, vol. 39, no. 2, at 1 (Institute of Development Studies, 2008); available at <https://www.ilo.org/global/topics/employment-promotion/informal-economy/lang--en/index.htm>.

²Anuwa-Amarh, Eben Tawiah *Understanding the Urban Informal Economy of Ghana* (Friedrich Ebert Stiftung 2015), available at http://www.fesghana.org/uploads/PDF/Understanding%20the%20Urban%20Informal%20Economy%20in%20Ghana_A%20Survey%20Report.pdf.

³“Extralegal” refers to activities that are not necessarily sanctioned or regulated by law, as distinguished from illegal activities, which are against the law.

⁴Baah-Boateng, William & Joann Vanek, *Informal Workers in Ghana: A Statistical Snapshot* (Women in Informal Employment: Globalizing and Organizing, 2020), available at https://www.wiego.org/sites/default/files/publications/file/WIEGO_Statistical_Brief_N21_0.pdf.

⁵Apinga, David, *COVID-19 Has Rendered 500,000 People Jobless In Ghana – TUC*, THE GHANA REPORT (July 23, 2020), available at <https://www.theghanareport.com/covid-19-has-rendered-500000-people-jobless-in-ghana-tuc/>.

⁶Rent Act of 1963 (Act 220), available at <https://acts.ghanajustice.com/actsofparliament/rent-act-1963-act-220/>.

Freedom of Expression in the time of COVID-19: The Situation in Tanzania **Anita Alfred Kyaruzi, Attorney and Member of Tanganyika Law Society & East African Law Society**

For the past five years, people in Tanzania have experienced the slow but sure degradation of their enjoyment of the freedom of expression through the enacting of various Acts by the Government. These Acts, which target the media, journalists, and the local citizens, have not only raised a number of legal issues, but have resulted in significant public protest for their repeal, especially from the media, domestic civil society organizations, and internationally. This fight has taken the form of filing cases before national courts and the East African Court of Justice (the “EACJ”). But even in light of the problems with



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this legislative attack on free speech, no one could have foreseen how far-reaching the harm from these new laws would be in the face of COVID-19.

When the National Assembly of Tanzania enacted the Media Services Act (MSA), 2016 and the Access to Information Act, 2016, among others¹, there was an outcry from journalists and media houses highlighting the negative impact these Acts would have on the practice of their profession. These two Acts posed a serious threat on journalism as they sought to provide a legal framework for the regulation of media and other similar services, and severe penalties were introduced to information holders who ‘wrongly’ released such information. Essentially, publication, distribution, and importation of allegedly seditious materials and/or any false statements, reports, or rumors were criminalized and a penalty imposed on any ‘offender,’ regardless of their intention. Newspapers such as Mawio, Mseto, Raia Mwema, Mwananchi, The Citizen, Mwanahalisi and Tanzania Daima have since been either banned for a period of time or had their licenses cancelled under the ambiguous Section 6(b) of the MSA.² As if this blow was not hard enough, the government further issued Regulations on Electronic and Postal Communications³ on 16 March 2018 through Government Notice: 133 of 16/03/2018, which were aimed at regulating all online content providers by introducing a mandatory registration requirement. Any content provider; including bloggers, social media users, online forums, online radios and televisions, is expected to register with the Tanzania Communication Regulatory Authority (TCRA).⁴ They contain an ambiguous restriction to content providers that directly and unequivocally limits the right to disseminate information, criticism of the government and the freedom of opinion.⁵ The limitations brought forth by these Regulations were alarming not only to the media community but to the everyday Tanzanian blogger, instagrammer and WhatsApp group chat user. The lack of a clear definition of what is considered “false content” or what constitutes “criticism of the government” allows the government to essentially list any content that it deems “unfit” as false and in turn illegal under the Regulations.

While the attack on free speech has gotten progressively worse since the enactment of these Acts, the current global pandemic of COVID-19 has led to a renewed attack on individuals, with increased effects on people’s freedom of

expression. It should first be noted that the Government’s response and reaction to the COVID-19 outbreak has had some positive outcomes such as curbing social unrest and public panic, as well as maintaining critical economic activity. Unfortunately, these outcomes came at the cost of the unconstitutional limitation of the freedom of expression. Also noteworthy is that as of now, the government’s policy may be summed up as: the lack of any lockdown, mandatory safety measures, reopening the borders, resumption of sports activities and the unwillingness to report numbers to the World Health Organization.⁶

The official source of COVID-19 related information in Tanzania is the Ministry of Health, Community Development, Gender, Elderly, and Children Emergency Preparedness and Response and rightly designated. However, it is only the Minister, and no other person from the ministry, who has the authority to inform the public through contacts with news media. The government further designated the Prime Minister and the Chief Medical Doctor as the only other persons allowed to inform the public on COVID-19 related matters. Moreover, the Chief Medical Doctor, the Deputy Minister of Health and others were fired by the government⁷, purportedly to assist in its fight against COVID-19. What this has meant for the local citizen is that under no circumstances are they to inform or otherwise report on these matters and worse still, the media has been curtailed from making any investigative journalism with regards to COVID-19. In an effort to ensure that silence is adhered to, there has been a frenzy of arrests of citizens who have dared to publish or make statements regarding COVID-19. On 29 April 2020, two individuals (a high-profile lawyer and a local citizen) were arbitrarily arrested by the Arusha Regional Police Commissioner for “inciting fear into the public by making false statements regarding COVID-19⁸” With regards to the high profile lawyer, Albert Msando, his remarks were made while making a donation to the media center in Kaloleni, Arusha,⁹ where he urged journalists to take action by informing citizens of the situation on the ground so as to ensure that the relevant precautions are taken by individuals.¹⁰ The local citizen, Agnes Ndimu Shinji, was alleged to have sent information on a private WhatsApp group claiming that a reporter from Tanzania Broadcasting Corporation had contracted COVID-19 and subsequently died. Both these individuals simply sought to share information they knew or thought to have been genuine as a warning to the public to illicit better precautionary measures among individual citizens. While no harm was intended nor caused by their information, the aforementioned



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acts, were used to justify their arrests. Although they were not officially charged, the result has been the curtailing of any reporting on the effect, spread, or any other COVID-19 related news from media houses or even personal chats for fear of facing repercussions from the government.

Despite the EACJ Decision of 28 March 2019¹¹ declaring various sections of the MSA as violating the Treaty for the Establishment of the East African Community, Articles 6(d) and 7(2) and ordering the government of Tanzania to take all necessary measures to ensure its compliance, nothing has been done to date to enforce the decision. The freedom of expression is in a dire state and in light of COVID-19, violating each Tanzanian citizen's basic rights.

¹Other Acts enacted by the government affecting the freedom of expression also include: The Cybercrimes Act, 2015 and The Statistics Act, 2015.

²Available on the THRDC's press statement at <https://thrdc.or.tz/wp-content/uploads/2020/06/PRESS-RELEASE-ON-THE-CANCELLATION-OF-TANZANIA-DAIMA%E2%80%99s-LICENCE.pdf>

³Available at <https://crm.misa.org/upload/web/supp-gn-no-133-16-03-2018-epoca-online-content-regulations-2018.pdf>

⁴*See id.*

⁵*Id.* Regulation 12(l)(iii) calls for the prohibition from publishing 'false content which is likely to mislead or deceive the public' unless publication is preceded by a statement that the content is not factual.

⁶There was no internal lockdown in Tanzania (i.e. curfews or limiting movement of people) since COVID-19 was reported; the borders were on lockdown but as of the time of writing this paper, they were opened despite the spike in cases of COVID in neighbouring countries and abroad as well; public sports events such as football matches have also resumed since July; and there are no mandatory safety measures being observed anymore such as the requirement to wear masks or sanitizing hands. Some businesses and public places of their own accord have been requiring people to sanitize before entering their premises.

⁷Available at <https://www.thecitizen.co.tz/news/Fired-Tanzanian-Health-deputy-minister-Ndugulile/1840340-5555016-3ckditz/index.html>

⁸Press Statement made by the deputy police commissioner of Arusha, ACP Koka Moita, on 30th April 2020.

⁹He was donating face masks and sanitizing liquid for journalists to safely carry out their jobs.

¹⁰Available at <https://www.jamiiforums.com/threads/albert-msando-amwaga-vifaa-vya-corona-kwa-wanahabari-arusha-adai-hali-ni-mbaya-sana.1720989/#post-35156868>

¹¹Available at <https://www.eacj.org/?cases=reference-no-2-of-2017-media-council-of-tanzania-legal-and-human-rights-centre-tanzania-human-rights-defenders-coalition-vs-the-attorney-general-of-the-united-republic-of-tanzania>

Of COVID-19 and Employment Law in Uganda Ivan Allan Ojakol, Lawyer and Advocate of the High Court of the Republic of Uganda.

With the advent of COVID-19 and its classification as a pandemic by the World Health Organization, several unique employment issues arose and more continue to arise, keeping employers on their toes and employees worried. Commercial lawyers actively in practice the world over have been bombarded by requests from their clients to provide them with, among others, legal advice on the restructuring of their employment workforce due to the way COVID-19 has affected their methods of work and carrying out business.

Employers must be extremely cautious to avoid, or at least limit, financial exposure, as Uganda's Industrial Court recently has been awarding hefty awards against employers found guilty of breaching their employment obligations under the legal employment regime of Uganda. Lawyers have had to creatively advise their clients on many employment issues. This article addresses some of the novel employment issues that have arisen and the possible legal solutions that many commercial lawyers have provided to their corporate clients in light of the COVID-19 pandemic according to the Employment Act,¹ the Public Health Act,² the Occupational Health & Safety Act³, and relevant employment regulations⁴ and case law.

Leave

Under Section 54 of the Employment Act, employees are entitled to leave totaling up to 21 days annually. Due to the economic hardships occasioned by COVID-19, employers have increasingly explored the option of employees being furloughed with reduced/ part-payment/ postponed payment or unpaid leave. However, it is paramount to note that all these options can only be reached with a meeting of the minds of the parties;



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any unilateral decisions by employer will result in action within the Industrial Court of Uganda⁵, for example an action for unfair termination, as provided for in the Employment Act, 2006.

Termination

There have been some cases of employees not agreeing with the aforementioned leave options. As a result, we have seen employers explore the option of termination or laying off these workers due to the burden they present on balance sheets in these precarious times.

Employers are now taking advantage of Section 40 of the Employment Act, which provides that an employer has a duty to provide work. However, the same section goes on to state that this duty does not apply where a contract is frustrated or its performance is suspended or prevented by an act of God.⁶ The Employment Act further states that an employer is not mandated to provide work where there are interruptions to his or her business activities caused by natural calamities or economic or technological reasons that result in a shortage of work.⁷ COVID-19 clearly falls within the ambit of these circumstances.

An interesting decision of the Industrial Court observed that:

The employer has an inherent right to restructure posts in his/her organization as long as the employees are aware of the process....” and that “the fact that one is occupying a certain position does not exclude the employer from advertising the same position if the said employer seeks more qualification or if the same post is being restructured....⁸

Previously, the court emphasized that, in the event of collective termination of ten or more employees for reasons of an economic, technological, and structural or similar nature, the same guidance provided for under Section 81 of the Employment Act also applies when an employer intends to terminate one employee for the same reasons.⁹ Therefore, an employer should follow the same guidelines under Section 81 when terminating one employee.

Collective Termination

Due to the large numbers of employees that are being laid off by employers, “Collective Terminations” are in vogue. If more than ten employees are being laid off, they can be collectively terminated. Collective termination is provided for under Section 81 of the Employment Act, and, over a period of three months, an employer may collectively terminate for economic, structural, technological, or similar reasons.

Collective termination can be justified for economic reasons, such as restructuring, business profile change, or any other valid reasons unrelated to employees.¹⁰ Under Regulation 44 of the Employment Regulations, a special procedure is provided in order to effect this type of termination, including the notification of the labor union representative (where a labor union exists); or, where no such union exists, the employer is mandated to give the notice to a labor officer. This notice should clearly state: the names and the job specifications of the employees to be collectively terminated, a valid reason for their termination, and the period over which the terminations are to be carried out.¹¹ This notice should be issued within a period at least of four weeks before the first of the terminations.¹²

Occupational Health and Safety

The Occupational Health and Safety Act obliges companies and employers in general to take reasonable measures to create and maintain a safe and healthy working environment.¹³ With COVID-19, this obligation seems to have been enhanced voluntarily; with many businesses going remote, adding shifts to reduce physical contact among employees, and adopting World Health Organization and Ministry of Health Guidelines and Protocols, such as implementing hand-washing and sanitary measures. The recently passed Public Health (COVID-19) Rules, 2020 SI No. 52 of 2020, place an obligation on employers to immediately notify a medical officer when an employee is infected by COVID-19 or order such employee to seek medical treatment.¹⁴

Conclusion

As commercial legal practitioners, we ought to advise our clients to diligently follow the appropriate procedures when effecting restructurings, even in these difficult times, lest they risk financial exposure when sued; this is especially relevant insofar as the Industrial Court of Uganda is increasingly



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becoming active towards employers caught in violation of the employment laws. As the courts open up gradually, employment disputes are expected to be at an all-time high and employers and lawyers alike should brace themselves. Employers should pay heed to the press statement issued on the 20th of March, 2020, by the Minister of State for Labour, Employment and Industrial Relations where he said that employers should handle these issues as delicately and sensitively as much as possible.¹⁵

¹The Employment Act, Laws of Uganda (2006), available at <https://ulii.org/system/files/legislation/act/2006/2006/employment%20Act%202006.pdf>.

²The Public Health Act, Laws of Uganda (1935), available at <https://ulii.org/ug/legislation/consolidated-act/281>.

³The Occupational Safety and Health Act, Laws of Uganda (2006), available at <https://ulii.org/system/files/legislation/act/2006/2006/occupational%20safety%20and%20Health%20Act%202006.pdf>

⁴See Employment Regulations of 2011 (Statutory Instruments 2011 No. 61), available at <http://ugandanlawyer.com/wp-content/uploads/2019/03/Employment-regulations-2011.pdf>

⁵See, *Employment Act, Section 71* and *Barclays Bank of Uganda V Godfrey Mubiru Civil Appeal No. 1 of 1998* available at <https://ulii.org/ug/judgment/supreme-court-uganda/1999/22>

⁶See Employment Act, Section 40(2).

⁷See *id.*, Section 40(3).

⁸*Nankabirwa v. The Board of Governors St. Kizito Technical Institute Kitovu*, L.D.C 60/2016, available at <https://ulii.org/ug/judgment/industrial-court/2016/15>.

⁹*Abigaba Lwanga v. Bank of Uganda* L.D.C No. 142/2014, available at <https://ulii.org/ug/judgment/industrial-court-uganda/2017/24>.

¹⁰Employment Act, Section 81.

¹¹Employment Act, Section 81 (1) (a) and Regulation 44 (a).

¹²Employment Act, Section 81 (1) (a).

¹³Occupational Health & Safety Act, 2006, Section 13.

¹⁴Rule 3.

¹⁵Available at http://mglsd.go.ug/Press/Press%20Statement%20By%20Hon%20Rukutana%20Mwesigwa%20on%20Labour%20and%20Industrial%20Relations%20Issues%20in%20Light%20of%20Covid%2019.pdf?fbclid=IwAR3zTwUSOWm-Yb0f_8_juLV4ISYIUYUs9QSyZFIBc9Ovat7JoD8F-Jl7So8.

The Rights and Obligations of Employers and Employees in Zambia During the COVID-19 Pandemic **Kasanga Ngulube, Legal Consultant at Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH**

COVID-19 has been declared a public health emergency by the World Health Organization. The number of confirmed cases has skyrocketed throughout the world and many lives have been lost.¹ The economic and safety impact of the pandemic has confounded employers and employees in their ongoing efforts to make progress in the work environment. This article examines the impact caused to the work environment in light of: (a) the sacrosanct nature of the employment contract and adherence to contractual obligations embedded therein; (b) safety measures to be followed and; (c) general employment conditions in Zambia.

Health and Safety

In Zambia, employers and employees have an obligation to ensure the health and safety of their workplace under the Factories Act² and the Occupational Health and Safety Act.³ The Factories Act requires under section 19 for employers to provide a clean working environment and adequate ventilation. The Act further stipulates under section 20 that the employer prevents overcrowding in the workplace. This provides a legal basis upon which factory employees can feel confident their safety is guaranteed whilst operating in the new norm of COVID-19 to better ensure regulations such as social distancing, the regular disinfection of buildings, and the prevention of constant human-to-human contact.

The Occupational Health and Safety Act (the “OHS Act”) provides that it is a duty of the employer to ensure the health, safety, and welfare of employees in the workplace; employers must place and maintain an employee in an occupational environment adapted to the employee's physical, physiological, and psychological ability. Furthermore, employers must provide a work environment that is safe and without any risk to the health and safety of the employees at their workplace and prepare a health and safety policy concerning the protection of the health and safety of the employees, including a description of the organization and arrangements for carrying out reviews to that policy.⁴ In addition, the employer must provide systems of work that are, so far as is reasonably practicable, safe and without any risks to human health and maintain them in that



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condition. As in the Factories Act, the OSHA mandates an employer ensure that workers are comfortable in the workplace to better ensure adaptability to newly emerging circumstances. Furthermore, employers under section 10 the Public Health Act⁵ are mandated to become more aware of any person residing on the premises of the employer who is suffering from any notifiable infectious disease and immediately give notice thereof to a Medical Officer of Health or Local Authority.

The burden to ensure the workplace is conducive and safe does not only fall on the employer; employees must also take reasonable care for their own health and safety and that of other individuals who may be affected by their acts or omissions at the workplace.⁶

Unilateral Variation of a Contract of Employment

Owing to the adverse economic impacts that have arisen because of the pandemic, employers are faced with increased challenges in meeting employee (financial) contractual obligations. In most cases, employers have been seen doing away with financial obligations towards their employees without the consent from such employees in a bid to survive and keep their businesses afloat. However, this is not legally permissible, as it amounts to the unilateral variation of a contract of employment. As with any other contract, an employment contract can only be changed with the agreement of both parties. If a variation is deemed necessary, employers are obliged to ensure that proper procedures are followed. Instructive on this position is Section 55 of the Employment Code Act, which provides that an employer is considered to have terminated a contract of employment of an employee because of redundancy if the termination is by way of the adverse alteration of the employee's conditions of service that the employee has not consented to. To further cement this position, the decision in the case of *Sililo v Mend-a-Bath*⁷ is instructive. The court there held that

an employer is not at liberty to alter an employee's terms and conditions of employment to the employee's detriment without the agreement or concurrence of the employee. A unilateral alteration of the conditions of service, which negatively impacts on the employee, amounts to breach and wrongful termination of the contract of

employment." Employers should therefore, consider the importance of the employment contract and see to it that any variation is done through the mutual understanding of all parties concerned.

Discrimination

In many countries, human rights laws and employment regulations protect employees from discrimination based on prohibited grounds such as status, sex, race, tribe, and health. Employers are therefore obliged to take steps to guarantee that no employee is subject to discrimination because of a misconception that they are the carrier of a communicable disease, in this case, COVID-19. In Zambia, treatment of any employee in such a manner can be considered a ground for discrimination under Section 5 of the Employment Code Act and warrant legal action.⁸

Sick Leave Requirements

Employees may be entitled to paid sick leave under their employment contract, legislative provisions, or governmental policies. Section 38 of the Employment Code Act provides that "an employee who is unable to perform their normal duties due to illness or injury not occasioned by the employee's default shall notify the employer of the illness...and proceed on sick leave on production of a medical certificate from health practitioner." Considering the communicable nature of COVID-19, it is recommended that employers bypass the requirement of a medical certificate requirement and allow employees who have symptoms of COVID-19 to be on leave for the duration of the quarantine period (fourteen days). Furthermore, under Section 39, employees are entitled to compassionate leave with full pay for a period of at least twelve days in a calendar year where that employee "has...a justifiable compassionate ground." As COVID-19 has affected multiple households, it is advisable that employers make use of this ground to ensure employees are able to take care of their households affected by COVID-19 on compassionate grounds. This would ensure employees assume their roles in business entities without worry, thereby increasing efficiency.

Conclusion

Owing to the significant change of operations in the employment environment arising from the COVID-19 pandemic, employers and employees have had to embrace a



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SECTION II – EURASIA RUSSIA

Addressing COVID-19 related Real Estate Disputes Pursuant to the Laws of Russia Andrey Zelenin, Managing Partner, Lidings, and Julia Ipatova)

new wave of standards surrounding the safety and health of their work environments. In Zambia, the Ministry of Health has issued guidance on how this can be done;⁹ however, this article has illustrated already existing obligations for employers and employees in the work environment that can be used to combat the spread of COVID-19 and ensure the safety of persons operating therein. The article has further emphasized the fundamental nature of the employment contract and employment conditions of service and the need for employers to adhere to such obligations. Furthermore, the article has highlighted the need to avoid both the stigmatisation of persons with, or who have recovered from, COVID-19 and dismissing them from employment on such grounds.

¹See WHO Coronavirus Disease (COVID-19) Dashboard, available at <https://COVID19.who.int/>.

²Chapter 441 of the Laws of Zambia (1966).

³Act No. 36 of 2010.

⁴Section 16 OHSA.

⁵Section 16 Chapter 295 of the Laws of Zambia.

⁶*Id.* at section 17.

⁷[2017] ZMSC 54, available at <https://zambialii.org/node/12742/revisions/12985/view>.

⁸No.3 of 2019.

⁹Public Health (COVID-19 Prevention, Containment and Treatment) Regulations, 2020 (published as Statutory Instrument 77 of 2020), available at <https://zimlil.org/zw/zw/subleg-consol/S.%20I%202.pdf>.

Covid-19 in Russia impacted legal relationships in a solid number of fields and real estate is not an exemption. The main purpose of the article is to clarify which amendments were brought into Russian legislation and case law as a result of the pandemic.

Protection for tenants

Right of tenant to seek for an abatement

One of the new federal laws was adopted granting tenants protective mechanisms. Tenants from then on became entitled to request a rent payment reduction for a certain period of 2020 following the state decree “On high-alert or emergency”. The Supreme Court of the Russian Federation clarified in its review¹ that the rent shall be decreased from the moment when it became impossible for the tenant to use a property for its intended purpose.

Another relevant law, in turn, vested tenants belonging to small or mid-sized business with a right to terminate the lease agreement if the landlord refused to decrease rent, and the subsequent amendment to the contract was not concluded. In one of the disputes the court confirmed² the tenant’s right to terminate a lease agreement because the landlord refused to amend it. In an analogous case another court, however, rejected³ the tenant in its right to terminate the agreement because he did not seek an abatement in advance. Besides, a premise in question was not used by the tenant for the initially agreed purpose. The case is still to be heard at the appellate court so the judgement might be overturned.

Right of tenant to seek a deferral

In order to mitigate the effects of the pandemic, tenants from impacted areas of business (except for those renting residential premises) can also opt for deferral. In that case, it is not necessary for a tenant to prove that property could not be used for an agreed purpose. However, if it is proven by the landlord



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that the tenant was not affected by restrictive measures, then the former is entitled to refuse to defer a payment. The provision is applicable to disputes where the latter requests a deferral but it is proven that he or she used rented property during the lockdown.

Force majeure and frustration of lease

Under the Russian civil law force majeure is a ground to avoid liability for the breach of contract, but its existence is decided by the court on a case by case basis. However, *force majeure* does not terminate an obligation if its execution is still possible after *force majeure* ceased to exist. In the aftermath of lockdown, the case law on termination of lease contracts has flourished. One of the main pitfalls in such disputes is how to determine appropriate grounds to claim *force majeure*.

Force majeure is not a considerable excuse for a delay in rent payment if the payment shall have been executed before the restrictive measures were implemented.

In one of the disputes⁴ the tenant claimed that he shall not be subjected to a penalty for delayed rent payment as the delay had been caused by the pandemic. The Court did not agree with the argument as the rent payment due date was 3 months before the restrictions had been implemented. Besides, the absence of money could not be recognized as a *force majeure per se*. Therefore, the claimant shall not be exempted from liability.

Besides, the Supreme Court follows the approach that Covid-19 can be the basis for termination or amendment of lease contracts due to frustration. But it is also to be decided by the court on a case by case basis: "A tenant cannot terminate a rent agreement due to a substantial change in circumstances if the parties entered into the agreement during the pandemic."

In the dispute⁵ concerned, a tenant tried to terminate a rent agreement and receive a security deposit since the premises were not transferred by the landlord and circumstances substantially changed due to the pandemic. The claim was dismissed because, in the court's view, the tenant should have taken into account possible risks when signing the agreement in times of pandemic, so the deposit was secured as a payment for repudiation of the agreement.

Moratorium for initiation of bankruptcy proceedings

One of the amendments made to the national Insolvency Act is a moratorium for initiation of bankruptcy proceedings by the creditors against debtors from impacted sectors. Debtors, however, can initiate the proceedings voluntarily by themselves. To some extent, the moratorium vested tenants with additional protection. In a recent case the court refused⁶ to collect a penalty for delayed rent payment by a tenant because the latter was undergoing supervision and, under the new amendments, was protected from financial sanctions for improper performance of obligations.

¹Review of the Supreme Court of the Russian Federation on 30 April 2020 №2, question 6.

²Decision of the Arbitration Court of the Republic of Karelia on 14 August 2020 on the case №A26-4576/2020.

³Decision of the Arbitration Court of the Novosibirsk region on 10 August 2020 on the case №A45-11448/2020.

⁴Decision of the Arbitration Court of the Yaroslavl Region on 27 August 2020 on the case №A82-9596/2020.

⁵Decision of the Arbitration Court of the Bryansk region on 17 August 2020 on the case №A09-5926/2020.

⁶Decision of the Arbitration Court of Sverdlovsk region on 24 August 2020 on the case № A60-28212/2020.

**Addressing COVID-19 Pursuant to the Laws of Ukraine
Timur Bondaryev, Managing Partner, Head of Real Estate
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**Alesya Pavlynska, Counsel of Labor and Corporate/M&A
Oksana Karel, Counsel, Co-Head of International
Litigation and Arbitration**

Following declaration of COVID-19 as a pandemic by the World Health Organization, on 11 March 2020, the Cabinet of Ministers of Ukraine passed Ruling No. 211 aimed to prevent the spread of COVID-19 throughout the territory of Ukraine ("Ruling") whereby the nationwide quarantine was introduced.¹ In the days to follow the Cabinet of Ministers would limit and ultimately prohibit crossing of state border. The Ruling was changed on several occasions to reflect the spread of the disease and the associated developments but as of the date of this publication the quarantine, however modified, remains in place throughout the country (prolonged till 28 February 2021²) and so do the legislative changes that were introduced to be applied provisionally pending the quarantine.



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General/Commercial

With the Ruling and introduction of quarantine, a substantial number of businesses in Ukraine, primarily small and middle-sized ones, were prohibited from further operation, at least in their existing form. The closure of operations immediately triggered an inability to perform current obligations of various sorts. Thus, the first changes that came about added quarantine into the list of possible *force majeure* events.³ At the same time, and despite the changes, the spread of COVID-19 and quarantine by themselves do not automatically provide exemption from contractual liability; a party referring to COVID-19 or quarantine in their contractual relations still has to prove that either was extraordinary, unexpected, beyond parties' control and had a direct causal link to the non-performance.

On 30 March 2020, the Ukrainian Parliament passed further changes applicable for the duration of the quarantine, covering lease, taxation, dispute resolution and labor relations (as amended subsequently):⁴ These included:

- A "grace period" for tenants whereby, pending quarantine, they may demand temporary reduction of lease payments based on part 4, Article 762 of the Civil Code of Ukraine. The reduction is subject to proof that the existing restrictions made it impossible to use the leased premises in the ordinary intended way and the latter are effectively not being used or the use is limited;⁵
- Extension of limitation periods for the duration of the quarantine;⁶
- Prohibition on increasing interest rates under a loan agreement;⁷ subsequently the Parliament decreed that no fines shall accrue for delayed payment under the loan if the delay took place pending quarantine or 30 days after its lifting;⁸
- Participation in court hearings for civil, commercial, and administrative cases by videoconference;⁹
- Extension of procedural deadlines in civil, commercial, and administrative proceedings.¹⁰

The Ukrainian Parliament has also passed major changes to insolvency-related legislation, providing a *de facto*

moratorium on initiation of any insolvency proceedings in the case the underlying claims matured on or after 12 March 2020.¹¹ The moratorium is expected to be in force for the whole duration of quarantine, despite now substantially eased restrictions, and for 90 days after it is lifted.¹² The law gained legal force on 17 October 2020.¹³

Employment

Although the prohibition of operations declared by the Ruling did not affect all businesses (mainly the companies accepting visitors), initially most employers closed offices in order to prevent the spread of COVID-19 and/or due to the impossibility for employees to come to work as public transport was shut down. However, as mentioned above, the Parliament reacted swiftly and introduced substantial changes into the labor legislation ensuring protection of employees and adherence to the quarantine requirements imposed by the CMU to counteract the spread of COVID-19¹⁴ ("Quarantine Laws").

After the gradual lifting of mentioned restrictions in May–July 2020, most businesses were able to return to work at offices. There still exist a number of sanitary requirements such as keeping sanitizers and wearing masks in offices, but they vary depending on the type of business (e.g., there are additional restrictions for restaurants, cinemas, beauty salons etc.). Restrictions may also vary depending on the region ("*oblast*"). Though with public transport it has become much easier to get to work, some employers that switched to other working modes still prefer them to ordinary office routine now.

In view of the latest changes, employers and employees can take advantage of the following options during the quarantine:

Remote work

Remote (home-based) work was the primary option used by employers in the first days of the announced quarantine. Unfortunately, such work was not regulated by laws at the beginning of the quarantine in Ukraine, but was later envisaged in the Quarantine Laws.

No employee's consent is required for remote work during quarantine (employer's order suffices for its formalization). But under "usual circumstances" remote work is formalized on the basis of a written employment agreement.¹⁵ Given the difficult epidemiological situation in the country and the world, separate



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regulations on remote work should be developed for the future (with detailed rules on communication and monitoring performance, cybersecurity measures, labor safety etc.). As of the time of writing, the Draft Law No. 4051 is pending to be adopted by the Parliament of Ukraine (passed in the first reading procedure) to refine remote work and home-based work regulations. If no remote work is possible, it is worthwhile considering other options.

Flexible working hours

An additional option is to switch to flexible working hours. This can be used both in combination with remote work and separately for employees remaining in the office. Under such working conditions, it is possible to set fixed working hours and variable ones. However, the established working hours standard for a certain accounting period (day, week, month, etc.) must be observed.¹⁶

Leave

If possible and requested by an employee, (s)he may be granted a leave, either paid (if there are unused days of such leave) or unpaid. Law No. 530-IX has stipulated the possibility of granting unpaid leaves to employees for the entire quarantine period (previously, unpaid leaves could be used for up to 15 calendar days per calendar year).¹⁷

Shutdown

If there is no work at all that could be entrusted to employees for the duration of quarantine or a dangerous production situation, an employer has the right to declare a shutdown by its relevant order. In this case, no consent of employees is required, and downtime continues until the work is resumed or the dangerous production situation ceases to exist. In this case, an employee retains the right to be paid for the downtime period in the amount of at least 2/3 of his/her fixed salary (wage).¹⁸

Self-isolation and sick leaves

According to the recent legislative changes, the grounds for issuing a sick leave certificate are not only an established illness, but also the period of stay in healthcare institutions as well as self-isolation under medical supervision due to COVID-19¹⁹. Such leaves are paid under the general

procedure, but the amount payable is 50% of average earnings, regardless of seniority.

Thus, even if the type of work does not allow transferring employees to remote work, employers and employees still have options for the safe organization of work in quarantine. However, many employers are already compelled to take more radical steps, such as transferring their employees to part-time work or even staff redundancies.

Part-time work

Transition to part-time work is possible either (1) at an employee's request or (2) at an employer's initiative.²⁰ If an employee does not agree to the changes, the only way to implement them is the second option, i.e., the procedure for changing key employment terms. However, contrary to expectations of businesses, no adjustments were made in the normal procedure for implementing such changes during quarantine. This means that the procedure still requires a long time, as employers must notify their employees of such changes at least 2 months before they are implemented.

Moreover, such changes should be associated with changes in production and labor organization (i.e. the mere fact of quarantine, which did not cause the relevant changes, may not be the basis for reducing working hours).

It is the second option or the use of unpaid leave that allows employers from among small or medium-sized businesses to apply to the Employment Center to receive partial unemployment benefits for such employees from the Social Insurance Fund. The simplified procedure provides for payments only for the employment reduction period during quarantine and the next 90 calendar days.²¹ Until recently, these payments were practically the only financial benefits the Ukrainian state was providing due to quarantine (maximum amount approximately 160 EUR per employee monthly). Recent legislative changes also guarantee one-time pecuniary aid²² to insured employees and private entrepreneurs, as well as employers who meet certain criteria and suffer negative consequences due to intensified anti-epidemic measures in the period December 2020 – January 2021.



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Redundancy/Layoff

Should the need arise to lay off part or all of the staff, the employer is obliged to consult with trade unions, warn employees at least 2 months in advance, notify the Employment Center of the massive lay-off, make severance pays etc.²³

Thus, though currently Ukrainian employees and employers face certain challenges due to the pandemic, recent legislative changes provide additional options and more flexibility to find an appropriate solution. Generally, Ukrainian employers do not feel supported by the State in connection with the quarantine, as the adopted relaxations relate mainly to the non-application of penalties, fines for certain types of tax violations, and a ban on certain types of inspections.

¹Ruling on preventing the spread in the territory of Ukraine of acute respiratory infection COVID-19, caused by SARS-CoV-2, No. 211 (March 11, 2020), <https://zakon.rada.gov.ua/laws/show/211-2020-%D0%BF>

²Ruling on the establishment of quarantine and the introduction of restrictive anti-epidemic measures in order to prevent the spread of acute respiratory infection COVID-19 caused by SARS-CoV-2 in the territory of Ukraine, No. 1236 (December 09, 2020), <https://zakon.rada.gov.ua/laws/show/1236-2020-%D0%BF#n5>

³Law on changes to some legislative acts to prevent appearance and spread of coronavirus disease (COVID-19), No. 530-IX (March 17, 2020) ("Law No. 530-IX"), <https://zakon.rada.gov.ua/laws/show/530-20/ed20200418>

⁴Law on changes to some legislative acts of Ukraine to ensure additional social and economic guarantees in view of coronavirus disease (COVID-19) spread, No. 540-IX (March 30, 2020), <https://zakon.rada.gov.ua/laws/show/540-20/ed20200624>

⁵Civil Code of Ukraine, No. 435-IV (January 16, 2003), <https://zakon.rada.gov.ua/laws/show/435-15>

⁶*Id.*

⁷*Id.*

⁸Law on changes to Commercial Code of Ukraine and Civil Code of Ukraine on non-accrual of penalties under loans pending quarantine introduced to prevent the spread of coronavirus disease (COVID-19) in the territory of Ukraine, No. 691-IX (June 16, 2020), <https://zakon.rada.gov.ua/laws/show/691-20>

⁹Code of Administrative Justice of Ukraine, No. 2747-IV (July 06, 2005), <https://zakon.rada.gov.ua/laws/show/2747-15/ed20200718> ; Civil Procedure Code, No. 1618-IV (March 18, 2004), <https://zakon.rada.gov.ua/laws/show/1618-15>; Commercial Procedure Code, No. 1798-XII (Nov. 06, 1991), <https://zakon.rada.gov.ua/laws/show/1798-12> The novelty provides that a party may participate in a court hearing on-line from any location (previously such on-line participation was possible only from the premises of a third court). Authentication is done through a qualified electronic signature on the state-managed on-line platform. Another feature widely used by the parties is electronic filing – the feature was technically in place for a few years but was not very popular among courts (e-documents were either not accepted or a duplicate in hard copy had to be sent later on as well) as the applicable legislation has not fully entered into force yet. With the quarantine both parties and courts have been widely exploiting electronic filing.

¹⁰*Id.*

¹¹Law on changes to Bankruptcy Procedures Code of Ukraine, No. 728-IX (June 18, 2020), <https://zakon.rada.gov.ua/laws/show/728-IX>

¹²*Id.*

¹³*Id.*

¹⁴Law on changes to some legislative acts to prevent appearance and spread of coronavirus disease (COVID-19), No. 530-IX (March 17, 2020), <https://zakon.rada.gov.ua/laws/show/530-20/ed20200418> and Law on changes to some legislative acts of Ukraine to ensure additional social and economic guarantees in view of coronavirus disease (COVID-19) spread, No. 540-IX (March 30, 2020), <https://zakon.rada.gov.ua/laws/show/540-20/ed20200624>

¹⁵Labor Code of Ukraine, No. 322-VIII (December 10, 1972), <https://zakon.rada.gov.ua/laws/show/322-08> amended by Law on changes to some legislative acts of Ukraine to ensure additional social and economic guarantees in view of coronavirus disease (COVID-19) spread, No. 540-IX (March 30, 2020), <https://zakon.rada.gov.ua/laws/show/540-20/ed20200624>

¹⁶*Id.*

¹⁷Law on vacations, No. 504/96-BP (November 15, 1996), <https://zakon.rada.gov.ua/laws/show/504/96-%D0%B2%D1%80> amended by Law on changes to some legislative acts to prevent appearance and spread of coronavirus disease (COVID-19), No. 530-IX (March 17, 2020), <https://zakon.rada.gov.ua/laws/show/530-20/ed20200418>



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SECTION III – EUROPE

France's General State of Emergency Laws to Confront COVID-19, Current Recommended Measures and the Back to School Protocol **Nathania Ustun**

¹⁸Labor Code of Ukraine, No. 322-VIII (December 10, 1972), <https://zakon.rada.gov.ua/laws/show/322-08> amended by Law on changes to some legislative acts of Ukraine to ensure additional social and economic guarantees in view of coronavirus disease (COVID-19) spread, No. 540-IX (March 30, 2020), <https://zakon.rada.gov.ua/laws/show/540-20/ed20200624>

¹⁹Law on changes to the Tax Code of Ukraine and other laws of Ukraine concerning support to taxpayers for the period of validity of measures aimed at preventing the occurrence and spread of coronavirus disease (COVID-19), No. 533 (March 17, 2020), <https://zakon.rada.gov.ua/laws/show/533-20>

²⁰Labor Code of Ukraine, No. 322-VIII (December 10, 1972), <https://zakon.rada.gov.ua/laws/show/322-08>

²¹Law on employment, No. 5067-VI (July 05, 2012), <https://zakon.rada.gov.ua/laws/show/5067-17> amended by Law on changes to some legislative acts of Ukraine to ensure additional social and economic guarantees in view of coronavirus disease (COVID-19) spread, No. 540-IX (March 30, 2020), <https://zakon.rada.gov.ua/laws/show/540-20/ed20200624>

²²Law on social support of insured persons and business entities for the period of implementation of restrictive anti-epidemic measures introduced to prevent the spread of acute respiratory disease COVID-19 caused by coronavirus SARS-CoV-2 in Ukraine, No. 1071-IX (December 04, 2020), <https://zakon.rada.gov.ua/laws/show/1071-20>

²³Labor Code of Ukraine, No. 322-VIII (December 10, 1972), <https://zakon.rada.gov.ua/laws/show/322-08>

France was one of the European countries most hard hit by the COVID 19 pandemic. Subsequently, it has faced a severe health crisis, employment downturn, and socio-political unrest.

COVID-19 Numbers: Cases and Deaths

As of 22 January 2021, France had suffered 71,998 deaths and 2,987,965 confirmed cases.¹ Out of a national population of 65,085,383 there has been 45,719 total cases per 1 million of the population, and 1102 deaths per 1 million of the population.² While France was very hard hit at the beginning of the pandemic, it currently ranks as 21st worldwide for new deaths, having had the pandemic somewhat under control in summer 2020, but experiencing a massive second wave in the autumn. The French Government in July 2020 put out a press release stating that the spread of COVID 19 was on the rise.³ This increase, described as “moderate” was explained by the insufficient number of asymptomatic patients obtaining COVID 19 tests, and thus spreading the virus.⁴

COVID-19 State of Emergency Laws and Ordonnances:

Confronted in March 2020 by the outbreak of this novel virus, the French Government acted by imposing a State of Emergency on the entirety of the French territory, as of March 24, 2020 with the publication of the law of March 23, 2020 on the State of Emergency due to a health crisis.⁵ The law of May 11, 2020, extended and kept in place the state of emergency and restrictions until July 10, 2020.⁶

In the context of the implementation of the law of March 23, 2020, over 25 ordonnances were put in place by the executive power and published in the JORF of March 26, 2020.⁷

The main ordonnances were the following:

Ordonnance n° 2020-306 of 25 March 2020: relative to the extension of time limits during the period of health emergency and the adaptation of procedures during the same period



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(‘preceded by its report to the President of the Republic, hereinafter ‘order of the time limits’).⁸

Ordonnance n° 2020-315 of 25 March 2020: relative to the financial conditions for terminating certain tourist travel and holiday contracts in the event of exceptional and unavoidable circumstances of force majeure (preceded by its report to the President of the Republic, hereinafter ‘the cancellation of package travel order’).⁹

Ordonnance n° 2020-316 of 25 March 2020: relative to the payment of rent, water, gas and electricity bills for the business premises of companies whose activity is affected by the spread of the COVID 19 epidemic (preceded by its report to the President of the Republic, hereinafter the ‘rent, water, gas, and electricity order’).¹⁰

Ordonnance n° 2020-317 of 25 March 2020: relative to the creation of a solidarity fund for companies particularly affected by the economic, financial, and social consequences of the spread of the COVID-19 epidemic and the measures taken to limit this spread (preceded by its report of the Republic, hereinafter the ‘solidarity fund order’).¹¹

Ordonnance n° 2020-319 of 25 March 2020: relative to various measures for adapting the rules for the award, procedure or execution of contracts subject to the public procurement code and public contracts that do not fall under it during the health crisis caused by the COVID-19 epidemic (preceded by its report to the President of the Republic, hereinafter the ‘public contracts’ order).¹²

Current Recommended Measures and the Back to School Protocol

Following the lifting of the quarantine in France and the most strident requirements, as of July 20, 2020 the recommendations of the French Ministry of Health¹³ continued to be: (1) wearing a mask in public enclosed areas, and areas considered as essential by the prefects in each department, except for dwelling houses;¹⁴ and (2) anyone showing symptoms of COVID 19 must get tested, self-quarantine, and inform all contacts.¹⁵

The French Government has created an up-to-date centralized website with recommendations, statistics, and information on the national state of COVID 19, with

resources to access if someone believes they have contracted the virus.¹⁶ Further, the Government regularly posts COVID health and social prescriptions.¹⁷

The COVID 19 protocol in place at the height of the pandemic¹⁸ has been relaxed for back to school, however strict sanitary and health measures remain.

- Children in kindergarten are not to wear masks; elementary school children have the option to wear masks, but must if they are showing any symptoms; while it will be mandatory for children over the age of 11 and in High-School, in particular in closed quarters.¹⁹ Parents must commit to not sending the students to school if they have a fever of 38 C or above, or if any family members have symptoms. Parents should provide masks for their children, but if they can’t the school will provide them.²⁰ The personnel in all schools must where mask where a distance of 1 meter is not possible.²¹

- Social distancing will no longer be imposed in schools, however, efforts must be made to create as much distance between the students indoors.²²

- Regarding hygiene: washing of hands, coughing in the elbow or a tissue, using a disposable tissue, and not shaking hands or kissing to great one another are still measures that must be implemented. Further, hand washing/sanitizing must be imposed: when students arrive at school, before each meal, after recess, after going to the bathroom, and when they get home from school.²³

- The limiting of contacts and interaction between students is no longer mandatory.²⁴

- Extensive measures are to be taken to ensure the cleaning and disinfecting of all locals and materials. Detailed instructions and requirements will be imposed on all academic institutions.²⁵

¹Worldometer, Reported Cases and Deaths for France, <https://www.worldometers.info/coronavirus/country/france/>
Accessed 22/01/2021.

²*Id.*

³On 07/17/2020, the press release stated that there was 3800 new cases and 600 new hospitalizations a week, including 70 on life support. Ministère des Solidarités et de la Santé. Pont de situation COVID 19 / Communiqué de presse du 17 juillet 2020, (<https://solidarites-sante.gouv.fr/actualites/presse/>



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[communiqués-de-presse/article/point-de-situation-communiqué-de-presse-du-17-juillet-2020/](https://solidarites-sante.gouv.fr/actualites/presse/communiqués-de-presse/article/point-de-situation-communiqué-de-presse-du-17-juillet-2020/) (last visited on 08/4/2020).

⁴Ministère des Solidarités et de la Santé. Pont de situation COVID 19 / Communiqué de presse du 17 juillet 2020, <https://solidarites-sante.gouv.fr/actualites/presse/communiqués-de-presse/article/point-de-situation-communiqué-de-presse-du-17-juillet-2020/> (last visited on 08/4/2020).

⁵Service-Public.fr, Le site officiel de l'administration française, « L'Etat d'urgence sanitaire en pratique, » Publié le 12 mai 2020 – Direction de l'information légale et administrative (Premier ministre), <https://www.service-public.fr/particuliers/actualites/A14013/> (last visited 08/04/2020); See : La Loi no 2020-290 du 23 mars 2020 d'urgence pour faire face à l'épidémie de covid-19, <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000041746313&categorieLien=id/>

(last visited 08/04/2020). Décret no 2020-293 du 23 mars 2020 prescrivant les mesures générales nécessaires pour faire face à l'épidémie de covid-19 dans le cadre de l'état d'urgence sanitaire, <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000041746694&categorieLien=id/>

(last visited 08/04/2020); Assemblée nationale, « Loi d'urgence pour faire face à l'épidémie de COVID 19 ; » http://www.assemblee-nationale.fr/dyn/15/dossiers/alt/loi_urgence_epidemie_covid-19/ (last visited 08/13/2020).

⁶Service-Public.fr, Le site officiel de l'administration française, « L'Etat d'urgence sanitaire en pratique, » Publié le 12 mai 2020 – Direction de l'information légale et administrative (Premier ministre), <https://www.service-public.fr/particuliers/actualites/A14013/> (last visited 08/04/2020); See : La Loi du 11 mai prorogeant l'état d'urgence sanitaire et complétant ses dispositions, <https://www.legifrance.gouv.fr/eli/loi/2020/5/11/PRMX2010645L/jo/texte/> (last visited 08/04/2020);

Décret no 2020-548 du 11 mai 2020 prescrivant les mesures générales nécessaires pour faire face à l'épidémie de covid-19 dans le cadre de l'état d'urgence sanitaire, <https://www.legifrance.gouv.fr/eli/decret/2020/5/11/SSAZ2011695D/jo/texte/> (last visited 08/04/2020),

11 mai 2020 : début du plan du déconfinement progressif, <https://www.service-public.fr/particuliers/actualites/A14029/> (last visited 08/04/2020).

⁷HMS Avocats, « Etat d'urgence sanitaire : les ordonnances du 25 mars 2020 adaptant le fonctionnement du service

public de la justice, » 26 mars, 2020, <https://hms-avocats.com/etat-durgence-sanitaire-les-ordonnances-du-25-mars-2020-adaptant-le-fonctionnement-du-service-public-de-la-justice/#:~:text=L%E2%80%99ordonnance%20%C3%A9noncée%20par%20ailleurs%20une%20liste%20de%20mesures,la%20fin%20de%20cette%20p%C3%A9riode.%20II%20s%E2%80%99agit%20%3A/> (last visited 08/04/2020).

⁸Ordonnance n° 2020-306 du 25 mars 2020 relative à la prorogation des délais échus pendant la période d'urgence sanitaire et à l'adaptation des procédures pendant cette même période (précédée de son rapport au Président de la République, ci-après « ordonnance prorogation des délais »), Service public : <https://www.service-public.fr/particuliers/actualites/A14013> ; Translation source : Grynbaum, Luc, Avocat of Counsel, De Gaulle Fleurance & Associés, Sociétés d'Avocats, "COVID 19, French Health Emergency Orders and Adaptation of Contracts," 03/27/2020, <https://www.degaullefleurance.com/en/ordonnances-etat-durgence-sanitaire-covid-19-et-adaptation-des-contrats/> (last visited 08/12/2020).

⁹Ordonnance n° 2020-315 du 25 mars 2020 relative aux conditions financières de résolution de certains contrats de voyages touristiques et de séjours en cas de circonstances exceptionnelles et inévitables ou de force majeure (précédée de son rapport au Président de la République, ci-après « ordonnance résolution des voyages et séjours »), Service public : <https://www.service-public.fr/particuliers/actualites/A14013/> (last visited 08/04/2020); Translation source : Grynbaum, Luc, Avocat of Counsel, De Gaulle Fleurance & Associés, Sociétés d'Avocats, "COVID 19, French Health Emergency Orders and Adaptation of Contracts," 03/27/2020, <https://www.degaullefleurance.com/en/ordonnances-etat-durgence-sanitaire-covid-19-et-adaptation-des-contrats/> (last visited 08/12/2020).

¹⁰Ordonnance n° 2020-316 du 25 mars 2020 relative au paiement des loyers, des factures d'eau, de gaz et d'électricité afférents aux locaux professionnels des entreprises dont l'activité est affectée par la propagation de l'épidémie de covid-19 (précédée de son rapport au Président de la République, ci-après « ordonnance loyers, eau, gaz, électricité »), Service public : <https://www.service-public.fr/particuliers/actualites/A14013/> (last visited 08/04/2020) Translation source : Grynbaum, Luc, Avocat of Counsel, De Gaulle Fleurance & Associés, Sociétés d'Avocats, "COVID 19, French Health



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Emergency Orders and Adaptation of Contracts,” 03/27/2020 <https://www.degaulleflurance.com/en/ordonnances-etat-durgence-sanitaire-covid-19-et-adaptation-des-contrats/> (last visited 08/12/2020).

¹¹Ordonnance n° 2020-317 du 25 mars 2020 portant création d’un fonds de solidarité à destination des entreprises particulièrement touchées par les conséquences économiques, financières et sociales de la propagation de l’épidémie de covid-19 et des mesures prises pour limiter cette propagation (précédée de son rapport au Président de la République, ci-après « ordonnance fonds de solidarité »), Service public : <https://www.service-public.fr/particuliers/actualites/A14013/> (last visited 08/04/2020); Translation source : Grynbaum, Luc, Avocat of Counsel, De Gaulle Fleurance & Associés, Sociétés d’Avocats, “COVID 19, French Health Emergency Orders and Adaptation of Contracts,” 03/27/2020 <https://www.degaulleflurance.com/en/ordonnances-etat-durgence-sanitaire-covid-19-et-adaptation-des-contrats/> (last visited 08/12/2020).

¹²Ordonnance n° 2020-319 du 25 mars 2020 portant diverses mesures d’adaptation des règles de passation, de procédure ou d’exécution des contrats soumis au code de la commande publique et des contrats publics qui n’en relèvent pas pendant la crise sanitaire née de l’épidémie de covid-19 (précédée de son rapport au Président de la République, ci-après ordonnance « contrats publics »), Service public : <https://www.service-public.fr/particuliers/actualites/A14013/> (last visited 08/04/2020); Translation source : Grynbaum, Luc, Avocat of Counsel, De Gaulle Fleurance & Associés, Sociétés d’Avocats, “COVID 19, French Health Emergency Orders and Adaptation of Contracts,” 03/27/2020 <https://www.degaulleflurance.com/en/ordonnances-etat-durgence-sanitaire-covid-19-et-adaptation-des-contrats/> (last visited 08/12/2020).

¹³Ministère des Solidarités et de la Santé

¹⁴Gouvernement, Information Coronavirus, 08/03/2020, https://gouvernement.fr/info-coronavirus?fbclid=IwAR1s8719ihAmetmPgeUtFlv3tUKveGM9mx62_GP8NAqhTnuHreflRRw/ (last visited on 08/4/2020).

¹⁵Ministère des Solidarités et de la Santé. Pont de situation COVID 19 / Communiqué de presse du 17 juillet 2020, <https://solidarites-sante.gouv.fr/actualites/presse/communiqués-de-presse/article/point-de-situation-communiqué-de-presse-du-17-juillet-2020/> (last visited on

08/4/2020).

¹⁶Gouvernement, Information Coronavirus, This government website is intended to centralize helpful information and contacts for the general public, 08/03/2020, https://gouvernement.fr/info-coronavirus?fbclid=IwAR1s8719ihAmetmPgeUtFlv3tUKveGM9mx62_GP8NAqhTnuHreflRRw/ (last visited on 08/4/2020).

¹⁷These recommendations include: (1) washing of hands and using hands sanitizer; (2) avoiding touching one’s face; (3) coughing or sneezing in one’s elbow or handkerchief; (4) social distance of one meter; (5) blowing one’s nose in a disposable tissue; (6) avoiding handshakes/kissing when greeting; (7) wearing a mask when social distancing is not possible. Gouvernement, Information Coronavirus, 08/03/2020, Luttons Ensemble contre le COVID 19, https://gouvernement.fr/info-coronavirus?fbclid=IwAR1s8719ihAmetmPgeUtFlv3tUKveGM9mx62_GP8NAqhTnuHreflRRw/ (last visited on 08/4/2020).

¹⁸Service-Public.fr, Le site officiel de l’administration française, « Rentrée scolaire 2020 : un protocole sanitaire assoupli, » Publié le 11 août, 2020– Direction de l’information légale et administrative (Premier ministre <https://www.service-public.fr/particuliers/actualites/A14221/> (last visited on 08/4/2020).

¹⁹*Id.*

²⁰*Id.*

²¹*Id.*

²²*Id.*

²³*Id.*

²⁴*Id.*

²⁵*Id.*

COVID-19 Update on Italy Valeria Camboni Miller

Italy, one of the European nations most affected by the novel coronavirus, with 2,428,221 positive cases and 84,202 dead on 22 January 2021, has had to deal with an unprecedented health crisis.¹ In response to this crisis, the Italian Government passed urgent measures in several areas. One of the most interesting one was Decree Law² n. 18 of 17 March 2020, published in the *Gazzetta Ufficiale* n. 70 of 17 March 2020, which was converted into law, with some amendments, by Law n. 27 of 24 April 2020, published in the *Gazzetta Ufficiale* n. 110 of 29 April 2020.³

Decree Law n. 18, titled “Measures of Enhancement of the National Healthcare System and Economic Support of Families,



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Employees and Businesses Related to the Emergency of the Covid-19 Pandemic,” was enacted to contain the negative effects of the pandemic. Decree Law n. 18 is divided into five Titles. Under Title I, its scope is to improve the National Health Service by increasing the resources intended for the remuneration of overtime hours for the healthcare workers working in the frontlines to treat Covid-19 patients. To that end, the Government authorized the expenditure of 250 million euros. The Government also gave the Department of Health the power to hire forty new healthcare executives, eighteen veterinary executives, and an additional twenty-nine non-executive personnel needed for monitoring and sanitary inspections due to Covid-19 in ports and airports; the new employees would be hired only temporarily with a three year contract. To that end, the Government authorized the expenditure of 5,092,994 euros for 2020, 6,790,659 euros for 2021 and 2022 and 1,697,665 euros for 2023.⁴

Under Article 3 of the Decree Law, each Region is authorized to stipulate and execute contracts to purchase additional medical services; however, in the event that the Regions cannot execute such contracts, they are authorized to negotiate and execute contracts, for the same purpose, with private facilities, even if non-accredited, as long as such facilities are authorized by Article 8-ter of Legislative Decree n. 502 of 30 December 1992. Such contracts are valid until the end of the Covid-19 state of emergency.⁵

Another measure to combat the shortage of health professionals during the Covid-19 state of emergency is Title I, Article 13, which seeks to waive the rules contained in Articles 49 and 50 of the Presidential decree n. 394 of 31 August 1999 and successive amendments by allowing health professionals who attended courses outside the Italian territory to practice in their respective health professions in Italy.⁶

Title II of Decree Law n. 18 focuses on setting up a system to aid employers affected by Covid-19. Article 19 provides payroll assistance starting on February 23, 2020 and lasting for a period of nine weeks (requests must be made no later than August 2020) to businesses forced to reduce their workforce or suspend business operations due to Covid-19.⁷ The request by the employer must be done by the end of the fourth month after the beginning of the period in

which there was a reduction of work hours or a complete suspension of business operations.⁸

Under Article 23, in response to the suspension of educational services, parents of children no older than 12 years of age have been entitled to a fifteen-day period of absence from work payable at 50 percent of the employee’s hourly wage. Alternatively, parents could choose to receive a bonus in the amount of 600 euros to pay for a baby-sitter to care for their children.⁹ Parents working in the public sector had the same entitlement; however, parents working in the medical field had the right to a bonus of 1,000 euros to pay for baby-sitting services. To receive the bonus, the workers must make a formal demand to the Inps¹⁰ indicating the number of days requested.¹¹

Under Article 43, to protect the continuity of the manufacturing processes, the Inail¹² was authorized to spend up to 50 million euros, by April 30, 2020, to assist employers in providing personal protective gear for their employees in an effort to contain the spread of the virus among workers.¹³

Article 44 creates a new unemployment fund to compensate employees who lost their jobs or suffered a reduction of hours due to Covid-19. The Italian Government set aside 300 million euros for such fund.¹⁴

Title III of Decree Law n. 18 focuses on measures to support the liquidity of businesses through the banking system. Title III protects small and medium businesses affected by Covid-19. Under Article 56, banks were prevented from revoking lines of credit until after September 30, 2020; for non-installment loans with a contractual expiration date prior to September 30, 2020, contracts were extended until September 30, 2020, and for mortgages and installment loans expiring prior to September 30, 2020, the payments of such monthly installments were suspended until September 30, 2020.¹⁵

Under Article 57, to support the liquidity of the businesses affected by Covid-19, the loans issued by the Cassa Depositi e Prestiti (Cdp S.p.A.)¹⁶ are accompanied by a Government Guarantee¹⁷ up to 80 percent of the loan.¹⁸ The Cassa Depositi e Prestiti created a fund of 4.5 billion euros to help businesses affected by the Covid-19 pandemic by disbursing new loans for liquidity and working capital. Cassa Depositi e Prestiti offered direct medium to long-term loans with a maximum duration of six years, backed by the Garanzia Italia,¹⁹ to support staff costs,



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investments or working capital in production plants and business activities. Cassa Depositi e Prestiti also offered direct short-term loans with a duration of up to eighteen months for investments, growth initiatives or carrying out public utility works.²⁰

The long-term loans were backed by the "Garanzia Italia," a guarantee granted by SACE and counter-guaranteed by the Government,²¹ until 31 December 2020, with the following coverage percentages: 90% of the loan amount for companies with less than 5,000 employees in Italy and turnover of up to 1.5 billion euros; 80% of the loan amount for companies with a turnover of between 1.5 billion and 5 billion euros or with more than 5,000 employees in Italy; and 70% for companies with a turnover of more than 5 billion.²²

Under Article 59, during the Covid-19 state of emergency, SACE S.p.A. was authorized to issue financial guarantees and insurance policies to foreign suppliers of goods sold to the Regions to fight Covid-19; such guarantees and policies could also be issued to Italian and foreign banks for loans issued to provide such necessary goods.²³ SACE S.p.A. is a corporation with only one shareholder, Cassa Depositi e Prestiti, specialized in the support of businesses through a large range of solutions to support competitiveness in Italy and in the world.²⁴

Title IV of Decree Law n. 18 focuses on fiscal measures to support the liquidity of families and businesses. Under Article 62, for those who have a fiscal domicile or legal residence in Italy, the tax obligations were suspended until 31 May 2020.

To encourage businesses to perform an environmental cleaning and disinfection of their workplaces to minimize the spread of Covid-19, the new law creates a tax credit in the amount of 50 percent of the cost of the cleaning and disinfection incurred and documented up to 20,000 euros for each taxpayer with a maximum 50 million euros for the year 2020.²⁵

Title V of Decree Law n. 18 focuses on other measures to respond to the Emergency of the Covid-19 Pandemic. Under Article 74, to carry out the tasks of containing the spread of Covid-19 by the police and the Armed Forces, for a period of 90 days from the date Decree Law n. 18 became

effective, the Italian Government authorized the expenditure of 59,938,776.00 euros for 2020 of which 34,380.936.00 is for the payment of overtime and 25,557,840 is for other financial responsibilities related to the employment of personnel. Considering the level of risk of exposure to the virus by police and Armed Forces, the Italian Government authorized the expenditure of 19,537.122 euros to cover the cost of environmental cleaning and disinfection of workplaces and the purchase of personal protective equipment, 4,000,000 euros for the purchase of equipment and 144,000,000 euros for the payment of overtime work performed by members of the Coast Guard.²⁶ The Italian Government also authorized under Law n. 27 to spend 43,5 million euros for the cleaning and disinfection of public schools to prevent the spread of Covid-19.²⁷ The new law also grants an extension until August 31, 2020 to renew documents of identification expiring shortly after the effective date of the Decree Law n. 18 of 17 March 2020.

Law n. 27 of 24 April 2020, published in the *Gazzetta Ufficiale* n. 110 of 29 April 2020 became effective on the day after its publication.

¹¹Worldometer, Reported Cases and Deaths for Italy, <https://www.worldometers.info/coronavirus/country/italy/>. Accessed 22/01/2021.

²A Decree Law is a temporary measure that expires if it is not converted into law within sixty days from its publication. A Decree Law is enacted by the Government, the executive organ, rather than the parliament in cases of necessity and urgency. Please see Article 77 of the Italian Constitution, available at <https://www.senato.it/documenti/repository/istituzione/costituzione.pdf>

³Available at <https://www.gazzettaufficiale.it/eli/id/2020/03/17/20G00034/sg>

⁴Title I, Article 2, <https://www.gazzettaufficiale.it/eli/id/2020/03/17/20G00034/sg>

⁵Title I, Article 3, <https://www.gazzettaufficiale.it/eli/id/2020/03/17/20G00034/sg>

⁶Title I, Article 13, <https://www.gazzettaufficiale.it/eli/id/2020/03/17/20G00034/sg>

⁷Title II, Article 19, <https://www.gazzettaufficiale.it/eli/id/2020/03/17/20G00034/sg>

⁸*Id.*

⁹Title II, Article 23, <https://www.gazzettaufficiale.it/eli/id/2020/03/17/20G00034/sg>

¹⁰Inps is the *Istituto Nazionale della Previdenza Sociale*, the main entity of the Italian public retirement system.



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Status of COVID-19 Legislation in Spain David Vázquez¹

¹¹Title II, Article 25, <https://www.gazzettaufficiale.it/eli/id/2020/03/17/20G00034/sg>

¹²Inail is the *Istituto Nazionale per l'Assicurazione contro gli Infortuni sul Lavoro*, is the Italian Workers Compensation Authority overseen by the Department of Labor.

¹³Title II, Article 43, <https://www.gazzettaufficiale.it/eli/id/2020/03/17/20G00034/sg>

¹⁴Title II, Article 44, <https://www.gazzettaufficiale.it/eli/id/2020/03/17/20G00034/sg>

¹⁵Title III, Article 56, <https://www.gazzettaufficiale.it/eli/id/2020/03/17/20G00034/sg>

¹⁶https://www.cdp.it/sitointernet/en/liquidita_covid_19.page

¹⁷Government Guarantee by Garanzia Italia - https://www.sacesimest.it/docs/default-source/prodotti/garanzia-italia/leaflet---garanzia-italia.pdf?sfvrsn=54cec2be_4

¹⁸Title III, Article 57, <https://www.gazzettaufficiale.it/eli/id/2020/03/17/20G00034/sg>

¹⁹See footnote n. 20

²⁰https://www.cdp.it/sitointernet/en/liquidita_covid_19.page

²¹See https://www.sacesimest.it/docs/default-source/prodotti/garanzia-italia/leaflet---garanzia-italia.pdf?sfvrsn=54cec2be_4 and footnote n. 25

²²Guaranteed Medium to long-term liquidity, https://www.cdp.it/sitointernet/page/en/guaranteed_medium_to_longterm_liquidity?contentId=PRD27984

²³Title III, Article 59, <https://www.gazzettaufficiale.it/eli/id/2020/03/17/20G00034/sg>

²⁴<https://www.sacesimest.it/chi-siamo/il-gruppo>

²⁵Title IV, Article 64, <https://www.gazzettaufficiale.it/eli/id/2020/03/17/20G00034/sg>

²⁶Title V, Article 74, <https://www.gazzettaufficiale.it/eli/id/2020/03/17/20G00034/sg>

²⁷Title V, Article 77, <https://www.gazzettaufficiale.it/eli/id/2020/03/17/20G00034/sg>

On March 14, 2020 at an extraordinary meeting of the Spanish Government's Council of Ministers approved Royal Decree 463/2020 of March 14, 2020, which declared fifteen-day state of alarm to be able to deal with the health crisis caused by COVID-19.²

In accordance with the Spanish Constitution and Organic Law 4/1981 Organic Law on States of Alarm, Emergency and Siege, the Spanish Congress had to authorize any extensions. To do so the Council of Ministers asked the Spanish Congress for authorizations. The Spanish Congress would then issue a detailed authorization resolution. Then the President of the Spanish Government would issue a royal decree with that decree being the legal document to be enforced and which would have force of law as soon as published in the Official State Gazette. Using this process, the state of alarm was extended - and at times modified - six times until it ended on June 21, 2020.

The decrees included restrictions in a myriad of areas of daily life, most noticeably on personal mobility, but gradually as the number of cases was reduced the restrictions were eased. These Congressional Resolutions and Royal Decrees frequently referred to the World Health Organization (WHO) and European Union (EU) guidance and rules. For example, regarding the WHO the initial royal decree of March 14, 2020 Royal Decree referenced the WHO's March 11, 2020 declaration of COVID-19 as an International Pandemic. In terms of the European Union, they frequently alluded to the Joint European Roadmap towards lifting COVID-19 containment measures of March 26, 2020 put forth by the European Commission, in cooperation with the President of the European Council³.

On April 28, 2020, the Spanish Council of Ministers approved a Ministry of Health Plan named Plan for Transition to a New Normalcy [hereinafter De-escalation Plan].⁴ The Congress first mentioned this Plan in its resolution 463/2020 of May 14, 2020 and the Presidency first referenced it within its Royal Decree 514/2020 of May 8, 2020. The De-escalation plan divides the responses in the following stages, which will last at least two weeks each, with actual dates being dependent of conditions on the ground:



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- Phase 0 or to Prepare for De-Escalation: Very limited openings and some personal mobility to be outside allowed.

- Phase I or Initial: Some openings of commerce in unenclosed spaces with strict limitations on occupancy, and some agricultural activities allowed.

- Phase II or Intermediate: Some activities are allowed within enclosed spaces but with strict limits on occupancy and observing social distancing. Some in-person educational activities allowed, especially for children under six years old whose parents need to work in person, as well as hunting and fishing, and reopening of theaters and other spaces where seats are assigned but with strict limits on occupancy and if in enclosed spaces with a limit of 50 persons; if in an open space no more than 400 persons. Places of worship may open with a limitation of 50% occupancy.

- Phase III or Advanced: General mobility is made more flexible. It is recommended to use masks outside of the home and in public transport. In terms of business activity occupancy will be limited to 50% and there will be a minimum distance of 2 meters between persons. In activities related to restaurants activities are somewhat more flexible but there is still strict separation between the public.

- New Normalcy: Social and economic restrictions end, but epidemiology is monitored and the health system is reinforced and citizens must self-protect.⁵

Given the limitation in space of this document, but namely because of the great variation in measures within Autonomous Communities and Cities and other territories that conform Spain, and how power is shared, or exercised by different authorities by virtue of laws related or unrelated to COVID-19 it is not possible to give in such a short space a description of what measures were taken in each Autonomous Community or Geographical Entity.⁶ We also face a dynamic situation. Thus the aim of this article is to identify for the reader possible sources to monitor the situation. Unfortunately, not all documents are available in English. All the Congressional Resolutions and Royal Decrees this note refers to are available at the web page of the Spanish Gazette, which also includes regulations on economic sectors and geographical subnational units, and specific de-escalation plans.⁷ To know what is happening somewhere in Spain one must also take into account what is

happening at that place in terms of disease transmission and control.⁸

It is also of note that on April 30, 2020 the Spanish Constitutional Court denied an application for a writ of “amparo”, related to a trade union’s right to a demonstration to be held on May 1, 2020, in the city of Vigo, Galicia. It was alleged that restrictions on personal mobility because of the pandemic were not constitutional under the state of alarm per constitutional rights to assembly and assembly as related to freedom of trade union activity, which are enshrined in articles 21 and 28 of the Spanish Constitution. The Court validated the limitations on movement under the aforementioned Royal Decrees giving particular importance to articles 15 and 43 of the Spanish Constitution on persons’ physical integrity and protection of health, respectively.⁹

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²Two online sources are particularly useful to access legal documentation on responses to COVID-19 in Spain. They are: Presidency of the Government of Spain, COVID-19 in Spain, available in Spanish at <https://www.lamoncloa.gob.es/covid-19/Paginas/index.aspx> (last visited 8/30/20). And the Official State Gazette, COVID-19: European, National and Autonomy Law, available in Spanish at https://www.boe.es/biblioteca_juridica/codigos/codigo.php?id=355&modo=2¬a=0&tab=2 (last visited 8/30/20).

³European Commission, Joint European Roadmap towards lifting COVID-19 containment measures, March 26, 2020, available at https://ec.europa.eu/info/sites/info/files/communication_-_a_european_roadmap_to_lifting_coronavirus_containment_measures_0.pdf (last visited 8/30/20). Also see discussion at European Commission, [Web Page on] A European roadmap



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to lifting coronavirus containment measures, https://ec.europa.eu/info/live-work-travel-eu/health/coronavirus-response/european-roadmap-lifting-coronavirus-containment-measures_en (last visited 8/30/20).

⁴This document is also referred to as “Plan for the De-escalation of the Extraordinary Measures Taken to Overcome the COVID-19 Pandemic”. Its official title is the Ministry of Health, Plan for Transition to a New Normalcy, April 28, 2020, *available in Spanish at* <https://www.lamoncloa.gob.es/consejodeministros/resumenes/Documents/2020/PlanTransicionNuevaNormalidad.pdf> (last visited 8/30/20).

⁵The above text follows the lines of this summary: Presidency of Government, La Moncloa, Plan for the De-escalation of the Extraordinary Measures Taken to Overcome the COVID-19 Pandemic, April 28, 2020 *available in Spanish at* <https://www.lamoncloa.gob.es/consejodeministros/Paginas/enlaces/280420-enlace-desescalada.aspx> (last visited 8/30/20).

⁶Also applicable to both the whole Spanish state and all its subdivisions are any applicable international treaties, including those of the European Union (EU) and EU directives and regulations. At the internal level Spain is divided in Autonomous Communities and Cities (Ceuta and Melilla) in a scheme that is similar to that of a federation. Those subdivisions have concurrent, complementary or exclusive jurisdiction over matters in conjunction with the central state. These competencies vary throughout the country. There are the additional subdivisions of provinces within each autonomous community. Some Autonomous Communities are composed of islands. There is one unified judiciary throughout the country yet there may be differences in how law is practiced at different locales. Also there is an independent Constitutional Court. Local government officials may have different names in different autonomous communities and sometimes names in different languages (*e.g.* For the highest ranking official in Autonomous Communities: in Catalunya the President of the Generalitat [title is in Catalan]; in Euskadi the Lehendakari [title is in Euskera]; in Andalusia the President of the Andalusian Junta [title is in Spanish] and in several Autonomous Communities there are other official languages in addition to Spanish. How each autonomous community is organized is regulated in a document called its Statute of Autonomy.

⁷Official State Gazette, COVID-19: European, National and Autonomy Law, *supra* note 2.

⁸*E.g.* Spain Radio TV, Map of Coronavirus in Spain, *available at* <https://www.rtve.es/noticias/coronavirus-covid-19/> (*look for links to "Mapa de España" or "El mapa del coronavirus en España"*) (last visited 8/30/20).

⁹Constitutional Court of Spain, Writ of April 30, 2020, *available in Spanish at* http://www.tribunalconstitucional.es/NotasDePrensaDocumentos/NP_2020_047/2020-2056ATC.pdf (last visited 8/30/20).

SECTION III - MIDDLE EAST

Defending Human Rights in the Time of Covid-19 Before the Israeli Supreme Court

Dr. Hassan Jabareen, General Director of Adalah

This is an edited transcript of a non-CLE webinar sponsored by the ABA International Law Section Middle East Committee on October 6, 2020.

Introduction

From the start of the battle against the spread of the coronavirus, Adalah - The Legal Center for Arab Minority Rights in Israel, moved into emergency mode to monitor potential human rights violations and take legal action to defend the rights of Palestinian citizens of Israel and Palestinians in the Occupied Palestinian Territory during this crisis.

Adalah has filed 14 petitions before the Israeli Supreme Court since mid-March 2020, three of which are currently pending, in three main areas: (i) ensuring access to health care; (ii) promoting dignified life; and (iii) promoting the rule of law and separation of powers. Five of the cases challenge the government's authority to continuously decree Emergency Regulations regarding the coronavirus epidemic without the oversight of the Knesset.

Hassan Jabareen is a Palestinian human rights lawyer and the founder of Adalah, a not-for-profit organization (NGO) in Israel. He has served as Adalah's general and legal director since its establishment in 1996.

Adalah has a long series of struggles for the rights of the Palestinian Arab minority in Israel, utilizing legal tools – first and foremost through petitions to the Supreme Court – including civil, political, economic and social rights, and issues of land discrimination. For close to 25 years with Adalah, Dr. Jabareen has litigated scores of landmark constitutional law cases concerning the rights of Palestinian citizens of Israel, including the



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Palestinian political leadership in Israel, and international humanitarian law cases concerning Palestinians in the 1967 Occupied Territory before the Israeli Supreme Court.

One of the organization's most notable achievements is the Supreme Court's landmark ruling of 2006, which cancelled the government's decision establishing National Priority Areas in the field of education, which resulted in extremely significant discrimination in budgets to Arab localities.

Dr. Jabareen has received several awards for outstanding public interest lawyering and top human rights law prizes. The Israeli daily, The Marker, selected Dr. Jabareen as one of the top 100 people in the country "who work tirelessly to protect democracy." Dr. Jabareen initiated a course on the legal status of the Arab minority in Israel and has also taught other law courses in the Faculties of Law at Tel Aviv, Hebrew, and Haifa Universities over the last 20 years. He has also authored several academic articles in books and law reviews on the citizenship status of Palestinians.

Dr. Jabareen was a Senior Robina Law Fellow at Yale Law School and a research fellow at the Wissenschaftskolleg in Berlin. He holds an LLB in Law and a BA in Philosophy from Tel Aviv University, an LLM in International Human Rights from American University Washington College of Law, and a D.Phil in Law from Hebrew University.

DR. HASSAN JABAREEN

HJ: Thank you for inviting me. I am happy to speak about litigation during COVID-19. [Adalah's] work is mainly litigation before the Israeli Supreme Court, and cases we bring are on constitutional matters.

This is not the first time that we have had emergencies. We, as human rights lawyers, [always] work and submit cases before the Israeli Supreme Court during emergencies. In every war – there were many wars between Israel, Gaza and Hamas, Israel and Hezbollah in Lebanon, in West Bank operations...during those emergencies, we also submitted cases before the Supreme Court.

This time, this emergency of COVID in relation to law is different from the kind of emergency we face when we speak about security emergencies. In all of those cases before, in security emergencies, the distinction is between enemy-friend, we and [the] other...and there, the tendency of the Court is usually to support the army [and] not to

intervene. [But with] COVID, the distinction between friend and enemy is totally different. The law must refer to every person in a neutral manner; it doesn't matter his or her national identity. Now, we are - all of us - under [lockdown], [and] the [human] body became the enemy. This is an aspect of neutrality, and [it doesn't] discriminate between Palestinians, Israeli Jews, and others; [and it] should give us hope and influence our legal strategy.

And indeed, it does influence our legal strategy. Now, the cases that we [are bringing] before the Court were not only about the Palestinian citizens of Israel, they [are] not only about the rights of Palestinians who live in Jerusalem or the West Bank or Gaza. They [are] cases that also refer to every Israeli citizen, Palestinian or Jewish, all of them the same.

So, for the first time, [we have] an emergency matter – [where] the “we” is we the citizens, we the residents, we the Jews and Palestinians that live under COVID. Not only [the] Israeli regime, and not during a war. And in fact, we believe it will influence the Court [to] be [prepared] to intervene more. But before I analyze the policy of the Court, I will mention what kind of cases we have [been bringing].

Cases that refer to the Palestinian citizens of Israel mostly refer to the effect of historical discrimination in infrastructure. [For example], there is a problem with access to healthcare. Why? Because there are no hospitals in Arab villages and Arab towns, there are not enough clinics there. And we have Bedouin villages called “unrecognized villages” -- they don't even have electricity and access to water. So, the subject of testing [for COVID] during the emergency became a major matter. And we filed cases before the Court to have access to healthcare, for example, for the Bedouin villages – access to clinics, and... because there is no electricity there, and no clinics, the only solution is to bring mobile clinics. Arab towns and villages also have the problem of access to these things [for COVID testing]. This is one kind of case.

The other kind of case – as we know in Israel, in the beginning of the emergency from the middle of March to May, almost the entire country was in lockdown, in closure. People were not even allowed to go to their workplaces, all the schools were closed, and the question of remote learning became a crucial matter. And in this aspect, we also faced a unique problem for the Palestinian towns and villages in Israel, because not every person has access to computers. Some places like unrecognized



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Bedouin villages in the south don't have access to electricity, and of course some families face poverty, so not all families have even one computer for the family itself. So, this is another kind of case that we brought before the Court -- to ask for distributive justice in education, to make [education] accessible to all children.

A third category [of cases] that we handle involves prisoners. Different from criminal [offenders], political prisoners usually face special problems in Israeli prisons. The conditions are harsher. The policy of the Prison Authority was to close all the prisons, not to allow families to visit, not for criminal prisoners and not for political prisoners. And, also not to allow lawyers to visit. So here we face a problem. What are the conditions in the prisons? Do prisoners have access to healthcare, do they give them masks? Do they deal with social distancing? For example, in one small cell you have eight persons; in some places they have 16 persons. So, what's the policy? If you don't have access to lawyers, you don't have access to families, this kind of case also raises questions of access to legal counsel, access to phones, at least to speak with one's family, and for us as human rights lawyers, access to the prison, and to see and hear from the prisoners about their conditions and what facilities the prison authority gives them [is crucial]. These kinds of cases, most of them have to do with Palestinian citizens and others [residents of the 1967 Occupied Territory] -- for example, Palestinian prisoners.

Now, the general cases that concern all citizens are about the legal nature of emergency. In the beginning, the Netanyahu government started to issue regulations, which continued until last July [2020]. The regulations were mostly about social distancing—when a person should be, or places should be -- towns, villages, cities -- under closure. Also, those emergency regulations regulate matters of criminality, about [tickets and] fines [for violating the regulations]. Our major petition was to challenge the authority of the government to issue such [emergency] regulations.

We argued that there is no authority of the government to issue such regulations without relying on legislation. And the Knesset should establish that during this COVID emergency the government is authorized to issue so and so kind of regulations. But in this case, when the

government has no special authorization, there is no legal basis for the government to issue such regulations.

This was a major case challenging the authority of the government. Usually the Israeli Supreme Court [sits in a panel of] three judges, and in this case, it was a five-judge panel hearing [both of] the sides. And in fact, we expected [that] the Court would issue an opinion in this case, speak about when the government is authorized to issue regulations and when it is not. The government argued that since Israel has had emergency regulations, security emergencies, since 1948, it is enough to allow it to issue emergency regulations now. We argued that that [emergency] is about national security. Yes, the Knesset declared a national security emergency in 1948, and each six months it renews [the state of emergency]. But that is related to national security and not to COVID. COVID is a special emergency and, thus, there should be a special law for that.

But, instead of delivering an immediate decision, the Court allowed the government to take its time, and to push the government to enact law [by going through the Knesset]. It wasn't until late July that the law was enacted authorizing the government to issue such regulations. We submitted a case against this law - that is still pending -- [and] we argued that it gives wide discretion to the government in many different fields to limit civil liberties and economic rights of citizens. But this case that I mention [about the emergency regulations] shows that the policy of the Court is not to decide; [it is] to try to let the government fix the situation, fix the question of authority. And we argued that it is important for the Court to decide in order that in the next emergency the government won't have such [broad] powers beyond the rule of law. This case can speak to the other cases that I mentioned, in which the Court didn't decide. In all of the cases that I mentioned, such as the prisoners, [several] cases continue to be pending. The Court wants to have affidavits from the government about the prisoners without deciding the case. This case -- I think we submitted in late March, beginning of April, until now there is no final decision about [visiting] the prisoners.

The Court dismissed one of the cases about social distancing in prison cells even without issuing an order *nisi* (an order to show cause). In cases of access to health, the Court [did not issue any ruling but] was satisfied by the government's answer that it is going to take care of those cases.



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So, to summarize all of these cases, we see that the policy of the Court is not to intervene. The Court was [frequently] satisfied by the state's answer, instead of following-up on these [insufficient] answers to the petitions, [it dismissed the cases]. Or [the Court] gave the government more time to find a solution [and allowed the cases to remain pending for a long time], even when the cases refer to a clear question of rule of law and lack of authority.

The only major case that the Supreme Court decided -- and it is an important case -- was against empowering the GSS [General Security Services] / Israeli *Shabak*, to do surveillance, to follow citizens who are sick from corona, or [who] carry the virus, in order to get information about with whom they were in contact. We filed a petition before the Supreme Court arguing that the government is not authorized to give this power to the GSS; GSS authority is limited only to national security. COVID is a civil emergency, it is not a national security matter. The Supreme Court heard the case and issued a decision, and it was one of -- in fact, [it was] the only decision that the Court delivered. But it was very significant, and the Court mentioned that, indeed, COVID is a civil emergency, and the government is not authorized to give the GSS such power without legislation. The government should ask the Knesset, if they wish, to give them the authority to empower the GSS, and ask the GSS to take such action. Thus, [the Court ruled that] the government lacked authority in this case, and indeed we see it as a successful case. But we were worried at the same time that the Knesset would enact a special law so that the government could authorize the GSS to [undertake] surveillance. And, indeed, this is what happened. So now, the Association for Civil Rights in Israel (ACRI) together with Adalah submitted a case against the new law.

So just to summarize, [but] before ... we [also] had cases that refer to Jerusalem, and Palestinian refugee camps like Shua'fat, that also don't have access to healthcare, to clinics [for COVID testing]. The most interesting thing in those cases is that we succeeded to provide remedies outside the Court. The Court refused to intervene. The remedy that we got is through correspondence, letters -- what the Court didn't deliver, we achieved, for example, health clinics [for COVID testing], through correspondence and letters with the [Israeli] Health Ministry for Shua'fat and East Jerusalem.

To summarize, the Court's functioning during COVID, so far, I can say, is frustrating. The Court could do more; the Court should have done more, especially with cases that question the lack of authority of the government to limit civil liberties without legislation. The Court could shape the law of COVID as a [civil] emergency, [it could have been a] partner [for protecting rights], but it didn't do that. The only case the Court intervened powerfully in was the GSS [surveillance case].

Now, one may ask, how does the Court intervene, in fact, in matters of national security, [one] that belongs to the GSS. Usually the Court doesn't intervene [in national security cases]. [Yet, they did intervene in the GSS case] because the Court doesn't want the GSS to also make surveillance on them as judges, and all citizens. This kind of security is not like before, when it [involved] Palestinians vis-a-vis Israelis. Here, all Israeli citizens will be under surveillance, and this made the Court, in my opinion, ready to say that the government lacks authority.

I'll stop here to take questions.

Q: Can you say more about [Adalah's work] helping clinics connect with the Ministry of Health? Given that the Ministry is also part of the government -- I'm curious about [how] that strategy has worked.

HJ: In fact, we have had more success corresponding with the Ministry, and without the intervention of the Court. One of the successes just in the last days -- the government [has] continued with the policy of home demolitions in East Jerusalem [before and during COVID], and this is one of the harsh and oppressive policies that the Palestinians face in East Jerusalem - home demolitions and not allow[ing] the people to build their houses --in order to control the land [there]. So, all the time you have this oppressive policy.

We knew if we addressed the Court, it would not intervene in such a matter to stop home demolitions against Palestinians; and in one of the letters we submitted, our lawyer Suhad Bishara asked the Court to stop this policy because it is the time of COVID. If you are asking people to be under closure, and now you are making them homeless, for this reason the policy should stop. And indeed, we got a response from the Ministry that they decided that [for now] they would stop the home demolitions policy in East Jerusalem. I don't believe that if we submitted such a case, the Supreme Court would intervene because the Court doesn't intervene in high policy such as



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confiscating Palestinian land, home demolitions, many things. [T]hey perceive this [issue] as high policy; [and] [the Court] gives almost a free hand to the government. But, here the government decided [for] itself that, indeed, in this time of COVID, it would stop [demolishing homes in East Jerusalem].

We issued another letter [asking] that [it be] applied to the West Bank, because home demolitions continue as a policy in the West Bank and we relied on the [matter] of COVID. Of course, we are against the [homes demolition] policy as such, of course we perceive the policy is against international humanitarian law (IHL), but we limited our demand to the time of COVID in order to show that we have unique circumstances. And, here, we may have success outside of the Court, when we knew that within the Court we wouldn't.

Q: Specifically, how has the Ministry of Health responded to some of these requests?

HJ: For example, we have requests to give [COVID testing] in the unrecognized villages, and the government's [response] didn't solve the problem. They said that the Bedouin who live in unrecognized villages can go to towns close to them...The Supreme Court dismissed the case ... because the government gave a partial solution. But in fact, this doesn't resolve the case because all the time the people are in lockdown, and they don't have transportation to leave their villages and to go to other places.

We have a case linking gender and culture to COVID in the Bedouin villages. Culturally, it's very problematic for [Bedouin] women to quarantine outside of their village. There is something called "institutional state quarantine places," [where the government] provides places for persons who should be isolated from others. We said, you also have to give this remedy to those villages and to allow mobile [quarantine] houses because women cannot be isolated out of their villages because of their traditional culture. And if this will continue, women won't be able to be isolated, and that is problematic for them and for other [family members].

Here too, even without receiving an answer from the state or any serious solution, the Court dismissed the case. The state said, 'when you bring us specific cases, with names of

women who have a problem of quarantine, we will be ready to think about [other] solutions. But since the petition didn't mention names, we are not ready.' We said, we cannot mention names - there is also a problem with giving names, but we brought affidavits from many experts that say there is a serious problem here. And really there is a problem: the women don't want to give their names, because if there is no other solution, they will be forced to be out of the village, and they will [be at] risk themselves. So first, before giving names provide a solution, and then we will give you names. And so, the case was dismissed and now we have a problem for women in Bedouin villages having no places to quarantine. Notice that we are speaking about big families in the Bedouin tribes. The number of persons in a family is [often] more than 10 persons, who live in two or three rooms. So really, you need a place for quarantine. And now this issue is still pending -- not as a pending case -- but as a question. And maybe we have no choice but to address the Court again.

Q: An article in the New York Times reported about a traffic light map of COVID-19 risks, showing that both Palestinian and Orthodox Jewish neighborhoods were high-risk red. Are you litigating on behalf of all these communities at risk?

HJ: In fact, the GSS case was about all of the citizens. We didn't argue in the name of Palestinian or [Jewish] Israelis. The authority of the government to issue [emergency] regulations in the first stage up until July was in the name of all the citizens.

We [also] had an economic case...[in which] a new government regulation allowed private workplaces to fire pregnant women during COVID. We submitted a case against this regulation, and this of course is in the name of Jewish and Palestinian women. And in the end the government said, OK we will cancel this regulation.

Now, usually villages and towns are not mixed in Israel. You have unique, special problems for Arab places. For example, the only place in the world where there is something called "unrecognized villages" is in Israel -- and those are Palestinian Bedouin villages. So, we submit cases on behalf of [their residents].

Arab villages and Arab towns in Israel are almost the only places that don't have access to health services. We don't have cases that belong to Jewish and Arab towns where we ask for access to healthcare for both sides. Usually in those mixed



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towns like Haifa -- except for East Jerusalem which is separated like an apartheid situation -- we didn't submit. Usually when you have a big [mixed] city, Palestinian [citizens of Israel] and Jewish residents can access and use the health services. But in access to health, most of the cases are about Palestinian villages and towns [in Israel].

Q: Please say more about Adalah's work in cooperation with other Israeli human rights organizations. You already mentioned ACRI, but particularly I'm asking about women's rights and domestic violence organizations.

HJ: In fact, since Adalah's establishment, we have cooperated with [Israeli] Jewish civil rights organizations. We have many cases with ACRI, not just during COVID. One major case was about family reunification of Palestinians in Israel. There are many other discriminatory laws [against which] we submit cases together. Now during COVID, we [also] have cases with Gisha -- [an Israeli organization] that works on the right to movement from Gaza -- we have many cases in Gaza during COVID of people that couldn't leave Gaza, and they need medical services. We also do prisoner cases together [with other organizations] before the Court. There's no ideological boundary that we and [Israeli] Jewish human rights organizations wouldn't work together. In fact, the door is [open] to work together. The exception is not for ideological reasons, but just because each [organization] has different priorities. So generally, yes. For example, the women's [rights] case, where private workplaces [could] fire pregnant women, that was brought in the name of a Member of the Knesset, Aida Touma-Sliman; then after that, [Israeli] Jewish women's organizations joined this case.

There is a serious problem that we didn't deal with through the law: violence in the family during COVID. Of course, COVID put many families under pressure; the rate of unemployment is high, and this by itself increases the violence within the family. And of course, women and children are the victims of this sort of violence. Now, the [elected Arab] Palestinian leadership [in Israel] (e.g., members of Knesset, mayors) addresses the Israeli police and the Knesset, addresses the government to find a solution. One of the problems with the Israeli police is that they don't enforce the law within the Arab villages, when it is an "internal" matter. And today, violence against women

in the society is becoming one of the most critical issues that we are facing.

It is difficult to articulate the case through litigation for a remedy. Because it is really a matter of broad policy. The Arab Palestinian leadership in Israel is in negotiation with the government [concerning these matters]; we know that the institutions of the state don't put these matters as a priority.

Q: Are you tracking the COVID-19 jurisdiction of other Supreme Courts or courts of last resort, or even intermediate appellate courts around the world; and have they been helpful to your arguments? Or is the state of the law problematic or just irrelevant from the perspective of your work in Israeli courts?

HJ: This is a good question because one of the reasons that the [Israeli Supreme] Court started to hear the case about the government's lack of authority to issue [emergency] regulations freely is the fact that we used comparative law. We brought many different cases [relating to] the war and [national security emergencies] that [are relevant] during COVID, that the Parliaments passed legislation to authorize the governments to issue regulations. And there is almost no case in the West, Europe for example, South Africa, Australia, Canada, that the government can issue regulations freely on matters of COVID without specific legislation.¹

The comparative study that we made was very helpful for us to convince the Court that this case is worth hearing, and the Court indeed issued an order nisi [in this case] and said to the government -- 'It seems there is no state that we know that considers, as a rule of law, that the government has a free hand to issue such regulations during this kind of emergency.' And those strong comments of the Court pushed the government to go to the Knesset and start the process of legislation.

Another [series of] cases that we brought were about the prisoners' rights. We also brought comparative studies [here] based on data from the USA by the ACLU. One of our friends, Jamil Dakwar, who works with the ACLU in New York and knows the cases of prisoners during COVID -- [and he led us to a study on] the duties that apply to states and what measures they took.² We brought this study before the Court to show that our case is one that should be heard. Here are examples of other states that take COVID seriously and provide special measures for prisoners and, thus, the Court should ask the state to give a serious answer to our petition. This matter didn't



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convince the Court to give a final decision, but the Court asked the state all the time for more data. And this case is still pending before the Court. One of the [cases] was dismissed -- the one about social distancing in cells that I mentioned. And the other case about access to families and lawyers, and access to phones, is still pending for a very long time. A very, very long time - since March until now, we are over seven months and no decision from the Court. So sometimes we use comparative law, and in some cases it is helpful. And we noticed that most supreme courts in the world don't have experience in how to deal with COVID, so comparative aspects become very helpful in those cases.

Q: How has COVID affected the situation vis-a-vis the Israeli and Palestinian conflict, annexation, the normalization with the UAE and Bahrain? You mentioned that the Court has been singularly unwilling to intervene, and that is the position that the Court took with respect to Netanyahu forming a fifth government -- despite corruption, indictments, allegations -- it said it had no legal grounds to do so. Can you talk about that problem within the context of COVID?

HJ: Among the major cases delivered during COVID were petitions against Netanyahu after the [March 2020] election -- and by 11 justices, the widest panel of the Court. We know that Netanyahu is under criminal charges, and the cases challenged whether or not he should be the new prime minister after the election. And, the cases rely on previous case law of the Supreme Court, saying that ministers cannot continue to be ministers if they are under criminal charges, because this will create conflicts of interest and damage public trust. Of course, not just any criminal case, but serious criminal cases will justify that.

The petitioners relied on this - one of the major cases in the country, although after the election it was clear it would be difficult for Netanyahu to form a coalition, but in fact, COVID helped him. Through COVID, he started to issue regulations to put all of us in lockdown and to have nightly meetings on TV, with Netanyahu saying to all of us, 'We are under a serious emergency situation. People may die. People may not find access to healthcare in the hospital, so we have to be united, we have to work together. This is why I have suggested to Mr. Ganz, and other opposition [leaders] to join my coalition. This is not a time for politics, it is time for unity.'

Those speeches convinced Ganz, who could have formed and led a government coalition [without Netanyahu], -- and today, almost every serious politician in Israel knows that it was one of the weakest points of Ganz -- to say yes, I am ready to join with Netanyahu and to form a coalition because we are under a COVID emergency. So, COVID was so helpful for Netanyahu.

Now, the next question of civil society organizations, [and] what became the legal question--whether Netanyahu, even though he has this coalition, can be prime minister based on the case law that I mentioned. So, this became a hot case. The Supreme Court heard this case for two days, and it was broadcast live. The first live broadcast in the history of the Israeli Supreme Court was the case against the GSS that I mentioned, and we, Adalah, and other organizations were part of it. This is the first time that I found myself as a lawyer before millions of people. It wasn't easy for the first minutes, but after that I got used to it. And now the Supreme Court decided that this case [concerning Netanyahu] was important for all the public to hear in live broadcast. Over two days of discussions in this case, the lawyers against Netanyahu issued every democratic argument as to why a prime minister under [criminal] charges cannot be prime minister. But the Supreme Court, by 11 justices, dismissed those cases even without [any] dissenting opinions. The critique from the center and from the left was strong and sharp against the Supreme Court -- how the Court allowed this situation to happen when you have clear case law that says that he should not be [prime minister].

Second, what is the explanation that there wasn't even a dissenting opinion, when we know that in the law schools, we have many professors, leading scholars, that said there is a serious argument against Netanyahu? But why no dissenting opinion? Again, COVID. COVID created the situation of emergency. The Court doesn't want to enter this game, when Ganz, who was supposed to have a coalition, agrees to be with Netanyahu. [If otherwise] the Supreme Court would be saying we are against unity -- [that would be] the consequence of the decision to accept the petition. So, COVID has created this problem. It is an emergency -- a health emergency and a political emergency. And, it was so helpful for Netanyahu. Without COVID, it would be very, very difficult for him to form a coalition and to have the support of his new coalition. Remember that Israel held three elections within one year in 2019 and 2020. It is a unique situation, and those three elections, one after the other in a short time, show that



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Netanyahu was in political crisis. COVID gave him the solution.

Q: At the start of your remarks, you spoke about COVID-19 and prison conditions, and many -- perhaps most -- countries around the world have implemented mass release of prisoners, at least temporary releases in an effort to ease prison crowding and minimize the spread of COVID. But many countries have specifically and explicitly refused to allow for COVID-19-related releases for certain classes of prisoners, including political prisoners. Has this been addressed in Israel?

HJ: It is true that the question of prisoners became a wider question during COVID, as some countries neglect COVID prisoners and don't provide access to masks, solutions for social distancing. But until now, this question became severe in Israel in the case of the Palestinian political prisoners. They share one small cell. You have a high number of persons there, and we know about cases where people are found to be COVID affected, and we don't know what serious solutions the prison authority provided. They released some of the criminal prisoners because of corona, in order to have enough space in the prison. But political prisoners continue to suffer. We even don't have information [as to] whether the prison authority gives masks to the prisoners. Even this, because there is a lack of information about the case of political prisoners. And we may bring a new case about that; to note that we have today 4,500 [Palestinian] political prisoners in Israeli prisons. It is a huge number, and within these prisons they are put under a serious risk during COVID.

Q: How might people who would like to help Adalah, do so?

HJ: We would greatly appreciate donations to Adalah. Support is needed more than ever at this very critical moment. Contributions can be made on our website: www.adalah.org - or you can send email to me (hassan@adalah.org) or to Rina (Rosenberg), the International Advocacy Director of Adalah (rina@adalah.org).

¹In fact, the U.S. executive branch has issued numerous Covid-related emergency rules without Congressional authorization or approval. See, e.g., "Emergency rulemaking in response to COVID-19," Connor Raso, Brookings, August 20, 2020, <https://www.brookings.edu/research/>

[emergency-rulemaking-in-response-to-covid-19/](https://www.brookings.edu/research/emergency-rulemaking-in-response-to-covid-19/) .

²American Civil Liberties Union and the Prison Policy Initiative, *Failing Grades, States' Responses to COVID-19 in Jails & Prisons*, June 2020, <https://www.aclu.org/report/failing-grades-states-responses-covid-19-jails-prisons> .

The Impact of COVID-19 on Mental Health: How Has the Government of Kuwait Responded and What are the Lessons Learned?

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As the number of confirmed cases of COVID-19 has surpassed 159,834 in Kuwait as of 22 January 2021 with 951 deaths, the disease has impacted both physical and physiological health, prompting the government of Kuwait to consider measures and policies to mitigate the negative impact of this pandemic. The impact of COVID-19 on physical health is apparent; therefore, most of the government's measures undertaken at the outset of the crisis, when the earliest cases of COVID-19 arrived in Kuwait from Iran on February 24, 2020,¹ such as lockdowns, curfews, social distancing, and self-quarantine, target the protection of physical health. However, a considerable period of time has passed since the implementation of these measures and the country has struggled with mental health issues. Some mental issues have originated from the pandemic, while others were pre-existing and intensified during the pandemic. Examples of such mental health issues include loneliness, stress, anxiety, social and economic insecurity, depression, suicidal thoughts, fear of contracting the virus or losing loved ones, changes in state resulting from changes in daily routine, insomnia, stockpiling and buying panic. A study conducted by Kuwait University found that 63.1 percent of 1080 participants, from all segments of Kuwaiti society, reported that the COVID-19 outbreak had a negative psychological, social, economic, and educational impact on them.²

Governments were late in realizing the importance of addressing these mental health issues because these conditions are invisible and have accelerated as the pandemic persists, so the problems caused by COVID-19 have become even more complicated. Additionally, no government was fully prepared for the large-scale health crisis brought about by COVID-19, which is unprecedented in modern history in terms of its



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nature, durability, and extent. COVID-19-related problems are economic, political, and social in nature. Further complicating the matter, these problems are expected to have a long-term effect on states, businesses, and individuals.³ Examples of challenges associated with the COVID-19 pandemic likely responsible for the rise in mental health issues include unemployment, domestic violence, food insecurity, misinformation and the spread of fake news, travel bans or restrictions on travel, overwhelmed hospitals, an inability to access social and physiological services, the closure of schools and businesses, the cancellation of social gatherings and prayers at mosques, and an inability to bury deceased family members who lost their lives due to the virus or during the pandemic.⁴ All people are affected by COVID-19 in some way; however, the most affected groups include the first responders (like healthcare and national security workers), family members of patients, and the most vulnerable in society, such as elderly people, persons with disabilities, persons with pre-existing health conditions, migrant workers, stateless people, children, and poor people.⁵

The government of Kuwait has taken measures in the hope of alleviating the mental suffering of people during the pandemic. The Kuwait Ministry of Health has launched a medicine delivery service during curfew hours to ensure that patients with pre-existing health conditions are receiving their drug treatments.⁶ The government, with the assistance of the Red Crescent, companies, charitable societies, and volunteer teams, delivered daily free meals to the people in areas under complete lockdown.⁷ Furthermore, in response to a viral video of a teenager with autism, which showed the implications of the curfew on his condition,⁸ the Kuwait Public Authority for Disability Affairs has promised to issue special permits allowing persons with intellectual disabilities to visit parks, beaches, and other public places during curfew.⁹ The government of Kuwait announced the provision of financial rewards to the front-line workers as a token of its appreciation of their efforts in combating COVID-19.¹⁰ In coordination with the government of Saudi Arabia, the travel restrictions between Kuwait and Saudi Arabia through the land borders have been reduced, particularly to allow stranded nationals to return to their country as well as to address humanitarian cases.¹¹

Non-nationals, many of which are undocumented workers,¹² represent 70 percent of Kuwait's population.¹³ The government has accordingly adopted measures that are specifically designed to address the needs of this large population, particularly given that some of them lost their jobs, were unable to pay rent, and lived in overcrowded accommodations. To this end, the government also initiated an amnesty program.¹⁴ Under this program, expatriates without valid residency permits who surrender themselves to the local authorities between April 1-30, 2020, were allowed to leave Kuwait without paying any fines while still having the opportunity to return in the future.¹⁵ Additionally, the Kuwait Ministry of Health provides daily updates regarding the pandemic in different languages on its social media accounts to make migrant workers feel safe and secure.¹⁶ After several incidents of suicide were reported during the lockdown among non-nationals,¹⁷ the Ministry of Health opened a center for psychiatric services in Mahboula, an area where non-nationals usually reside.¹⁸

Given these implications of COVID-19 on mental health and the response of Kuwait's government, it is essential to answer the question of how the world and Kuwait can be better prepared for the effects of future similar crises on mental health.

Some scholars, such as Marko Hakovirta and Navodya Denuwara, argue that the international community should redefine sustainability after COVID-19; I agree with this position.¹⁹ Particularly, Hakovirta and Denuwara think that the existing three pillars of sustainability—societal development, economic development, and environmental protections—have fallen short in addressing the mental health issues associated with COVID-19.²⁰ Therefore, they propose the introduction of a fourth pillar to the overall definition of sustainability, concerned particularly with the health of the individual.²¹ Accordingly, the UN Secretary General Antonio Guterres emphasizes that “mental health services are an essential part of all government responses to COVID-19.”²² There is a role for governments, the community, and international organizations and agencies—including the ILO, IOM, UNDP, UNESCO, UNFPA, UNHCR, UNICEF, and WHO—to play in making our mental health support infrastructure more resilient and inclusive in response to future crises.²³ A retroactive plan for healthcare workers to address their mental health needs should be developed. Additionally, protocols must be in place for prioritization among patients. An effective communication infrastructure is also a necessity. Moreover, cooperation



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agreements between private and public sectors as well as bilateral and multilateral treaties between governments would be generally useful in addressing the consequences of a large-scale health crisis and would subsequently help to minimize its profound effects on mental health.

Due to the implications of the COVID-19 pandemic, the government of Kuwait is addressing the imbalance in demographics, one of the most important and long-standing local problems that has led to increasing mental health troubles during the crisis.²⁴ Kuwait is a country dominated by foreign workers. Kuwaiti citizens, only 30 % of the population, are thus a minority in their country. Such imbalance in demography is a burden on the state's resources and thus affects Kuwait's ability to face the pandemic effectively. Addressing this problem requires addressing many other underlying issues related to human trafficking, corruption, plans for crisis management, and regulations concerning the admission and treatment of aliens.

¹Kuwaiti (Ministry of Health) announces that 3 people have been infected with the Corona virus among those returning from the Iranian city of Mashhad, Kuwait News Agency (Feb 24, 2020), <https://www.kuna.net.kw/ArticleDetails.aspx?id=2864376> (last visited Jun 19, 2020: google translate Sep. 11, 2020).

²Specialized study: Negative trends in Kuwaiti society resulting from multiple risks caused by the Corona virus, Kuwait News Agency (Apr. 15, 2020), <https://www.kuna.net.kw/ArticleDetails.aspx?id=2886044> (last visited Jun 19, 2020: google translate Sep. 11, 2020).

³The Daily — Canadians' mental health during the COVID-19 pandemic, *Statistics Canada* (May. 27, 2020), <https://www150.statcan.gc.ca/n1/daily-quotidien/200527/dq200527b-eng.htm> (last visited Jun 12, 2020).

⁴Mental health and psychosocial considerations during the COVID-19 outbreak, WORLD HEALTH ORGANIZATION (2020), <https://apps.who.int/iris/bitstream/handle/10665/331490/WHO-2019-nCoV-MentalHealth-2020.1-eng.pdf> (last visited Jun 12, 2020).

⁵Policy Brief: COVID-19 and the Need for Action on Mental Health, United Nations (2020), <https://unsdg.un.org/sites/default/files/2020-05/UN-Policy-Brief-COVID-19-and-mental-health.pdf> (last visited Jun 12, 2020).

⁶The Ministry of Health launches medicine delivery service, *Arab Times* (Mar. 28, 2020), <http://www.arabtimesonline.com/news/the-ministry-of-health-launches-medicine-delivery-service/> (last visited Jun 13, 2020).

⁷More Than A Half Million Free Meals Will Be Available For People In Jleeb And Mahboula, Kuwaitlocal (2020), <https://kuwaitlocal.com/news/more-than-a-half-million-free-meals-will-be-available-for-people-in-jleeb-and-mahboula> (last visited Jun 19, 2020).

⁸Curfew with Persons with Intellectual Disabilities-Humanitarian Tragedy, Alqabastube (Jun. 8, 2020), https://www.youtube.com/watch?v=F0d2J97Ga3U&feature=emb_rel_pause (last visited Jun 13, 2020). Note: the title is a translation by author.

⁹In a reaction after the Qabas' report; a letter issued to the Minister of Interior Affairs to allow persons with intellectual disabilities to leave during the curfew. *Alqabastube* (Jun. 10, 2020), https://www.youtube.com/watch?time_continue=196&v=-rpvZQNBME8&feature=emb_logo (last visited Jun 13, 2020). Note: the title is a translation by author.

¹⁰Video: Badr Al-Hamad, Undersecretary of the Civil Service Bureau, Explains The Details of The Compensation Categories For Workers In The First Rows To Combat Corona. *www.alziadiQ8.com* (May. 26, 2020), <https://alziadiq8.com/362919.html> (last visited Jun 19, 2020: google translate Sep. 11, 2020).

¹¹Mariam Aljaber, Saudi Ambassador to Kuwait: Land borders are open 24 hours, *Alarabiya* (June 18, 2020), <https://ara.tv/67tmv> (last visited Sep 11, 2020: google translate Sep. 11, 2020).

¹²Aarti Nagraj, Amnesty ends in Kuwait, 30,000 undocumented expats avail scheme - report *Gulf Business* (May. 4, 2020), <https://gulfbusiness.com/amnesty-ends-in-kuwait-30000-undocumented-expats-avail-scheme-report/> (last visited Jun 19, 2020).

¹³Kuwait Population 2020 (Live), *World Population Review* (2020), <https://worldpopulationreview.com/countries/kuwait-population/> (last visited Jun 19, 2020).

¹⁴Aarti Nagraj, *supra* note 12.

¹⁵*Id.*

¹⁶Kuwait Ministry of Health, Media Office – Instagram, https://www.instagram.com/moh_media_office/?hl=en (last visited Jun 20, 2020).

¹⁷Samir Salama, COVID-19: Nepalese, Indian commit suicide in Kuwait, *Gulf News* (Jun. 2, 2020), <https://gulfbusiness.com/world/gulf/kuwait/covid-19-nepalese-indian-commit-suicide-in-kuwait-1.71802356> (last visited Jun 19, 2020).



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¹⁸Urgent: the Ministry of Health announces the opening of a psychiatric clinic in Mahboula due to the residents' need, NABD (Jun. 9, 2020), <https://nabd.com>

¹⁹Hakovirta, M. and Denuwara, N., 2020. How COVID-19 Redefines The Concept Of Sustainability. [online] MDPI. Available at: <https://doi.org/10.3390/su12093727> [Accessed 13 June 2020].

²⁰*Id.*

²¹*Id.*

²²António Guterres, "Mental health services are an essential part of all government responses to COVID-19" United Nations (May. 13, 2020), <https://www.un.org/en/coronavirus/mental-health-services-are-essential-part-all-government-responses-covid-19> (last visited Jun 20, 2020).

²³Policy Brief, *supra* note 5, at 14.

²⁴Nawal Sayed, PM: Kuwait Faces Demographic Imbalance with Only 30% Citizens, Sada El balad (Jun. 4, 2020), <https://see.news/kuwait-faces-demographic-imbalance-only-30-citizens/> (last visited Jun 19, 2020). *See also*, Farhan Alshammari, The Comprehensive government plan for "demographics"... 15 years maximum residency, a "quota" for Communities, and an increase in fees, Alraimedia (Jun. 12, 2020), <https://www.alraimedia.com/Home/Details?id=6864433f-2002-4e97-b018-24c49038c8aa> (last visited Jun. 19, 2020; google translate Sep. 11, 2020).

Lebanon: Right to Food at Stake Due to Economic Collapse Amid the Covid-19 Crisis **Dr. Julie Farah Yassine** **Associate Professor** **Kuwait International Law School**

The photographs of empty fridges published in June 2020¹ shocked people in Lebanon as much as it shocked people outside Lebanon. It was a wake-up call for those who thought that "people cannot die of hunger," a popular Lebanese quote that was constantly repeated throughout the past months. No one expected the fast economic collapse and the devastating impact of the ongoing crisis. Even though everyone knew that the Lebanese economy was suffering and that the currency was under serious threat, no one expected that the situation would rapidly deteriorate due to a pandemic. The global threat of COVID-19 led to partial and total lockdowns in addition to the closure of public places and businesses. As a result, the Lebanese economy crumpled in its already very fragile state.

Moreover, Lebanon was still trying to cope with the impact of the protests that never really ended from October 17.² The most significant aftermath was the threat of hunger that is likely to lead to famine due to the "worst economic crisis -faced by Lebanon- in modern history."³ The situation became more tragic after the blast in the port of Beirut that resulted in a high number of casualties and injuries.

It is difficult to provide a thorough overview of the current situation in Lebanon and to examine the human rights' situation in the country as a whole. Thus, this article will focus on one important aspect requiring urgent attention, the potential breaches of the right to food.

Pursuant to Article 11 of the International Covenant of Economic, Social and Cultural Rights (ICESCR), "States Parties (...) recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions."⁴ This implies the obligation to take several measures nationally and through international cooperation, such as the improvement of the "methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources."⁵

The assessment of Lebanon's compliance with the obligation to ensure the right to food requires the identification of national obligations in this regard. The core content of this right entails availability and accessibility of food in a sustainable manner. Steps should be taken to achieve progressively the realization of the right for the access to the minimum essential food to ensure freedom from hunger, while complying with the obligations to respect, to protect and to fulfil (provide).⁶ The obligation to respect requires States to abstain from taking measures that would prevent access to adequate food. The obligation to protect ensures that private parties do not obstruct such access. The obligation to fulfil means States must take positive proactive measures to ensure access to, and utilization of, resources as well as guaranteeing food security. When individuals do not have sufficient means to enjoy the right to adequate food for reasons beyond their control, States must provide that right directly. This covers also the victims of natural or other disasters.⁷ What about economic collapse, severe financial crisis amid the spread of a pandemic? How does



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this reality impact Lebanon's obligations under international law pertaining to the right to food?

As shown above, Lebanon should at least take necessary steps "to ensure the satisfaction of the minimum essential level required to be free from hunger,"⁸ while working on the progressive implementation of all the components of the right to food, acknowledging that some measures "are of a more immediate nature, while other measures are more of a long-term character."⁹

Did Lebanon take all necessary measures to comply with its obligations pursuant to the ICESCR? Violations occur when a State fails to adopt a national strategy to ensure food security without discrimination, even in emergency situations and in situations of severe resource constraints.¹⁰ It is hard to determine whether such strategy exists and whether Lebanon has taken "necessary steps to the maximum of its available resources."¹¹ Until recently, the right to food was available but not always accessible while stability and sustainability were at risk.¹² This led to a serious threat to the right to food due to the current crisis. Lebanon supported certain basic food products to mitigate inflation that is mainly caused by the fall in the Lebanese pound (Lira). However, the right to food is still compromised and more consistent steps are needed "as Lebanon can no longer afford to operate its response to food and nutrition security without a clear, comprehensive, multi-stakeholder Food and Nutrition Security Strategy (FNSS)."¹³

Whether or not Lebanon has breached its obligation to fulfil the right to food cannot be clearly determined without an extensive study of the economic situation in the country. As a home for a very high number of refugees, it has very limited available resources amid economic collapse and the spread of COVID-19. Nevertheless, Lebanon is now able to benefit from international cooperation and assistance following the unfortunate explosion in Beirut Port on August 4, 2020. Lebanese people are now relying on the compassion of the international community through the aid provided by several organizations and States, while national authorities did not/could not sufficiently fulfil the right to food, allegedly for reasons beyond their control!

¹*Empty fridges as Lebanon economic crisis bites*, France 24, 23/06/2020, <https://www.france24.com/en/20200623>

[-empty-fridges-as-lebanon-economic-crisis-bites.](#)

²See World Food Programme, *Assessing the Impact of the Economic and COVID-19 Crises in Lebanon*, June 2020, <https://docs.wfp.org/api/documents/WFP-0000116784/download/>.

³Abbie Cheeseman, *'People will die within months': Lebanon heads for famine as pandemic accelerates hunger*, The Telegraph, 30 June 2020, <https://www.telegraph.co.uk/global-health/science-and-disease/people-will-die-within-months-lebanon-heads-famine-pandemic/>.

⁴ICESCR, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 3 January 1976, Article 11.

⁵*Id.*, Article 11 paragraph 2 (a).

⁶Committee on ESCR, *General Comment No. 12: The Right to Adequate Food (Art. 11)*, adopted at the twentieth Session of the Committee on ECSR, 12 May 1999 (Contained in Document E/C.12/1999/5), Paragraphs 8-15.

⁷*Id.*, paragraph 15.

⁸Mickael Fakhri, Special Rapporteur on the Right to Food, OHCHR, available at <https://www.ohchr.org/en/issues/food/pages/foodindex.aspx>

⁹Committee on ESCR, *General Comment No. 12: The Right to Adequate Food (Art. 11)*, *op.cit.*, note 5, paragraph 16.

¹⁰*Id.*, paragraphs 19-28.

¹¹ICESCR, *op.cit.*, note 4, Article 2.1.

¹²*Strategic review of food and nutrition Security in Lebanon*, United Nations, ESCWA, May 2016, pp.29-63.

¹³*Id.*, p.64.