

# 12 CHARACTERISTICS OF AN EFFECTIVE PUBLIC HEALTH EMERGENCY LAW

A country's response to a public health emergency such as the COVID-19 pandemic, will be both empowered and constrained by its national laws. These laws need to provide the government with strong, clear and flexible authority to respond to an emergency. While every country should enact laws appropriate for the local context, there are several general characteristics that distinguish the most effective laws. In some countries these features may all be contained in a single public health emergency law, while in other countries they might be spread across a variety of legislation, regulations and other legal measures. This document outlines these touchstone characteristics to help policymakers design an appropriate legal framework.

Laws that seek to address public health emergencies should have the following characteristics, adapted and tailored to the country context and legal system:



## Scope

- 1 Address complete life cycle of emergencies.** The legal framework should operate before, during and after an emergency to prevent, detect, respond and recover.<sup>1</sup> The law should allow public health activities to adapt and adjust to the levels or phases of the emergency,<sup>2</sup> and ensure a formal review of lessons learned.<sup>3</sup>
- 2 Define the triggering events.** The law should address a range of events that can trigger a public health emergency<sup>4</sup>. The list of diseases, conditions or events must be broader than just infectious diseases, and include chemical or radiation leaks, foodborne illnesses and famine, among others.<sup>5</sup> Any list should also provide a catchall provision to include novel, unknown and suspicious events and any Public Health Event of International Concern declared by WHO.<sup>6</sup> Conversely, not every infectious disease should be listed; the regular health system can address certain infectious diseases without triggering an emergency.

1 International Health Regulations (2005) Third Edition, World Health Organization; Mastroianni, A., Kahn, J., Kass, N., & Henry, L. (2019-09-09). An Overview of Public Health Ethics in Emergency Preparedness and Response. In *The Oxford Handbook of Public Health Ethics*.: Oxford University Press. Retrieved 3 Aug. 2020, from <https://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780190245191.001.0001/oxfordhb-9780190245191-e-66>.

2 Critical preparedness, readiness and response actions for COVID-19, Interim Guidance, World Health Organization, 24 June 2020, available at: <https://www.who.int/publications/i/item/critical-preparedness-readiness-and-response-actions-for-covid-19>;

3 Staying Alert: Navigating COVID-19 Toward a New Normal, Resolve to Save Lives, May 2020, available at: [https://preventepidemics.org/wp-content/uploads/2020/05/STAYING-ALERT-Navigating-COVID-19-Risk-Toward-a-New-Normal\\_final.pdf](https://preventepidemics.org/wp-content/uploads/2020/05/STAYING-ALERT-Navigating-COVID-19-Risk-Toward-a-New-Normal_final.pdf)

4 Guidance for conducting a country COVID-19 intra-action review, 23 July 2020, World Health Organization, available at: [https://www.who.int/publications/i/item/WHO-2019-nCoV-Country\\_IAR-2020.1](https://www.who.int/publications/i/item/WHO-2019-nCoV-Country_IAR-2020.1)

5 Mastroianni, A., Kahn, J., Kass, N., & Henry, L. (2019-09-09). An Overview of Public Health Ethics in Emergency Preparedness and Response. In *The Oxford Handbook of Public Health Ethics*.: Oxford University Press. Retrieved 3 Aug. 2020, from <https://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780190245191.001.0001/oxfordhb-9780190245191-e-66>.

6 Joint External Evaluation Tool, second edition, IHR (2005) Monitoring and Evaluation framework, World Health Organization, 2018



## Procedures and operations

### 3 Balance strong and agile decision-making with meaningful oversight.

Emergency response requires clear and quick action by competent public health authorities without unnecessary bureaucracy.<sup>7</sup> The law should streamline the decision-making process without sacrificing meaningful oversight by the legislature, the judiciary or other autonomous bodies, because emergency powers can be abused without checks and balances.<sup>8</sup> There should also be clear criteria on who can declare a public health emergency, under what conditions, and how long the temporary emergency measures can remain in effect.<sup>9</sup>

### 4 Fund adequately.

Government budget allocations should cover the normal operating expenses for the agencies, institutions and officials responsible for emergency response at the national and subnational levels. Additional emergency funding sources and expedited disbursement mechanisms should be established for extreme or unanticipated events.<sup>10</sup>

### 5 Equip authorities with all relevant public health tools.

Public health authorities at national and local levels must have broad power to issue and implement critical orders to respond to emergencies, including: mandatory quarantine or isolation; hygiene, sanitation and distancing rules; contact tracing and investigation procedures; testing, treatment and vaccination standards; disinfection and destruction of property; event- and community-based surveillance; and other innovative measures needed for unexpected challenges.<sup>11</sup>



## International Obligations

### 6 Fulfil IHR obligations.

Any law must satisfy a country's obligations under the International Health Regulations (2005).<sup>12</sup> This includes developing and maintaining core capacities, designating points of entry, providing appropriate services to international travelers and conveyances, establishing and empowering a national focal point, and reporting to the WHO and other countries in accordance with the IHR.

7 IHR Procedures concerning public health emergencies of international concern (PHEIC), World Health Organization, available at: <https://www.who.int/ihr/procedures/pheic/en/>

8 Sunshine G. (2017). The Case for Streamlining Emergency Declaration Authorities and Adapting Legal Requirements to Ever-Changing Public Health Threats. *Emory law journal*, 67(3), 397–414.

9 OSCE Human Dimension Commitments and State Responses to the Covid-19 Pandemic, OSCE Office of Democratic Institutions of Human Rights (ODIHR), 2020, pp 49-50, 78.

10 Human Rights at the Heart of Response, Topics in Focus, Emergency Measures and COVID-19, 27 April 2020, United Nations Human Rights, Office of the High Commissioner, available at: [https://www.ohchr.org/Documents/Events/EmergencyMeasures\\_COVID19.pdf](https://www.ohchr.org/Documents/Events/EmergencyMeasures_COVID19.pdf)

11 Curristine T., Doherty L., et al., Budgeting in a Crisis: Guidance for Preparing the 2021 Budget, Fiscal Affairs, International Monetary Fund, 29 June 2020.

12 COVID-19 Playbook, July 2020, Resolve to Save Lives, available at: [https://preventepidemics.org/wp-content/uploads/2020/04/COV040\\_COVID-19Playbook\\_v2-1.pdf](https://preventepidemics.org/wp-content/uploads/2020/04/COV040_COVID-19Playbook_v2-1.pdf)



- 7 Protect human rights.** Especially during an emergency, the government must respect the rights of the people.<sup>13</sup> Measures should be the least intrusive needed to achieve the objective. When necessary restrictions are imposed, the government should sustain basic necessities, such as food, water, shelter and medical care.<sup>14</sup> Other rights, such as privacy, freedom of expression, and informed consent to treatment, should be maintained.<sup>15</sup> Laws should be implemented without discrimination.<sup>16</sup> All people should have access to a meaningful appeal process to provide redress for legitimate harms.<sup>17</sup>



### Augment existing health systems

- 8 Integrate functioning health strategies.** Any law should complement operational public health strategies and structures. The law should require a strategy to ensure continuity of essential health services during an emergency, including fair allocation of scarce resources.<sup>18</sup> The law should also support multi-sectoral and multi-agency coordination and should integrate One Health<sup>19</sup> and Integrated Disease Surveillance and Response<sup>20</sup> strategies where in place.
- 9 Ensure flow of health data across all levels of governance.** Public health authorities need timely and accurate data to allow real-time, operational decision-making.<sup>21</sup> Any law should regulate the access to health data and information among patients, laboratories, providers, different health and other government agencies across various tiers of government, international partners, and the public. The law must balance privacy, confidentiality and data protection safeguards against transparency principles.<sup>22</sup>
- 10 Safeguard health care workers.** Any law should empower the health agency to provide wraparound protections for health care workers, volunteers and other essential workers as required by the emergency.<sup>23</sup> At work, these protections might include hazard pay and benefits, enhanced insurance and liability protections, guaranteed personal protective equipment and workplace safety measures, and clear guidance on crisis standards of care, among others.<sup>24</sup> In the community, authorities must protect workers from community attacks driven by stigma, fear, and misinformation.

<sup>13</sup> IHR (2005)

<sup>14</sup> Human Rights at the Heart of Response

<sup>15</sup> OSCE Human Dimension Commitments and State Responses to the Covid-19 Pandemic, OSCE Office of Democratic Institutions of Human Right (ODIHR), 2020, pp 98-99; Human Rights at the Heart of Response.

<sup>16</sup> OSCE Human Dimension Commitments and State Responses to the Covid-19 Pandemic, pp 63, 98-99, 110-111, 115-116, 119-120.

<sup>17</sup> OSCE Human Dimension Commitments and State Responses to the Covid-19 Pandemic, p 63.

<sup>18</sup> OSCE Human Dimension Commitments and State Responses to the Covid-19 Pandemic, pp 69, 90-91, 119-120. 18.

<sup>19</sup> Maintaining essential health services: operational guidance for the COVID-19 context, 1 June 2020, World Health Organization.

<sup>20</sup> One Health Platform, One Health Agenda, available at: [https://onehealthplatform.com/sites/default/files/downloadables/OHP\\_agenda\\_0.pdf](https://onehealthplatform.com/sites/default/files/downloadables/OHP_agenda_0.pdf)

<sup>21</sup> Technical Guidelines for Integrated Disease Surveillance and Response in the African Region: Third Edition, WHO Africa, March 2019, available at: <https://www.afro.who.int/publications/technical-guidelines-integrated-disease-surveillance-and-response-african-region-third>

<sup>22</sup> Principles of data sharing in public health emergencies, Global Research Collaboration for Infectious Disease Preparedness, June 2018, available at <https://www.glopid-r.org/wp-content/uploads/2018/06/glopid-r-principles-of-data-sharing-in-public-health-emergencies.pdf>

<sup>23</sup> OSCE Human Dimension Commitments and State Responses to the Covid-19 Pandemic, p 63

<sup>24</sup> Mastroianni, A., Kahn, J., Kass, N., Smith, M., & Upshur, R. (2019-09-09). Pandemic Disease, Public Health, and Ethics. In *The Oxford Handbook of Public Health Ethics*. : Oxford University Press. Retrieved 3 Aug. 2020, from <https://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780190245191.001.0001/oxfordhb-9780190245191-e-69>



## Public Compliance

- 11 Enforce the rules without imposing unjust penalties.** Culturally appropriate tactics should encourage compliance with the emergency measures. Constructive tactics, such as public education, service delivery, and enhanced monitoring, should be first prioritized. In extreme cases, deterrent sanctions, such as license suspension or fines, may be required as a last resort to prevent individual harm.<sup>25</sup> The health agency should lead coordination and training of enforcement officers across different sectors.
- 12 Promote transparency.** Governments should prioritize consistent and continuous dissemination of factual information to the public through risk communication.<sup>26</sup> Any law should obligate the utmost transparency to the public throughout the emergency on the risks, response and requirements.<sup>27</sup> This commitment to transparency should protect whistleblowers and civil society groups who speak outside of approved government channels.<sup>28</sup>

<sup>25</sup> Coronavirus Disease Outbreak: Rights, Roles and Responsibilities of Health Workers, including Key Considerations for Occupational Safety and Health, World Health Organization, available at: [https://www.who.int/docs/default-source/coronaviruse/who-rights-roles-respon-hw-covid-19.pdf?sfvrsn=bcabd401\\_0](https://www.who.int/docs/default-source/coronaviruse/who-rights-roles-respon-hw-covid-19.pdf?sfvrsn=bcabd401_0); Exposed, Silenced, Attacked: Failures to protect Health and Essential Workers During the COVID-19 Pandemic, Amnesty International, 2020.

<sup>25</sup> Human Rights at the Heart of Response, available at: [https://www.ohchr.org/Documents/Events/EmergencyMeasures\\_COVID19.pdf](https://www.ohchr.org/Documents/Events/EmergencyMeasures_COVID19.pdf); OSCE Human Dimension Commitments and State Responses to the Covid-19 Pandemic, OSCE Office of Democratic Institutions of Human Rights (ODIHR), 2020, pp 105-106.

<sup>26</sup> OSCE Human Dimension Commitments and State Responses to the Covid-19 Pandemic, pp 56.

<sup>27</sup> OSCE Human Dimension Commitments and State Responses to the Covid-19 Pandemic, pp 51.

<sup>28</sup> OSCE Human Dimension Commitments and State Responses to the Covid-19 Pandemic, pp 90-91, 116.