Examining the role of Law in international regulation of pandemics and its inherent paradoxes'

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I. Abstract

The paper presents an elaborate analysis of the law relating to global public health regulation and its efficacy in addressing global pandemics and other disease outbreaks. It was primarily a conceptual paper, focusing on states, policies, institutions and the law such as public health regulation (2005) and other international treaties in regulation of pandemics and other disease outbreaks. The main thrust of the paper was to tease the nuances in the law regulating pandemics and the underlying challenges given that engendered international public health regimes are implemented locally. The paper therefore proceeds on the following two specific objectives.

a) It has adopted a mixed research design to analyze the laws which regulate global public health crises from selected data sources.
b) To articulate the inherent deficiencies of a global regulatory paradigm given that regulatory regimes are evolved at the periphery of the state but are implemented within it. This poses the dilemma that the

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implementation of engendered regulatory norms succeed or fail to work depending on the dictates and a prevailing environment at a local level where they are implemented.

The paper examines the importance of the law in fostering interstate relations and coordination of their responses against public health emergencies. The outbreak of pandemics such the Covid-19 demonstrated the limitations of territorial boundaries as a mechanism for containing disease outbreaks from the other side of the border. The significance of the law was for instance manifested in the work of WHO, in issuing guidelines for states to follow in fashioning their response against Covid-19 pandemic. This pandemic also highlighted that equitable distribution of essential medicines was a critical component of public health response to global pandemics. There is a need for countries to adopt a robust legal framework to ensure equitable, fair and timely distribution of essential medicines across all countries, regardless of their economic status.

II. Introduction

International public health regulation provides a legal framework of rules and normative practices used to prevent, control and to protect the overall health of the population. It covers the raft of laws, principles and practices adopted to prevent and control disease outbreaks. These measures range from disease prevention, control and treatment of patients to ensure health of the

population. The growing threat of pandemics was highlighted by the recent outbreaks such as Ebola, Middle East respiratory syndrome (MERS), Swine flu (H1N1 virus), Severe Acute Respiratory Syndrome (SARs), Covid-19, just to mention but a few. The law especially in the realm of preventing the spread of global crises has not fared well in the prevention of pandemics globally.[2] The Covid-19 pandemic demonstrated ill-preparedness of states in dealing with the overlapping effect of global pandemics. To accomplish the objectives of this paper, the author adopted a mixed research design based on selected regulatory regimes and evaluating their application in dealing with global public health emergencies.

It is worth noting that one of the primary international instruments adopted to deal with public health emergencies was the International Health Regulation (hereinafter IHR 2005). The IHR is a legally binding instrument for all World Health Organization (WHO) member states.[3] Under Articles 21(a) and 22, the Constitution of WHO confers upon the World Health Assembly the authority to adopt regulations to curtail the international spread of disease.[4] There is no doubt that the COVID-19 pandemic was a wakeup call for countries in highlighting the far reaching impact of pandemics on countries—small or big. The equitable distribution of vaccines has become a critical component of the global public

[2] The International Health Regulation core capacities as set out in Articles 5 and 13 as to detect, assess, notify and report events relating to public health risks and emergencies of national and international concern.

[3] The WHO's cardinal responsibility is to provide oversight on prevention and control of international spread of diseases.

[4] There is no state, however powerful that state is that can deal with overlapping health challenges singlehandedly.

health response to pandemics[5]. It is imperative for countries to ensure that there is a robust legal framework for equitable, fair and timely access to vaccines across all countries, regardless of their economic status[6].

[5] Worldometer, COVID-19 coronavirus pandemic. https://www.worldometers.info/coronavirus/#countries (2020)

[6] United Nations. (2020). Global humanitarian response plan COVID-19. https://www.unocha.org/sites/unocha/files/Global-Humanitarian-Response-Plan-COVID-19.pdf

The International Health Regulation (IHR) provides a legal framework for countries to work together in in regulation of international disease outbreaks while at the same time avoiding unnecessary interference with international traffic and trade. The IHR comprises of 66 articles stipulating measures to be taken by states to prevent epidemics and pandemics[7]. International health regulation has mechanisms for governments to compel, prohibit, track, regulate, and sensitize the public against pandemics and how to respond in the event of outbreaks. The world has experienced a raft of public health catastrophes including rapid spread epidemics and pandemics of different magnitudes.[8] The pervasive nature of public health emergencies calls for the concerted efforts of governments of the world because there is no country, however, powerful that states is that can afford to tackle pandemics singlehandedly. The adoption of international treaties fosters harmonization of varying policy responses to curtail the spread of diseases across borders. In international public health regulation, regulatory norms are emanated from International treaties but ironically implemented within sovereign states.

III. Methodology

The paper was undertaken by way of qualitative research focusing on documentary analysis, which was augmented by doctrinal research

[7] In Public health, a **pandemic** is a disease outbreak that spreads across countries or continents. An epidemic is a disease outbreak that is rapidly spreading in a limited region.

[8] Diseases such as fever, smallpox, measles, polio, obesity have been considered to be epidemics.

methodology. The later was largely utilized to review legal principles such as IHR, norms, rules, and court decisions, the constitution, statutes, journal papers, newspapers, official government reports, policies, legislation, official documents, treaties and statutory instruments. The secondary data sources referred to included academic books, foreign literature, newspapers, magazines, and online sources. The internet and the social media was also consulted but on a reduced basis to internalize the views of other scholars. The analysis of these legal materials were enriching in terms of fostering the understanding of public health regulatory measures at a global level and their adaptability across countries. Other materials referred to included international law reports, ministerial statements, and policy statements accessed from the websites and newspaper articles on public health regulation.

IV. The evolution of International Public Health Regulation

The concerted efforts of states to curtail the spread of infectious diseases and pandemics started gaining traction in the mid-ninetieth century.[9] This was after the convention on the first International Sanitary in 1851 on standardization of quarantine regulations and prevention of cholera, plague, and yellow fever was adopted.[10] Some of these standardization measures included the adoption of International Sanitary Conventions in 1890s, the creation of World Health

[9] Ibid

[10] The first Sanitary Conferences was organized by the French Government in 1851 to standardize international quarantine regulations against the spread of cholera, plague, and yellow fever.

Organization in 1948, and International Health Regulations (2005) to curb the spread international spread of diseases, epidemics and pandemics.[11] The mandate of IHR is provided for in article 1 of this Convention which states that; "the purpose and scope of these Regulations are to prevent, protect against, control and provide a public health response to the international spread of disease in ways that are commensurate with and restricted to public health risks, and which avoid unnecessary interference with international traffic and trade." Article 5 of the IHR calls on countries to strengthen surveillance and develop the capacity to detect, assess, notify and report all available essential information immediately to the appropriate level of healthcare response. Annex 1 of the IHR calls on states to use existing national structures and resources to meet their core capacity for surveillance, reporting, notification, verification, response and collaboration activities. Annex 1 further emphasizes that reporting can be done at different levels of the health care of a particular country. At the local community level, reporting shall be vested with local community health-care centres or the appropriate health personnel, at the

[11] Once a disease outbreak has been confirmed to be a public health emergency of international concern, the IHR mandates WHO under article 13 (3) to collaborate in the response to public health risks and other events by providing technical guidance and assistance and by assessing the effectiveness of the control measures in place, including the mobilization of international teams of experts for on-site assistance, when necessary. Apart from providing technical assistance as stipulated in article 13 of paragraph 3, paragraph 4, calls for further assistance to the State Party, including an assessment of the severity of the international risk and the adequacy of control measures. Such collaboration may include the offer to mobilize international assistance in order to support the national authorities in conducting and coordinating on-site assessments. These legal provisions are intended to foster harmonization of public health regulations to curtail the spread of global pandemics and other outbreaks across countries.

primary public health response level, reporting shall be to the intermediate or national response level, depending on organizational structures. The purpose of reporting essential information at different levels of health care is to detect the disease and implement preliminary control measures immediately. The above Annex provides a list of essential information including clinical descriptions, laboratory results, sources and type of risk, numbers of human cases and deaths, conditions affecting the spread of the disease and the health measures employed. Surveillance plays a critical role in public health and is essential for early detection of disease outbreaks, allowing for prompt, control, and management and prevent further spread of diseases. Articles 19, 20, 21 and 22 of the IHR provide guidelines on how to handle ports on entry including airports, water and ground crossing. Article 22 (1) in particular emphasizes the role of authorities at ports of entry which include: (a) monitoring baggage, cargo, containers, conveyances, goods, postal parcels and human remains departing and arriving from affected areas, so that they are maintained in such a condition that they are free of sources of infection or contamination, including vectors and reservoirs; (b) ensure, as far as practicable, that facilities used by travelers at points of entry are maintained in a sanitary condition and are kept free of sources of infection or contamination, including vectors and reservoirs; supervision of any derating, disinfection, or decontamination of baggage, cargo, containers, conveyances, goods, postal parcels and human remains or sanitary measures for persons, as appropriate under these regulations, among others. All these provisions help to foster

fostering harmonization of public health regulations in dealing with the spread of global pandemics and outbreaks across countries.

The International Law Commission Draft Articles on the Protection of Persons in the Event of Disasters, set out a general duty of cooperation in the event of a 'calamitous event or series of events resulting in widespread loss of life, great human suffering and distress, thereby seriously disrupting the functioning of society'.[12] These health events include epidemics and pandemics. And under the ILC Draft Articles, the affected State and assisting actors have a general duty to 'cooperate among themselves for the purpose of limiting the spread of diseases and outbreaks.'[13]

V. The historic responsibility of WHO in public health regulation

The WHO has a central and historic responsibility to manage and control the international spread of diseases. Under Articles 21(a) and 22, the Constitution of WHO confers upon the World Health Assembly the authority to adopt regulations "designed to prevent the international spread of disease. The IHR represents the collective effort of WHO member countries and international organizations to address global health issues through coordinated policies, agreements, and regulatory measures. Important to note is that the IHR deals

[12] This Article was submitted to the General Assembly as a part of the Commission's report (A/71/10). It appeared in Volume II of International Law Commission, Yearbook 2016.
[13] Ibid.

with health issues and threats that transcend national borders and require corporation among nations. Therefore, IHR is rooted in the noble intentions aimed at protecting and promoting the health and well-being of people worldwide. However, the critical challenge faced by this noble regulation lies in the implementation within individual sovereign states as elucidated below. During COVID-19 lockdown, people were desperate for food and necessities. However, when the opposition politicians tried to distribute food to people, who had lost their source of income due to lockdown, the president of Uganda directed the police and the army to apprehend all the people who will be distributing food to people and be charged with attempted murder.

The WHO further mandates under article 6 of the IHR that states have a duty to report to WHO within 24 hours of assessment of public health information of all events which may constitute a public health emergency of international concern within its territory. The IHR is endowed with mechanisms to monitor and evaluate if countries are compliant with the notification to WHO. This wide ranging mandate has on many occasions failed to crystalize because of limited capacity of states to monitor and evaluate compliance within sovereign countries. Article 5 and 13 of IHR calls on states to develop national capacities to effectively respond to public health risks and public health emergencies of international concern. Countries have a timeline of five years to garner the required response capacity to detect, assess, notify, and report events to oversight institutions. However, many low-income countries face financial and technical resource constraints that hinder their ability to

implement the IHR effectively. Without adequate funding, prioritization for health, technical and human resources, countries may struggle to build the necessary capacities for surveillance, detection, and response to public health threats. Even with limited financial resources, health is usually not the top priority during the budging and fund allocation. For instances in Uganda, security usually takes the biggest budget in comparison with other sectors. In addition to limited financial capacity, low-income and middle-income countries face the challenge of corruption. Due to corruption, the limited financial resources allocated for health purposes are often misallocated or diverted and used for personal gains instead of being invested in building strong capacities to implement IHR and other health programs effectively. Without effective mechanisms for accountability, there may be little incentive for authorities to prioritize the implementation of the IHR or even to address gaps in the preparedness and response. It is for this reason that relief items intended to respond to famine were often diverted by those in-charge of the program and the needy are often left with nothing, which compromises their health and well-being.

Article 12 of IHR mandates the Director General of WHO to assess the information received from the State Party within whose territory an event is occurring, whether an event constitutes a public health emergency of international concern. This article mandates the Director-General to take further steps and make necessary consultations with different stakeholders including the Emergency Committee within 48 hours and make temporary

recommendations to contain the disease. Once an issue has been confirmed to be a public health emergency of international concern, the International Health Regulation (IIHR) mandates WHO under article 13 (3) to collaborate in the response to public health risks and other events by providing technical guidance and assistance and by assessing the effectiveness of the control measures in place, including the mobilization of international teams of experts for on-site assistance, when necessary. Apart from providing technical assistance as stipulated in article 13 of paragraph 3, paragraph 4, calls for further assistance to the State Party, including an assessment of the severity of the international risk and the adequacy of control measures. Such collaboration may include the offer to mobilize international assistance in order to support the national authorities in conducting and coordinating on-site assessments. These legal provisions are intended to foster harmonization of public health regulations to curtail the spread of global pandemics and other outbreaks across countries. Article 5 of the IHR calls on countries to strengthen surveillance and develop the capacity to detect, assess, notify and report all available essential information immediately to the appropriate level of healthcare response. Annex 1 of the IHR calls on states to use existing national structures and resources to meet their core capacity for surveillance, reporting, notification, verification, response and collaboration activities.[14]

[14] Annex 1 further emphasizes that reporting can be done at different levels of the health care of a particular country.

Articles 19, 20, 21 and 22 of the IHR provide guidelines on how to handle ports on entry including airports, water and ground crossing. Article 22 (1) in particular highlight the role of authorities at ports of entry which include: (a) monitoring baggage, cargo, containers, conveyances, goods, postal parcels and human remains departing and arriving from affected areas, so that they are maintained in such a condition that they are free of sources of infection or contamination, including vectors and reservoirs; (b) ensure, as far as practicable, that facilities used by travellers at points of entry are maintained in a sanitary condition and are kept free of sources of infection or contamination, including vectors and reservoirs; supervision of any deratting, disinfection, disinsection or decontamination of baggage, cargo, containers, conveyances, goods, postal parcels and human remains or sanitary measures for persons, as appropriate under these regulations, among others. All these articles and provisions are aimed at fostering harmonization of public health regulations to curtail the spread of global pandemics and other outbreaks across countries.

However, it must be noted that the IHR is a crucial international legal instrument that addresses most global pertinent issues of public health and public health emergencies. The IHR has 66 articles, 9 Annexes and 2 Appendices all addressing different concerns of either public health prevention, control of response. After demonstrating how the IHR is a crucial international legal document in fostering harmonization of public health regulations to curtail the spread of global pandemics and other outbreaks across countries, below I highlight the International Covenants on Human Rights.

VI. Human Rights

By human rights refers the inherent dignity and worth of every person and there is nowhere this become apparent than in public health regulation. Human Rights are universal, inalienable rights established through international treaties such as the Universal Declaration of Human Rights. Specifically in the realm of public health regulation, the International Covenant on Economic, Social and Cultural Rights (ICESCR) is key in underscoring the mechanisms for protection of the right to public health.[15] The right to public health include the right to access healthcare, access to essential medicines, and crucial information for the prevention and control of disease outbreaks.

In responding to global pandemics, governments often adopt measures that negatively impact on individual human rights.[16] The observance of human rights[17] ensures that public health interventions are both effective and

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[15] The International Covenant on Economic, Social and Cultural Rights commits parties to progressively realize rights of their citizens, including rights to work, adequate housing, food, health, and education.

[16] During the CoviD-19 pandemic, here in Uganda, for instance, many people were quarantined, family members were separated from each other and some communities could not access essential vaccines. More on the adverse effects of pandemics and human rights, see the paper by Hays JN. Epidemics and pandemics: Their impacts on human history. Santa Barbara, Ca: ABCCLIO; 2005. P. 23–24.

[17] United Nations, Global humanitarian response plan COVID-19. https://www.unocha.org/sites/unocha/files/Global-Humanitarian-Response-Plan-COVID-19.pdf

respectful of individual liberties[18]. The perverse nature of pandemics calls for innovative legal approaches to ensure the development and distribution of medical assistance, including vaccines, in a timely and equitable manner[19]. There is need for enhanced international collaboration[20], data sharing, human rights considerations, and adoption of innovative approaches. All these are critical components of an effective global response in dealing with pandemics.[21] As such, there is need for research and reforms to adapt the law and its preparedness in addressing future public health crises.[22]

Article 42 of IHR calls on countries to adopt public health measures in a transparent and non-discriminatory manner. States are mandated to enact laws and policies to curtail the spread of global pandemics and other outbreaks across countries. Article 12 of ICESCR obligates State Parties who have ratified the covenant to recognize the right of everyone to enjoyment of the highest attainable standard of physical and mental health. This means that countries are expected to integrate the right to health into their national legal frameworks, ensuring that it is enforceable and protected by law. Article 12 (2) highlights the steps which should be taken by State Parties which have ratified the covenant to achieve full realization of this right include: the improvement of all aspects of environmental and

[18]Midgley J. (2020). Social protection and social development. In S. Todd, & J. Drolet (Eds.), Community practice and social development in social work (pp. 127–149). Springer.
[19] Henrickson M, Kiwis and COVID: The Aotearoa New Zealand response to the global pandemic (2020), 2 (2). The International Journal of Community and Social Development, p 120.
[20] Midgley J., Surender R., Alfers L., (Eds.). (2019). Handbook of social policy and development. Edward Elgar.
[21] Samaddar R. (2020). Borders of an epidemic: COVID-19 and migrant workers. Mahanirban Calcutta Research Group.
[22] Morganstein JC, Ursano RJ, Fullerton CS, Holloway HC. Pandemics: Health care emergencies.

industrial hygiene; the prevention, treatment and control of epidemic, endemic, occupational and other diseases; and the creation of conditions which would assure to all medical service and medical attention in the event of sickness, among others.

VII. WTO Law

The World Trade Organization (WTO) has a broad mandate, some of which may not be directly applicable in fostering the objectives of this paper. Of particular interest for this paper is the Agreement **on Sanitary and Phytosanitary Measures (SPS Agreement) which calls states to adopt measures** on the protection of plants and animal life. Article 2 of the **Agreement on Sanitary and Phytosanitary Measures imposes obligations on member states to** protect human, animal, plant life. Article 2(1) of the SPS Agreement further stipulates that member states have the right to take sanitary and phytosanitary measures necessary for the protection of human, animal or plant life or health, provided that such measures are not inconsistent with the provisions of this Agreement. This agreement is crucial considering that the world has experienced public health epidemics, endemics and disease outbreaks spreading from animals to humans over the years making it necessary for the adoption of a robust legal framework to deal with them.

Additionally, the SPS agreement calls upon member states to ensure that sanitary and phytosanitary measures do not arbitrarily or unjustifiably discriminate between member states. Article 5 (2) of WTO Sanitary and phytosanitary Agreement

(1994) provides that procedures on quarantine and biosecurity protocols are implemented to safeguard the health and well-being of humans, animals, and plants against potential hazards of pests, illnesses, poisons, and pollutants. The agreement provides that sick animals are quarantined and excluded for human consumption as a measure to preserve and protect the environment. In the European Communities — Measures Concerning Meat and Meat Products (Hormones), the WTO determined that the European Union's prohibition on hormone-treated meat imports did not align with the EU's WTO responsibilities under the Sanitary and Phytosanitary (SPS) Agreement, since the EU had failed to carry out a risk assessment as required under **Article 5(3)**. This decision was intended to deter unsafe meat from flooding EU markets that was potentially capable endangering the health of the population. The adopted SPS measures must be scientifically proven not to discriminate against WTO member states.

The foregoing nondiscrimination requirement is also highlighted in the IHR as elucidated earlier. To emphasize the point of nondiscrimination and just implementation of sanitary or phytosanitary measures, Article 5 (1) states that; Members shall ensure that their sanitary or phytosanitary measures are based on an assessment, as appropriate to the circumstances, of the risks to human, animal or plant life or health, taking into account risk assessment techniques developed by the relevant international organizations. To minimize discrimination in the implementation of sanitary and phytosanitary measures the SPS Agreement 3 calls for the harmonization of sanitary and phytosanitary

measures based on international standards, guidelines or recommendations. The WTO Agreements and the different articles and provisions related to public health provide a legal framework for harmonization of public health regulations to stem the spread of global pandemic and other outbreaks across countries as I have explained.

This being said, international law performs a fundamental role in fostering harmonization of public health regulation against the spread of epidemics globally. There are also institutional measures, which have evolved at inter-state level to foster harmonization of public health responses to major disease outbreaks such as the Africa Centre for Disease Control (Africa CDC).

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VIII. Africa Centre for Disease Control (CDC)

The African CDC was established in January 2016 by the 26th Ordinary Assembly of Heads of State and Government and officially launched in January 2017. It is an autonomous health agency of the African Union which was established to support public health initiatives of member states and to strengthen the capacity of public health institutions to detect, prevent, control and respond quickly and effectively as and when there is a disease outbreak. The CDC has serval Objectives which include establishment of early warning and response surveillance platforms to address all health threats and health emergencies and natural disasters in a timely and effective manner; assisting Member

States to address gaps in capabilities required for compliance with the International Health Regulations (IHR 2005); and to harmonize disease control and prevention policies and the surveillance systems in Member States, among others. Africa CDC has different policies and legal frameworks in place such as the Legal Framework on Infection prevention and Control which is intended to provide guidance and harmonize public health interventions across the continent to curtail the spread of global pandemics.

Other efforts across Africa to harmonize public health regulations such as the Africa CDC Framework for Antimicrobial Resistance (AMR).[23] Antimicrobial resistance has been documented to be a problem for HIV and the pathogens that cause malaria, tuberculosis, typhoid, Cholera, meningitis, gonorrhea, and dysentery. The main purpose of Africa CDC Framework for Antimicrobial Resistance is to ensure that there robust surveillance of AMR organisms among humans and animals, delay emergence of AMR, limit transmission of AMR and mitigate harm among the patients infected with AMR organism. The framework provides detailed guidance on how each of the goals can be implemented and achieved. After exploring the regional legal instruments and frameworks intended to harmonize public health regulations, below I present and explain the national legal instruments and frameworks, using Uganda a case of Uganda.

[23] Antimicrobial Resistance (AMR) occurs when microorganisms like bacteria, fungi, viruses, or parasites evolve and develop mechanisms to survive treatments that were once effective

IX. The law on Public Health in Uganda

The Constitution of Uganda (1995) in its preamble, paragraph XXIII gives powers to the state enact measures necessary to address public health emergencies such as those that may cause serious disruptions to the normal health of the populations.

National legal frameworks are essential in ensuring that countries have the necessary legal tools to respond to pandemics[24]. The timely sharing of accurate information is crucial for effective pandemic management[25]. Legal frameworks can encourage transparency and information-sharing among countries[26]. Research published in the Journal of Law, Medicine & Ethics emphasizes the need for legal mechanisms that facilitate the sharing of epidemiological data and other relevant information during health emergencies.

The Ugandan government introduced during the recent COVID-19 such as quarantine, travel restrictions, closure of markets and other institutions like churches, schools, mosques and compulsory vaccination provides a good example of how the state can intervene in arresting public health emergencies.

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against them. As a result, infections become harder, or even impossible, to treat, posing a serious threat to human and animal health.

[24] Samaddar R. (2020). Borders of an epidemic: COVID-19 and migrant workers. Mahanirban Calcutta Research Group.

[25] Hays JN. Epidemics and pandemics: Their impacts on human history. Santa Barbara, Ca: ABCCLIO; 2005. P. 23–24.

[26] Cox D., & Pawar M. (2013). International social work: Issues, strategies and programs. SAGE Publications.

The law can be used as an instrument to foster harmonization of public health regulations and to curtail the spread of diseases and outbreaks globally.

The Public Health Act CAP 310 is a legislative instrument enacted by the government of Uganda to regulate public health activities. The Act stipulates in various sections, mechanisms for dealing with the outbreak of disease, prevention, prompt sharing of data on outbreak, control, and response. The Act mandates disease reporting mechanisms by establishing health agencies, and outlining powers for health officials. It therefore plays a critical role in harmonizing public health responses, particularly during health crises such as pandemics by establishing clear legal guidelines and ensuring coordinated actions across different levels of government and sector. This was exemplified during the COVID-19 in Uganda where different ministries worked collaboratively with the ministry of health to contain the spread of Covid-19. The Act also grants specific administrative powers to the minister of health to make decisions aimed at containing the outbreak. These administrative powers are stipulated in Public Health Act 1935 Part II, Part III grant minister the powers for the notification of diseases among other parts and articles of the act.

The foregoing is compounded by a scourge of corruption which has derailed government efforts to institute effective regulatory and compliance regimes both as required under international health regulation (IHR) and in the domestic Public law. Corruption has made oversight agencies susceptible to

bribery, collusion, or political interference, compromising their ability to enforce health standards and hold violators accountable. Corruption erodes public trust in government institutions and health systems, which is essential for public health response. When individuals perceive that authorities are corrupt or untrustworthy, they may be less likely to comply with public health measures, participate in disease surveillance efforts, or seek healthcare services, undermining the effectiveness of IHR implementation.

Another challenges with regard to international regulation of global pandemics is the resistance of states to be policed by international oversight agencies. Nations are independent entities and fiercely guard their sovereignty, often viewing external interventions and influence as disregard for their autonomy. This can result in resistance or non-compliance with the IHR especially if they perceive them as conflicting with their national values, interests and priorities. This is also emphasized under article 3.4 of IHR, which "states have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to legislate and to implement legislation in pursuance of their health policies. The COVID-19 pandemic, which began in late 2019 and extended into 2022, indeed highlighted the interconnectedness of the global community and the need for coordinated efforts to address health crises. The notion that no country can claim immunity from global pandemics due to globalization is valid, and the role of law has become crucial in facilitating international cooperation and harmonizing policy measures.

It is common knowledge that advances in telecommunication technology and travel has increased the potential for the rapid spread of infectious diseases across borders[27]. A study published in the journal Nature in 2015[28] highlighted the role of international travel in the global spread of infectious diseases[29] emphasizing the need for global collaboration to manage outbreaks effectively.

Despite the existence of international legal frameworks[30] challenges still abound especially in relation to the implementation of coordinated responses[31]. Research on the effectiveness of the IHR, as published in the Bulletin of the World Health Organization[32] has highlighted gaps in compliance and the need for countries to enhance their capacities for surveillance, detection, and response to outbreaks.

Ensuring adequate legal instruments is essential for countries to collaborate on various aspects[33], including the movement of goods and personnel, as well

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[27] Samaddar R. (2020). Borders of an epidemic: COVID-19 and migrant workers. Mahanirban Calcutta Research Group.

[28] Barry N. (1995). Friedman. In V. George, & R. Page (Eds.), Modern thinkers on welfare (pp. 31–47). Prentice Hall.

[29] Narayan, P. K., and D. H. B. Phan. 2020. Country responses and the reaction of the stock market to COVID-19 – A preliminary exposition. Emerging Markets Finance and Trade.

[30] Henrickson M. (2020). Kiwis and COVID: The Aotearoa New Zealand response to the global pandemic. The International Journal of Community and Social Development, 2(2).

[31] Demirbag, M., K. Glaister, and A. Sengupta. 2019. Which regions matter for MNEs? The role of regional and firm level differences. Journal of World Business 55 (1):101026. doi:10.1016/j.jwb.2019.101026.

[32] Worldometer. (2020). COVID-19 coronavirus pandemic. https://www.worldometers.info/coronavirus/#countries

[33] Midgley J. (2014). Social development: Theory and practice. SAGE Publications.

as the implementation of consistent public health measures.[34] The study published in the journals of Global Health Governance emphasize the importance of legal frameworks[35] in fostering cross-border collaboration. Weak states often face resource constraints, including financial limitations, lack of skilled personnel, and inadequate healthcare infrastructure[36]. These limitations can impede their ability to effectively implement and enforce public health regulations, even if they are willing to comply.[37] The political will to prioritize public health and invest in the necessary infrastructure and systems is crucial[38]. In states with weak governance structures or political instability, the implementation of public health regulations may be hindered, as leaders may prioritize other immediate concerns.[39] International organizations and developed nations often engage in capacity-building efforts to support weaker states in implementing public health regulations[40]. However, the effectiveness

[34] Yeates N. (2001). Globalization and social policy. SAGE Publications

[35] Midgley J., Surender R., Alfers L., (Eds.). (2019). Handbook of social policy and development. Edward Elgar.

[36] Hall, M.A. 2003. The Scope and Limits of Public Health Law. Perspectives in Biology & Medicine 46: S199–209.

[37] Larkin, M.A., and A.K. McGowan. 2008. Introduction: Strengthening Public Health. Journal of Law Medicine & Ethics 36: 4–5.

[38] Croley, S. 2008. Regulation and Public Interests, the Possibility of Good Regulatory Government. Princeton , NJ : Princeton University Press.

[39] Burris, S., I. Kawachi, and A. Sarat. 2002. Integrating Law and Social Epidemiology. Journal of Law, Medicine & Ethics 30: 510–21.

[40] Lee, K., A. Ingram, K. Lock, and C. McInnes. 2007. Bridging Health and Foreign Policy: The Role of Health Impact Assessments. Bulletin of the World Health Organization 85: 207–11.

of these efforts can be limited by factors such as corruption, lack of institutional development, and insufficient long-term support.[41]

The effectiveness of international public health regulations depends on the robustness of existing monitoring and accountability mechanisms[42]. Weak states have struggled to establish robust monitoring systems and as a result have faced challenges in holding individuals and entities accountable for non-compliance.[43] Thus, there is need for international cooperation in coordinating response measures against public health emergencies and reinforce the ability of states in dealing with pandemics and other disease outbreaks.[44] International organizations play a vital role in bolstering the ability of weaker states through financial aid[45], technical assistance, and knowledge transfer to build to effective implement their international obligations when they are emergencies.[46] Equally States with weak educational systems have struggled

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[41] Ostrom, E. 2005. Understanding Institutional Diversity. Princeton , NJ : Princeton University Press.

[42] Markell, D.L., and T.R. Tyler. 2008. Using Empirical Research to Design Government Citizen Participation Processes. University of Kansas Law Review 57(1): 1–38.

[43] Community Guide. 2009. Community Guide 101: Using Evidence for Public Health Decision Making. Available at http://www.thecommunityguide.org/about/cg_101.html (accessed October 16, 2009).

[44] Fidler, D. 2004. Constitutional Outlines of Public Health's "New World Order. Temple Law Review 77: 247–89.

[45] McCoy, D., and M. Hilson. 2009. Civil Society, Its Organizations, and Global Health Governance. In Making Sense of Global Health Governance, ed. K. Buse, W. Hein, and N. Drager, 209–31. London: Palgrave Macmillan.

[46] Henry, B.L., F.D. Scutchfield, and D.J. Pérez. 2008. Tapping the Potential: Tackling Health Disparities through Accreditation and Public Health Services and Systems Research. Journal of Public Health Management and Practice 14(suppl.): S85–87.

to educate their populations, which has had a negative effect on their ability to comply with their international health regulations[47].

This is not to mention that weak states lack the legal infrastructure and enforcement capabilities to fully comply with their international obligations. It needs to be noted that effective implementation of measures against pandemics with individual states often requires coordinated efforts across various sectors, including health, transportation, and law enforcement[48]. As a result, States with weak public health systems have shown to lack preparedness and capabilities to deal with public health emergencies.[49] The Covid-19 pandemic highlighted the need for timely and effective responses to public health crises to protect people from widespread infections.[50] The global landscape of health threats is dynamic, with new and emerging diseases constantly evolving. States with weak systems may struggle to adapt quickly to emerging threats, requiring continuous investment in research, surveillance, and response capabilities[51].

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[47] United Nations. (2020). Global humanitarian response plan COVID-19. https://www.unocha.org/sites/unocha/files/Global-Humanitarian-Response-Plan-COVID-19.pdf

[48] Ewick, P., and S. Silbey. 1998. The Common Place of Law: Stories from Everyday Life. Chicago : University of Chicago Press.

[49] Magnusson, R.S. 2009. Rethinking Global Health Challenges: Towards a "Global Compact" for Reducing the Burden of Chronic Disease. Public Health 123: 265–74

[50] Commission on Social Determinants of Health. 2008. Closing the Gap in a Generation: Health Equity through Action on the Social Determinants of Health. Geneva : World Health Organization.

[51] Cox D., & Pawar M. (2013). International social work: Issues, strategies and programs. SAGE Publications.

The involvement of non-state actors, such as non-governmental organizations (NGOs) and private entities, is crucial in public health efforts[52]. Weak states may face challenges in effectively engaging and collaborating with these actors, limiting the collective capacity to address health challenges.[53]The implementation of public health measures often involves ethical considerations.[54] States have faced the dilemma in their quest to balance public health imperatives with individual rights and freedoms.[55] Resolving these ethical dilemmas requires careful consideration and may vary across different cultural and legal contexts.[56]

X. Conclusion

Let us make no mistaken the International Health Regulations is an important international legal framework in the regulation global health emergencies. The inherent challenge in international public health regulation lies in the gap between the adoption of laws at a global level and their effective implementation within sovereign states.[57] This has led to debates about the

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[52] Braithwaite, J., and P. Drahos. 2000. Global Business Regulation. Cambridge : Cambridge University Press.

[53] Campbell Collaboration. 2009. What Helps? What Harms? Based on What Evidence? Systematic Reviews of the Effects of Interventions in Education, Crime and Justice, and Social Welfare, to Promote Evidence-Based Decision-Making

[54] Midgley J. (2020). Social protection and social development. In S. Todd, & J. Drolet (Eds.), Community practice and social development in social work (pp. 127–149). Springer.

[55] United Nations. (2020). Global humanitarian response plan COVID-19. https://www.unocha.org/sites/unocha/files/Global-Humanitarian-Response-Plan-COVID-19.pdf

[56] Black, J. 2008. Constructing and Contesting Legitimacy and Accountability in Polycentric Regulatory Regimes. Regulation & Governance 2: 137–64.

[57] Vernick, J.S., and S.P. Teret. 2000. A Public Health Approach to Regulating Firearms as Consumer Products. University of Pennsylvania Law Review 148: 1193–1211.

need for a new or improved approach on how the world governs public health emergencies[58] The paper was underpinned by two theoretical approaches in the analysis of international public health regulation; and the ease with it can be adapted across individual countries especially developing countries. It was found that the discrepancy between the global and the local regulatory environment dictates the ease of adaptability of engendered public health regimes. It was also found that unless the discrepancy between the global and the local regulatory environments is harmonised, environmental governance laws and policies however robust they are, cannot work well. Thus the effectiveness of public health regulation is a multi-faceted issue and must take into account the totality issues including sovereignty, national capacities, resource constraints, political will, and global solidarity to ensure a more coordinated response to global health challenges.

References.

1. Filip, R.; Gheorghita Puscaselu, R.; Anchidin-Norocel, L.; Dimian, M.; Savage, W.K (2022). Global Challenges to Public Health Care Systems during the COVID-19 Pandemic: A Review of Pandemic Measures and Problems. J. Pers. Med. 2022, 12, 1295. https://doi.org/10.3390/jpm1208129.
2. International health regulations, 2005 and WHO, 2008

[58] Trubek, L. 2006. New Governance and Soft Law in Health Care Reform. Indiana Health Law Review 3: 139–69.

3. International Law Commission (ILC), 'Draft Articles on the Protection of Persons in the Event of Disasters' (2016) <https://legal.un.org/ilc/texts/instruments/english/commentaries/6_3_2016.pdf>
4. Malcolm N. Shaw (2017). International Law. University Printing House, Cambridge CB2 8BS, United Kingdom.
5. Norman Howard-Jones (WHO, 1975). 'The Scientific Background of the International Sanitary Conferences, 1851–1938' (WHO 1975) pp. 9–12 <https://apps.who.int/iris/bitstream/handle/10665/62873/14549_eng.pdf
6. Prather, K.A.; Wang, C.C.; Schooley, R.T (2020). Reducing transmission of SARS-CoV-2. Science 2020, 368, 1422–1424. [CrossRef).