

Principles

The principles and guidelines on human rights and public health emergencies

The Global Health Law Consortium and the International Commission of Jurists

Launched by the Global Health Law Consortium and the International Commission of Jurists in 2023, the Principles and Guidelines on Human Rights and Public Health Emergencies (the ‘Principles’) clarify and affirm international law and correlative standards on human rights and the rule of law in the context of public health emergency prevention, preparedness, response, and recovery.

The Principles were developed through a three-year deliberative and consensus-building process between more than 150 individuals from around the world, including international legal scholars and practitioners, human rights defenders, civil society advocates, public health researchers, health workers, and others bearing relevant insights and expertise. Spanning 28 interrelated provisions, they aim to guide the decisions and actions of governments, civil society, and other stakeholders who are at the forefront of efforts to address public health emergencies.

Keywords: *global health law, international human rights law, public health emergency, global health emergency, pandemics, health law, legal preparedness*

1 INTRODUCTION

The COVID-19 pandemic posed a grave threat to health systems worldwide and brought to light the precarious state of human rights in times of public health emergency. The rapid spread of the novel coronavirus exposed deep-seated inequalities within and between societies and magnified the suffering of those already marginalized, including women, girls and disadvantaged communities. Despite urgent and persistent calls to foreground human rights in COVID-19 responses from international organizations, human rights advocates and civil society organizations, human rights were too often neglected or violated in public health prevention, preparedness and response in nearly every country in the world.

In the face of the unprecedented challenges posed by COVID-19, a diverse group of expert jurists, scholars and practitioners of public health and human rights united to clarify the principles and obligations of human rights in the context of public health emergencies. Recognizing the critical need for guidance on the matter, these experts engaged in three years of intensive collaboration and deliberation, culminating in the development of the *Principles and Guidelines on Human Rights and Public Health Emergencies* (the ‘Principles’). This wide-ranging and authoritative text represents an international consensus-based expert opinion on the most pressing human rights issues related to public health emergencies.¹ It reflects the expertise of a broad range of

1. For the latest list of signatories, see www.PHEPrinciples.org.



perspectives and experiences, and it provides a critical framework for governments, civil society and other stakeholders to prioritize human rights considerations in the prevention of, preparedness for and response to public health emergencies, and in the recovery of health systems in the aftermath of public health emergencies.

While the Principles were developed against the backdrop of COVID-19, their applicability extends well beyond this pandemic. The Principles draw upon lessons gathered from past epidemics and pandemics, including Cholera, Dengue, Ebola, HIV and Zika, where inadequate adherence to effective public health policies and human rights obligations led to disastrous outcomes. In so doing, the Principles take a broad view of what might constitute a ‘public health emergency’, recognizing that while such crises may vary in scope and in nature, safeguarding human rights remains not only a legal obligation, but vital to an effective public health response.

The Principles affirm that States have a degree of flexibility to respond to public health emergencies in a contextually appropriate manner, in line with existing international human rights law and standards. Equitable measures, taken individually and collectively, are essential for States to effectively address public health emergencies, and to build resilient, equitable and sustainable health systems in their wake. Indeed, public health emergency prevention, preparedness, response and recovery are integral parts of State obligations under international law, particularly concerning the right to health. However, the Principles also recognize the interdependence and interrelatedness of all human rights and should not be construed to suggest the supremacy or dominance of public health interests over other human rights obligations.

Focusing specifically on public health emergencies, these Principles are not intended to address wider structural barriers to the realization of the right to health and health-related rights. Future initiatives should aim to develop standards for the progressive realization of human rights in all aspects of global health governance, and address the root causes of health inequalities among nations and communities, some of which are historically based.

2 INTERPRETATION AND SOURCES

As far as possible, the Principles affirm existing international law and correlative standards applicable to all States facing public health threats that may amount to emergencies. In providing clarity on the State’s obligations to realize civil, cultural, economic, political and social rights in the context of public health emergencies, the Principles adopt a progressive interpretation of existing international legal standards. This approach includes, among other considerations, applying in alignment with the principle of *pro homine*, by which to the extent there may be a conflict between standards or their interpretation, those most protective of human rights should prevail. Accordingly, the Principles are substantially grounded in human rights, global health law principles, legal obligations under international law, and especially treaties arising from within the UN system. They are supplemented by the jurisprudence and commentary of regional human rights bodies, and related standards developed through expert consensus, including the *Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights* (1984), the *Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights* (1986) and the *Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights* (2011).

The interpretive approach adopted in this text also extends to the monitoring and regulatory measures undertaken by the State to address the increasing influence of non-State actors in global health, and in particular corporate entities such as private healthcare providers and insurers, and manufacturers of health goods, facilities and technologies. In this regard, the Principles emphasize the State's positive, primary obligations and non-State actors' duties in relation to civil, cultural, economic, political and social rights in the context of public health emergencies. The Principles also have relevance to the conduct of international organizations.

Nothing in these Principles should be interpreted as limiting, restricting or undermining any of the respective obligations or responsibilities that States, international organizations and non-State actors may have under human rights law and standards, whether these are contained in international, constitutional or other national laws or in standards which are in conformity with international human rights law. Moreover, these Principles do not purport to comprehensively address all facets of a rights-based approach to public health emergencies, and do not supplant the need for tailored and case-by-case analyses. The Principles may, however, provide a foundation upon which future human rights norms in public health emergency prevention, preparedness, response and recovery emerge and evolve.

3 ACKNOWLEDGEMENTS

Developed in partnership between the Global Health Law Consortium and the International Commission of Jurists, the Principles are the outcome of collaborative engagement between more than 150 individuals from around the world, including international legal scholars and practitioners, human rights defenders, civil society advocates, public health researchers, health workers and others bearing relevant insights and expertise.

The overall process to develop the Principles was led and overseen by Roojin Habibi, Assistant Professor at the University of Ottawa Faculty of Law, and a Steering Committee of the following people, who collaborated closely in organizing the consultations, synthesizing the inputs, conducting background research and providing intellectual direction:

- Timothy Fish Hodgson, Senior Legal Adviser on Economic and Social Rights, International Commission of Jurists
- Benjamin Mason Meier, Chair, Global Health Law Consortium & Professor, Department of Public Policy & Gillings School of Global Public Health, University of North Carolina at Chapel Hill
- Saman Zia-Zarifi, Executive Director, Physicians for Human Rights (formerly Secretary-General, International Commission of Jurists)
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- Luciano Bottini Filho, Lecturer, Helena Kennedy Centre for International Justice, Sheffield Hallam University
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The following distinguished experts co-authored the Principles from the first draft through all subsequent revisions, provided crucial peer review, participated and contributed to key international meetings and endorsed the final version of the Principles: Gian Luca Burci, Luisa Cabal, Thana de Campos-Rudinsky, Danwood Chirwa, Stéphanie Dagrón, Sara (Meg) Davis, Mark Eccleston-Turner, Rossella de Falco, Lisa Forman, Lawrence O Gostin, Aeyal Gross, Steven J Hoffman, Rajat Khosla, Tsung-Ling Lee, Stefania Negri, Alexandra Phelan, Ravi M Ram, Magdalena Sepúlveda Carmona, Matiangai Sirleaf, Allyn L Taylor, Brigit Toebes, Nerima Were and Alicia Ely Yamin.

The final text of the Principles was informed by several virtual and in-person consultations held from 2020 to 2023. In addition to regular virtual working sessions, key meetings took place at the following times and places:

1. An interim expert consensus conference held in hybrid form in Mantello, Italy, in November 2021 to deliberate on a first draft of the Principles;
2. Virtual regional consultations with human rights defenders, health workers and other experts with contextualized knowledge about the impact of public health emergencies in their communities;
3. A workshop among the consultants who led the regional consultations held at the British Institute in Eastern Africa in Nairobi, Kenya in late 2022 to deliberate on the findings of regional consultations; and
4. A concluding workshop held at the Brocher Foundation in Hermance, Switzerland to finalize the Principles.

Regional consultations were led by several health rights experts, including Gabriel Armas-Cardona, Luciano Bottini Filho, Yogi Bratajaya, Farnoosh Hashemian, India Haus, Sreenath Namboodiri, Chiamaka Precious Ojiako, Rocío Quintero Martínez and Nithin Ramakrishnan. The participation of many individuals informed the outcome of these consultations, including Arachu Castro, Lucía Berro Pizzarossa, Paulo Bustillos, Andrés Constantin, Verónica Hinestroza, Eduardo Arenas Catalán, María de Jesús Medina Arellano, Lesly Ramirez, Marlene Rodríguez Atriano, Pilar Medina, Diana Bernal, Camila Gianella Malca, Natalia Echegoyemberry, Muriel Lamarque, Liliana Ronconi, Diana Guarnizo, Rodrigo Uprimny, Johanna Cortes and Julieta Rossi.

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4 STRUCTURE

These Principles span 28 paragraphs organized into five interrelated Sections. Each Section should be read in close conjunction with the others.

Section I defines key terms used as well as the scope of application of these Principles. **Section II** delineates overarching human rights principles and obligations that are essential to the realization of human rights in the context of public health emergencies and are of cross-cutting application throughout the Principles. **Section III** addresses human rights obligations that relate in particular to the prevention of and preparedness for public health emergencies. **Section IV** focuses on the human rights obligations that arise in preparation for, or response to an imminent or ongoing public health emergency and includes considerations relating to the design, implementation and enforcement of rights-based and evidence-informed public health emergency measures. **Section V** builds on previous sections and expands on the extraterritorial human rights obligations of States in the context of public health emergencies.

I. GENERAL PROVISIONS

Definitions

For the purposes of this text:

Available resources refers to all of the following: (1) financial resources, human resources, natural resources, informational resources, technological resources and other resources; (2) resources which are held by the State and/or resources that are held, owned or operated by non-State actors; and (3) resources that States can mobilize, individually or collectively, through the discharging of their obligation to seek or provide international cooperation, as adequate.

Equality and non-discrimination encompass **non-discrimination**, referring to the elimination of any distinction, exclusion or restriction on the basis of proscribed grounds of discrimination which impair or nullify the recognition, enjoyment or exercise of human rights by all; **formal equality**, requiring equality before the law for all and for States to eliminate discriminatory distinctions under the law; and **substantive equality**, embracing equality of opportunities and results, including positive measures to address systemic and root causes of disadvantage and accommodate differences. In public health, substantive equality includes accommodating differences relating to individual health status and other axes of identity to achieve equal enjoyment of human rights in practice.

Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.

Health goods, facilities, services and technologies refer to goods, facilities and services that may be needed to prevent, prepare for, respond to and recover from, a public health emergency, as well as the technologies and the knowledge relating directly to the production or improvement of such goods, services and facilities. Examples of the foregoing include vaccines, therapeutics, diagnostic tests, personal protective equipment and other medical devices, including both the final and intermediate products used to produce and/or administer them.

Health system refers to all organizations, people and actions whose *primary intent* is to promote, restore or maintain health. The health system includes efforts to influence the determinants of health as well as more direct health improving measures and measures related to the prevention of, preparedness for, response to, and recovery from, public health emergencies.

Public health emergency refers to a newly emergent situation or the intensification in scope and/or scale of an existing situation involving an illness or medical condition, which – irrespective of origin or source – poses or could pose an urgent and significant risk to human life, health, or the basic functioning of society and/or substantially impact the enjoyment or exercise of human rights in one or more States.

Public health emergency prevention, preparedness, response and recovery measures (PPRR) refer to the necessary and appropriate measures taken at national, regional and international levels to prevent, prepare for, respond to, and recover from a public health emergency.

Solidarity is an emerging principle of international law that refers to the shared responsibility of States and non-State actors, including individuals, communities and organizations, to act together in support of others, to address common challenges and to achieve shared goals, including the full realization of human rights for everyone, regardless of where they live or their individual circumstances. In the context of public health emergencies, solidarity entails the union of interests, purposes and actions and the recognition of different needs and rights to achieve common goals in prevention, preparedness, response, and recovery.

Scope of application

These Principles apply to States' obligations to respect, protect and fulfil human rights, and the responsibility of non-State actors to respect human rights, in public health emergency prevention, preparedness, response and recovery.

For the purposes of these Principles, the following acts and omissions must be attributed to the State:

- a. acts and omissions of non-State actors under the instruction or under the direction or control of the State; and
- b. acts and omissions of persons or entities which are not organs of the State, where they are empowered by the State to exercise elements of governmental authority, provided those persons or entities are acting in that capacity in that particular instance.

II. OVERARCHING PRINCIPLES AND OBLIGATIONS

1. Universal enjoyment of human rights

- 1.1 All human beings are born free and equal in dignity and rights, and all human rights are universal, indivisible, interdependent, interrelated and mutually reinforcing.
- 1.2 In giving full effect to their obligations to respect, protect and fulfil human rights, States enhance the effectiveness of their individual and collective efforts to prevent, prepare for, respond to and recover from public health emergencies.

2. International solidarity

- 2.1 States, whether acting individually or collectively, have the duty to ensure that all individuals and peoples can, on the basis of equality and non-discrimination,

participate meaningfully in, contribute to and enjoy a social and international order in which their human rights can be fully realized.

- 2.2 In the context of a public health emergency, such a duty reinforces rights-based actions in accordance with obligations of international cooperation outlined in **Section V**, including measures on technical and financial cooperation, and equitable access to health goods, facilities, services and technologies.
- 2.3 To give full effect to paras. **2.1** and **2.2**, States should:
 - a. take account of different individual and collective needs and rights to achieve common goals; and
 - b. act to prevent the acts and omissions of non-State actors from harming efforts of international solidarity.
- 2.4 Non-State actors, including those whose activities have extraterritorial effects, have a responsibility to refrain from impeding international solidarity efforts.

3. Rule of law

- 3.1 States must guarantee the protection of human rights and public health through the rule of law.
- 3.2 The rule of law is a cornerstone of democracy and human rights. In addition to paras. **4** (equality and non-discrimination), **6** (transparency and access to information), **7** (meaningful and effective participation) and **8** (accountability and access to justice), the rule of law includes:
 - a. the effective separation of powers within State governance and the independence of the judiciary and legal profession, as well as their accountability;
 - b. the principle of legality and legal certainty, including that law must be stated with clarity and intelligible to those whom it concerns, and non-retroactivity of the law;
 - c. In the administration of justice, the right to a fair hearing by a competent, independent and impartial tribunal established by law; and
 - d. non-arbitrary, rational and evidence-informed use of power by all branches of government.

4. Equality and non-discrimination

- 4.1 States must take effective measures, individually and collectively, to guarantee equality and non-discrimination.
- 4.2 In particular, States must:
 - a. guarantee equality under, and equal protection of, the law and adopt special measures to guarantee substantive equality;
 - b. eliminate discrimination on all prohibited grounds, including but not limited to age; birth; colour; deprivation of liberty; descent; disability, including physical and mental disability; ethnicity; gender; gender identity or expression; health status and co-morbidities; housing status; immigration status, Indigenous identity or status; language; locality or geography; national or social origin; nationality or citizenship; occupation; political or other opinion; property; race; religion or belief; sex; sexual orientation; socio-economic status; or other similarly relevant statuses;

- c. ensure that PPRR measures are non-discriminatory and based on clear and transparent criteria and procedures and adopted through participatory decision-making processes in accordance with paras. 7.1 and 7.2;
- d. take effective measures to ensure that non-State actors do not engage in, promote or tolerate discrimination; and
- e. address intersectional and structural discrimination when designing and adopting all such measures.

5. Human rights duties relating to non-State actors

- 5.1 Across all PPRR measures, States must ensure that non-State actors do not, whether by their acts or omissions, impair the enjoyment of human rights. States must regulate and monitor engaged non-State actors to prevent them from impairing the enjoyment of human rights and provide for redress and accountability.
- 5.2 In particular, States' obligation to protect human rights in para. 5.1:
 - a. applies both to the regulation and monitoring of non-State actors operating in their national jurisdiction, as well as the regulation and monitoring non-State actors operating transnationally;
 - b. requires that effective measures be taken prior to, during and in the recovery from public health emergencies, including through the review, amendment or enactment of laws, policies and practices relating to PPRR, in accordance with para. 13.1;
 - c. requires States to take effective measures to ensure, including through regulation and monitoring, the compliance, cooperation and collaboration of all entities operating within the health system with their duty to respect human rights; and
 - d. requires States to ensure access to effective remedies and reparations for abuses of human rights resulting from the failure of non-State actors to comply with their duty to respect or fulfil human rights in accordance with paras. 8.1 and 8.2.
- 5.3 Non-State actors, particularly business enterprises and those exercising effective public authority, have:
 - a. a duty to respect human rights in the context of a public health emergency by refraining from impairing the exercise or enjoyment of human rights and redressing adverse human rights impacts arising from or otherwise linked to their activities; and
 - b. where relevant, a duty to contribute to the fulfilment of human rights.
- 5.4 In particular, non-State actors' duty to respect human rights:
 - a. applies to both domestic and transnational entities, and in relation to the domestic and extraterritorial impacts of their activities;
 - b. requires those entities operating within the health system, including private healthcare providers and insurers, and manufacturers of health goods, facilities and technologies, to:
 - i. comply with legal frameworks referred to in para. 13.1; and
 - ii. where relevant, proactively engage, collaborate and coordinate with States, individually and collectively, to ensure the full realization of health and human rights.

- c. requires non-State actors to participate in and/or initiate both State and non-State mechanisms designed to ensure the remediation of any adverse human rights impacts their activities may cause or contribute to.

6. *Transparency and access to information*

- 6.1 States must guarantee access to information, including health-related information and information concerning State policies to address public health emergencies.
- 6.2 In particular, States must:
 - a. ensure widespread, meaningful and timely access to accurate and quality information without discrimination. In the context of a public health emergency, such information must include:
 - i. what is known and uncertain about the nature and scope of a public health emergency, the nature and probability of possible harm(s), and measures that can be taken to avoid or mitigate the health threat;
 - ii. relevant scientific, epidemiological and other available evidence, as well as statistical data disaggregated where possible and appropriate by demographic, social and other public health-relevant characteristics;
 - iii. details of the measures taken in preparation for, and response to a public health emergency, and the basis for such measures, including public health mandates legally enforced by government, emergency budgets in force, public procurement contracts for health goods, facilities, services and technologies, public services offered, disrupted and suspended during a public health emergency and restrictions to human rights; and
 - iv. any other information that is necessary for individuals and rights-holding groups within a State's jurisdiction to exercise their human rights and protect their health.
 - b. ensure clear guidance and assistance to facilitate access to information in the context of a public health emergency, including by ensuring that:
 - i. remote, virtual, online platforms do not lead to undue constraints or discrimination in access to information;
 - ii. any obstacles to such access for marginalized, disadvantaged and disproportionately impacted individuals and groups, including digital illiteracy and linguistic barriers, are removed; and
 - iii. reasonable accommodations are adopted to secure equal access to information to all persons without discrimination, including persons with disabilities.
 - c. ensure the existence and functionality of independent oversight entities, mechanisms or institutions to monitor and report on the right to access to information in the context of public health emergencies;
 - d. take the necessary measures to facilitate access to information produced or held by non-State actors, particularly information on their operations and activities and possible human rights impacts or violations; and
 - e. counter misinformation using human rights compliant mechanisms and tools, while fully respecting and ensuring the right to freedom of expression, in accordance with para. **16.1(b)**.

7. Meaningful and effective participation

- 7.1 States must respect and ensure the right to meaningful and effective public participation in decision-making processes relating to PPRR at the international, regional, national, subnational and local levels.
- 7.2 In particular, States must:
 - a. consult with and take into account the self-expressed needs, knowledge, expertise and perspectives of rights holders, including those from disadvantaged and disproportionately impacted groups and people experiencing multiple forms of exclusion, as well as local communities, human rights defenders, legal professionals, health and care workers and medical personnel, experts and scientists from different fields; and
 - b. guarantee effective and institutionalized public participation and deliberation mechanisms which are accessible to everyone without discrimination. Such mechanisms should:
 - i. act to remove obstacles to participation that marginalized, disadvantaged and disproportionately impacted individuals and groups may face, including digital illiteracy and linguistic barriers;
 - ii. facilitate, incentivize and empower effective participation in decision-making processes relating to PPRR through public awareness and capacity-building programmes on available participation mechanisms and on the right to participation under international law;
 - iii. provide notice, as well as clear, timely, accurate and relevant information to the public within reasonable timeframes in advance of any such decision-making processes;
 - iv. accord due consideration to the observations and outcomes of public participation; and
 - v. once a decision has been made, inform the public in a timely manner of the grounds and reasons underlying the decision, including how the observations of the public have been taken into consideration.

8. Accountability and access to justice for those harmed by human rights violations and abuses

- 8.1 States must, individually and collectively, guarantee access to effective remedies and full reparation for victims and survivors of human rights violations and abuses committed by State and non-State actors in PPRR.
- 8.2 In particular, States must:
 - a. ensure access to effective judicial and/or equivalent administrative remedies which are prompt and lead to a cessation of the violation and/or legally enforceable reparation in accordance with international human rights law and standards. In giving effect to this obligation, States must ensure that:
 - i. judicial remedies are always available for gross human rights violations; and
 - ii. reparation includes, as appropriate, provision of services, recognition of benefits and entitlements, compensation, guarantees of non-repetition, rehabilitation, restitution and satisfaction.
 - b. in the limited instances during a public health emergency where access to judicial or equivalent administrative remedies may not be immediately available, including because they require prolonged adjudication, interim

measures that are fit-for-purpose must be implemented to avoid irreparable harm until the situation can be fully and effectively adjudicated. Wherever necessary, free and effective independent legal assistance must be available;

- c. ensure the availability and accessibility of procedures and mechanisms for the full and thorough monitoring and review of public policy measures, decisions and outcomes in public health emergencies, and their compliance with human rights obligations. These procedures and mechanisms should be established through a timely and holistic approach that engages political mechanisms, judicial and quasi-judicial fora, including courts, and administrative processes; and
- d. ensure accountability in the context of their territorial and extraterritorial human rights obligations in PPRR.

III. OBLIGATIONS RELATING TO PUBLIC HEALTH EMERGENCY PREVENTION AND PREPAREDNESS

9. Obligation to strengthen and develop sustainable health systems

- 9.1 States must strengthen and develop a universal, resilient, functional, integrated, accountable, rights-based and people-centred health system for the entire population.
- 9.2 States must ensure that any measure taken to prevent, prepare for or respond to a public health emergency that interferes with the functioning of the health system strictly observes the principles and obligations set out in paras. **15.1** and **15.2**.
- 9.3 In giving effect to their obligations in para. **9.1**, States must regulate and monitor the activities of non-State actors in the health system, including private healthcare providers and insurers, and manufacturers of health goods, facilities and technologies, to ensure they respect and, where relevant, contribute to the fulfilment of the right to health and health-related rights.

10. Obligation to take positive measures to prioritize and mobilize resources for public health emergency prevention and preparedness

- 10.1 To respect, protect and fulfil the right to health and health-related rights, States must take positive measures relating to the prevention of, and preparedness for public health emergencies on a continuous basis.
- 10.2 States must take deliberate, concrete and targeted measures to the maximum of available resources, to prevent and prepare for public health emergencies in public and private settings. In particular, States must:
 - a. address the needs of marginalized, disadvantaged and disproportionately impacted individuals and groups, including by planning for measures aimed at eliminating structural discrimination and achieving substantive equality, in accordance with paras. **4.1** and **4.2**;
 - b. promote and fortify scientific research as a common good, including with the allocation of adequate financial and human resources, and through

- the regulation and monitoring of private companies contributing to scientific progress or technological advances; and
 - c. invest in health systems that enable public health core capacities in accordance with the *International Health Regulations* and provide for the availability, accessibility, acceptability and quality of health goods, facilities, services and technologies.
- 10.3 To maximize available resources for effective public health emergency prevention and preparedness, the State should:
- a. where necessary, take effective measures to direct or otherwise regulate the use of privately held, owned or operated resources, particularly those resources held, owned or operated in private healthcare sectors within a State's jurisdiction; and
 - b. coordinate with private actors, particularly those with resources held, owned or operated in the private healthcare sectors within the State's jurisdiction.
- 10.4 The obligation to contribute resources to the prevention of and preparedness for public health emergencies at global and regional levels is commensurate with the State's maximum available resources.
- 10.5 Where the participation of private actors in the health system has been authorized by a State, that State must ensure, including through regulation and monitoring, that any such participation does not impair the enjoyment of human rights. Such participation does not relieve the State of its obligation to ensure that minimum essential levels of economic, social and cultural rights are enjoyed by individuals, particularly the most marginalized, disadvantaged and disproportionately impacted individuals and groups.

11. Obligation to ensure access to health goods, facilities, services and technologies

- 11.1 States must ensure that health goods, facilities, services and technologies, whether they are provided by the State or non-State actors, are accessible, affordable, ethically and culturally acceptable, of good quality, including evidence-based and medically and scientifically appropriate, and available to all without discrimination. In particular, States must:
- a. review and, where necessary, amend all laws, policies and practices to ensure that they do not result in discrimination or other infringements of human rights; and
 - b. adopt measures to ensure substantive equality in access to preventive, curative and palliative health goods, facilities, services and technologies, whether or not the provision of the foregoing is directly related to the prevention of and preparedness for public health emergencies.
- 11.2 Where the participation of private actors in the health system has been authorized by a State, that State must ensure, including through regulation and monitoring, that any such participation does not constitute a threat to rights in para. 11.1.
- 11.3 In implementing para. 11.1, States must also take proactive measures to improve the accessibility, affordability, acceptability, quality and availability of health goods, facilities, services and technologies necessary for PPRR.

12. Obligation to refrain from taking retrogressive measures against the right to health and health-related rights

- 12.1 In accordance with para. **11.1**, the State must:
 - a. refrain from taking retrogressive measures that impair the enjoyment of the right to health and health-related rights, including those which reduce access to health goods, facilities, services and technologies not directly related to a public health emergency; and
 - b. refrain from taking retrogressive measures that have a significant negative impact on livelihoods, welfare and the enjoyment of the minimum essential levels of economic, social and cultural rights.
- 12.2 If the adoption of retrogressive measures that reduce existing access to health and health-related rights is unavoidable, fully justify such measures with reference to their full range of human rights obligations, including by providing clear evidence that such measures:
 - a. are necessary and unavoidable despite the full and effective use of the State's maximum available resources;
 - b. continue only for the limited period during which they are strictly necessary.
 - c. have been taken only after a comprehensive examination of less restrictive alternatives, and full consideration that a failure to act would be even more detrimental to human rights; and
 - d. do not have a disproportionate or otherwise discriminatory impact on marginalized, disadvantaged and disproportionately impacted individuals and groups.

13. Obligation to ensure legal and policy preparedness for public health emergencies

- 13.1 States must ensure a coordinated, effective and human rights compliant legal framework which operationalizes the overarching principles and obligations outlined in **Section II** and the obligations detailed in this section, **Section IV** and **Section V**.
- 13.2 In particular, this legal framework should:
 - a. specify budgeting for public health emergency prevention, preparedness and response;
 - b. stipulate legal processes and standards for public health legal preparedness at national, subnational and local levels;
 - c. provide that all decision-making processes in PPRR are public, transparent and subject to legal and administrative review, in accordance with paras. **6.2** and **8.2**;
 - d. institutionalize public participation and deliberation processes, in accordance with paras. **7.1** & **7.2**, and independent scientific review processes in accordance with para. **15.2(a)**;
 - e. take into account the health needs and rights of the whole population, including marginalized, disadvantaged and disproportionately impacted individuals and groups, as well as health and frontline workers;
 - f. provide for the potential deployment of social protection measures to mitigate and compensate for the impact of public health emergencies

- on livelihoods, welfare, gender-based violence, security and the enjoyment of at least the minimum essential levels of economic, social and cultural rights; and
 - g. operate to ensure that measures purporting to protect or advance commercial interests do not serve to frustrate public health needs, including access to health goods, facilities, services and technologies.
- 13.3 States must ensure that the above legal framework aligns with their obligation to create an international enabling environment, as set out in para. **21.1**, and takes into account the effects of the legal framework on international and extraterritorial PPRR measures. Such alignment should include intellectual property laws or rules and practices of drug regulatory authorities, and budgeting of sustained investments in the just and equitable allocation of scarce resources in preventing, preparing for and responding to, a public health emergency.
- 13.4 States should enact a national public health strategy and plan of action with a view to giving effect to this legal preparedness framework.

IV. OBLIGATIONS IN PUBLIC HEALTH EMERGENCY RESPONSE

14. General obligation to prioritize and mobilize resources in a public health emergency response

- 14.1 When faced with an imminent or ongoing public health emergency, States must:
- a. take extraordinary measures to the maximum of their available resources, giving priority to their allocation on public health;
 - b. provide for social protection measures, as envisaged in para. **13.2(f)**, to mitigate and compensate for the impact of public health measures on livelihoods, welfare, gender-based violence, security and the enjoyment of the minimum essential levels of economic, social and cultural rights;
 - c. ensure that the necessary health goods, facilities, services and technologies to respond to the public health emergency are provided;
 - d. ensure that principles of non-discrimination and equal protection are applied in cases of unavoidable prioritization of scarce health goods, facilities, services and technologies;
 - e. maintain the availability of, and access to, other health goods, facilities, services and technologies, including in particular those related to primary healthcare, as well as sexual and reproductive healthcare. Where a disruption to the foregoing services may be unavoidable, it must be justified with regard to the considerations under para. **16**; and
 - f. implement legally enforceable measures, in accordance with para. **13.2(g)**, to prevent profiteering on health and health-related rights, including in respect of access to health goods, facilities, services and technologies.
- 14.2 The obligations in para. **14.1** complement and are cumulative to those in **Section III**.

15. General obligation to ensure rights-based and evidence-informed public health measures

- 15.1 States must adopt rights-based and evidence-informed public health measures to prepare for and respond to an imminent or ongoing public health emergency.

15.2 States must ensure that all public health measures taken pursuant to para. **15.1** are justifiable. A justifiable public health measure must be:

- a. based on a risk assessment grounded in scientific principles and scientific, epidemiological and other available evidence. To support compliance with this obligation, States must ensure that:
 - i. even where acting in the face of inconclusive scientific evidence, public health measures are grounded in scientific principles and the best scientific, epidemiological and other available evidence; and
 - ii. the review and synthesis of risk assessment in para. **14.2 (a)** is undertaken by independent scientific advisory bodies or committees institutionalized within government and readily available, with balanced representation on the basis of gender, diverse scientific opinions, approaches and practical experience across sectors, and an appropriate interdisciplinary balance.
- b. compliant with applicable human rights obligations;
- c. accompanied by targeted measures to mitigate human rights harm(s) of such measures, in accordance with para. **13.2 (f)**;
- d. informed by public participation and deliberation mechanisms meeting the criteria set out in para. **7.2**;
- e. subject to continuous, evidence-informed and deliberative review (see paras. **7.2**, **15.2 (a)** and **15.2 (d)**) and lifted as soon as such review no longer supports having these measures in place, including due to the development of less restrictive alternatives.

16. Limitations and derogations to human rights during a rights-based and evidence-informed public health measure

16.1 Where States take measures pursuant to para. **15** that result in a limitation to human rights, such measures must be temporary, for a legitimate and specific public health purpose and have strict regard for the principles of legality, necessity, proportionality and non-discrimination. In addition:

- a. when a rights-based and evidence-informed public health measure results in limitations to freedom of movement, States must:
 - i. provide reasonable advance public notice of the decision to implement such a measure;
 - ii. resort to the measure that would achieve the public health purpose, is necessary and is least restrictive to the enjoyment of freedom of movement;
 - iii. tailor the scope of the measure to the differential needs of the population, avoiding disproportionate burdens on marginalized, disadvantaged and disproportionately impacted individuals and groups; and
 - iv. ensure that any limitations to the right to return to one's own country is non-arbitrary, used as a measure of last resort and accompanied by the provision of timely and effective assistance to affected individuals for the duration of the restriction.
- b. when a rights-based and evidence-informed public health measure results in a limitation to the right to freedom of expression, freedom of association or the right to peaceful assembly, States must:

- i. ensure that limitations are not used to harass, persecute, intimidate or stigmatize persons from any particular sector of the population; and
 - ii. refrain from using such public health measures to silence disfavoured views, including those views that contest the necessity or legality of the measures themselves, or in any way impede the work of human rights defenders, health and care workers, journalists, insider informants ('whistleblowers') or researchers.
- 16.2. Where States take measures pursuant to para. 15 that result in a derogation to human rights based on a state of emergency or similar state of exception, as provided under the *International Covenant on Civil and Political Rights*, the *European Convention on Human Rights*, the *American Convention on Human Rights* or the *Arab Charter on Human Rights*, any such measures must meet a specific threat to the life of the nation, be pursuant to a publicly proclaimed state of emergency, be temporary and have strict regard for the principles of legality, necessity, proportionality and non-discrimination.
- 16.3 States may never derogate from human rights identified as non-derogable under the international treaties outlined in para. 16.2.

17. Limited application of a precautionary approach in the face of an imminent public health threat and absent or inconclusive scientific evidence

- 17.1 Where the risk assessment in para. 15.2(a) is inconclusive, and a public health emergency could pose a serious risk of harm to human life or health, States may implement certain measures on the basis of precaution, provided that such measures:
 - a. are the least restrictive precautionary measure to a public health threat that would achieve the appropriate level of health protection; and
 - b. restrict human rights only in accordance with paras. 16.1 to 16.3.
- 17.2 The conclusion that the risk of harm in para. 17.1 is 'serious' must be made in light of a decision-making process which:
 - a. involves public participation in accordance with paras. 7.1, 7.2 and 15.2 (d);
 - b. is accompanied by a full and widely communicated justification, including the publication of the medical and public health rationale used to support the precautionary measure; and
 - c. is subject to continuous, evidence-informed and deliberative reviews.

18. Obligations relating to public health measures of surveillance and data collection, including digital technologies

- 18.1 Where a public health measure pursuant to para. 15 involves surveillance and the collection, processing, storage or distribution of personal data, including through digital technologies, States must ensure that the measure is deployed for a legitimate and specific public health purpose, is temporary and has strict regard for the principles of legality, necessity, proportionality and non-discrimination.

- 18.2 In giving effect to their obligations in para. **18.1**, States must ensure that adequate and effective human rights safeguards are implemented, taking care in particular:
 - a. to conduct human rights due diligence and entrench sunset clauses in law prior to the deployment of the measure;
 - b. to ensure that individuals are informed of their rights in respect of such a measure and how their personal data may be used. Where sensitive personal data are concerned, such data should be handled separately, and with the consent of the person subjected to surveillance;
 - c. to mitigate the impact of such a measure on the right to privacy by ensuring that data collected are:
 - i. anonymized;
 - ii. the minimum data required for the public health purpose; and
 - iii. duly expunged when no longer serving the public health purpose.
 - d. to implement mechanisms for independent oversight and accountability, including through human rights impact assessments, and ensure access to effective remedies for all harms caused by the measure.
- 18.3 States must ensure, including through regulation and monitoring, that non-State actors involved in the design and deployment of the abovementioned surveillance or the collection processing, storage or distribution of personal data and information adhere to paras. **18.1** and **18.2**.

19. Obligations relating to the enforcement of public health measures

- 19.1 States must limit the use of any enforcement of public health measures to the least restrictive means that would achieve a legitimate and specific public health purpose, having strict regard for the principles of legality, necessity, proportionality and non-discrimination.
- 19.2 If non-compliance with public health measures is subject to administrative, non-custodial or other punitive but non-criminal measures, such as injunctive orders, penalties, fines or mandatory community service, States must ensure that such measures do not lead to economic hardship for the addressee of the measures and are subject to review by a judicial or other authority.
- 19.3 The enforcement of public health measures through the use of police powers should be avoided to the extent possible. Police powers may only be used as a measure of last resort, and should only be resorted to when strictly necessary to achieve a legitimate and specific public health purpose and where less restrictive means would be ineffective in achieving this public health purpose. If police powers are used, States should ensure that:
 - a. clear guidelines are provided to State officials, including police officers, applying such powers with respect to:
 - i. the prohibition against the excessive use of force, and relevant international law and human rights standards, including the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;
 - ii. the reasons for the application of such powers;

- iii. the public health imperative for non-coercive measures;
 - iv. the imperative to avoid disproportionate burdens to marginalized, disadvantaged and disproportionately impacted individuals and groups.
 - b. mechanisms are in place for mitigating instances of abuse by officials, including police officers, applying such powers; and
 - c. effective remedies and reparation for rights violations by officials, including police officers, implementing such power, are easily available and accessible.
- 19.4 The enforcement of public health measures through the use of criminal sanctions should be avoided to the extent possible. Criminal sanctions may only be used as a measure of last resort, and should only be resorted to when strictly necessary to achieve a legitimate and specific public health purpose and where less restrictive means would be ineffective in achieving this public health purpose. If a criminal sanction is implemented, States must:
 - a. refrain from applying the sanction in a disproportionate, discriminatory or excessive manner, avoiding in particular their harmful effects on marginalized, disadvantaged and disproportionately impacted individuals or groups;
 - b. ensure that the sanction is implemented only following full adherence to the rights pertaining to a fair trial from a competent, independent and impartial tribunal established by law, meeting all the guarantees of fair trial recognized under international law; and
 - c. take effective measures to protect the health and safety of all persons deprived of their liberty as a result of the sanction, including through the guarantee of access to health goods, facilities, services and technologies, and where detention elevates the threat to public health, through the establishment of non-custodial alternatives to detention.

20. *Obligations with regards to persons in custody and in institutions*

- 20.1 States must ensure that all persons under their care and custody and all persons in institutional settings are guaranteed access to health goods, facilities, services and technologies, without discrimination and on the basis of free and informed consent, in accordance with para. 11.1.
- 20.2 During a public health emergency, States must, in addition to para. 20.1, take all necessary measures to minimize or eliminate the public health threat to persons in institutionalized settings and in custody, with full respect of the *United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules)*, including through:
 - a. the supervised early release and/or commutation of both pre-trial detention and prison sentences, particularly when such measures are considered effective to prevent the spread of the illness or medical condition; and
 - b. the immediate transfer of persons to specialized institutions or to civil hospitals where specialized surgery or treatment is needed.
- 20.2 Where the participation of private actors in respect of the care of persons in custody and in institutional settings has been authorized by a State, that State must ensure, including through regulation and monitoring, that any such participation does not constitute a threat to entitlements in para. 11.1.

V. EXTRATERRITORIAL OBLIGATIONS IN THE CONTEXT OF PUBLIC HEALTH EMERGENCIES

21. *Extraterritorial obligations in the context of public health emergencies*

- 21.1 In the context of a public health emergency, States have extraterritorial obligations that comprise:
- a. the acts or omissions of the State within or beyond its territory that may impact human rights beyond its territory, including where:
 - i. the State exercises authority or effective control;
 - ii. where the State's acts or omissions bring about foreseeable effects on rights; or
 - iii. where the State is in a position to exercise decisive influence or otherwise take measures to realize rights, including on account of its capacities, resources and influence.
 - b. obligations of a global character as set out in the Charter of the United Nations, the Constitution of the World Health Organization and other relevant instruments of international law, to take action, individually and collectively, to realize human rights universally.

22. *Obligation to create an international enabling environment*

- 22.1 States, individually and collectively, must take deliberate, concrete and targeted measures to create an international enabling environment for the universal realization of rights in PPRR, including in the context of:
- a. the elaboration, interpretation, application, implementation and regular review of multilateral and bilateral agreements as well as international law and standards;
 - b. bilateral and multilateral trade, investment, taxation, finance, environmental protection and development cooperation;
 - c. international mechanisms to ensure the just and equitable allocation of scarce resources during a public health emergency;
 - d. any other measures of individual States, or groups of States, in respect of their foreign relations, including funding and other forms of international assistance, that can contribute to the realization of health-related human rights; and
 - e. reporting on domestic and extraterritorial PPRR under international human rights review procedures, international PPRR review procedures and through the implementation of these procedures' recommendations.
- 22.2 The lack of international coordination on any element from para. 22.1 does not exonerate the State from giving effect to its separate extraterritorial obligations.

23. *Obligation to refrain from causing harm to the enjoyment of human rights*

- 23.1 During a public health emergency, the State must respect human rights in other States and refrain from acts or omissions that, without a good faith legitimate public health justification consistent with international law, create a real or reasonably foreseeable risk of nullifying or impairing the enjoyment of human rights extraterritorially.

- 23.2 In particular, the responsibility of the State is engaged where the nullification or impairment of human rights extraterritorially is a reasonably foreseeable result of its conduct.

24. Obligation regarding the use of sanctions and other coercive measures

- 24.1 States must refrain from adopting measures, such as embargoes, sovereign debt enforcement or other economic sanctions, that would result in nullifying or impairing human rights. In particular, States must:
- ensure that human rights obligations are fully respected and protected in the design, implementation and termination of any sanction regime; and
 - desist from the use of unilateral or multilateral economic measures or sanctions that limit trade in health goods, facilities, services and technologies in PPRR.
- 24.2 Where sanctions are targeted against individuals or entities reasonably considered to have engaged in serious human rights violations or other crimes under international law, these must be designed and applied in conformity with para. **24.1**.

25. Obligation to provide international assistance and cooperation

- 25.1 States must act individually and collectively to provide international assistance to respect and protect human rights in PPRR, in accordance with their capacity and resources, and in consultation, agreement and alignment with the strategies of the receiving State(s).
- 25.2 In particular, States must act to remove or limit, through appropriate temporary or permanent measures, legal or non-legal barriers that hinder equitable access to health goods, facilities, services and technologies, in accordance with paras. **13.3** and **22.1**. To facilitate equitable access, measures may include:
- adoption of technology transfer agreements;
 - adoption of emergency use agreements;
 - adoption of other information sharing agreements and other arrangements for the just and equitable sharing of data and health goods, facilities, services and technologies; and
 - collaborative establishment of capacities and infrastructure for PPRR.
- 25.3 Any measures creating legal barriers that hinder international cooperation and solidarity, including intellectual property laws or rules and practices of drug regulatory authorities, may only be undertaken in a manner that is compliant with the human rights obligations of States both within national jurisdiction and extraterritorially.

26. Obligation to seek international assistance and cooperation

- 26.1 When despite their best efforts, States cannot adequately ensure rights-based PPRR with resources available at the domestic level, States must seek international cooperation. In particular, States must:

- a. seek international assistance and cooperation from other States, the United Nations, other competent intergovernmental organizations and non-governmental organizations and entities, as appropriate;
- b. ensure that cooperation and assistance are used towards realizing human rights and do not violate human rights;
- c. realize the right to the enjoyment of the benefits of scientific progress and its applications in PPRR, including through the adoption of technology transfer agreements, emergency use agreements, information sharing agreements and other arrangements for the equitable sharing of health goods, facilities, services and technologies, and the collaborative establishment of capacities and infrastructure for PPRR; and
- d. ensure that conditions attached to financial assistance do not compromise the State's ability to protect human rights in the context of public health emergencies.

27. Obligation to regulate and monitor the extraterritorial activities of non-State actors

- 27.1 States must act individually and collectively, including through international organizations and agreements, to ensure that the health goods, facilities, services and technologies provided by non-State actors are accessible, affordable, acceptable, of good quality and available to all without discrimination.
- 27.2 States must effectively regulate and monitor non-State actors to prevent them from harming human rights, including by:
 - a. taking administrative, legislative, judicial, investigative and other measures to ensure that the realization of human rights is not undermined by any treatment, including special protections, afforded to the commercial interests of private actors;
 - b. taking any measures necessary to prevent interference with any other State's regulatory measures;
 - c. taking any measures necessary to ensure combined, transnational or international regulation of non-State actors, including transnational corporations and other business enterprises, through effective and rights-based global governance;
 - d. when necessary, taking measures to ensure the application of its jurisdiction to the extraterritorial activities of a transnational corporation, or to their parent or controlling company, where the corporation or company has its center of activity, is incorporated, registered or domiciled, or has its main place of business or substantial business activities, in the State concerned;
 - e. providing for effective monitoring mechanisms and procedures for compliance with national regulations and human rights obligations;
 - f. providing for effective supervision of and penalties for non-compliance with regulations, including access to effective remedies and remedial mechanisms provided by the State. Such penalties and remedies must not themselves impair the enjoyment of human rights; and
 - g. obliging non-State actors, including business enterprises, to make provision for operational grievance mechanisms to allow for direct redress to victims of human rights abuses.

28. *Obligations of intergovernmental organizations*

- 28.1 In accordance with their mandates, intergovernmental organizations must create an enabling global environment for the respect, protection and fulfilment of human rights in PPRR, including through facilitating the equitable sharing of scientific information, technical cooperation, financial assistance, knowledge sharing and technology transfer.
- 28.2 Intergovernmental organizations must respect and not impair States' compliance with their international human rights obligations, and in the context of their mandates, must support States to realize human rights in PPPR.
- 28.3 Individual States should comply with their international human rights obligations in the context of their membership in intergovernmental organizations, including in the exercise of voting rights and any other decision-making functions in intergovernmental organizations.