



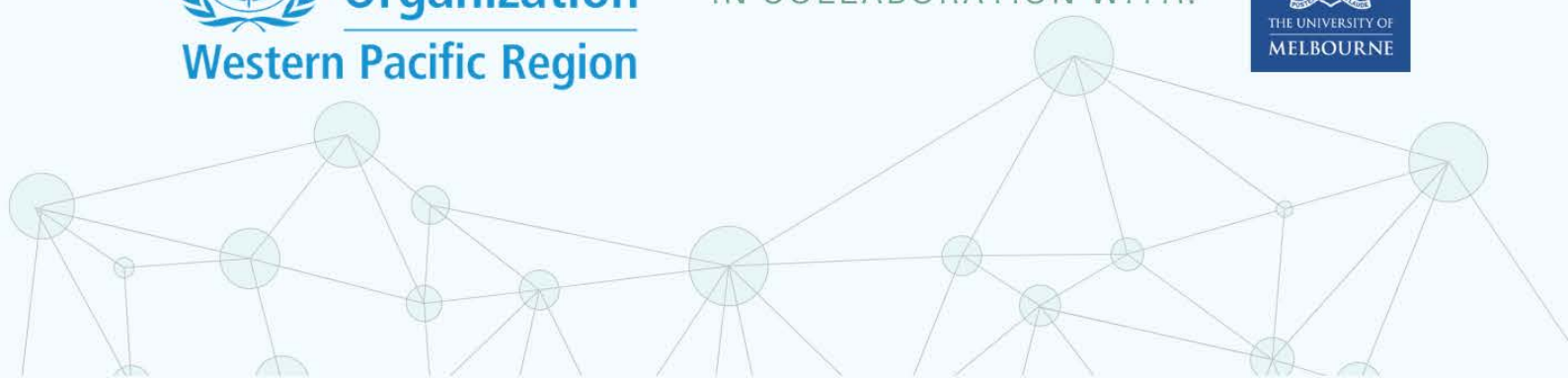
LEGAL DIMENSIONS OF COVID-19 SERIES
PAPER #2

CONSIDERATIONS FOR HEALTH
GOVERNANCE: STRENGTHENING
INSTITUTIONAL CAPACITY AND
CONNECTEDNESS THROUGH
COVID-19 RESPONSES



**World Health
Organization**
Western Pacific Region

IN COLLABORATION WITH:



Legal Dimensions of COVID-19 Series: Paper #2

CONSIDERATIONS FOR HEALTH GOVERNANCE: STRENGTHENING INSTITUTIONAL CAPACITY AND CONNECTEDNESS THROUGH COVID-19 RESPONSES

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This publication is part of a series developed in collaboration with the University of Melbourne. The main authors of the series of publications are the following: Jonathan Liberman (Associate Professor, University of Melbourne) and Ben Lilley and Darryl Barrett (WHO Regional Office for the Western Pacific).

The named authors alone are responsible for the views expressed in these publications.

Key points

- The coronavirus disease 2019 (COVID-19) pandemic requires whole-of-government and whole-of-society action and collaboration.
- Legal frameworks are critical to enabling collaboration and coordination, as well as protecting against misuses of power and potential unintended consequences of COVID-19 responses.
- Strengthening legal frameworks and related regulatory capacity in responding to COVID-19 can support leadership and governance, and the achievement of universal health coverage, beyond the COVID-19 crisis.
- Legal frameworks can ensure government accountability and transparency, support evidence-based decision-making, provide for the engagement of the community and regulate engagement with private sector actors.

Purpose

To support Member States in the Western Pacific Region in developing legal frameworks and related regulatory capacity to support governance for health in the COVID-19 response and beyond.

Background

Success in preventing and controlling the spread of SARS-CoV-2, the virus that causes COVID-19, and in responding to the social and economic dislocations caused by the pandemic requires effective action and collaboration throughout the health system and across government and society. Legal frameworks are critical for achieving this.

Responses to the pandemic have been both supported and constrained by the legal frameworks in place when COVID-19 emerged. In many countries, legal frameworks and related governance arrangements were not sufficiently prepared for the challenges that COVID-19 has presented. The pandemic has inevitably highlighted gaps and disconnections.

At the same time as responding to the immediate crisis, COVID-19 presents an opportunity for countries to review and strengthen legal frameworks for health governance beyond the pandemic, in line with their commitments in *Universal Health Coverage: Moving Together to Build a Healthier World*, the political declaration of the September 2019 high-level meeting on universal health coverage.

Through the political declaration, Member States recognized the need for enabling legislative frameworks to support “health systems that are strong, resilient, functional, well-governed, responsive, accountable, integrated, community-based, people-centred and capable of quality service delivery” (paragraph 10), and “the vital importance of strengthening legislative and regulatory frameworks and institutions for the achievement of universal health coverage” (paragraph 21).

Universal Health Coverage: Moving Towards Better Health, the action framework for the Western Pacific Region, emphasizes the rule of law and regulatory institutions as critical enablers of health. The action framework highlights the importance of clear responsibilities and authorities, participatory processes, accountability mechanisms, transparency and integrity, the avoidance of conflicts of interest and prevention of corruption, and the involvement of civil society.

The use of law in responding to COVID-19, and for health generally, should be grounded in the right to the highest attainable standard of health, as well as obligations to respect, protect and fulfil other human rights. In the political declaration of the high-level meeting on universal health coverage, Member States reaffirmed “the right of every human being, without distinction of any kind, to the enjoyment of the highest attainable standard of physical and mental health” (paragraph 1). In the resolution adopted by the World Health Assembly in May 2020 on the *COVID-19 response*, WHO Member States recalled “that the Constitution of WHO defines health as a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, and declares that the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being, without distinction of race, religion, political belief, economic or social condition”.

Discussion

While COVID-19 presents initially as a health crisis, both the disease itself, and measures required to prevent and control the spread of the virus, create a broader crisis, with social, economic and legal dimensions.

Salient features of this crisis include:

- The urgency of the need for action, both to prevent and control the spread of the virus, and to provide health and related care to those who contract the virus. Across countries, responses have either been supported or constrained by existing legal frameworks and practices and cultures of collaboration that have developed (or not developed) to address health emergencies, both within and beyond the health sector.
- The enormous social and economic dislocations created by the virus and the measures implemented to prevent and control its spread, which have often disproportionately impacted already vulnerable and marginalized populations.
- The restrictions on individual rights and freedoms entailed by many of the measures implemented to prevent and control the spread of the virus. Competing considerations have often played out as a trade-off between public health and human rights, rather than through consideration of how taking a human rights approach (including the right to the highest attainable standard of health) is a foundation of effective public health measures and an element of good governance, ensuring a voice and participation of all people, particularly vulnerable and marginalized populations.
- The range of negative health impacts caused by COVID-19, as recognized by the World Health Assembly resolution on the [COVID-19 response](#), “including hunger and malnutrition, increased violence against women, children and frontline health workers, as well as disruptions in the care of older persons and persons with disabilities”.
- COVID-19 impacts differently on different populations, including, as recognized by the World Health Assembly resolution: people with pre-existing health conditions; older people; health professionals, health workers and other relevant frontline workers, especially women, who represent the majority of the health workforce; people with disabilities; children and adolescents; and people in vulnerable situations.
- Several measures implemented to prevent and control the spread of the virus have involved substantial expansion of the ordinary powers of governments, and the suspension or limitation of their ordinary processes, including some significant accountability and oversight mechanisms.
- In many jurisdictions, legal frameworks for public health and health emergencies have been neglected and are critically outdated and unfit to enable an effective public health response. In these circumstances, some governments quickly enacted COVID-19-specific laws and with limited opportunity for consultation or deliberation.
- The activation, in many jurisdictions, of emergency frameworks that determine the powers and functions of government entities during public health emergencies. These frameworks may be being utilized for a public health event for the first time and may be outdated and, in postcolonial states, rooted in colonial laws.
- That the global nature of the COVID-19 crisis has seen the adoption of substantial restrictions on significant aspects of international cooperation, including international travel and trade. This has impacted freedom of movement and the distribution of essential goods and services, particularly in landlocked countries, islands and remote settings.

Meeting these challenges requires genuinely whole-of-government (see Table 1) and whole-of-society responses, which in turn require laws and legal frameworks that enable necessary action and protect against misuses of power and potential unintended consequences.

Table 1. Non-exhaustive examples of the different sectors and functions of government (outside the health sector) that COVID-19 responses engage

Social protection	Provide unemployment support, disability support, support to businesses, housing support, and support to migrants and displaced persons.
Education	Support the continuation of education in schools, tertiary institutions and child care, and provide safe premises and environments.
Industry	Ensure the continuity of essential services and supplies such as food, water, medical equipment, energy, telecommunications/information technology, banking, freight movement and support industries affected by economic disruptions.
Public transport	Continue to facilitate the movement of people, including essential workers, and provide safe premises and services, including enabling physical distancing where required.
Workplace/labour	Support and regulate employers to provide healthy and safe premises and environments, including appropriate personal protective equipment to employees, and to provide appropriate leave entitlements.
Agriculture	Ensure the continuity of food supply and support agricultural industries and associated logistics systems affected by travel and trade measures.
Emergency services	Support coordination of emergency responses, including securing and distribution of essential supplies and services.
Justice/Attorney-General	Provide legal counsel and support, draft relevant legal instruments, ensure continued operation of essential legal services such as courts, ensure the continuation of essential corrections services, and protect the health and safety of those in correctional facilities.
Consumer safety/protection	Protect the community from unhealthy/unsafe health and other products, as well as from misinformation and scams or other exploitation.
Immigration/border control	Manage international borders (land, air and sea), including regulation and facilitation of international travel and trade.
Foreign affairs	Provide travel advisories, consular support, support people to return to their home countries, and lead and support international and regional cooperation.
Trade	Secure international supply chains, both for import and export, to ensure the continuing supply of goods, including food, medical

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