

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 5 | Issue 3

2022

© 2022 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at the **International Journal of Law Management & Humanities**, kindly email your Manuscript at submission@ijlmh.com.

Ensuring Human Rights during Covid-19 Pandemic: International Law and the Obligations of States – The Problems of Southeast Asian Countries

MAC THI HOAI THUONG¹

ABSTRACT

The Covid-19 pandemic (SARS-CoV-2) has become complicated in most countries around the world. The pandemic not only claims the lives and affected the health of tens of millions of people, but also has many negative impacts on life and human rights. To limit the spread of the disease, states have adopted many measures, such as warnings, travel restrictions, medical isolation, and border closures, etc. Despite limiting the spread of the Covid-19, these measures negatively affect human freedoms, such as freedom of movement, freedom to choose health care providers, etc. This paper uses the methods of statistics and describing reality to show the obligations of states to ensure human rights under the impact of the pandemic according to the provisions of international law, and the fulfillment of these obligations in member states of the Association of Southeast Asian Nations, the challenges faced by ASEAN countries to fulfill their national obligations in ensuring human rights under the impact of the epidemic and in post-pandemic: the shortage of vaccine supply; mass vaccination is unlikely to be achieved in the short term. The comparative method is used in some parts of the article to compare Fulfillment of states' obligations in ensuring human rights under the impact of the Covid-19 pandemic in ASEAN countries.

Keywords: obligation, Covid-19, states, human rights, ASEAN, Asian.

I. OVERVIEW OF NATIONAL OBLIGATIONS TO ENSURE HUMAN RIGHTS IN THE CONTEXT OF THE COVID-19 PANDEMIC

According to statistics, as of October 30, the total number of acute respiratory infection cases (COVID-19) globally was 246,743,078, including 5,003,329 deaths in more than 100 countries across all inhabited continents². WHO has declared that Covid-19 is a pandemic³. In the context

¹ Author is a Researcher and Lecture at Hanoi Law University, Vietnam.

² <https://covid19.gov.vn/aacovid-19-toi-6h-ngay-30-10-the-gioi-vuot-5-trieu-ca-tu-vong-fda-my-phe-chuan-tiem-vaccine-pfizer-cho-tre-tu-5-11-tuoi-171211030083239006.htm> retrieved on October 30, 2021

³ WHO, WHO characterizes COVID-19 as a pandemic, 11 March 2020, www.who.int/emergencies/diseases/novel-coronavirus-2019/events-as-they-happen

of globally complicated development of the COVID-19 pandemic, many countries are witnessing the return of the pandemic in a new phase with new and more complicated developments than the previous one. This pandemic has changed the world, exerted negative impacts on, and posed great challenges to the countries in the world and ASEAN countries by the economic recession, increasing stigma, inequality, poverty, job loss, etc. Furthermore, the measures to limit the spread of the disease, such as travel restrictions, medical isolation, etc. directly or indirectly affect human freedom. The Covid-19 pandemic, with its negative impacts on human rights, could be a test of obligation fulfillment level of states in human rights.

From the perspective of international law, obligations of states in ensuring and promoting human rights can be determined based on many international legal documents, including the Declaration of Human Rights, international treaties, recommendations, principles, guidelines, etc. adopted by the United Nations and international organizations, general comments, recommendations (for all countries) and conclusions (for specific countries) made by the committee monitoring international human rights conventions after reviewing reports of states. In which, it is remiss not to mention International Bill of Human Rights and other core international treaties on human rights, such as the Convention on the Elimination of All Forms of Discrimination against Women, 1979; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984; Convention on the Rights of the Child, 1989⁴, etc. In general, the obligations of states in ensuring human rights include⁵ obligation to respect, obligation to protect, and obligation to fulfill⁶. In addition to the three main obligations mentioned above, under the impact of epidemics, especially infectious diseases as the Covid-19 pandemic, the obligation to cooperate between states is one of the important obligations to limit the spread of the virus and damage incurred by the pandemic.

II. SOME POSSIBLE MEASURES TO ENSURE HUMAN RIGHT TO LIFE AND RIGHT TO HEALTH CARE IS THE PRIORITY OBLIGATION OF STATES UNDER THE IMPACT OF THE COVID-19 PANDEMIC

Obligation to fulfill requires states to take measures to assist their citizens in exercising human rights. The COVID-19 pandemic affects the enjoyment of all basic human rights in which the

⁴ International Bill of Human Rights is the common name for the trio of international human rights instruments prepared by the United Nations including Universal Declaration of Human Rights (adopted in 1948), International Covenant on Civil and Political Rights (1966) with two optional protocols, and International Covenant on Economic, Social and Cultural Rights.

⁵ Faculty of Law, Hanoi National University, Textbook of theory and law on human rights, Hanoi National University Publishing House (2009) pg. 70

⁶ To provide states with specific guidance on the principles and conditions for limiting or temporarily derogating their obligations, United Nations Economic and Social Council adopted Siracusa Principles (1984)

right to health is most directly affected. Therefore, the efforts of states to prevent and repel the COVID-19 pandemic today are to ensure the right to life, especially the human right to protection and health care.

The right to health is linked to the right to a standard of living adequate as set out in Article 25 of 1948 Universal Declaration of Human Rights (UDHR)⁷, by which everyone has the right to a standard of living adequate to ensure health and welfare of himself and his family for food, clothing, accommodation, medical care, and necessary social services. Provisions of Article 25 of UDHR are then concretized in International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR) (Articles 7, 11, 12)⁸, Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (articles 10, 12, 14)⁹, Convention on the Rights of the Child 1989 (CRC) (Article 24)¹⁰, International Convention on the Elimination of All Forms of Racial Discrimination 1965 (ICERD) (Article 5)¹¹. In addition, the right to health is recognized in some regional human rights documents, such as The Charter of Fundamental Rights of the European Union (Article 35)¹², African Charter on Human and Peoples' Rights 1981 (Article 16)¹³, etc.

The recognition of the right to health care in international law does not merely mean that a state has an obligation to ensure that everyone is healthy, the purpose of the right is to ensure that everyone has the right to the highest standard of health care. International law is aimed at limiting the spread of diseases, thereby when a disease spreads, states are obliged to apply necessary measures to limit the spread of the disease. In special cases, individual rights could be restricted to protect public health, but such restrictions must be lawful for the purpose of protecting general health of people and consistent with the general principles of human rights. The right to health care of everyone must be guaranteed without discrimination. Particularly, the right to health care of high-risk groups, such as the elderly, the homeless, the poor, people living and working in health and education facilities, must be fully protected by appropriate measures.¹⁴

⁷ UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III).

⁸ UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966.

⁹ UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979.

¹⁰ UN General Assembly, Convention on the Rights of the Child, 20 November 1989.

¹¹ UN General Assembly, International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965.

¹² European Union, Charter of Fundamental Rights of the European Union, 26 October 2012, 2012/C 326/02

¹³ Organization of African Unity (OAU), African Charter on Human and Peoples' Rights ("Banjul Charter"), 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982).

¹⁴ Human Rights Treaties Branch, Internal HRTB toolkit of treaty law perspectives and jurisprudence in the context of COVID-19, Geneva, May 2020 (last updated 15 July),

The obligation to exercise human rights to health in the context of a pandemic is reflected initially by the necessary actions taken by states to limit the spread of the virus in the community (isolation of people who may have been in contact or have infectious disease symptoms, providing medical masks, disinfectants, etc.) and by the measures to treat the patients (enough number of beds, special care equipment, both quickly mobilize a sufficient number of medical staff and ensure a healthy and safe working conditions for them). States must carry out accessible vaccination programs while maintaining high vaccine coverage rate to not only reduce infection rate but also to neutralize the virus cluster. Vaccine research needs to be promoted, fully funded, and effectively coordinated between public and private organizations.¹⁵

The right to health requires the assurance of both physical and mental health. States have an obligation to provide their citizens with psychological support to cope with potential mental health consequences of the Covid-19 pandemic, such as anxiety or depression. People infected with the Covid-19, including those who have had or are suspected of the Covid-19 infection or exposed to it, and their families have the right to meaningful consultancy and the opportunity to fully do their jobs¹⁶. Moreover, States have an obligation to guarantee the rights to water and sanitation, which are especially important in preventing COVID-19 exposure effectively¹⁷.

Finally, it is proved that due to the rapid spread of the virus, the public health system could be overburdened, leading to a negative impact on those who need regular health care - for illnesses other than the COVID-19 - including people with chronic health conditions, the elderly and the pregnant. Therefore, to ensure the obligation to fulfill human rights, states need to be prepared with necessary medical supplies and equipment to ensure the human rights of these vulnerable groups.

III. THE STATES' OBLIGATION TO PROTECT AND RESPECT HUMAN RIGHTS UNDER THE IMPACT OF THE COVID-19 PANDEMIC

The obligation to respect human rights requires States to refrain from interfering, either directly

https://www.ohchr.org/Documents/HRBodies/TB/COVID19/HRTB_toolkit_COVID_19.pdf, pg. 15.

¹⁵ Statement on COVID-19 and economic, social and cultural rights (2020), paragraph 5, 8, 15; Concluding observations for Cyprus (2016), E/C.12/CYP/CO/6, đon 40; Committee on Economic, Social and Cultural Rights, general comment No. 6 (1995) on the rights of older persons, annex IV of E/1996/22, paragraph 5.

¹⁶ Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Human Rights Guidelines for Pharmaceutical Companies in relation to Access to Medicines, UN Doc. A/63/263 (2008), www.who.int/medicines/areas/human_rights/A63_263.pdf

¹⁷ The rights to water and sanitation have been recognized as being derived from the right to an adequate standard of living (Article 11 of the ICESCR), and therefore implicitly contained in the ICESCR and other instruments; see Amnesty International, Human Rights for Human Dignity (Index: POL 34/001/2014), pp. 50-53.

or indirectly, with the enjoyment of human rights. The obligation to respect human rights during the Covid-19 pandemic is reflected in the fact that states limit their interference in the enjoyment of human rights, such as the right to choose health care providers, the right to access vaccines, etc. In particular, this is associated with the need of States to meet the requirements of restriction on human rights.

As analyzed, to ensure the right to life and health for people, states need to simultaneously apply many measures, including limiting human rights, to prevent, treat and control the pandemic. The regulations on human rights restrictions are recognized differently in different international human rights treaties. However, stemming from respecting human rights, the restriction on human rights must meet the principles of legality, necessity and proportionality, and legitimacy¹⁸.

First, the restriction must comply with the legality principle. The legality here is understood that the restriction on human rights in the context of the Covid-19 pandemic must be publicized by legal provisions, meet clear and precise standards, and be interpreted by the independent judiciary authorities. This requirement is to prevent the arbitrary imposition of restrictions. HRC indicates that “law” includes legislation enacted by the legislature or a court. National laws of states around the world today often provide the restriction and suspension on human rights in emergent cases through legal provisions promulgated by the legislature¹⁹. Specifically, to eliminate the spread of the virus, states often start by limiting freedom of movement. This issue is clearly stated in Article 12 of ICCPR: “Anyone lawfully within the territory of a State shall have the right to freedom of movement and freedom to choose his place of residence... except for the restrictions provided by law and are necessary for the protection of national security, public order, public health or morals or the rights a freedom of others and shall be consistent with other rights recognized by this Covenant”. Article 5§1(e) of ECHR allows the restriction on freedom of movement to prevent the spread of infectious disease. All prove that the restrictions on freedom of movement in the context of the Covid-19 pandemic have been recognized by the law of European countries.

The restriction on human rights by suspending certain rights after the declaration of a state of emergency, the legality principle also includes the legality of the declaration of such a state of

¹⁸ Assoc.Prof.Dr. Vu Cong Giao, M.A. Hoang Thi Bich Ngoc, *The restriction and supervision of free speech in the Internet environment*, Scope and Limits of Internet Freedom by Assoc.Prof.Dr. Nguyen Thi Que Anh, Assoc.Prof.Dr. Vu Cong Giao, National politics of truth Publishing House, Hanoi, 2018, p.179

¹⁹ UN Human Rights Committee (HRC), *General comment no. 34, Article 19, Freedoms of opinion and expression*, 12 September 2011, CCPR/C/GC/34, paragraph 24, tại: <https://www.refworld.org/docid/4ed34b562.html>, retrieved on March 18, 2020

emergency. The legislature initially enacts a general law of emergency with regulations that could not be applied under normal conditions but a state of emergency. Along with this group of provisions, the constitutions of states stipulate the competent authority to supervise the rationality and legitimacy of the decision to declare a state of emergency and limit human rights. Specifically, Constitution of Kenya (Article 58) allows the Supreme Court to make a decision on the validity of: (a) declaration of a state of emergency; (b) any extension of the declaration of a state of emergency; and (c) any law enacted, or other action taken, as a result of the declaration of a state of emergency; The South African constitution allows the court to consider both the initial declaration of a state of emergency (Article 37.3(a)) and any subsequent extension (Article 37.3(b)). The French Constitution (Article 16) allows the Constitutional Council to determine, at the request of about 10% of members of Parliament, whether the situation still calls for an extension of the state of emergency.

Second, the restriction on human rights in response to the Covid-19 pandemic must be legitimate. Legitimacy is expressed in the goals and reasons to justify the restriction on human rights of the state. In other words, the state's restriction on human rights must not be arbitrary or unreasonable, it must serve a reasonable goal. The reasonable goal of restriction on human rights is now recognized in two common ways: such restriction shares the same purpose of Covenant rights, for example, International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR) in Article 4 states that “[...]a State only can impose restrictions by legal regulations to the extent that such restrictions are not contrary to the nature of the said rights and for the purpose of promoting the common good in a democratic society”; or such restriction provides separate provisions, specifically for the goal of limiting rights to specific rights as in ICCPR. Despite different provisions, in general, the legitimate purposes of ICCPR include national security, or public safety, or the protection of public health or morals, or protect the legitimate rights and freedoms of others. Legitimate purposes listed in ECHR include national security; territorial integrity; the health of national economy; public safety or order; prevent disorder or crime; protection of health and morals; protect the rights, freedoms, and honor of others; protect confidential information; maintain the dignity and objectivity of the judicial system.²⁰

Third, the restriction on human rights in response to the Covid-19 pandemic must meet the requirements of necessity and proportionality. This requires that the restriction on human rights must satisfy the above reasonable goals and maintain a balance between the benefits and the

²⁰ Article 4 ICESCR, Article 19 ICCPR, ECHR

loss incurred restrictions on human rights. In other words, the necessity and proportionality require that the restriction on human rights adopted by the state is the least measure to achieve a reasonable goal. Apart from that measure, there is no other option with less restrictive means that still achieve a reasonable goal.

The intrinsic connection between restrictive human rights measures and the fight against the Covid-19 pandemic requires the minimization of invasive human rights measures. Human Rights Committee on April 24, 2020, states: "Where possible, and in view of the need to protect the life and health of others, member States should substitute Covid-19-related measures prohibiting the enjoyment of Covenant rights by means of less restrictive measures that allow such activities to take place, while subjecting to necessary public health requirements, such as the minimum social distance"²¹.

In a Covid-19-related resolution on April 10, 2020, Inter-American Commission warned states about the risk of applying restrictive measures excessively: "Even in the worst cases and exceptional cases in which the suspension of certain rights may become necessary, international law sets forth a series of requirements, such as legality, necessity, proportionality and timeliness, designed to prevent the illegal or abusive application of emergency measures causing human rights violations or damages to the democratic system of government"²². To ensure the necessity principle, Inter-American Commission requests OAS member States to restrict human rights only based on the best scientific evidence. However, this request in the context of the Covid-19 pandemic does not seem to be appropriate because, at present, the origin and transmission routes of the virus, its effects, and variants have not been fully defined by science. It can be seen that, at this stage, with current knowledge of Covid-19, it is difficult to assess the proportionality of rights restrictions. Faced with a shortage of essential hospital resources, such as ventilators and masks for medical staff, these restrictive measures are considered necessary to limit the spread of coronavirus. Mandatory curfews could be considered necessary and proportionate if they are implemented gradually with the typical progression from calls for voluntary isolation, to mandatory isolation and finally closure. This restriction also applies to those who have Covid-19 negative test results.

A prime example of the restriction is the limitation on freedom of speech in the Covid-19 pandemic. The purpose of this restriction is to limit the fake information about the source and

²¹ Human Rights Committee, Declaration on violations of the Convention related to the COVID-19 pandemic, 24 April 2020, CCPR / C / 128/2, §2 (b)

²² 54 IACHR, Pandemic and Human Rights in the Americas, Resolution 1/2020, April 10, 2020, § 3 (g), <https://www.oas.org/en/iachr/decisions/pdf/Resolution-1-20-en.pdf>

the way of infection which confuses the public, incites, and discriminates against people infected with the virus. However, it could inadvertently impede the accurate understanding of the disease and increase the risk of disease transmission. Restriction on freedom of speech can be harmful to anti-pandemic efforts. It is witnessed that the restriction on freedom of speech and opinion is considered as one of the causes leading to the initial outbreak in China. The Office of the United Nations High Commissioner for Human Rights (OHCHR) affirms that criminal penalties for misinformation related to the Covid-19 pandemic can be disproportionate, illegal, and counterproductive. Human Rights Commission also emphasizes that “the right to freedom of expression... and a civil space where public debate can be held” are not only important and inherent rights that need to be protected when states deal with Covid-19, but also an important tool to ensure member States comply with their other human rights obligations²³. The UN Secretary-General recognizes the need for “factual, timely and accurate information”, including enabling the supervision and criticism on the effectiveness of government measures to respond to the Covid-19 pandemic²⁴. The Special Rapporteur on freedom of expression also highlights the obligation of governments to “provide truthful information about the nature of the threat posed by the coronavirus”.

Fourth, in response to a public health emergency, international human rights law stipulates that even in the context of a pandemic, states still need to comply with basic obligations to ensure and respect human dignity and human rights. This obligation is reflected in the provision that even in emergency situations, states should not restrict the exercise of certain human rights. Under the current human rights law, certain human rights cannot be limited or suspended under any circumstance. Non-derogable rights and absolute rights are two concepts that are often understood in the same way. However, in essence, these two concepts have certain differences in content and scope.

Absolute rights are the rights that cannot be limited under any circumstance, for any reason because the exercise of these rights does not affect any legitimate interests of other individuals or the community. These rights include the right to life (Article 6), right not to be subjected to torture or cruel, inhuman, or degrading treatment or punishment (Article 7), right not to be held in slavery (Article 8), right not to be imprisoned merely on the ground of inability to fulfill a contractual obligation (Article 11), right not to be retroactive application of criminal law (Article 15), right to recognition as a person before the law (Article 16), right to freedom of

²³ <https://www.justsecurity.org/73520/covid-19-and-international-law-series-human-rights-law-civil-and-political-rights/>

²⁴ http://www.un.org/sites/un2.un.org/files/un_policy_short_on_human_rights_and_covid_23_april_2020.pdf

thought, belief, and religion (Article 18).

A non-derogable right is a right that cannot be suspended even in a state of emergency, because suspension would pose serious risks to the enjoyment of these rights, including the right to life (Article 6 ICCPR); right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment (Article 7 ICCPR), right not to be held in slavery (Article 8 ICCPR), right not to be imprisoned merely on the ground of inability to fulfill a contractual obligation (Article 11 ICCPR), right not to be retroactive application of criminal law (Article 15 ICCPR), right to recognition as a person before the law (Article 16 ICCPR), right to freedom of thought, belief and religion (Article 18 ICCPR), right not to be used for medical experiments study without consent (Article 7 ICCPR), right of persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. (Article 10 ICCPR).

Fifth, in relation to other rights, the applied restriction measures must not be inconsistent with other obligations arising from international law, and not discriminatory in terms of races, color, religion, sex, language, or social origin. States shall not be allowed to discriminate on the basis of nationality. The first infected cases of the pandemic identified in Wuhan – China is an example of such discrimination. The discrimination in the context of the Covid-19 pandemic demonstrated by the restrictions on human rights of Asian immigrants or foreign workers is a violation of international human rights law. Article 4(1) of ICCPR provides that in a state of emergency, the measures to restrict human rights could be imposed without discrimination of race, color, sex, language, religion, or social origin. Article 2 of ICESCR obliges States to ensure that the rights under ICESCR will be exercised without discrimination of any kind such as race, color, sex, language, religion, political or other opinions, national or social origin, property, place of birth, or other status".

IV. THE INTERNATIONAL COOPERATION OBLIGATION OF STATES TO LIMIT THE SPREAD OF THE COVID-19 PANDEMIC

Infectious disease outbreak is always a global challenge. SARS, H1N1, Ebola, Covid-19, etc. negatively affect not only human rights but also economic cooperation activities and cultural exchanges. The virus spreads across borders, through many different routes of transmission and negatively affects all countries around the world. Therefore, the prevention and control of infectious diseases in general, and the Covid-19 pandemic in particular, could be effective only when the states have effective cooperation mechanisms through the application of appropriate and reasonable restrictive measures, effective cooperation in transferring experience in disease

prevention and treatment, supporting poor and developing countries who do not have enough resources to prevent and control the pandemic, etc.

International cooperation is considered a common obligation of states as mentioned in Articles 55 and 56 of the Charter of the United Nations and Declaration on the Principles of International Law governing friendly relations and cooperation among States in accordance with the 1970 Charter of United Nations. Article 2(1) and the 1966 Covenant on Economic, Social, and Cultural Rights recognize the obligation of States to cooperate internationally in order to achieve the increasingly full guarantee of economic, social, and cultural rights. In accordance with General Comments of the Convention Committee, Article 12 recognizes the role of international cooperation in providing economic and technical assistance to enable developing countries to fulfill their obligations in ensuring human rights²⁵.

The typical regulations on cooperation obligations of states in the context of the Covid-19 pandemic are International Health Regulations (2005) and the Guidelines of the World Health Organization (WHO). Facing with a series of regional or global health insecurity events related to infectious diseases have occurred in recent decades, such as HIV/AIDS pandemic (from 1981 until now); Severe acute respiratory infection (SARS) pandemic in 2002; Influenza A/H5N1 in birds has been transmitted to humans from 2003 to now; The risk of emergence and spread of many deadly virus strains, such as Nipah, Marburg, Ebola, etc., the World Health Organization (WHO) has initiated the development and completion of a global strategy document called the International Health Regulations (IHR)²⁶. IHR is an instrument of international law that is legally binding 196 countries, including 194 member states of WHO²⁷.

IHR requires the states to designate a national focal point to liaise with WHO and maintain core surveillance and response capabilities. IHR encourages neighboring countries to sign bilateral/plurilateral agreements to cooperate on infectious disease prevention and jointly use “core competencies” in disease prevention to take effective and regular control measures, and report of and respond to the events that could constitute a public health emergency attracting international interest.

²⁵ See more at: <https://undocs.org/en/E/C.12/2000/4> retrieved on November 5, 2021

²⁶ This document inherits the spirit of the 1969 International Health Regulations, but there have been very fundamental changes in the way of assessing the situation, unifying the concepts of a health emergency as well as the global actions to be taken.

²⁷ Cited from “From the International Health Regulations to the Global Health Security Agenda: Towards a world safe from the threat of infectious diseases” – *Journal of Preventive Medicine*, April 5, 2014).

It is witnessed that while some states put in place the strict systematic controls on tourists, movement, and transportation of goods passing through official ground crossings, some otherwise allow relatively free movement across borders, where, under bilateral or regional agreements, daily border crossings are essential for work, commerce, family visits, schooling, health care services, and entertainment, etc. of people in these states. Considering the current situations in some countries around the world, the World Health Organization has issued guidance on controlling the spread of Covid-19 at ground crossings - May 20, 2020.

For the Covid-19 pandemic in particular and infectious diseases in general, the fulfillment of states' obligation in cooperation plays an important role. This obligation has been mentioned in many international documents, however, the enforcement is quite limited as some states want to monopolize the production of vaccines, ban the export of masks and medical supplies serving pandemic prevention and control. This comes from the fact that the regulations on states' obligation in cooperation are not clear enough in terms of level of cooperation, cooperation mechanism, and binding level of Comments and guidelines of the Convention Committees, etc.

V. FULFILLMENT OF STATES' OBLIGATIONS IN ENSURING HUMAN RIGHTS UNDER THE IMPACT OF THE COVID-19 PANDEMIC IN ASEAN COUNTRIES

The Covid-19 pandemic has a negative impact on the efforts to improve human rights in Southeast Asia. Ensuring the right to life and right to health care has been identified by ASEAN countries as an important obligation to ensure human rights under the impacts of the pandemic. To fulfill this obligation, ASEAN countries have applied various measures to respond to the pandemic.

At the regional level, ASEAN countries have overcome the challenge and affirmed their community values in pandemic response. Right after the outbreak of the disease, ASEAN member states have placed the top priority on ensuring the safety of their people, supporting each other, and creating the most favorable conditions to help ASEAN citizens facing difficulties in their countries. It proves that the spirit of solidarity and, more importantly, international cooperation and coordination are essential elements. With experience in dealing with previous pandemics, such as SARS (2002 - 2003) and MERS (2012), ASEAN has demonstrated the ability to respond quickly and promptly to common challenges, as well as the capacity for cohesion in policy coordination and action among members. ASEAN soon has the Chairman's Statement on ASEAN's common response to the Covid-19 (February 14, 2021) followed by a series of important ministerial meetings in the fields of health, economy, national

defense, tourism, agriculture, forestry, etc. to ensure synchronous and interdisciplinary coordination in pandemic prevention and control.

The turning point in the anti-pandemic efforts of ASEAN is the meeting of the leaders of the Special ASEAN Summit and Special ASEAN+3 Summit (including China, Japan, and Korea) on the Covid-19 and issued the Joint Statement of these conferences on April 14, 2020. Under the leadership of Vietnam, the leaders of member states set forth orientations and cooperation measures on three key aspects: (1) disease control and prevention; (2) support and ensure the safety of each other's citizens; (3) minimize the socio-economic impact of the pandemic²⁸.

Based on that orientation, many creative and practical solutions for cooperation in response to the Covid-19 and pandemic risks have been deployed by ASEAN. Specifically, Covid-19 ASEAN Response Fund was established in 2020. ASEAN has planned to use 10.5 million USD from the Fund to buy vaccines (through UNICEF and the COVAX mechanism) to support the people of member states in equal proportions. The agreement between ASEAN and UNICEF on vaccine supply is now completed, aiming to supply vaccines to member states very soon. ASEAN Regional Reserve of Medical Supplies received many donations of medical supplies, such as masks, medical protective clothing, antiseptic solutions, Covid-19 test kits, medicine, etc., that are ready to send to ASEAN countries in need. Vietnam has committed to contribute medical supplies worth 5 million USD to the reserve, showing the spirit of readiness to support each other in hard time; The ASEAN Overall Recovery Framework is being quickly built with the focus on enhancing the public health capacity of the region, exploiting the potentials of the intra-ASEAN market and promoting economic linkages, innovation, creativeness and digital transformation as the effective recovery lever. To facilitate essential movements in the region, ASEAN has basically completed the draft of ASEAN Travel Corridor Arrangement Framework that shall be submitted to ASEAN Summit Leaders for approval at the 38th ASEAN Summit (October 10, 2021). ASEAN has developed and applied ASEAN Strategic Framework on urgent health issues to ensure the regional readiness to respond to emerging disease challenges by a standardized and effective process. ASEAN Centre for Public Health Emergencies and Emerging Diseases funded by Japan with \$50 million and Australia with \$21 million is in the finalization process, expected to serve as the region's information and coordination center in this regard²⁹.

²⁸ <https://asean.org/asean-economic-ministers-adopt-action-plan-increase-resilience-amid-pandemic>

²⁹ Iyanti Djalante , Laely Nurhidayah, Jonatan Lassa , Hoang Van Minh , Yodi Mahendradhata , Nguyen Thi NgocPhuong, Angelo Paolo L Trias Michelle Ann Miller, Susanti Djalante, Muhammad Sabaruddin Sinapoy, The ASEAN's responses to COVID-19: A policy sciences analysis, <https://psyarxiv.com/8347d/download/%3Fformat%3Dpdf+%&cd=12&hl=vi&ct=clnk&gl=vn>

At the national level, some states, such as Cambodia, Laos, Thailand, and the Philippines, have enacted new emergency laws and policies by which the governments are empowered strongly. Vietnam, Singapore, Malaysia, and Indonesia have not declared a state of emergency but used their existing laws instead. Indonesia, Malaysia, and Thailand use tracking apps to track their people's movements³⁰. Emergency law is enacted while existing laws are applied in new ways to literally eliminate the spread of disease and protect public health. However, such measures affect the rights that are threatened in the region, including freedom of opinion and expression, assembly and association, and freedom from arbitrary arrest and detention.

In Southeast Asia, the positive case rate remains worryingly high. As recommended by World Health Organization (WHO), states should maintain their COVID-19 positive case rate at 5% or lower for at least two weeks before reopening - but that number is 20% - 30% in many Southeast Asian countries. However, many governments in Southeast Asia may not have many options. Vaccine supply is still low in the region and even exacerbated by repetitive supply delays and global vaccine shortages. Some countries did not have time to buy vaccines before the latest wave hit while some middle-income countries, including Thailand and Malaysia, are not eligible for the subsidies from the global vaccine initiative - COVAX. Meanwhile, people's lives and livelihoods in this region have been severely disrupted for nearly two years; serious consequences could be incurred if people are continuously forced to stop earning.

Up to now, many ASEAN countries have gradually realized that it is impossible to continue with restrictive measures to combat the pandemic, they must find a way to live with the pandemic instead and save the economy. In some areas, local governments have experimental solutions, such as mobilizing the army to provide their people with food, allowing workers to isolate and work at the factory, blockade a specific area, allow only vaccinated people to enter restaurants and offices. However, in contrast to US and European countries who gradually reopen, the low vaccination rates in Southeast Asian countries have made the region become the world's most vulnerable to the threat of new variants.

Since the Covid-19 was detected in Southeast Asia, despite the efforts of ASEAN member states in following most of WHO recommendations to deal with the Covid-19, positive cases are likely to increase. Therefore, vaccination is the best chance to fight the current pandemic. However, the supply and distribution of vaccines is still a problematic issue for ASEAN member states³¹.

³⁰ COVID-19 in ASEAN: the Human Rights Crisis and How to End it
<https://www.forum-asia.org/uploads/wp/2020/06/ASEAN-covid-human-rights-briefing-paper.pdf>

³¹ Muhammad Insan Tarigan 1, Raisha Hafandi, Equal Access to the Vaccination of Covid-19 in Southeast Asia:

VI. CONCLUSION

Facing the complicated development of the global COVID-19 pandemic, many countries are witnessing the return of the pandemic in a new phase with new and more complicated developments than the previous one. This pandemic has changed the world, exerted negative impacts, and posed great challenges, such as economic recession, increasing stigma, inequality, poverty, job loss, etc., to all countries in the world in general and Vietnam in particular. To overcome these challenges, countries around the world (including ASEAN countries) have applied many measures to respond to the pandemic. However, these measures have more or less affected the enjoyment of human rights, including civil and political rights. Therefore, ensuring human rights during the pandemic should be prioritized by states to make sure that no one is left behind. Like many other countries, balancing between the pandemic prevention measures (such as social distancing, travel restrictions, disclosing disease information, etc.) and respecting and ensuring civil and political rights of people, especially vulnerable groups, are not easy for ASEAN member states.

ASEAN countries are mainly low-middle-income countries where the healthcare system is not yet fully modern, thus they face many difficulties and challenges in ensuring people's right to life and right to health care in the emergency context of the Covid-19 pandemic. At both the regional and national level, it is witnessed that ASEAN countries have made great efforts in ensuring a balance between implementing urgent measures to prevent the COVID-19 and respecting their commitments and legal obligations in implementing international laws, their constitution, and national laws. Under the complicated and unpredictable context of the Covid-19 pandemic, the economic potentials, development level of the country, and the great efforts that ASEAN countries have made in guaranteeing human rights are undeniable. However, the spread of the Covid-19 and its negative knock-on effects are still huge challenges in the next stages.

VII. REFERENCES

1. Faculty of Law, Hanoi National University, Textbook of Theory and Law on Human Rights, Hanoi National University Publishing House (2009)
2. Assoc. Prof. Dr. Vu Cong Giao, M.A. Hoang Thi Bich Ngoc, The restriction and supervision of free speech in the Internet environment, Scope and Limits of Internet Freedom by Assoc.Prof.Dr. Nguyen Thi Que Anh, Assoc.Prof.Dr. Vu Cong Giao, National politics of truth Publishing House, Hanoi, 2018
3. Organization of African Unity (OAU), African Charter on Human and Peoples' Rights ("Banjul Charter"), 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982).
4. Human Rights Treaties Branch, Internal HRTB toolkit of treaty law perspectives and jurisprudence in the context of COVID-19, Geneva, May 2020 (last updated 15 July), https://www.ohchr.org/Documents/HRBodies/TB/COVID19/HRTB_toolkit_COVID_19.pdf, trang 15.
5. Statement on COVID-19 and economic, social and cultural rights (2020), đoạn 5, 8, 15; Concluding observations for Cyprus (2016), E/C.12/CYP/CO/6, đoạn 40; Committee on Economic, Social and Cultural Rights, general comment No. 6 (1995) on the rights of older persons, annex IV of E/1996/22.
6. Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Human Rights Guidelines for Pharmaceutical Companies in relation to Access to Medicines, UN Doc. A/63/263 (2008), www.who.int/medicines/areas/human_rights/A63_263.pdf
7. The rights to water and sanitation have been recognized as being derived from the right to an adequate standard of living (Article 11 of the ICESCR), and therefore implicitly contained in the ICESCR and other instruments; see Amnesty International, Human Rights for Human Dignity (Index: POL 34/001/2014).
8. Muhammad Insan Tarigan 1 , Raisha Hafandi, Equal Access to the Vaccination of Covid-19 in Southeast Asia: Can ASEAN be a Catalyst? HasanuddinLawReview Volume 7 Issue 2, August 2021 P-ISSN: 2442-9880, E-ISSN: 2442-9899
9. Iyanti Djalante , Laely Nurhidayah, Jonatan Lassa , Hoang Van Minh , Yodi Mahendradhata , Nguyen Thi NgocPhuong, Angelo Paolo L Trias Michelle Ann Miller, Susanti Djalante, Muhammad Sabaruddin Sinapoy, The ASEAN's responses to COVID-19: A policy sciences analysis, <https://doi.org/10.1016/j.pdisas.2020.100129>

10. UN Human Rights Committee (HRC), *General comment no. 34, Article 19, Freedoms of opinion and expression*, 12 September 2011, CCPR/C/GC/34, đoạn 24, tại: <https://www.refworld.org/docid/4ed34b562.html>, truy cập ngày 18/3/2020.
11. <https://covid19.gov.vn/aacovid-19-toi-6h-ngay-30-10-the-gioi-vuot-5-trieu-ca-tu-vong-fda-my-phe-chuan-tiem-vaccine-pfizer-cho-tre-tu-5-11-tuoi-171211030083239006.htm> retrieved on October 30, 2021
12. WHO, WHO characterizes COVID-19 as a pandemic, 11 March 2020, www.who.int/emergencies/diseases/novel-coronavirus-2019/events-as-theyhappen.
