

## **INTERROGATING THE IMPOSITION OF RESTRICTIONS LAW DURING THE COVID-19 PANDEMIC IN GHANA**

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### **ABSTRACT**

The world was confronted with both legal and political issues after the announcement by the World Health Organisation (WHO) on March 11, 2020 of COVID-19 as a pandemic. The declaration led many national governments to implement restrictions to combat the spread of the disease and also to enable them make preparations for the health systems to deal with the emergency on hand. Even though, fundamentally the COVID-19 pandemic is seen as a public health emergency, it has presented a challenge to human rights and the rule of law, which are all crucial in times of national crisis. In Ghana, the government enacted the Imposition of Restrictions law together with other Executive Instruments to enable it deal with the crisis. The need to strike a balance between the public health emergency and the rule of law has led many advocates to question the constitutionality of the legislation that was introduced during the pandemic. This paper aims at interrogating the legitimacy of these laws and whether the government could have explored other available alternatives in dealing with the pandemic, than promulgating a new legislation.

**Keywords:** Human Rights, Pandemic, Rule of Law, Executive Instruments, Public Health Emergency

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## INTRODUCTION

What happened in Wuhan, China in December 2019 as an internal transmission of the 'novel coronavirus disease' has grown to become a pandemic. The COVID-19 pandemic which is caused by the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) continues to wreck untold hardships on countries across the world.<sup>3</sup> It has been described as the worst human catastrophe since World War 11. In the view of Sarah Joseph,<sup>4</sup> COVID-19 has caused 'a global public health emergency, a global economic emergency and a global human rights emergency.' According to Bryant,<sup>5</sup> the destructive nature of the disease can be seen from its infectious nature, since the first hundred thousand (100,000) occurred within 67 days, the second hundred thousand in eleven days while the third hundred thousand occurred within four days. According to him, unless the world adopts proactive measures to deal with the pandemic, a lot of lives could be lost. The public health emergency presented by the COVID-19 pandemic means that countries all over the world must take prudent measures to protect the health and safety of their people.<sup>6</sup> The severity of the devastating impact of COVID-19 on areas of governance also means that, states must take urgent steps to reduce the impact of the COVID-19 pandemic on their populations.

The pandemic is seen as one of the significant challenges to human security in the 21st century, which has affected all facets of human lives.<sup>7</sup> It is undeniable of the fact that, as a result of the COVID-19 pandemic, countries all over the world have imposed restrictions on fundamental freedoms which include "freedom of assembly, association and movement."<sup>8</sup> Although these measures were necessary in view of the public health crisis on hand, many concerns have been raised on the way and manner governments handled the imposition of restrictions law that were passed as a result of the pandemic.<sup>9</sup>

The coronavirus pandemic has continued to affect mankind in an unprecedented manner in the area of social, economic, political, education and health.<sup>10</sup> The devastating effect, is what compelled the WHO to declare it as a Public Health Emergency of International Concern (PHEIC).<sup>11</sup> Classifying it as a PHEIC makes the disease in relation to others, the sixth PHEIC in accordance with International Health Regulations.<sup>12</sup> The impact of the COVID-19 pandemic has been felt in every continent of the world.

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<sup>3</sup> WHO, Coronavirus disease (COVID-19) (June 2021) <https://www.who.int/health-topics/coronavirus#tab+tab> 1 retrieved on 20/1/22.

<sup>4</sup> S Joseph, International human rights law and the response to the COVID-19 pandemic *British Journal of International Humanitarian Legal Studies* (2020) 249-269.

<sup>5</sup> N Bryant, #Coronavirus#CoronavirusUpdate#WHO (March 2020).

<https://twitter.com/nickbrantny/status/1242272355159769089?lang+e> accessed on 12/12/21.

<sup>6</sup> OHCHR, COVID-19 Response (April 2020).

<sup>7</sup> E Kharytonov, Kharytonova O, Kolodin D and Kalych M, The covid-19 pandemic and the rights of the individual in terms of private and public law *Revista de Derecho Lus Humani* vol. 9 (ii) (2020) 225-250.

<sup>8</sup> E Bethke, Amos J, Azer M, Baker D, Bashir R and Best C, COVID-19 and shrinking space (October 2020).

<sup>9</sup> Ibid.

<sup>10</sup> A D Dai-Kosi, The impact of COVID-19 social restrictions on culture and psychosocial well-being: The Ghanaian experience *Academia* (2021).

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

After the declaration by the WHO as a pandemic, various national governments took various steps to combat the spread of the disease.<sup>13</sup> The severity of the pandemic has also compelled many countries to take emergency measures which has been a challenge to respect for fundamental human rights and the rule of law.<sup>14</sup> Addadzi-Koom,<sup>15</sup> has intimated that the COVID-19 pandemic has become a catalyst for the abuse of human rights and violation of the rule of law under the cloak of lock down measures and public health security.<sup>16</sup> A lockdown is a “social distancing intervention that aims to minimise physical contact between individuals and groups in order to reduce transmission of a communicable disease.”<sup>17</sup>

De Mesquita et al.,<sup>18</sup> have also opined that the destructive effects of COVID-19 on human rights has been felt in all facets of life. OHCHR<sup>19</sup> has argued forcefully that in such public health crisis, all measures taken to protect the health of the people must be based on law. The Africa Centre for Disease Control and Prevention (ACDC), has also opined that the pandemic will continue to wreak havoc in African countries in much the same way as the rest of the world, which invariably will lead to a deterioration of “constitutionalism and the rule of law” in the African continent.<sup>20</sup> Nearly every country in the world adopted emergency measures in response to the Covid-19 pandemic.<sup>21</sup>

Since the outbreak of the disease, various countries across the globe have implemented various measures to curb the spread of the virus<sup>22</sup> including lockdowns. The nature of lockdown measures have been similar, but the levels of strictness have varied from one country to another.<sup>23</sup> Lockdowns create enormous challenges within a country but are deemed to have a crucial impact on the spread of the pandemic.<sup>24</sup> The global lockdown initiated by various countries of the world starting from March 2020 after the declaration of COVID-19 as a pandemic by the WHO, is the first in this century.<sup>25</sup>

According to OHCHR, COVID-19 Response<sup>26</sup>:

Emergency powers should be used within the parameters provided by international human rights law, particularly the International Covenant on

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<sup>13</sup> K Antwi-Boasiako, Abbey COA and Ogbey P, Policy responses to fight COVID-19, the case of Ghana *Revista de Derecho* (2021).

<sup>14</sup> ME Addadzi-Koom, Quasi-state of emergency: Assessing the constitutionality of Ghana’s legislative response to Covid-19 *The theory and practice of legislation* No. 3 (Routledge Taylor & Francis Group 2020) 311–327.

<sup>15</sup> Ibid.

<sup>16</sup> C Adlhoch, Baka A, Ciotti M, Dias JG, Kinsman J, Leitmeyer K, Considerations relating to social distancing measures in response to COVID-19 update second update (European Centre for Disease Prevention and Control Report March 2020).

<sup>17</sup> Ibid.

<sup>18</sup> JB de Mesquita, Kapilashrami A and Mason B M, Strengthening human rights in global health law: Lessons from the COVID-19 response Commissioned by The Independent Panel for Pandemic Preparedness and Response (Human Rights Centre University of Essex 2021).

<sup>19</sup> OHCHR, COVID-19 Response (April 2020).

<sup>20</sup> International Institute for Democracy and Electoral Assistance (IDEA), The Impact of the COVID-19 Crisis on Constitutionalism and the Rule of Law in Anglophone Countries of Central and West Africa 2020 (IDEA 2020).

<sup>21</sup> B Amanda, Edgell A, Lachapelle BJ, Lührmann CA and Maerz SF, Pandemic backsliding: Violations of democratic standards during Covid-19 *Social Science & Medicine* (Elsevier 2021).

<sup>22</sup> S Kharroubi and Saleh F, Are lockdown measures effective against COVID-19?. *Frontiers in Public Health* (2020) 610.

<sup>23</sup> OHCHR (n 4).

<sup>24</sup> Kharroubi S and Saleh F (n 19).

<sup>25</sup> H Onyeaka, Anumudu CK and Al -Sharify ZT, COVID-19 pandemic: A review of the global lockdown and its far-reaching effects (SAGE 2021).

<sup>26</sup> OHCHR (n 4).

Civil and Political Rights (ICCPR), which acknowledges that States may need additional powers to address exceptional situations. Such powers should be time-bound and only exercised on a temporary basis with the aim to restore a state of normalcy as soon as possible.

In view of the fact that emergency measures concentrates power in the executive, it is trite that other institutions that play oversight roles such as the legislature, judiciary and other National Human Rights Institutions (NHRIs) act as a check on the executive power from abuse since there is the tendency that it could be used to violate the rights of the people as well as the rule of law. In spite of this, many governments have taken extensive actions that have restricted human rights without due cognisance of the Siracusa Principles<sup>27</sup> which require emergency measures to be legitimate, necessary and proportional.<sup>28</sup> Habibi et al.,<sup>29</sup> are of the view that, once the appropriate procedures are not followed in the implementation of restrictions public health will be undermined on the altar of justice. “Law is an important determinant of health,” which requires the establishment of practical – based health interventions.<sup>30</sup>

In the view of Atalan<sup>31</sup> drastic measures have been taken by national governments which include the closure of schools, lockdown for epicentres of the disease to reduce the transmission of the virus of which the main mode of transmission is human to human contact. This has also been buttressed by Haider et al.,<sup>32</sup> who have intimated that strict lock down measures were adopted to halt the “exponential epidemic growth trajectories.” Human rights and the rule of law have been overstretched to their full limits as a result of the COVID-19 health emergency.<sup>33</sup> Human Rights Watch<sup>34</sup> has intimated that, emergency measures implemented to control the pandemic has been arbitrarily exercised with security forces violating the rights of citizens. In most states, inclusive of Ghana non-compliance of the curfews, travel restrictions and quarantines were met with brute force by the security services. Many states’ responses turned rapidly to criminal law to compel compliance with lockdowns, physical distancing, isolation, curfews and travel restrictions.

The International Development Law Organisation (IDLO)<sup>35</sup> has intimated that good governance and the rule of law are cardinal to the management of the COVID-19 Public health emergency and economic recovery of countries. Efficient and effective governments’ response is contingent on measures adopted to make society recover from the effects and the various public institutions providing appropriate leadership to contain the disease. According to IDLO<sup>36</sup> it is only by providing quality leadership based on transparency, accountable actions and adhering to rule of law

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<sup>27</sup> Human Rights Watch (HRW), Applying Siracusa: A call for a general comment on public health emergencies *Health and Human Rights Journal* (2020).

<sup>28</sup> Ibid.

<sup>29</sup> MS Habibi, Cotter MP, Riley PA, Houston AC and Planche TD, Prior COVID-19 significantly reduces the risk of subsequent infection, but reinfections are seen after eight months (2021).

<sup>30</sup> Gostin et al., The legal determinants of health: harnessing the power of law for global health and sustainable development (Pubmed.gov April 2019).

<sup>31</sup> A Atalan, Is the lockdown important to prevent COVID-19 pandemic ScienceDirect (Elsevier August 2020).

<sup>32</sup> Haider et al., Lockdown measures in response to COVID-19 in nine Sub-Saharan African countries *BMJ Global Health* (October 2020).

<sup>33</sup> HRC, Action Plan (Helsinki 2020).

<sup>34</sup> Human Rights Watch (n 24).

<sup>35</sup> The International Development Law Organisation (IDLO), A rule of law-based response to the covid-19 pandemic (March 2020).

<sup>36</sup> Ibid.

principles that countries may recover quickly. The Sustainable Development Agenda for 2030,<sup>37</sup> especially GOAL (SDG) 16 highlights rule of law as key in the attainment of peace, justice and inclusiveness which are pivotal in making institutions accountable and stronger in reducing inequalities in dealing with the effects of the pandemic.

## HUMAN RIGHTS PROTECTION AND EMERGENCY LEGISLATION

International law stipulates the grounds for “respecting, protecting and fulfilling the rights of all individuals” inclusive of health. The WHO<sup>38</sup> has stated that, it is incumbent on “all countries to strike a fine balance between protecting health, minimising economic and social disruption, and respecting human rights.” Before the pandemic in 2019, it had been recorded that there was a “decline in global freedom” for the fourteenth consecutive year, which invariably undermine democracy and pluralism.<sup>39</sup> The Siricusa Principles<sup>40</sup> stipulates that, the law must make provision for adequate measures against illegal and abuse of fundamental freedoms. It has been argued by many advocates that, the COVID -19 crisis has made many governments to become authoritarian.<sup>41</sup>

International human rights obligations do not cease within global pandemics however, many governments have introduced laws that restrict rights to protect public health. The Siracusa Principles provided avenues for governments to use options for States to invoke “exceptional emergency powers,” that could derogate from some international human rights treaty’s obligations in emergencies such as the COVID-19 crisis in so far as they are “necessary, proportionate and non-discriminatory.”<sup>42</sup> According to the Human Rights Committee,<sup>43</sup> derogating from an obligation in the protection of rights should be the last resort with the committee favouring restrictions of certain rights in the interest of public health.

The Human Rights Committee has expressed concern about national governments not following the right procedures in implementing lockdowns in accordance with the Siracusa Principles, which has invariably reduced the available opportunities for ‘human rights safeguards and state accountability.’ Respecting the enjoyment of human rights is an end in itself, as compared to being a means to an end and also not “inherently utilitarian.”<sup>44</sup> It is therefore argued forcefully that, it is not expedient to sacrifice human rights, on the altar of a few people who will die from COVID-19.<sup>45</sup> International law requires governments to limit the rights of people only when it is ‘necessary to achieve a legitimate, pressing objective,’ and that same should not be too intrusive and

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<sup>37</sup> UN, Sustainable Development Goals (SDG) 16, <https://www.un.org/sustainabledevelopment/wp> accessed on 18/1/22.

<sup>38</sup> WHO, Director General, media briefing Available at <https://www.who.int/dg/speeches/detail/who-directorgeneral-s-opening-remarks-at-the-media-briefing-on-covid19> 11-mar (2020).

<sup>39</sup> S Repucci, ‘Freedom in the World 2020: A leaderless struggle for democracy’ (Freedom House 2020) <https://freedomhouse.org/report/freedom-world/2020/leaderless-struggle-democracy>.

<sup>40</sup> UN Economic and Social Council, “The Siracusa Principles on the Limitation and Derogation Provisions into the International Covenant on Civil and Political Rights”) UN Doc E/CN.4/1985/4 (28 September 1984) para 18.

<sup>41</sup> Institutes for Development Studies, Navigating civic space in a time of COVID: Synthesis report Restrictions on the basic fundamental freedoms of the citizens have taken both ‘overt and covert forms (UK Brighton 2021).

<sup>42</sup> UN Commission on Human Rights, Report on 40<sup>th</sup> session (6 February – 16 March 1984).

<sup>43</sup> Human Rights Committee, 38<sup>th</sup> meeting of states parties to the International Covenant on Civil and Political Rights (ICCPRs) (September 2020).

<sup>44</sup> Sarah Joseph (n 2).

<sup>45</sup> Ibid.

restrictive to abuse the intended objective, arbitrary nor discriminatory and lastly, people should be able to appeal against it or call for a review when their rights are trampled upon.<sup>46</sup>

Moreover, those who are vulnerable must be taken care of, and that there must be a “proportionality between the harmful effect of the measure limiting rights and the greater public good in achieving the objective.”<sup>47</sup> After the declaration of COVID-19 as a pandemic, various countries adopted policies to restrict the rights of the citizenry, as a justification for protecting public health.<sup>48</sup> With some countries passing formal legislation to restrict movement, harassing people who are opposed to the regime and adopting “delegitimising tactics.”<sup>49</sup> This has strained relations between the citizenry and their governments in some instances and has also been a restraint to governmental power in its quest to distribute ‘public goods.’<sup>50</sup>

The restrictions and lockdown measures as a result of the pandemic and the ‘securitised response’ has brought to the fore many insecurities that face people and the role played by national governments in perpetuating violence against the people. There is no doubt that the pandemic has hastened governments tendencies towards authoritarianism thereby violating the rights of individuals and the rule of law, and invariably becoming autocratic which has negatively affected the political landscape.<sup>51</sup> In the view of Anderson et al.,<sup>52</sup> the pandemic has brought to the fore “emergency legislation” which has brought restrictions on all facets of life. Implementation of lockdown measures increase executive powers since they control the police, army and other security services who are in charge to implement lockdown measures. It offered a platform for concentration of excessive powers in the executive which were sometimes abused by the security forces.<sup>53</sup> Even though the pandemic has slowed with the discovery of vaccines, securitisation has deepened with restrictive legislation and those who flout the law being punished under emergency laws passed by the executive, ostensibly violating the rights of individuals.

Even though public health emergency like COVID-19 could allow states to derogate from some of their human rights obligations, this has been abused in some countries.<sup>54</sup> Derogations is about the ‘temporary suspension of some rights’ and are allowed only in so far as it is required by the exigencies of the time and consistent with international human rights law. Any state which also wants to derogate from international human rights law must also duly comply with the notification processes stipulated under Article 4 of the ICCPR,<sup>55</sup> and the emergency triggering the derogation must be published to the citizenry and communicated effectively to them as well. In the view of Erasmus,<sup>56</sup> when a limitation is put on a right, the important attributes of the right must be

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<sup>46</sup> Bonn et al., Canadian HIV/AIDS Legal Network, Addressing the syndemic of HIV, hepatitis C, overdose, and COVID-19 among people who use drugs: The potential roles for decriminalisation and safe supply *Journal of Studies on Alcohol and Drugs* (2020).

<sup>47</sup> E Mykhalovskiy, Kazatchkine C, Foreman-Mackey A, McClelland A, Peck R, Hastings C and Elliot R, Human rights, public health and COVID-19 in Canada (Springer Canadian Journal of Public Health 2020).

<sup>48</sup> Institutes for Development Studies (IDS) (n 38).

<sup>49</sup> Ibid.

<sup>50</sup> Ibid.

<sup>51</sup> Ibid.

<sup>52</sup> C Anderson, McGee R, Nampoothiri N, Gaventa J, Forquilha S, Ibeh Z and Alex S, Navigating Civic Space in a Time of Covid: Synthesis Report. Institute for Development Studies (2021) 1-52.

<sup>53</sup> Ibid.

<sup>54</sup> A Spadaro, COVID-19: Testing the Limits of Human Rights (2021).

<sup>55</sup> Article 4 of ICCPR.

<sup>56</sup> G Erasmus ‘Limitation and suspension’ in D van Wyk et al. (eds) Rights and constitutionalism: The new South African legal order (1996) 640 28.

“maintained and not extinguished.” The limitation must be construed narrowly, or strictly in favour of the rights bearer.<sup>57</sup> In this sense, rights limitation will be measured objectively, in regard to the situation on hand as compared to ‘the subjective intentions or importance for which the rights that are to be limited are being curtailed in the new enactment. This is the litmus test with which rights limitations are to be tested.

Allan<sup>58</sup> has argued that, in instances where an enactment confers a discretion on a state authority, the exercise of that discretion must ‘be construed consistently with legal principles and individual rights.’ Invasions are only necessary in the public interest in conformity with law. It is in times of crisis that civic space, transparency and the free flow of information are more critical than ever for building and maintaining the trust needed for effective responses.<sup>59</sup> Addadzi-Koom,<sup>60</sup> has emphasised ‘the need for a rights-based approach’ to the COVID-19 pandemic, where states and non-Governmental actors must take urgent steps to empower the people and not criminalise people who violate lockdown measures. The right to move freely within the territorial boundaries of a country, within one’s region and at the international level have been hampered as a result of measures put in place by governments to curb the spread of COVID-19.<sup>61</sup>

In times of national emergencies such as COVID-19, it is incumbent on law enforcement agencies as well as security services to work with government and health workers to deal with the spread of the disease.<sup>62</sup> During a pandemic, law enforcement agencies and officers play a crucial role to provide necessary public services and maintain order.<sup>63</sup> The pandemic has led to the imposition of restrictions in an unprecedented level, with the ultimate aim of reducing the destructive effects of the disease.<sup>64</sup>

Moreover, the COVID-19 pandemic has led to the suspension of a lot of fundamental freedoms to achieve the “public good” and this has led to the perpetuation of a lot of authoritarian tendencies. Article 4 of the ICCPR stipulates that, “countries may derogate from some rights if necessary during a “time of public emergency which threatens the life of the nation.”<sup>65</sup> To derogate from an obligation connotes the suspension in the implementation of some provisions of a law,<sup>66</sup> all but temporary<sup>67</sup> or to deviate from the performance of the obligation<sup>68</sup> or as intimates, to

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<sup>57</sup> Ibid.

<sup>58</sup>TRS Allan, Deference, defiance, and doctrine: Defining the limits of judicial review *University of Toronto Law Journal*, 60 (1) (2010) 41-59.

<sup>59</sup> UN, Guidance Note on Civic Space (September 2020).

<sup>60</sup> ME Addadzi-Koom. Quasi-state of emergency: Assessing the constitutionality of Ghana’s legislative response to Covid-19 *The Theory and Practice of Legislation* 8(3) (2020) 311-327.

<sup>61</sup>LIBE committee Monitoring Group on Democracy, Rule of Law, Fundamental Rights European Parliament The impact of COVID-19 measures on Democracy, the rule of law and Fundamental Human Rights in the EU (2020).

<sup>62</sup> WG Jennings and Perez MN, The Immediate Impact of COVID-19 on Law Enforcement in the United States *American Journal of Criminal Justice* (2020) 45:690–701 <https://doi.org/10.1007/s12103-020-09536-2>.

<sup>63</sup> Richards, Rathbun, Brito & Luna, The role of law enforcement in public health emergencies (US Department of Justice 2006).

<sup>64</sup> A Sheikh, Zakariya S1, Sheikh A, Novel approaches to estimate compliance with lockdown measures in the COVID-19 pandemic [www.jogh.org](http://www.jogh.org) • doi: 10.7189/jogh.10.010348 1 June 2020 • Vol. 10 No. 1 • 010348).

<sup>65</sup>United Nations (2020).

<sup>66</sup> EM Hafner-Burton, Helfer LR and Fariss C J, Emergency and escape: Explaining derogations from human rights treaties *International Organization* 65(4) (2011) 673-707.

<sup>67</sup> DL Richards and Clay, K C, An umbrella with holes: Respect for non-derogable human rights during declared states of emergency, 1996–2004. *Human Rights Review* 13(4) (2012) 443-471.

<sup>68</sup> The Siricusa Principles (n 37).

eliminate a legal obligation in honouring provisions relating to political and civil rights under international law.

International human rights law thus allow national governments to temporarily curtail the enjoyment of some rights in times of national emergencies<sup>69</sup>. Any derogation must also conform to laid down procedure and the UN Secretary General must be put on notice. The norms of emergency measures are dealt with under international law and states are obliged to follow the regime on derogations. In the view of Criddle and Fox-Decent,<sup>70</sup> in times of political or health crisis pressures on governments serves as an impetus for states to violate the fundamental freedoms of the citizenry. Emergency laws which have introduced “rule by decrees” have placed a limitation on the functions of the legislature, judiciary and other National Human Rights Institutions. The fast pace in which laws were passed to deal with the pandemic have compromised the legality of some of the laws passed.<sup>71</sup>

De Mesquita et al.,<sup>72</sup> have stated that emergency legislation should have checks that will protect the rights of people and parliamentary scrutiny as well as oversight by the courts. “Parliaments must also continue to debate, scrutinise and explain the intended use of executive powers.”<sup>73</sup>

## **COVID-19 PANDEMIC AND THE RULE OF LAW**

The COVID-19 pandemic has brought to the fore the relationship between states response to the public health emergency and the rule of law.<sup>74</sup> Interventions by national governments globally to curb the spread of the disease have had a negative impact on upholding the law which has threatened state institutions and violated the fundamental human rights of the people.<sup>75</sup> In the quest to implement lockdowns necessitated by the pandemic, states passed emergency laws to restrict movement, curtail social gatherings which did not take into consideration people’s livelihoods. The coronavirus disease (COVID-19) legislations have narrowed civic space and threatened fundamental freedoms, which are crucial attributes of the rule of law. The nexus between rule of law principles and public emergencies (including PHEIC) is set out in both international instruments and national legal frameworks.

It is trite knowledge that rule of law is the most value-laden of all the constitutional law principles.<sup>76</sup> Embedded within this stipulation is the fact that, the concept helps guarantee a measured government and respect for fundamental freedoms. The rule of law may either be seen as a “philosophy or political theory” but in either way the basic requisites are laying down the significant conditions of law or as a procedure by which those who wield power are to rule under the law.<sup>77</sup> The purpose of the rule of law is that of the supremacy or sovereignty of law over man. According

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<sup>69</sup> See Yin et al. (2021) on rights and religious belief in maintaining prison social order. Yin shows how the right to freedom of movement is also curtailed in prison.

<sup>70</sup>Criddle Fox-Decent (2012).

<sup>71</sup> De Mesquita et al., (n 15).

<sup>72</sup> Ibid.

<sup>73</sup> Julinda et al, 2021).

<sup>74</sup> Role UK, Rule of law in times of Health crisis (A4ID 2020).

<sup>75</sup> Ibid.

<sup>76</sup>KA Tuffuor, Human rights and rule of law in Africa: Legal and institutional frameworks for sustainable peace in SB Kendie, P Osei- Kufuor, KN Bukari & S Bukari (eds) *Towards sustainable peace in Ghana: Essays in memory of Francis Koj Azuimah* (Accra Sub-Saharan Publishers 2021).

<sup>77</sup>H Barnett, *Constitutional and administrative law* (Cavendish 2000) 85.



to Gomes,<sup>78</sup> rule of law requires “lawfulness, regularity and continuity in the preservation of public order.” The International Bar Association<sup>79</sup> stipulates that under the concept of rule of law, no one is above or beyond the law. “Everyone is subject to and governed by the law.” The United Nations<sup>80</sup> has given out the characteristics of the rule of law as follows:

It refers to a principle of governance in which all persons, institutions and entities, public and private, including the state itself, are accountable to laws that are publicly promulgated, equally enforced, and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.

The “rule of law” refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated and which are consistent with international human rights norms and standards. It requires, as well measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.<sup>81</sup>

The World Justice Project has also described the concept of rule of law as follows:<sup>82</sup>

see[s] the rule of law as a regime where government and its officials and agents, as well as individuals and private entities, are accountable under the law. The laws are clear, and laws are applied evenly and protect fundamental rights – including the security of persons and property, justice delivered timely by a competent, ethical and independent judiciary and reflected the make-up of the communities.

Clearly put, every authority is likely to become oppressive and tyrannical as intimated by moral philosophers from Plato to Thomas Aquinas and to John Locke. In illustrating the concept of rule of law, Locke put it succinctly as follows:<sup>83</sup>

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<sup>78</sup> TMRC Gomes, Promoting the rule of law in Serbia. What is hindering the reforms in the justice sector? *Communist and Post-Communist Studies* 50(4) (2017) 331-337.

<sup>79</sup> International Bar Association, *Commentary on the IBA Council ‘Rule of law’ Resolution of September, 2005* Retrieved from <https://www.ibanet.org/Search/Search.aspx?query=commentary%20on%20the%20IBA%20council%20rule%20of%20law> accessed on 12/12/21.

<sup>80</sup> UN, *The International Covenant on Civil and Political Right* (2006) Retrieved from <https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf>

<sup>81</sup> United Nations, Report of the Secretary-General, *The rule of law and transitional justice in conflict and post-conflict societies* (2004).

<sup>82</sup> The World Justice Project (WJP) *On rule of law* (2014).

<sup>83</sup> MW Slann, *Introduction to politics: Governments and nations in the post-cold war era* (McGraw-Hill 1988).

whosoever in authority exceeds the power given him by the law and makes use of the force he has under his command to compass that upon the subject which the law allows not, ceases in that to be a magistrate, and acting without authority may be opposed, as any other man who by force invades the right of another.

The European Court of Human Rights refer to the notion of the rule of law as follows, that the rule of law must make provision for the protection of human rights, which are significant to the development of every society.<sup>84</sup> In 2016, the Bingham Centre for the Rule of Law<sup>85</sup> adopted some priority benchmarks for the assessment of adherence to rule of law within a state in a manner that is 'objective, thorough, transparent and equal.' These are that, the law should be applied at all times and should not be based on discretion, power must be reasonably exercised based on the reasons for its conferment, equality before the law and accessible dispute resolution. Others are the protection of rights, fair trial and rule of law in the international arena. The Venice Commission's report<sup>86</sup> also identified a consensus on six necessary elements of the rule of law. These are that, there should be legality (transparency and accountability), legal certainty, prohibition of arbitrariness, equality before the law, access to justice including judicial review and respect for civil liberties.

According to the Rule of Law Index<sup>87</sup> there has been a "deterioration and stagnation" in eight critical areas as a result of restrictions imposed by governments. IDLO<sup>88</sup> also posited that the resulting emergency measures as a result of the pandemic heightened autocratic tendencies "risking descent from rule of law to rule by law." The enforcement of emergency measures must be subject to oversight by an independent judiciary.<sup>89</sup> Ordinary courts should maintain their jurisdiction to adjudicate complaints relating to a violation of a non-derogable right.<sup>90</sup> The main provisions under the international Bill of Rights stipulates limitations on the rights contained. According to the author, governments guaranteeing the basic fundamental freedoms of the individual under law, is one of the core attributes of the 'rule of law and constitutionalism.'

Beqira et al.,<sup>91</sup> have posited that, in a democracy the essence of rule of law is to check arbitrary use of power and that rule of law is a key pre-requisite for the legitimacy of governments. It is worth noting that, in times of emergency when power is conferred on governments to deal with the crisis on hand "it is essential to look back to what good law is about and why the Rule of Law is so important."<sup>92</sup> In the view of John Locke, "law should serve, not to abolish or restrain, but to

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<sup>84</sup> S Wheatley, *The idea of international human rights law* (Oxford University Press 2019).

<sup>85</sup> Bingham Centre for Rule of Law, A Research Report by the Bingham Centre for the Rule of Law for the All-Party Parliamentary Group on the Rule of Law (Bingham Centre for Rule of Law 2016). Available on [https://www.biicl.org/documents/860\\_final\\_full\\_rule\\_of\\_law\\_in\\_parliament\\_research\\_report\\_2013-14\\_2014-15.pdf](https://www.biicl.org/documents/860_final_full_rule_of_law_in_parliament_research_report_2013-14_2014-15.pdf).

<sup>86</sup> Venice Commission, Venice Commission Report 2021. Retrieved from [https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2021\)016rev-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2021)016rev-e).

<sup>87</sup> World Justice Project, 'Rule of Law Index 2020' (2020) available: <https://worldjusticeproject.org/our-work/research-and-data/wjp-rule-law-index-2020>. See also: United Nations, Rule of Law Indicators, 2011, available: [https://www.un.org/en/events/peacekeepersday/2011/publications/un\\_rule\\_of\\_law\\_indicators.pdf](https://www.un.org/en/events/peacekeepersday/2011/publications/un_rule_of_law_indicators.pdf).

<sup>88</sup> IDLO (n 32).

<sup>89</sup> The Siricusa Principles (n 32) para 22.

<sup>90</sup> ICCPRs, Report available: <https://undocs.org/CCPR/C/21/Rev.1/Add.11>.

<sup>91</sup> J Beqiraj, Stennett R and Weinberg N, The rule of law and COVID-19 related technologies (Birmingham Centre for Rule of Law 2021).

<sup>92</sup> Ibid.

fundamentally preserve and enlarge freedom.” Rule of Law fundamentally rejects abuse of power in an arbitrary manner, which constraints people as well as institutional actions. This means harms that are to be protected through law in normal times, should not be introduced because there is a pandemic. The European Court of Human Rights has opined that “[even] in the framework of a state of emergency, the fundamental principle of the rule of law must prevail.<sup>93</sup>”

It is only under rule of law that the legitimacy of restrictions imposed can be acceptable. It also strengthens public confidence in institutions and consolidate the legality of the restrictions introduced, which invariably serve as an impetus for its effectiveness and compliance. Under the ‘thin’ rule, states are required to make laws that are clear, this must be done in a transparent manner, and that the laws must be applied fairly and in an impartial manner by the justice system.<sup>94</sup> As required by the “thick” spectrum, rule of law goes beyond safeguards provided within the contents of the law to include state compliance with international law and respect of the fundamental human rights of the individual.<sup>95</sup>

Joseph Raz<sup>96</sup> has emphasised that, the key features of the concept of rule of law are that the law must be stable, predictable, intelligible, limitations on the use of discretionary power, equality before the law and access to justice since these are key to all jurisdictions. In the words of Judge Spano the concept transcends international borders, traditions and cultures and constitutes a key principle in democracies when a ‘system of communal human life is regulated by legally binding norms.’<sup>97</sup> This is why it is captured in the preamble of the United Nations’ Universal Declaration of Human Rights. And that in any civilized polity with a health emergency such as COVID-19, which has necessitated lockdown, it is only by resorting to the rule of law that power can be exercised lawfully, predictably and in a human manner. In the view of Fuller, it is only in times of such crisis that the “bond of reciprocity” between the state and the citizens becomes very important - the bond between the ruler and the ruled - becomes so important.<sup>98</sup> In Krygier’s teleological account of the Rule of Law<sup>99</sup> there are three modes of exercising power that make people vulnerable to arbitrary treatment. Power is arbitrary when it is uncontrolled, unpredictable and/or unrespectful. Now after knowing what is required to be done in times of emergency we will subject what occurred in Ghana to these core values.

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<sup>93</sup> ECHR, ‘The rule of law as the lodestar of the European Convention on Human Rights: The Strasbourg Court and the independence of the judiciary’, *Piskin v. Turkey* (no. 33399/18), 15 December 2020 Citation from Robert Spano para. 153 *European Law Journal* (January 2021) 5.

<sup>94</sup> Venice Commission Report (n 86).

<sup>95</sup> *Ibid.*

<sup>96</sup> J Raz, On the Rule of Law as a universal principle see Joseph Raz, ‘The Law’s Own Virtue’ *Oxford Journal of Legal Studies* 39 (1) (2019) 4.

<sup>97</sup> *Ibid.*

<sup>98</sup> R Spano, ‘The rule of law as the lodestar of the European Convention on Human Rights: The Strasbourg Court and the independence of the judiciary’ *European Law Journal* (7 January 2021) 5.

<sup>99</sup> M Krygier, ‘The Rule of Law and State Legitimacy’ in Martin Krygier, *Legitimacy* (Oxford University Press 2019) <https://oxford.universitypressscholarship.com/view/10.1093/oso/9780198825265.001.0001/oso-9780198825265-chapter-7>).

## IMPOSITION OF RESTRICTIONS LAW IN GHANA

The country had its first experience of infection of the COVID-19 disease on 12 March 2020 after two persons tested positive to the virus.<sup>100</sup> In Ghana, a GH¢1.2 billion (about US\$200 million) Coronavirus Alleviation Programme was established by the government to support affected households. The disease grew exponentially and by the 7 of September 2020, the country had 44,869 cases, but out of these about 43,801 recovered and discharged while 283 people could not survive the disease.<sup>101</sup> In an address to the nation on 15 March 2020, the President Nana Addo Dankwa Akufo-Addo directed the Attorney-General to table before Parliament an emergency legislation immediately, in accordance with the 1992 Constitution of Ghana.<sup>102</sup> The Minister for Health was also directed to declare the COVID-19 as a public health emergency pursuant to the Public Health Act, 2012 (Act 851)<sup>103</sup> to govern the relevant measures.

In addition to this, Parliament passed the Imposition of Restriction Act, 2020 (Act 1012)<sup>104</sup> which was assented to by the President and the Imposition of Restrictions (COVID-19) Instrument, 2020 (E.I. 64) adopted as a mitigating measure to curb the spread of the virus.<sup>105</sup> This enabled the authorities to close the country's borders on the 21 of March 2020, and a lock down imposed on Greater Accra, Tema, Kasoa and Greater Kumasi Metropolis for first two weeks and additional one week and all social activities prohibited including religious gatherings, funerals, weddings and parties and those that were allowed were not to have more than twenty five (25) people.<sup>106</sup>

In addition to the above, all places of work-public as well as private were to adopt a shift system, adopt the use of virtual means for business, while adhering to all COVID-19 safety protocols.<sup>107</sup> It has been argued that, the country in responding to the emergency used the derogation clause under Article 31 (10) in the 1992 Constitution to restrain the exercise of some fundamental freedoms. The imposition of restrictions laws therefore limited the enjoyment of some fundamental freedoms. With respect to free movement of persons, measures such as 'temporary quarantine, ban on public gatherings, demonstrations and protests, the closure of schools and places of worship' were put in place to control the spread of the disease since the main mode of spread is human to human transmission. Added to the above, human rights violations have been reported by some citizens of brutalities meted to them by the Ghana Police Service (GPS) and the military in an attempt to restrict the movement of people.<sup>108</sup>

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<sup>100</sup> A Y Osman et al., Lockdown measures in response to COVID-19 in nine sub-Saharan African countries *BMJ Global Health* (2020) 5: e003319. doi:10.1136/ bmjgh-2020-003319.

<sup>101</sup> Ministry of Health Report (2020).

<sup>102</sup> Article 21(4) (c), (d) & (e) of the 1992 *Constitution* of Ghana.

<sup>103</sup> Section 169 of the Public Health Act, 2012 (Act 851) Communications Bureau, 'President Akufo-Addo Addresses Nation on Measures Taken by Government to Combat the Coronavirus Pandemic' (Speech 15 March 2020) accessed 10/12/ 2020.

<sup>104</sup> Republic of Ghana, *Imposition of Restriction Act* (2020).

<sup>105</sup> E Kumi, Pandemic democracy: The nexus of COVID-19, shrinking civic space for civil society organizations and the 2020 elections in Ghana *Democratization* (2022) 1-19.

<sup>106</sup> N Haider, Osman AY, Gadzekpo A, Akpede GO, Asogun D, Ansumana R and McCoy D, Lockdown measures in response to COVID-19 in nine sub-Saharan African countries *BMJ Global Health* 5(10) (2020) e003319.

<sup>107</sup> KPMG Ghana – COVID-19: Update on Travel Policies and Restrictions on Social Activities (2021) Retrieved from: <https://assets.kpmg/content/dam/kpmg/gh/pdf/gh-COVID-19-Update-on-Travel-Policies-and-Restrictions-on-Social-Activities.pdf>

<sup>108</sup> Kumi (n 98).

According to Anderson et al.<sup>109</sup> while the COVID-19 inspired legislations are legitimate as mandated by the Constitution, Public Health Act, 2012 (Act 851), the Imposition of Restriction Act, 2020 (Act 1012) and the Imposition of Restrictions (COVID-19) Instrument, 2020<sup>110</sup> (E.I. 64) are justified in the protection of public health, its application has constrained privacy rights, freedom of movement, peaceful assembly, expression and association which invariably has negated civic space. The disease also created a lot of challenges for the conduct of the 2020 general elections. Moreover, the COVID-19 pandemic created uncertainties for the 2020 general elections which threatened democratic governance as stipulated in the Constitution. This is due mainly to restrictive measures that were introduced to curtail mass gatherings which affected the campaigns of some political parties.<sup>111</sup> Even though the compilation of a new voters register was to be done in April, this was postponed to June by the Electoral Commission (EC) of Ghana.

Five days after the President's address, the Attorney-General also presented to Parliament the Imposition of Restrictions Bill, 2020 to Parliament under a certificate of urgency. The bill was passed by Parliament into law after the third reading and was given a Parliamentary approval which was assented to by the President and published in the gazette and became operational.<sup>112</sup> On 23 March 2020, the Imposition of Restrictions (Coronavirus Disease (COVID-19) Pandemic) Instrument, 2020 (E.I. 64) regulated by articles 31 and 32 of the Constitution was also published in the gazette and entered into force.<sup>113</sup> State of emergency in the country is regulated by the 1992 Constitution<sup>114</sup> and the Emergency Powers Act 1994, Act 472.<sup>115</sup> Even though these are the main statutes governing emergencies there are other provisions contained in other specialised statutes. Addadzi-Koom<sup>116</sup> has described the Imposition of Restrictions law, 2020 as 'a terse enactment' with only seven sections which are intended to deal with restrictions as and when an emergency occurs to ensure public safety, public health and protection.

Under section 4 of the Imposition of Restrictions Law, 2020 restrictions could last for a maximum of three months when there is an emergency. The President may also shorten or extend the duration of the restriction for not more than one month at a time where the exigencies of the circumstances so require. Under the 1992 Constitution and the Emergency Powers Act, Parliament is mandated to either shorten or extend the duration of an emergency, but the Imposition of Restrictions Law, 2020 gives the power to the President without any Parliamentary scrutiny. Three Executive Instruments that came into effect as a result of Act 1012 are E.I. 64 (Imposition of Restrictions (Coronavirus Disease (COVID-19) Pandemic) Instrument 2020. E.I. 64, E.I. 65 (Imposition of Restrictions (Coronavirus Disease (COVID-19) Pandemic) (No. 2) Instrument 2020 came into effect on 30 March 2020, while E.I. 66 (Imposition of Restrictions Coronavirus Disease (COVID-19) Pandemic) (No. 3) Instrument 2020 also came into effect on 3 April 2020 placed restrictions on movements to Ghana by air, land and sea.

One is liable to a fine of not less than one thousand penalty units and not more than five thousand penalty units, with one penalty unit being GH¢12 as stipulated in the Fines (Penalty Units)

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<sup>109</sup> Anderson et al. (n 50).

<sup>110</sup> Republic of Ghana, *Imposition of Restrictions (COVID-19) Instrument, 2020* (E.I. 64).

<sup>111</sup> AG Abdulai and Sackeyfio N, Introduction: The uncertainties of Ghana's 2020 elections *African Affairs* (2021).

<sup>112</sup> Addadzi-Koom (n 15).

<sup>113</sup> *Ibid.*

<sup>114</sup> Republic of Ghana, Articles 31 and 32 of the Constitution and the Emergency Powers Act 1994, Act 472

<sup>115</sup> Republic of Ghana, Emergency Powers Act 472.

<sup>116</sup> Addadzi-Koom (n 15).

(Amendments) Instrument, 2005 (LI 1813). One could therefore be fined GH¢12,000.00 to GH¢60,000.00 or suffer a prison term of not less than four years and not more than ten years or to both.<sup>117</sup>The Presidency also committed GH¢ 572 million (US\$ 100 million) as part of the preparations to deal with the pandemic. A coronavirus National Preparedness and Response Plan, which sought to strengthen the capacity of health facilities, laboratories, and points of entry to detect and control viral spread and to create public awareness were put in place.

The lockdown restrictions were further extended for additional one week till 20 April 2020. Each and every individual was instructed to remain at home, but could go out only when needed to get essentials such as food and medicine and services such as banking transactions, attending to public toilet and medical facilities. Inter-city movement of 'vehicles and aircrafts for private and commercial purposes' were also curtailed, with the exception for those that provide essential services and haulage of cargo.<sup>118</sup> On 31 January 2021, the president of Ghana gave an update<sup>1</sup> on the country's coronavirus (COVID-19) infections and outlined measures which sought to reverse some of the restrictions that had earlier been relaxed.<sup>119</sup> The KIA has been reopened with international passenger travel since the 10<sup>th</sup> of September 2020 while schools opened in January, 2021.<sup>120</sup>New measures were again announced effective Monday 1 February 2021 which saw to the revision of COVID-19 test fees at KIA for nationals from Economic Community of West African States (ECOWAS) and restrictions placed on social gatherings such as weddings, parties, and funerals. Land and sea borders remained closed,<sup>121</sup>but have been opened recently.

## **CONSTITUTIONALITY OF THE IMPOSITION OF RESTRICTIONS LAW**

In the view of Bagaric,<sup>122</sup> "the Constitution controls for the worst of times, so that we may more regularly enjoy the best of times." And that, to defer from a legislation is in accordance with its true purpose, which in a democratic setting must be in consonance with a constitutional order. If a derogation will lead to an injury to rights, then it is imperative that then there should be a change so that the legislature will not be seen as violating the rights of the people according to Allan. It is trite knowledge that in a Constitutional setting "freedom and individual rights are not unlimited."

Addadzi-Koom has described the Impositions of Restrictions Act, 2020 Act 1012 as follows:

it has no legitimate constitutional blessing. Consequently, the place of the IRA in Ghana's emergency regime is unprecedented and puzzling. It creates what we may call a 'quasi state of emergency'.

It is argued here that, the constitutional provisions under a state of emergency, as well as the Emergency Powers Act were enough to be invoked to deal with the pandemic. And that, a proclamation by the President on 15 March, 2020 would have been enough to deal with the emergency on hand. People arrested in defiance of the government's directives who were

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<sup>117</sup> Republic of Ghana, Imposition of Restrictions law (2020).

<sup>118</sup> Kumi (n 98).

<sup>119</sup> Republic of Ghana, Ghana – COVID-19: Update on Travel Policies and Restrictions on Social Activities GMAS Flash Alert, Immigration Edition (February 2021).

<sup>120</sup> Kenu E, Frimpong J, Koram K, Responding to the COVID-19 pandemic in Ghana *Ghana Medical Journal* 54 (2) (2020) 72-73.

<sup>121</sup> Republic of Ghana (n 112).

<sup>122</sup> M Bagaric, 'Originalism: Why some things should never change – or at least not too quickly' 19 *University of Tasmania Law Review* (2000) 187-186.

arrested is deemed to be unconstitutional. In a review by Appiagyei-Atua<sup>123</sup> he also noted that the retrospective nature of Act 1012 was also in contravention of the 1992 Republican Constitution since the fundamental law frowns on retrospectivity under Article 107 (b).

The Imposition of Restrictions law make the President “a benevolent dictator” since there is no parliamentary check on his powers thereby negating the whole concept of accountability. The law took away the consultative powers which the constitution gave, that in times of emergency the Council of State should be consulted first under article 31 (1) and also getting approval from Parliament under article 31 (2) of the 1992 Constitution. This also sins against the rule of law which stipulates that, laws must be clear, stable, transparent and fair. Again, when the President had not declared a state of emergency under article 31 of the Constitution, it was wrong for him to have invoked the Electronic Communications Act, 775 section 99 and 100 to support contact tracing in relation to the pandemic. Appiagyei-Tua has argued that, there ought to have been a state of emergency invoked under the constitution before the Parliamentary Act could be invoked and that this was the intention of Parliament. The impositions of restrictions law as it is currently, sins against the dictates of the 1992 Constitution and its continuous existence is challengeable.

Locke put it succinctly as follows, when those in authority abuse the power given them, they cease to be magistrates and such laws may be opposed. In the view of Aquinas and Locke, “every authority is likely to become oppressive and tyrannical unless restrained by law.” One of the fundamental principles in rule of law based-setting is that, the law must be supreme over man and there should also be a measured government. Indeed, in Constitutional law the constitution is deemed to be superior and nothing or no law should prevail over it or conflict with it. But with the new law which has no room for accountability and puts excessive powers in the hands of one man in a democratic country is a source of concern. If the Constitution is to have “a meta-objective,” then this should be the exercise of control of governmental powers especially in times of emergency.

Emergency legislation should only be introduced when there is no existing law to take care of the situation on hand. It must conform to the principles of rule of law – accountable, transparency, predictable, frowns on retrospectivity and the use of arbitrary discretion. Above all, there should be respect for the fundamental human rights of the individual before, during and after the state of emergency. Interfering in rights conferred by the Constitution on the altar of public interest is only acceptable when it is in tandem with the rule of law. Need be to say here that, it is even in times of crisis that the rights of the citizenry should be protected. People should have a trust in the justice delivery system. From the standpoint of human rights, a state of emergency only provides a legal justification for the taking of extra-ordinary measures which should not violate peoples’ rights. It is also imperative that, once law is a crucial determinant of public health as stated supra, all legislative enactments promulgated in the future to control public health emergencies should conform to the rule of law.

## **CONCLUSION**

The COVID-19 pandemic has put mankind on notice that, it is not only conventional war such as armies fighting each other that can bring the world to its knees, but rather unconventional issues

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<sup>123</sup> K Appiagyei-Atua, ‘Emergency without a State of Emergency: Effect of Imposition of Restrictions Act, 2020 on Rights of Ghanaians’ (MyJoyonline 2 April 2020) accessed 12 January 2021.

such as health as the pandemic has shown can also affect the world tremendously as armies do. The pandemic has affected state-citizen relationship as a result of measures that curtailed the basic liberties of the individual such as free movement of goods, services and people, curtailing freedom of assembly through the implementation of emergency measures. Ghana passed the imposition of restrictions law due to the pandemic, but when assessed in the light of principles governing the rule of law as found in the 1992 Republican Constitution there were deficits. It is posited here that, in view of the fact that the Constitution make provision for a state of emergency and an Act of Parliament on emergency situations in the country it was needless to pass a new law to deal with the pandemic. In future, authorities should haste slowly when other national emergencies occur, so that constitutional hitches such as these will not occur. People incarcerated under the law should also be given amnesty, since they were convicted under arbitrary legislations which sins against the rule of law.



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