

## INTERROGATING THE ENFORCEMENT OF THE COVID-19 PANDEMIC ON RELIGIOUS LIBERTY UNDER INTERNATIONAL LAW\*

### Abstract

*The article examined the safety measures, restriction to worship, the conduct of religious rituals, human right challenges, perception of religious authorities, governmental policies, enforcement of the covid-19 pandemic on religious restriction, challenges brought on by the rapid spread of COVID-19 (coronavirus), the coronavirus pandemic has impacted religion in various ways, including the cancellation of worship services of various faiths, closure of Sunday Schools. Many churches, synagogues, mosques, and temples have offered worship through live stream amidst the pandemic. Beyond the obvious health repercussions, this global pandemic has presented major disruptions for global religious gathering. The article has taken a cursory survey of the impact of covid-19 on religious restriction, response and impact, food and medical assistance, social justice. The article concludes by recommending that religious and community leaders should promote messages of unity and discuss with community members the importance of preventing the social stigma of people and groups.*

**Keywords:** Covid-19, Restriction, Religion, Public Health, Enforcement, Impact and Response

### 1. Introduction

In response to the global public health crisis posed by the Covid-19 pandemic, the federal, state and local governments are ramping up social distancing practice and directives, including the closing of non-essential businesses, schools and venues that typically attract large gatherings. The state and the local enactments have varied as to whether and to what extent they afford an exemption to houses of worship. Regardless, most religious congregations have suspended services and now move to digital communication, such as live streaming of services, as an alternative; the question as to whether there is acceptance or opposition to such religious restriction is a matter of fact and not on the bases of theological convictions, many did so even in the absence of state or local government directives calling for the suspension of large gatherings which others have followed suit once those directives were forth coming. This article attempts to examine the religious liberty implications of the pandemic-related restrictions on assembling of religious purposes. And what other questions are presented by responses to the pandemic both in terms of impact on religious organizations and as they relate to other church- state concern.

How far can a government limit religious freedom in the name of fighting Corona-Virus under international law? As the global pandemic continues, many national and local governments are grappling with this question.<sup>1</sup> Religious gatherings are important opportunities for people to practice and share their beliefs but they are also sites for transmission of Covid-19, endangering not only participants in the gathering but everyone with whom they interact. This pandemic crisis requires decisive government action, but governments often use times of crisis to encroach on individual liberty and freedoms or target monitoring groups long after the crisis has passed.<sup>2</sup> Religious and faith based institution and teachings, as well as traditional actors, can positively contribute to preventing the spread of the virus and serve as a source of comfort and stability. Religious and traditional actors are frequently well positioned to respond and communicate information and teachings to their communities in times of crisis.<sup>3</sup>

With social distancing restricting public celebration of the Sacraments, many churches began looking to innovate. Some priests began offering drive-thru confessions.<sup>4</sup> A parish in Quezon City announced an online general absolution via live stream but cancelled the event upon discovering that the priest who absolves and the

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<sup>1</sup><img alt='icon' src='//upload.wikimedia.org/wikipedia/commons/thumb/2/28/P\_religion\_world.svg/31px-P\_religion\_world.svg.png' decoding='async' width='31' height='28' class='noviewer' data-file-width='400' data-file-height='360'> Religion portal, Retrieved on 29, April 2021

<sup>2</sup>iframesrc='https://www.googletagmanager.com/ns.html?id=GTM-WFP5ZN5'height='0'width='0' style='display: none; visibility: hidden'></iframe> UN chief calls on religious leaders to unite in the fight against COVID-19 UN Secretary-General António Guterres meets religious leaders at Gurdwara Kartapur Sahib in Punjab province in Pakistan. Retrieved on 29, April 2021

<sup>3</sup> Ibid

<sup>4</sup>img alt='icon' src='//upload.wikimedia.org/wikipedia/commons/thumb/d/d6/WHO\_Rod.svg/12px WHO\_Rod.svg.png' decoding='async' width='12' height='28' class='noviewer' data-file-width='107' data-file-height='250'> Medicine portal Retrieved on 29, April 2020

penitent people receiving absolution must be physically in the same place.<sup>5</sup> Similarly, the Archdiocese of Kansas City attempted to allow confessions to be heard via cell phone but ran into the same issue regarding absolution.<sup>6</sup> Archbishop Leonard Blair wrote in a memo to the U.S. bishops, ‘With regard to Penance, it is clear that the Sacrament is not to be celebrated via cell phone.’<sup>7</sup> The Diocese of Springfield in Massachusetts attempted to allow nurses to anoint patients while priests recite prayers for ‘Extreme Unction’ but this policy was quickly rescinded because anointing cannot be validly delegated.<sup>8</sup> On the other hand, Johann Pock, the dean of the Faculty of Catholic Theology at the University of Vienna, wrote that if the Pope could impart a ‘complete indulgence’ to the world via television, ‘why then can’t the bishop... celebrate the Eucharist for his entire diocese, with believers in front of their screens actively participating and making this not just a spiritual, but an actual communion with bread (and wine) at the table?’<sup>9</sup> By mid-March the Maronite Church in Lebanon authorized the reception of the Eucharist in the hand, a practice previously not permitted, in order to stem the spread of the virus. Some parishes allowed for two lines of communicants: one for those who wished to receive traditionally on the tongue and those who wished to receive in the hand. This led to protests from traditional Maronites, including an 8 March incident in an Ajaltoun church where protesters shouted ‘We are the Church’ in response to a priest requesting obedience to Church requests.<sup>10</sup>

This is the time to remember the most vulnerable of the vulnerable around the world, people in war zones, refugee camps, slums and other areas least equipped to fight the virus. It is a call to renew faith in one another and draw strength from the good that is gathering in troubled times as communities of diverse faiths and ethical traditions unite to care for one another. According to the United Nations Secretary-General, the virus has ushered in what can be best described as ‘a strange, surreal world’. Streets are silent, storefronts are shuttered and places of worship are empty in efforts to contain the spread of the pandemic.

## 2. Impact on Religious Restriction

The covid-19 pandemic has extensively and intensively impacted the Christian Association of Nigeria (CAN) with the national, regional, and state coordinators calling for the total closures of religious worship centres and putting a hold on any gathering of faith based believers exceeding 20 members at any time in question, in compliance with government directives. At other times, many or few assemblies whose religious leaders failed to comply with such directives were arrested, detained and prosecuted on the bases of criminal breach. The coronavirus pandemic has impacted religion in various ways, including the cancellation of the worship services of various faiths, the closure of Sunday Schools, as well as the cancellation of pilgrimages surrounding observances and festivals.<sup>11</sup> Many churches, synagogues, mosques, and temples have offered worship through live stream amidst the pandemic.<sup>12</sup> Relief wings of religious organisations have dispatched disinfection supplies, powered air-purifying respirators, face shields, gloves, coronavirus nucleic acid detection reagents, ventilators, patient monitors, syringe pumps, infusion pumps, and food to affected areas.<sup>13</sup> Other churches have offered free COVID-19 testing to the public.<sup>14</sup> Adherents of many religions have gathered together to pray for an end to the COVID-19 pandemic, for those affected by it, as well as for wisdom for physicians and scientists to combat the disease.<sup>15</sup>

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<sup>5</sup> a b c d e f g h i Burke, Daniel (14 March 2020). ‘What churches, mosques and temples are doing to fight the spread of coronavirus’. CNN. Archived from the original on 14 March 2020. Retrieved 16 March 2020.

<sup>6</sup> Parke, Caleb (13 March 2020). ‘Churches cancel Sunday service, move online amid coronavirus outbreak’. Fox News. Archived from the original on 15 March 2020. Retrieved 16 March 2020.

<sup>7</sup> Doody, Cameron (25 March 2020). ‘200 Church, civil groups launch COVID-19 SOS for 42,000 refugees ‘trapped’ on Greek islands ‘in horrific conditions’’. Novena News. Retrieved 5 April 2020. .

<sup>8</sup> Concerning COVID-19 and the Moravian Church’. Moravian Church. 26 March 2020. Archived from the original on 28 March 2020. Retrieved 28 March 2020.

<sup>9</sup> Worship’. Trinity Christian Reformed Church » Worship. Archived from the original on 5 September 2016. Retrieved 28 March 2020.

<sup>10</sup> Queen ready for move to Windsor Castle’. The Gazette. Retrieved 18 April 2020.

<sup>11</sup> Pagán, Jonathan Warren (21 March 2020). ‘Spiritual Communion during the COVID–19 Pandemic’. Anglican Compass. Archived from the original on 21 March 2020. Retrieved 21 March 2020

<sup>12</sup> Ibid

<sup>13</sup> Lamb, Christopher; Heneghan, Tom; Pongratz-Lippitt, Christa; Luxmoore, Jonathan; Roberts, James (15 March 2020). ‘Pope Francis urges Catholics to unite in spiritual communion’. The Tablet. Archived from the original on 21 March 2020. Retrieved 21 March 2020

<sup>14</sup> Lewis, Mitchell (20 March 2020). ‘An Act of Spiritual Communion’. Wordpress. Archived from the original on 21 March 2020. Retrieved 21 March 2020.

<sup>15</sup> Wenger, Yvonne. ‘Baltimore-based Lutheran World Relief preparing response to coronavirus in Africa: ‘This is a moment of unity’’. The Baltimore Sun. Archived from the original on 27 March 2020. Retrieved 28 March 2020.

### Response and Impact

According to Gallup report by Frank Newport ‘the most dramatic result (in religion) has been the exceedingly quick shift of religious services from in-person to online worship.’ This decision was not by compulsion but on the mere acceptance of the fact regarding the health implication of the deathly pandemic. While for almost a hundred years, churches have used various communication methods to reach their audiences, such as radio, television and online media, Gallup says that the halting of in-person worship ‘is one of the most significant sudden disruptions in the practice of religion in U.S. history.’<sup>16</sup> A Pew Research report from March 2020 reported a change in their religious habits due to the pandemic. More than half of respondents said that they have ‘prayed for an end to the spread of coronavirus,’ ‘attended religious services in person less often,’ and ‘watched religious services online or on TV instead of in person.’<sup>17</sup> Time magazine reported that drive-in church services have achieved a great level of attendance in the COVID-19 outbreak.<sup>18</sup> As to whether the crisis had an effect on long-term personal religious life, 19% of Americans said that their faith has strengthened and only 3% said that it got worse.<sup>19</sup>

### Food and Medical Assistance and Social Justice Work

World Council of Churches General Secretary Olav Fykse Tveit announced that, ‘This situation calls on our solidarity and accountability, mindfulness, care and wisdom for our signs of faith, hope and love’.<sup>20</sup> Amidst the 2019–20 coronavirus pandemic, some churches continue to operate their food pantries that are offering bags filled with meat and toilet paper rolls for needy families.<sup>21</sup> The National Cathedral of the United States, which belongs to the Episcopal Church, donated over five-thousand surgical masks to hospitals of Washington, D.C., which were in shortage during the 2019–20 coronavirus pandemic.<sup>22</sup> Other churches, such as the Church of the Highlands, an evangelical Christian mega church, have offered free COVID-19 tests in their parking lots.<sup>23</sup> Some chaplains, such as Father Benito Rodríguez Regueiro, have chosen to remain on call 24/7 for COVID-19 patients.<sup>24</sup> Over 200 church and civil society organisations, including Caritas and the Jesuit Refugee Service, have called on the government of Greece to restore access to asylum for refugees, especially the 42,000 who are ‘trapped’ and living ‘in horrific conditions’ in the Greek islands.<sup>25</sup> Many Episcopal and Catholic dioceses in Nigeria recommended older Christians to stay at home rather than attending Mass on Sundays, which is usually required; many churches of all Christian denominations have made church services available via radio, online live streaming or television while others have offered drive-in services in their church parking lots.<sup>26</sup> Some Christians are using online apps, which contain prayers and daily devotionals, to remain engaged with their faith.<sup>27</sup>

How far can a government limit religious freedom in the name of fighting the coronavirus under international law? As the global pandemic continues, many national and local governments are grappling with this question. Religious gatherings are important opportunities for people to practice and share their beliefs, but they are also sites for transmission of COVID-19, endangering not only participants in these gatherings but everyone with whom they interact. Crises require decisive government action, but governments often use times of crisis to encroach on individual freedoms or target minority groups long after the crisis has passed. Article 18 of the

<sup>16</sup> ‘Attorney General William P. Barr Issues Statement on Religious Practice and Social Distancing; Department of Justice Files Statement of Interest in Mississippi Church Case’. [www.justice.gov](http://www.justice.gov). 14 April 2020. Retrieved 17 April 2020.

<sup>17</sup> ‘Religion and the COVID-19 Virus in the U.S’. [news.gallup.com](http://news.gallup.com). Retrieved 21 April 2020. .

<sup>18</sup> Gryboski, Michael (26 March 2020). ‘National Cathedral donates 5,000 respirator masks to DC hospitals’. [www.christianpost.com](http://www.christianpost.com). the Christian Post. Archived from the original on 26 March 2020. Retrieved 26 March 2020.

<sup>19</sup> Doody, Cameron (31 March 2020). ‘Spanish chaplain on call 24/7 for coronavirus patients: ‘There are tears, yes, but great hope too’’. [Novena News](http://novena.com). Retrieved 5 April 2020

<sup>20</sup> Wooden, Cindy (17 March 2020). ‘Public Mass ban in Italy leads to new focus on ‘spiritual Communion’’. [Crux](http://crux.com). Archived from the original on 21 March 2020. Retrieved 21 March 2020.

<sup>21</sup> Parvini, Sarah (17 April 2020). ‘Ventura County faith leaders demand officials allow socially distant gatherings amid coronavirus shutdown’. [Los Angeles Times](http://www.losangeles.com). Retrieved 18 April 2020.

<sup>22</sup> Williams, Ryan P. (10 April 2020). ‘Starting the resistance and civil disobedience...’ @RpwWilliams on Twitter. Retrieved 12 April 2020.

<sup>23</sup> Parke, Caleb (23 March 2020). ‘In coronavirus fight, China hasn't stopped persecuting Christians: watchdog’. [Fox News](http://www.foxnews.com). Archived from the original on 27 March 2020. Retrieved 27 March 2020.

<sup>24</sup> Klett, Leah MarieAnn (21 March 2020). ‘China demolishes church, removes crosses as Christians worship at home’. [The Christian Post](http://www.christianpost.com). Archived from the original on 22 March 2020. Retrieved 27 March 2020.

<sup>25</sup> ‘In Rare Move, Justice Department Takes Church's Side in 1st Amendment Suit’. [Time](http://www.time.com). Retrieved 17 April 2020.

<sup>26</sup> religionEmailEmailBioBioFollowFollow, Sarah Pulliam Bailey closeSarah Pulliam BaileyReporter covering (10 March 2020). ‘From Ireland to Boston, coronavirus shuts down St. Patrick's Day parades’. [The Washington Post](http://www.washingtonpost.com). Archived from the original on 17 March 2020. Retrieved 17 March 2020.

<sup>27</sup> Dias, Elizabeth (15 March 2020). ‘A Sunday Without Church: In Crisis, a Nation Asks, ‘What Is Community?’’. [The New York Times](http://www.nytimes.com). Archived from the original on 16 March 2020. Retrieved 17 March 2020.

International Covenant on Civil and Political Rights (ICCPR) guarantees freedom of religion, but also allows governments to narrowly restrict religious freedom by law when necessary to protect a legitimate state interest, including public health. The Siracusa Principles on the Limitation and Derogation Provisions in the ICCPR explains that public health measures that limit rights must be specifically aimed at preventing disease or injury or providing care for the sick and injured<sup>28</sup>. Given the fundamental nature of freedom of religion or belief, it is subject to fewer restrictions than other rights. Only manifestations of this freedom can be limited, but never holding beliefs itself. Unlike other rights, religious freedom cannot be derogated in times of public emergency, which means that governments must continue to balance this fundamental right even in efforts to combat the impact of the virus. While freedom of religion is not absolute, it also cannot be limited disproportionately, or in a way that discriminates against believers and non-believers or a certain religion or belief. Public health emergencies should also not be used to target or stigmatize certain religious groups<sup>29</sup>.

As stressed by UN High Commissioner for Human Rights Michelle Bachelet, ‘human dignity and rights need to be front and’ in the effort to contain and combat the spread of COVID-19. UN experts have also emphasized that restrictions must be based on public health concerns and not used ‘simply to quash dissent’ or target particular groups, minorities, or individuals.<sup>30</sup> The World Health Organization (WHO) has noted that in the response to this pandemic, countries must strike a fine balance between protecting health, minimizing economic and social disruption, and respecting human rights’. To this aim, the WHO has provided guidelines and planning recommendations for mass gatherings to aid authorities in mitigating the public health risks of large events, including religious services. These tools urge public health authorities to conduct a detailed risk assessment to determine whether a mass gathering should be cancelled to mitigate the spread of COVID-19<sup>31</sup>. Compliance with international law not only protects human rights, but also should ultimately create more effective implementation of public health measures to slow COVID-19. Many governments have asked religious groups to voluntarily take measures that limit the spread of COVID-19, including cancelling services, disinfecting houses of worship,<sup>32</sup> and limiting the length of prayer times. These requests utilize a cooperative approach in which governments treat religious groups as partners rather than potential threats. As such, we expect wider implementation and stronger individual adherence to these public health measures.<sup>33</sup> Across the globe, religious authorities are limiting gatherings in response to COVID-19. On March 5, Saudi Arabia closed the Grand Mosque in Mecca for disinfecting, and reopened it nine days later with restrictions. The Vatican suspended public masses on March 8 and has begun live streaming the Pope’s general audience. The United Arab Emirates has prohibited children from attending church activities and limited Friday prayer times in mosques to 15 minutes. Tajikistan’s semi-official Council of Ulema issued a fatwa calling on clergy to close mosques and cancelled public celebrations of the Nowruz holiday. In other countries, existing limitations on freedom of religion might be exacerbated during the response to COVID-19.<sup>34</sup> The Iranian government has released 85,000 prisoners on furlough to prevent the spread of COVID-19, but has reportedly placed prisoners who are part of the Sufi religious minority in wards that are overcrowded, increasing their risk.<sup>35</sup> And, although the South Korean government’s response has generally drawn praise for balancing rights and public health, there are worrying signs that some local authorities are scapegoating a small religious sect known as the Shincheonji church because some of its members were infected.<sup>36</sup>

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<sup>28</sup>American Bar Association|content/aba-cms-dotorg/en/groups/crsj/events\_cle/program-archive/covid-religious-freedom, Retrieved on 29, April 2020

<sup>29</sup>Gayle Manchin is the Vice Chair of the United States Commission on International Religious Freedom, appointed by Senate Minority Leader Chuck Schumer. James W. Carr is a Commissioner of the United States Commission on International Religious Freedom, appointed by House Minority Leader Kevin McCarthy

<sup>30</sup>‘Come as you are in the Family Car.’ Drive-In Church Services Are Taking Off During the Coronavirus Pandemic’. Time.

<sup>31</sup>‘Most Americans Say Coronavirus Outbreak Has Impacted Their Lives | Pew Research Center’. Pewsocialtrends.org. 30 March 2020. Retrieved 21 April 2020.

<sup>32</sup> Stanglin, Doug (20 March 2020). ‘How we can show love for the most vulnerable’: Churches cancel in-person Easter services’. USA TODAY. Archived from the original on 28 March 2020. Retrieved 28 March 2020. Presiding Bishop Michael Curry of the Episcopal Church said in a statement this week that suspending in-person public worship ‘is generally the most prudent course of action at this time, even during Holy Week and on Easter Day,’ which is April 12.

<sup>33</sup> Ibid

<sup>34</sup> ‘Westerville church offering ‘drive in’ service’. WBNS-TV. 22 March 2020. Archived from the original on 22 March 2020. Retrieved 22 March 2020.

<sup>35</sup> ‘Church News’. Bedford Gazette. 27 March 2020. Archived from the original on 28 March 2020. Retrieved 28 March 2020.

<sup>36</sup> Farzan, Antonia Noori (27 March 2020). ‘Because coronavirus has led to enough sacrifices, Catholic bishops say it’s okay to eat meat on Fridays during Lent’. The Washington Post. Archived from the original on 28 March 2020. Retrieved 28 March 2020.

Religious freedom must be balanced with public health concerns, even as the COVID-19 pandemic continues.<sup>37</sup> We cannot allow fear to override human rights principles, including the unique protections afforded to the freedom of religion or belief. Instead, we must be vigilant that governments carefully balance this right and enact neutral responses that do not unduly target religious communities. We at USCIRF will continue to monitor government responses to ensure compliance with international human rights standards and use our voice to sound the alarm when public health is used as a mask for persecuting religious communities. We urge others to be vigilant in ensuring that our most sacred right is not forsaken, even in this time of crisis

### **3. Palliative Measures and Social Opportunities**

Many countries have adopted different approaches as to palliative and stimulus measures while others have gone to the extent of enacting legislations to redress the impact COVID-19, providing emergency funding primarily for federal agencies to respond to the outbreak, in America two statutes were enacted to provide relief but not so in Nigeria where palliatives were handed to political crannies for individual relatives instead of the collective good of the societies.<sup>38</sup> The American government in response to the pandemic enacted the laws described below apply to nonprofit organizations, and several members of Congress have said they intended churches to be included alongside all other nonprofits. Neither the statutes nor any implementing regulations to date expressly cover or exclude churches.<sup>39</sup> Both churches and other employers should be aware of new requirements they must meet in order to comply and potentially utilize these new federal programs for the benefit of their employees.

#### **Families First Coronavirus Response Act**

The Families First Coronavirus Response Act (FFCRA), signed into law on March 18, 2020, extends coverage of the Family Medical Leave Act in two significant ways. Effective from April 1, 2020, through the end of 2020, FFCRA temporarily requires employers engaged in commerce, including those with fewer than 50 employees, to offer paid family and medical leave and paid sick leave for all employees for specified coronavirus-related reasons. These reasons include inability to work or telework because they are experiencing COVID-19 symptoms, caring for someone who is ill with COVID-19, or caring for a child whose school or daycare is closed due to COVID-19. 'Engaged in commerce' is a broad standard that could include many churches. Even if a church operates under a more stringent state-law standard or voluntarily provides benefits similar to FMLA, this law could create a new mandate for churches. This new government requirement on employers is intended to be refunded by a payroll tax credit against the amounts due from the employer for paid FMLA and paid sick leave. Additional information can be found from the Department of Labor. The UCC's Office of General Counsel prepared an initial analysis and generously shared it online. The UCC memo is here, and a simplified flowchart is here. Due to the particular way that clergy pay is treated under the law, particularly in the Internal Revenue Code, some analysis suggests that a minister's compensation would not be 'qualified wages' under the FFCRA for purposes of the tax credit to churches, though a minister may be able to claim a credit under the self-employment provision of the FFCRA.

#### **Coronavirus Aid, Relief and Economic Security Act (CARES Act)**

The most recent piece of legislation, signed on March 27, 2020, is the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). Of particular interest in this \$2 trillion relief bill is the \$349 billion Paycheck Protection Program, a temporary expansion of a small business loan program to help businesses and nonprofit organizations with 500 or fewer employees.<sup>40</sup> Government-backed loans of up to \$10 million are available to cover expenses such as payroll, mortgage payments, rent and utilities for up to two months. These loans will be forgiven, in whole or in part, for employers who keep their employees on the payroll or rehire by June 30.<sup>41</sup> Payroll expenses must be at least 75% of the loan that is forgiven. The Small Business Administration has resources, including a sample application form. The Treasury Department has created a short overview of the Paycheck Protection Program as well as this information sheet for borrowers. Of particular importance will be forthcoming guidance and regulations that should clarify how eligible nonprofit organizations will be treated.

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<sup>37</sup> Sheva, Arutz (15 February 2020). 'Thousands to pray at Western Wall for end to COVID-19 epidemic'. Israel National News. Archived from the original on 18 March 2020. Retrieved 17 March 2020.

<sup>38</sup> Solovy, Alden (27 February 2020). 'Coronavirus: A Prayer for Medical Scientists'. Union for Reform Judaism. Archived from the original on 18 March 2020. Retrieved 17 March 2021.

<sup>39</sup> 'Coronavirus Disease 2019 (COVID-19)'. Evangelical Lutheran Church in America. 2019. Archived from the original on 18 March 2020. Retrieved 17 March 2021.

<sup>40</sup> (Section 1102) Coronavirus Aid, Relief, and Economic Security Act (CARES Act).

<sup>41</sup> (Section 1106)

### Constitutional and Practical Considerations

While there is no precedent for these COVID-19 measures, and there is no certainty about how they will be applied in practice, many of the specific provisions seem to be within constitutional boundaries governing the relationship between church and state.<sup>42</sup> A payroll tax credit to cover a new, quickly implemented government mandate of paid sick leave, for example, does not raise the same concerns as general economic assistance to a church. Likewise, a government-backed loan to a religious organization that is provided on the same terms as loans to other non-religious entities would not likely raise constitutional concerns. Even if they include churches, these programs are likely to be held constitutional and seem unlikely to broadly undercut religious exemptions in other contexts or to create excessive entanglement between government and religion. That said, any ruling on these or other constitutional questions could be many months or even years away.<sup>43</sup> Loan forgiveness for a church's ministerial payroll and mortgage expenses perhaps comes closest to the traditional concerns of taxpayers paying for clergy and building houses of worship. In light of recent changes in case law and on the U.S. Supreme Court, as well as the speed with which this legislation was passed, it is not surprising that such issues have not been addressed. Until very recently, the 'no aid to churches' principle was firmly ingrained in federal constitutional law and reflected more explicitly in the religious liberty provisions of many state constitutions. After the Supreme Court's 2017 decision in *Trinity Lutheran v. Comer*, the constitutional boundary on funding has become less clear. The Court has shifted in personnel and perspective toward a greater acceptance of neutral funding for religious institutions, including churches, at least where there is no intended religious purpose or effect.<sup>44</sup>

With the information available now, we think it unlikely that the federal assistance provided in the Paycheck Protection Program is an unconstitutional establishment of religion. The purpose of the program is to maintain employment during an economic and health crisis in the country, not to advance or prefer religion. Nor are churches preferred in any way over other nonprofits. The assistance is not provided through a government grant program, but rather through bank loans that are forgivable in whole or in part. Still, depending on its specific terms and application, a general loan forgiveness program may raise unintended practical problems for a church. Qualifying for the payroll tax credit or government-backed loan will inevitably require some form of certification regarding the church's financial condition and some accounting for the proper use of taxpayer funds. Other government requirements to ensure accountability may conflict with a church's mission. For example, the application includes two pages of boilerplate language that applicants agree to, including references to requirements that prohibit religious discrimination in how the applicant provides goods, services and accommodations. Churches that apply for these programs should not allow this short-term relief to distract from longer-term assessments, planning and necessary reforms, occasioned by the crisis. Voluntary contributions to support each church's ongoing operations and mission will continue to provide the vast majority of support for houses of worship. In the CARES Act, Congress increased charitable giving incentives for 2020, creating a new deduction of up to \$300 for all taxpayers, including those who take the standard deduction rather than itemizing deductions. For the minority of taxpayers who itemize their deductions, they will be able to deduct contributions up to 100% of their adjusted gross income. We pray that individuals will continue to be as generous as they are able in supporting their houses of worship during this time of public health and economic crisis and that churches, synagogues, mosques and other houses of worship will continue to support their communities in time of need. Though uncertainties abound, we trust churches to make thoughtful decisions and we hope this information helps them navigate through these challenging days.

### 4. Challenges to Enforcement of State of Emergency

In sum, international human rights law has very little to say about defining crisis situations, and only limited restrictions on the means. At present, this means national governments are able to unilaterally decide whether COVID-19 constitutes a threat to the nation requiring emergency government, and, once they have, international human rights law permits limiting any rights except for those deemed non-derogable.<sup>45</sup> Countries that have not declared states of emergency to handle the COVID-19 pandemic can still legally limit individual rights under

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<sup>42</sup>Amazon Adds Jobs and Megachurch Helps with Covid-19 Testing'. Religious Freedom & Business Foundation. 19 March 2020. Archived from the original on 20 March 2020. Retrieved 19 March 2020.

<sup>43</sup>Holly Hollman is general counsel of BJC. She and BJC Executive Director Amanda Tyler also discussed this on the April 2, 2020, episode of the Respecting Religion podcast series. Retrieved on 29/04/2021

<sup>44</sup>WCC takes strong measures to protect from coronavirus'. World Council of Churches. 13 March 2020. Retrieved 16 March 2021.

<sup>45</sup>Emmons, Cassandra: *International Human Rights Law and COVID-19 States of Emergency*, *VerfBlog*, 2020/4/25, <https://verfassungsblog.de/international-human-rights-law-and-covid-19-states-of-emergency>, Retrieved on the 25 April, 2020

international human rights law. The ESC permits restrictions on any rights for public health.<sup>46</sup> Unlike derogation clauses, these limitations are not explicitly time constrained. Simultaneously, there is an impetus in some of these treaties to take extra measures to protect public health. A counterpart to the ICCPR, the International Covenant of Economic, Social, and Cultural Rights, specifically mandates signatory governments protect the public from epidemic diseases<sup>47</sup> as does the ESC<sup>48</sup>. The ACHPR also requires signatories ‘protect the health of their people’<sup>49</sup>. This tension introduces a unique problem: in an effort to protect health, governments could theoretically permanently suspend some international-recognized human rights. Combining these preemptive commitments and permissive conditions creates additional opportunities for governments to combat COVID-19 without declaring an emergency. It also invites abuse. Together, this means all government responses to COVID-19 should be closely monitored for proportionality, necessity, and retraction of measures once the crisis is under control – not only the emergency decrees.

### Enforcement

An emergency’s legitimacy and the proportionality of restrictions can be challenged two ways at the international level: international courts and active monitoring. Violations under the ICCPR and ECHR can be brought to the respective courts by individual claimants. An optional protocol to the ICCPR, currently ratified by 116 states and signed by an additional three, grants individuals in any signatory state the right to address the Human Rights Committee (also established under the ICCPR) about violations of their rights under the ICCPR. However, these individuals need to show they have exhausted all domestic remedies before their challenge will be reviewed by the Committee, and, as it is not a court, the Committee’s response options are limited. The European Court of Human Rights also can be directly addressed by individuals who have exhausted domestic remedies, though only since 1998<sup>50</sup>. The European Court of Human Rights has historically been asked to judge whether a given situation constituted a threat to the nation. The Court has confirmed states of emergency were warranted.<sup>51</sup> The American Court of Human Rights only hears cases brought to the Inter-American Commission on Human Rights first; no individual has standing before the Court except through the Commission. State parties to the conventions do have standing before both Courts and the Committee. Thus, individual countries could file complaints of another country’s state of emergency violating the convention<sup>52</sup>, which they said justified extrajudicial deprivation of liberty. The problem with these juridical approaches boils down to expediency. Given that domestic remedies have to be exhausted under the ECHR and ICCPR and the lengths of time accused governments have to respond to either court or committee, this option hardly rises to the challenge of addressing abuses of rights under states of emergency. Even relaxing the domestic remedies requirement would not meaningfully shorten the process.

Alternatively, monitoring is the most common method for international bodies to enforce human rights. Compliance with the ICCPR is monitored annually by the Human Rights Committee, as the ACHR is monitored by the Inter-American Commission on Human Rights. Human rights within the Council of Europe’s member states are monitored by the Commissioner for Human Rights, the Secretary General, and a variety of other entities. Most monitoring practices are determined within these bodies and the wider organization, but some non-governmental actors have sought to contribute to these discussions. For instance, in 1986, the International Law Association’s committee on enforcement of human rights produced a framework for critically evaluating actions taken under the guise of states of emergency called the Queensland Guidelines for Bodies Monitoring Respect for Human Rights during States of Emergency; a subsequent committee is currently assessing this very topic. While monitors can outpace judicial actors, they have very few punitive tools if a serious violation is found. The modus operandi for monitors is to call attention to a problem and ‘name and shame’ the actors. This response might raise more alarm bells, but cannot directly halt any ongoing abuse.

<sup>46</sup>(Article G (1)). The ICCPR, ACHR, ACHR, and African Charter on Human and People’s Rights (‘ACHPR’) permit the following restrictions for public health protection, the right to manifest or practice one’s religion (ICCPR Article 18(3), ACHR Article 12(3), ECHR Article 9(2)), respect for private and family life (ECHR Article 8(2)), freedom of movement (ICCPR Article 12(3), ACHR Article 22(3), ECHR Protocol 4, Article 2(3), ACHPR Article 12(2)), freedom of assembly (ICCPR Article 21, ACHR Article 15, ECHR Article 11(2), ACHPR Article 11), freedom of association (ICCPR Article 22(2), ACHR Article 16(2), ECHR Article 11(2)), and freedom of expression (ICCPR Article 19(3b), ACHR Article 13(2b), ECHR Article 10(2)).

<sup>47</sup> (Article 12(2) c),

<sup>48</sup> (Article 11(3)).

<sup>49</sup> (Article 16(2)).

<sup>50</sup> (Protocol 11, Articles 34-35).

<sup>51</sup>For example, in *Lawless v. Ireland* (1961), *Brannigan and McBride v. the United Kingdom* (1993), and *Aksoy v. Turkey* (1996).

<sup>52</sup>For example, in *Ireland v. the United Kingdom* (1978), the European Court of Human Rights confirmed the presence of an emergency under Article 15 of the ECHR

### **International Law in Public Health Emergencies**

One potential change is conceptual. Each time a new threat emerges, the definition of an ‘emergency’ irrevocably stretches, as was observed post 9/11. We might, therefore, see public health pandemics included as legitimate grounds for derogations under states of emergency. Public health derogations would, importantly, then become subject to the proportionality criterion and be expressly temporary. However, since states can already legally limit some rights in these cases, this change might invite more abuse rather than provide necessary flexibility to address crises. We should only advocate this conceptual stretching if there are indeed other rights besides those listed in section 2 that need to be derogable during pandemics in the interest of public welfare. Instead of conceptual rethinking, we can reconsider enforcement. Unilateral or multilateral economic or political sanctions on governments that are abusing their states of emergency would certainly get people’s attention. These measures are sometimes effective in non-emergent situations. However, sanctions can hardly be justified nor would they likely be complied with during a true public health pandemic – especially one like COVID-19, which has catalyzed one of the largest global economic recessions in modern history. This approach would quickly instigate long-term public backlash as people continue to suffer.

### **5. Conclusion and Recommendations**

This article concludes that rather than coercion, improved collaboration is a viable answer. Here we should pause before reinventing the wheel. We already have an international body that focuses explicitly on combatting international health emergencies through coordination and collaboration: the World Health Organization. At present, the WHO is funded by a combination of assessed and voluntary contributions. Voluntary contributions are typically earmarked for specific projects, but these preconditions could feasibly be loosened during pandemics. Greater oversight and investment during non-pandemic times can also promise a better reaction to the next crisis. The WHO’s work could be supplemented – though should not be duplicated – by regional bodies by expanding inter-agency relationships. Overhauling and improving an existing body is preferred to starting again from nothing. Perhaps unsatisfactorily, this is not an immediate solution to COVID-19, but you can’t put out the fire from inside the house. In the aftermath of this crisis, real institutional reform will be necessary – and may actually be possible. Religious leaders have a particularly important role to play in championing attention to and inclusion of, vulnerable populations including minorities, migrants, refugees, internally displaced persons, indigenous peoples, prisoners, people with disabilities, and members of other marginalized groups, by creating supportive environments; advocating for their rights and access to diagnosis, treatment, and vaccines; sharing evidence-based accurate information; and publicly standing against statements and acts that encourage violence and human rights violations against people. By drawing on language within their own faith tradition, religious leaders can promote positive messages that affirm the dignity of all people, the need to protect and care of the vulnerable, and inspire hope and resilience in those affected by, or vulnerable to, COVID-19. On the practical side, faith-based organizations can work with health and development agencies to identify mechanisms to increase access to information and services for vulnerable communities, including those that are provided by faith-based organizations themselves. Moreover, most of these faith traditions serve all people in need, without regard to national or ethnic origin, race, sex, or religious affiliation, and are motivated by universal values and ethical principles of ‘do no harm,’ ‘solidarity,’ and the ‘golden rule’. Various global religious and inter-religious groups have issued guidance, advisory notes, and statements to support the actions and role of religious leaders, faith-based organizations, and faith communities during the COVID-19 pandemic. Many of those same groups have contributed to this guidance, through a common acknowledgement that COVID-19 is a global pandemic, affecting all races, ethnicities, and geographic regions that demands a global response. Interfaith collaboration between both majority and minority faiths is crucial, particularly through the sharing of knowledge, resources, and best practices where possible. These are unsettling times; prayer and moral support are critical to the well-being of the believer. We should all encourage social unity through a common purpose. We should seek our neighbor to share resources and amplify our common efforts as human beings regardless of lines of division in the past. Consider partnering with other community or faith-organizations if you do not have access to technology. The following recommendations for religious and traditional leaders are developed to mitigate community vulnerability and increase resilience in combating the deadly virus.

#### **Communicate Timely Information**

Countries around the world are enacting strict measures to reduce the probability of an individual contracting the disease or spreading it to others. Disinformation and rumors related to spread of the virus and preventative measures can be harmful if followed by members of any community. As such, community leaders should maintain a viable communication line with government authorities to ensure they have accurate information regarding the pandemic and preventative measures. Moreover, they should encourage their community to listen to the safety guidelines promoted by their respective governments and the World Health Organization (WHO) to ensure the safety and well-being of everyone. Religious leaders and communities can maintain constant communication via online platforms, such as Facebook and email.



### **Engage with Youth**

Global leaders have called for social distancing. As such, we must use new methods to support our community members and maintain lines of communication. Youth have been at the forefront as users of social media and technology. As modern technology is still a recent development, religious and traditional leaders may not have a concrete understanding on how to use technological platforms to communicate with a wide audience. In addition, messages developed and communicated by young people are more likely to resonate with their peers. Therefore, communities and leaders should seek to actively partner with youth in developing messages, assisting with the utilization of technology and social media as a connective communication mechanism during this period of social distancing. Young women and men of faith play an important role in connecting with their peers and communities at large.

### **Promote unity and empathy in times of crisis**

The COVID-19 pandemic has resulted in the spread of xenophobic and discriminatory attacks towards specific groups and communities. Religious and Community leaders should promote messages of unity and discuss with community members the importance of preventing the social stigma of people and groups. Encourage community members to show empathy with others and understand the virus itself. Ensure all messaging is thoughtful and intentional.

### **Guide your community on safe religious practices**

As we are practicing social distancing, communities should call on religious leaders and actors to re-examine religious rituals and practices in order to minimize risks of transmission of the virus. Moreover, hygiene is emphasized in every faith; hence, religious leaders should utilize its teachings to educate the community on the importance of sanitation and hygiene. The World Health Organization (WHO) emphasizes the importance of hygiene, such as frequently washing hands with warm water and soap, to help prevent the spread of the virus.

### **Support Your Neighbour**

Religious teachings encourage us to be kind and supportive of our neighbors. While practicing social distancing, religious organizations, big or small, can provide resources to help the community, especially the most vulnerable. Work to ensure that children, immuno-compromised, and the elderly have access to proper nutrition, healthcare and necessary medication. Encourage those at lower risk to help with grocery shopping and picking up medicines and supplies for elderly and immune-compromised community members. Social distancing can still be maintained by leaving supplies at entryways for those in need.

### **Continue to serve the community**

Above all else, churches, mosques, synagogues, temples and other sacred spaces, must continue to serve the community. Prayer services and rituals are important for people to connect with their faith. Maintaining a modified routine creates a needed sense of continuation and stability in face of many changes in our ordinary life. Faith is an important support and coping mechanism, especially in a time of crisis and uncertainty. While public worship sessions are temporarily discouraged, religious institutions should seek to find new ways of providing their services. This can be done by utilizing technology, such as Facebook or YouTube, to live-stream prayer services. Radio is also an efficient way of reaching out to the community and sharing vital information to wide community audience.