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Human Rights Impact of Implementing the International Pandemic Agreement: The Case of Mongolia

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ABSTRACT

Some human rights may be limited by law, but they must be justified, necessary and consistent with the norm. This restriction is essential to respect human rights when taking measures during mass epidemics and quarantines, and requires careful consideration of human rights issues when implementing pandemic agreements. When the pandemic agreement is ratified by each State and the measures are contained and it is implemented each member State is obliged to make decisions in accordance with its own domestic legislation (Assembly, 2021). The restriction is intended to ensure the safety of citizens and society, and the imposition of the restriction must be accompanied by respect for Human rights, reasonable treatment and complains with the requirements and fairness. A violation of principles is considered if it does not comply with the purpose of protecting interests or if it deviates from that purpose and takes actions directed against it. New international legal regulations on human rights are necessary internationality due to the fact that the responsibilities and obligations expected during the pandemic are tie; to the internal laws of the countries, and pandemic treaty is still in the negotiating stage, which has not yet been finalized. My research is focused on the critical impact of the pandemic on Human Right Protection and supporting reforms in the legislative process.

Keywords: *Pandemic agreement, World Health Organization, Responsibility agreement, World Health Assembly*

I. INTRODUCTION

Legal obligations require countries to face and overcome uncertain and unforeseen situations. Provisions for temporary relief from responsibility exist in international law, human rights norms, and customary law. The main condition for using these exceptional measures is that the country's national security is threatened or that extraordinary circumstances have arisen. This was exactly the situation in 2019 when a new disease, never recorded before, emerged in Wuhan, Hubei Province, China. As deaths from this disease rose, cases in many countries

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around the world increased rapidly. This surge prompted the World Health Organization to declare COVID-19 a pandemic. By that time, 118 million people in 114 countries had been infected (<https://unctad.org/news/>, 2021, p. 1)

According to the draft decision of the emergency session, the WHO will establish an intergovernmental negotiating body (IGN) to develop and negotiate a “Pandemic Agreement” (treaty, convention) to develop and negotiate the draft “Pandemic Agreement” (treaty, convention), establish an Intergovernmental Negotiating Body (IGN), and hold its first meeting no later than March 1, 2022. The “Pandemic Agreement” will be ready in May 2024 (<https://unctad.org/news/>, 2021)

The World Health Organization's Second Emergency Session was held on November 29, 2021. The special convention on pandemic influenza, or the “Pandemic Agreement,” was published by the World Health Organization on November 23, 2021. (<https://unctad.org/news/>, 2021). Of the legal provisions detailed in the convention, the most important is

- The WHO is the entity with the authority to declare the start of a pandemic.
- In the event of the emergence of “pandemic” regimes, it was stipulated that human rights, including fundamental human rights, would be amended (Assembly, 2021) (ЧУУЛГАН, 2021). Then, in the international covenants, or the legal instrument known as the Universal Declaration of Human Rights, (the universal declaration of human rights, 1948) 12. 17.1 (Political, 1976).

Article 17.2 of the pact provides for legal protection.” (Political, 1976). These numerous legal measures must remain in effect even during a crisis. While certain human rights may be restricted by law, such restrictions must be justified, necessary, and proportionate. Each country must ratify the pandemic agreement and, when implementing the measures it contains, is obliged to make decisions in accordance with its domestic legislation. (ЧУУЛГАН, 2021). It is considered a violation of principle if measures that are inconsistent with or deviate from the goal of protecting the public interest are taken and implemented. Moreover, given that the Pandemic Agreement is still at the negotiation stage and has not yet been finalized, new international legal frameworks on human rights are urgently needed at the global level. I will compare and contrast specific provisions of the Pandemic Agreement on Personal Security, the laws of Mongolia, and the Civil Code of the People's Republic of China, I compare their implementation, identify the pressing issues, and offer recommendations for improving the legal framework.

II. CONTRACTUAL OBLIGATION

This agreement is intended to reflect the international community's political commitment to take joint measures against future pandemic outbreaks and spread, and it sets out seven main objectives, the most important of which is the legal and regulatory framework.

Was a pandemic treaty established?

During the 77th World Health Assembly, WHO's 194 member states agreed to extend their authority to conclude the negotiation process. They are working to conclude the negotiations as quickly as possible and prepare the outcome for presentation at the WHO's 78th extraordinary session, to be held no later than 2025—or, even sooner, in 2024.

The entities defining the content of the international pandemic agreement are the WHO member states, with Germany playing a leading role. The WHO Secretariat does not determine the content of the international pandemic treaty. The pandemic treaty is not just a legal document on paper, but a communication tool for a wide range of issues related to countries' preparedness for and response to the next pandemic.

Measures or legal acts taken by Mongolia in connection with this agreement

1. The COVID law and its accompanying 14 regulations were adopted by the competent authorities.
2. Liability agreement

| Within the framework of the COVID-19 pandemic | | | | | | | |
|---|------|---------|--|--|---|--------------------|--------------|
| Planning direction | Time | Measure | <i>RACI² model</i> | | | | Cost Planned |
| | | | <i>R</i> | <i>A</i> | <i>C</i> | <i>I</i> | |
| | | | Responsible for carrying out or adopting regulations | Assume responsibility for and approve the step | Advising and collaborating at that stage. | Report step output | |

² Notation: [R] – respond; [A] – assume responsibility, approve; [C] – consult, collaborate; [I] – inform.

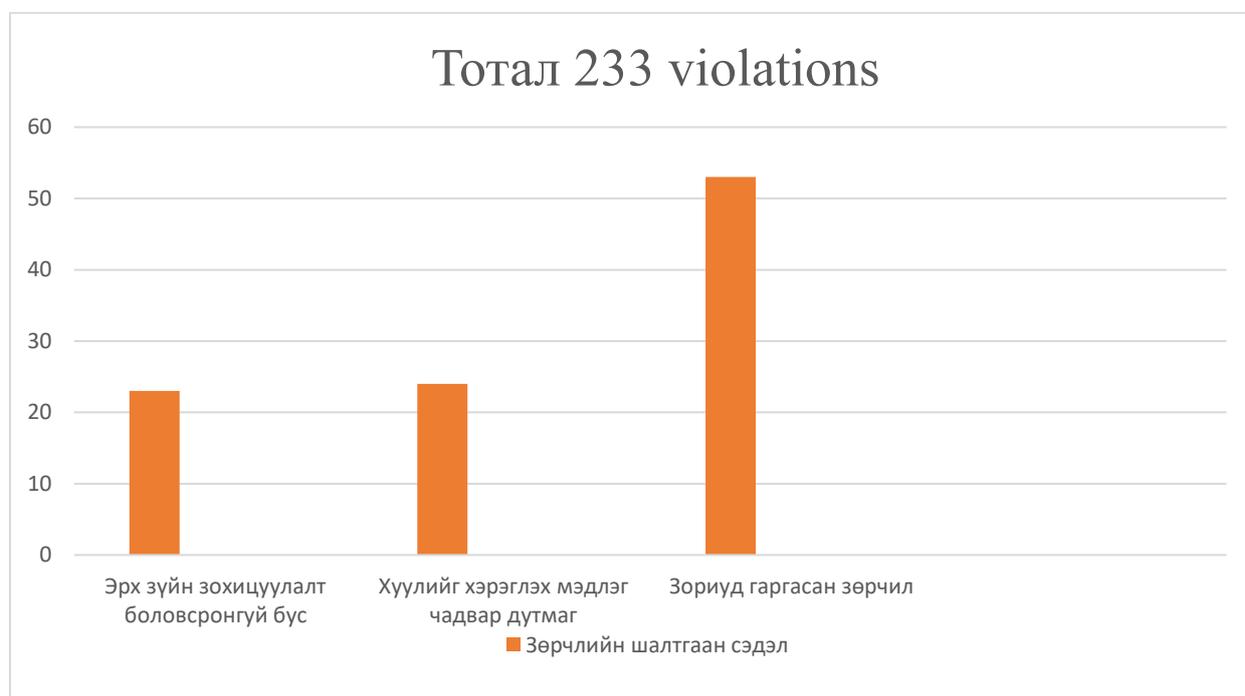
| | | | | | | | |
|--|---|---|---------------------------------------|---------------------------------------|--------------|--------------|-------------|
| to prevent and combat the coronavirus infection /COVID-19/ pandemic /hereinafter “the pandemic”/, to protect public health, to impose certain restrictions on human rights, to promptly make related decisions and to mitigate the adverse social and economic impacts | During the period from the declaration of heightened alert status until its cancellation. | COVID-19 Government Agency Participation Procedure | State Emergency Commission Government | State Emergency Commission Government | Government | Press Center | 3,27 0.6 |
| | | COVID-19 Participation Procedures for Citizens, Businesses, and Organizations | Government | Citizen, Business Entity | Government | Press Center | to plan |
| | Passenger Transportation Regulations | National Emergency Commission | Authorized body | National Emergency Commission | Press Center | to plan | |
| | Cargo Transport | National Emergency | Authorized body | Government | Press Center | to plan | |

| | | | | | | | |
|--|--|---|---|---------------------|------------|---------------------|---------|
| | | Regulations | Commission | | | <i>r</i> | |
| | | Procedure for Handling Infectious Disease Cases | Minister of Health | Health organization | Government | <i>Press Center</i> | to plan |
| | | Regulations of the border port | Professional Supervisory Department | Authorized body | Government | <i>Press Center</i> | to plan |
| | | Reserve Policy | Minister of Health and Emergency Situations | Authorized body | Government | <i>Press Center</i> | to plan |
| | | Special Permit Regulations | Minister of Health | Authorized body | Government | <i>Press Center</i> | to plan |
| | | Border Control Regulations | Border Protection Agency Council | Authorized body | Government | <i>Press Center</i> | to plan |
| | | Simplified procedures for border ports | Director of the Border Protection Agency | Authorized body | Government | <i>Press Center</i> | to plan |
| | | Court and Prosecutor Procedures | The Chief Justice of the Supreme | Authorized body | Government | <i>Press Center</i> | to plan |

| | | | | | | | |
|---|--|--|--|--------------------------------------|---|--------------|---------|
| | | | Court and the Chief Justice of the General Court jointly | | | | |
| | | International Postal Regulations | The relevant ministers jointly | Authorized body | Government | Press Center | to plan |
| | | Rules related to the online environment | Communications Regulatory Commission | Communications Regulatory Commission | Government | Press Center | to plan |
| | | Compensation Procedure | State Emergency Commission, Government | Authorized body | Government | Press Center | to plan |
| Contract of Liability | | | | | | | |
| Protecting the public from the impact of the pandemic | | Temporary Pandemic Regulations, Special Conditions for Food Production | The Office of the Mayor of Ulaanbaatar City and the District Governor's Office – Trade and Service | Businesses, citizens | Office of the Mayor of the National Capital | Press Center | to plan |

| | | | | | | | |
|--|--|--|--------------------|--|--|--|--|
| | | | Regulation Council | | | | |
| <p>For Mongolia, between April 2020 and June 2021, 3.27, 1. 9 trillion won in relief and exemptions, and 649 billion won in off-budget financing, for a total response amounting to 5.1 trillion won. (Council, 2021). (зөвлөл, 2021)</p> | | | | | | | |

Since November 2020, the measures the government has taken and implemented during the state of general preparedness—the state of emergency serving as a response to COVID-19, or the pandemic—are subject to scrutiny under the principle of permissible restrictions on international human rights. Examining whether the domestic legislation in force during the state of emergency, the state of heightened alert, and the state of general preparedness complies with the principles of international human rights restrictions, a joint violation study by the Global Initiative Center and the Open Society Forum was conducted in January 2020. Between January 27 and March 31, 2022 (Globe International Center, 2022). (төв, 2022)





The majority of victims of offenses are citizens. To express this in numerical terms...



Based on the above, the lack of clarity in the legal framework regarding the procedures for restricting human rights, the guiding principles, and the oversight of such restrictions provides grounds for violating human rights.

For example, the pandemic law is used to instill fear in society under COVID conditions, to prevent the spread of false information on the internet and in digital environments under the circumstances of COVID, and to establish regulations for internet regulation in cooperation with the Police Department and the Communications Regulatory Commission, and to legally mandate oversight of their implementation. As of April 2021, the regulations provided for in Articles 8.18 and 9.23 of the Emergency Situations Law had not been adopted (ЭМНЭСТИ ИНТЕРНАЦИОНАЛ, 2021) (Amnesty International, 2021)

A breach of personal sensitive data and an external hacker attack on a database have been recorded in Mongolia.. (Hardnews.mn, 2024.11.12) Үүнд:

- A major private hospital lost its clients' information, exposing the surnames, registration numbers, and contact numbers of 280,000 people. (Hardnews.mn, 2024.11.12) [\(ХҮНИЙ ЭРХИЙН ЗӨРЧИЛ, 2024.11.13\)](#) The activities of state institutions are arbitrary, fail to incorporate legal standards, and violate citizens' rights to privacy, disclosing sensitive information to the public, violating the right to privacy, arbitrarily interpreting laws and decisions, and creating grounds for disputes and misunderstandings in interactions with citizens.

III. CHINA'S NEW CIVIL CODE AND COVID-19: A LEGAL REGULATORY PERSPECTIVE

On May 28, 2020, at the third session of the 13th National People's Congress The Civil Code of the People's Republic of China (中华人民共和国民法典) was adopted in 2020 and took effect on January 1, 2021. The law had to be enacted immediately because the COVID-19 pandemic and the drastic changes it brought to citizens' lives in a short period made it necessary to amend and update the legislation.

Under the Civil Code:

1. A new temporary guardianship system has been established for guardians who have no one to care for them in an emergency. This reflects the real-life situation in society where, due to the effects of the pandemic, the caregiver's quarantine left the care recipient without anyone to care for them. The above arrangement is regulated in the Civil Code as follows:

In the event of an emergency where the caregiver is temporarily unable to fulfill their caregiving duties and the care recipient is left without anyone to care for them, the ward in which the care

recipient resides, the town council or the municipal administration department shall organize the necessary temporary living care measures for the person under guardianship (Article 34 of the Civil Code)

2. It regulated the responsibilities of legal entities involved in the relationship, such as companies providing services to HOAs and homeowners' associations, for carrying out the necessary emergency operations during a state of emergency. During the pandemic, the businesses providing services to homeowners' associations were responsible for a large volume of preventive work. Accordingly, the Civil Code of the People's Republic of China was enacted as follows:

An enterprise or other management entity providing services to a homeowners' association (HOA) shall take emergency measures and other management measures implemented in accordance with government laws, has arranged to actively cooperate in the relevant work. (Article 285 of the Civil Code of the People's Republic of China)

Additionally, it defined the condominium homeowners' association's duty to cooperate. For example, Article 286 of the Civil Code of the People's Republic of China stipulates that the compulsory use of movable and immovable property belonging to organizations and individuals by the state is authorized by law. By regulating these relationships, it has become crucial for protecting residents' health, safety, and public interests.

3. It legalized the state's compulsory use of organizations' and individuals' movable and immovable property (Article 245 of the Civil Code).

4. Regulated the framework of the state procurement contract. The state for urgent rescue operations, When the state, due to an emergency rescue operation or other necessity, assigns procurement tasks, duties, or orders, contracts shall be concluded between legal entities in accordance with the rights and obligations prescribed by law. A person who is legally obligated to make a contract offer shall, at that time, extend the available contract proposal. A person who is legally obligated to make an offer is prohibited from refusing the other party's request for a possible contract. (Article 494 of the Civil Code) www.businesslaw.mn 2021.01.17

Every country must ratify the pandemic agreement and, when implementing the measures it contains, each member state is obligated to make decisions in accordance with its domestic legislation (Conference, 2021). (чуулган, 2021). In terms of ensuring and protecting human rights, the People's Republic of China has adopted and implemented legal measures provided for in international treaties compared to Mongolia

IV. CONCLUSION

For Mongolia, under the Pandemic Agreement, one law and 14 regulations have been enacted and implemented, and one agreement has been concluded. These legal regulations are vague regarding the procedures for restricting human rights, the principles to be followed, and the oversight of such restrictions, which provides grounds for violating human rights. The international pandemic treaty cannot keep countries politically neutral or serve as an effective means of regulating their relations.

Therefore, take this issue into account and carry out legal reforms that align Mongolia's interests with the state policies of other countries, taking measures aimed at bringing legal regulation up to international standards. These include:

1. **Human Rights Protection Mechanism:** During a pandemic, restrictions can potentially affect human rights, so it is necessary to join international treaties and ensure compliance with human rights protection standards. For example, restrictions and measures implemented to protect health must not only be based on health considerations but must also respect citizens' rights.
2. **Preparation for implementing international treaties:** When Mongolia participates in international agreements, it must align its policies with those of other countries worldwide and conduct thorough research. Joining a treaty without conducting research may lead to legal conflicts and political disputes. Therefore, it is important for any country interested in an international treaty to ensure both legal and practical preparedness.
3. **Legal Reform:** To bring Mongolia's legal framework up to international standards, legal reform is necessary. This reform will bring national laws into compliance with international standards and enhance respect for human rights. This indicates the need to reform the national legal system in line with international treaties and legislation.
4. **To become a participant in international relations:** In order for Mongolia to participate more actively in international relations, it needs to accede to international treaties and protect its national interests. To this end, it is important to implement a strategy tailored to the country's historical, cultural, and political characteristics.

Therefore, conducting a careful study on this issue and implementing legal regulations that comply with the requirements of international treaties is in the interest of the Mongolian state and the protection of its population, proposes that conducting a careful study of this issue and

implementing legal regulations that comply with the requirements of international treaties will help ensure the protection of Mongolia's interests and population and assist in making the right decisions in accordance with the global legal system.

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