

Jean Monnet EU4GH Summer School on the European Union and Global Health  
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# Human Rights in Times of Pandemic



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# Structure

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(1) Human rights and pandemics

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(2) Human rights and the IHR

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(3) Human rights and COVID-19

Did  
lockdowns  
violate  
human  
rights?

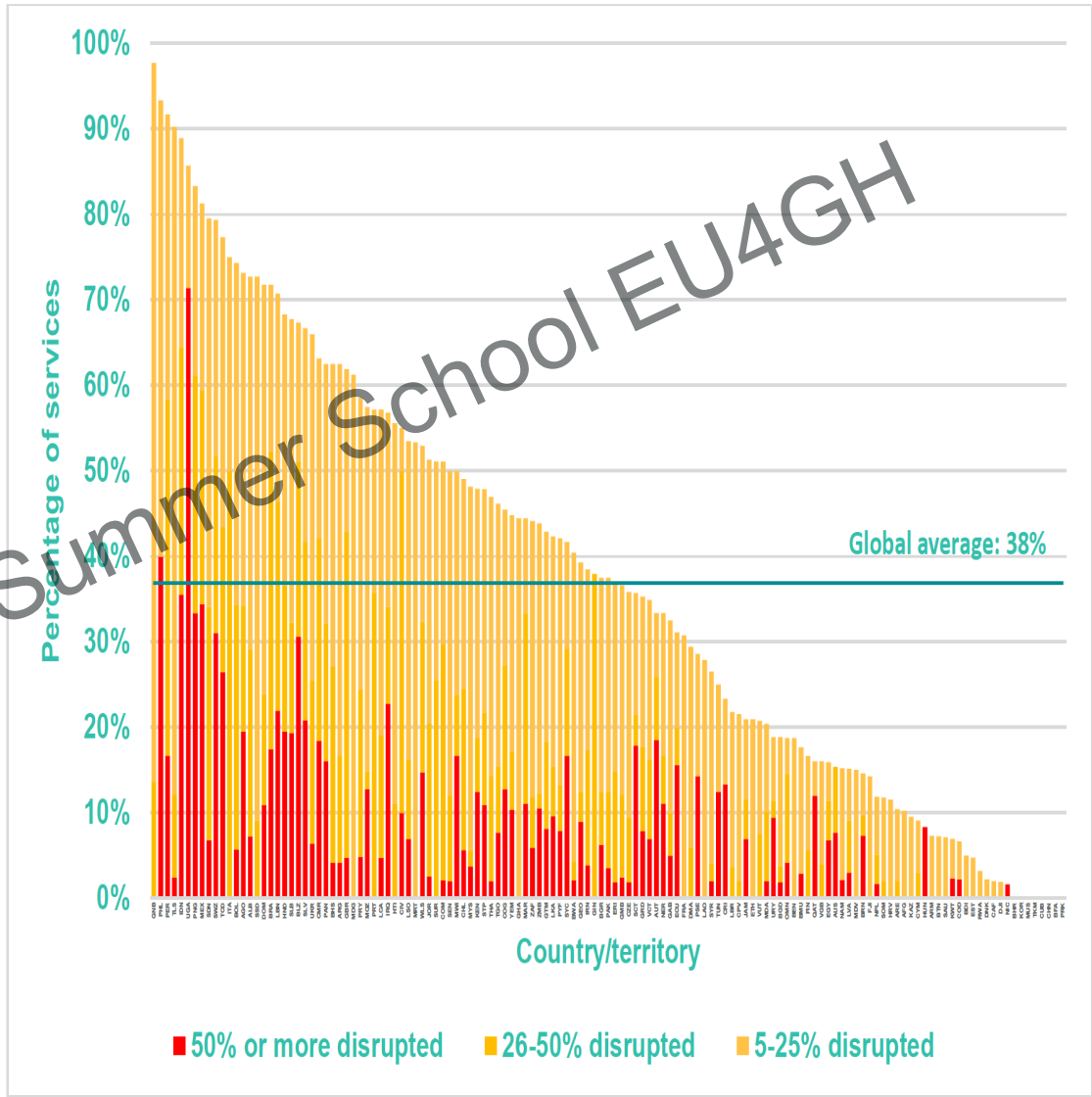


Did vaccine mandates/green passes violate human rights?



Did disrupted health services violate human rights?

Figure 1: Percentage of services disrupted per country (number of tracer services = 63)



# Global Health Law

- Economic, social and cultural rights
- Civil and political rights

Human rights law

Public international law

- International humanitarian law
- International environmental law
- International trade law
- International investment law

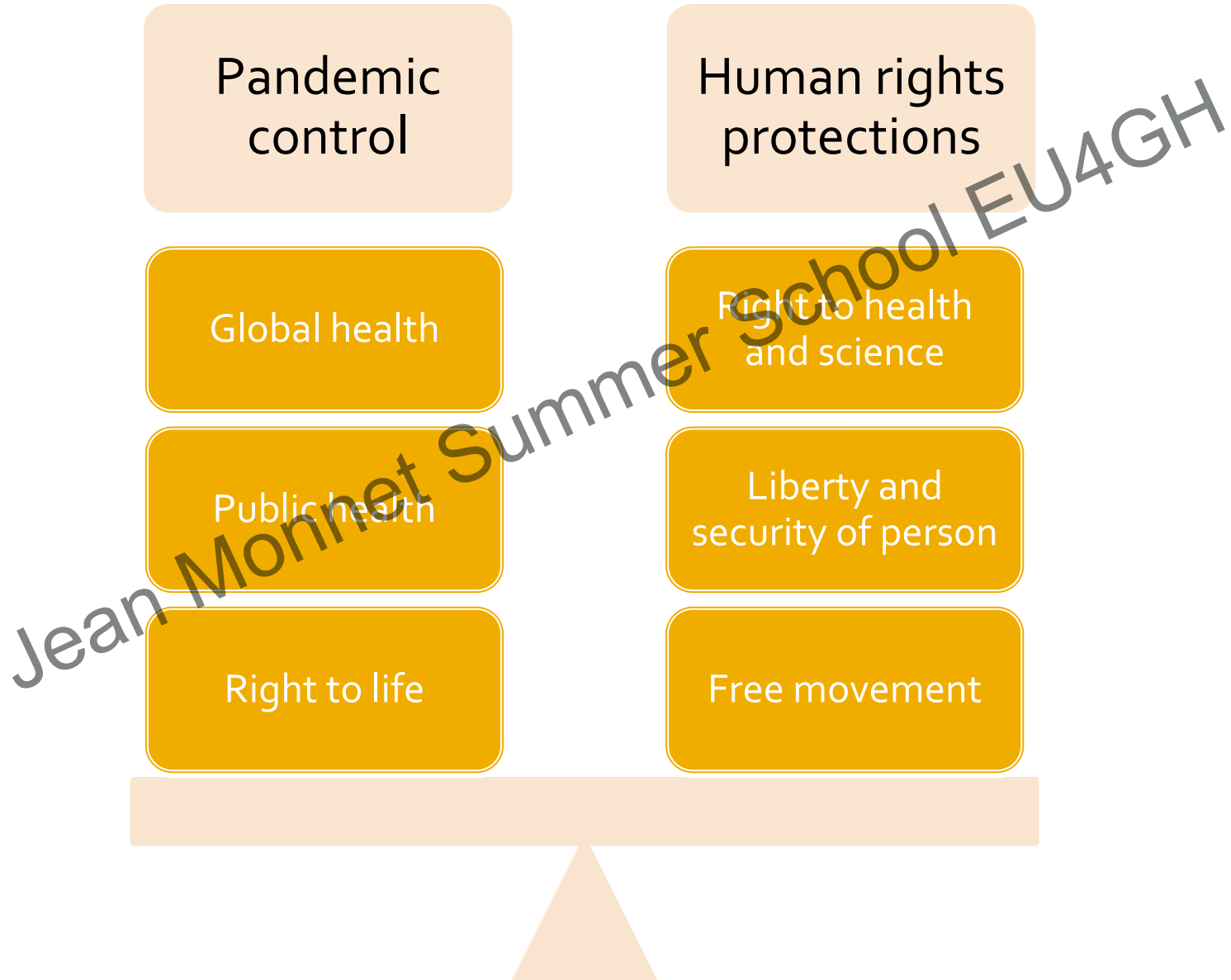
WHO

- International Health Regulations
- Framework Convention on Tobacco Control
- International Code on Marketing of Breastmilk Substitutes
- New Pandemic Treaty?

Based on Toebes, 2016

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# BALANCING HUMAN RIGHTS AND GLOBAL HEALTH



# International and regional human rights instruments

1946 – Constitution of the World Health Organization

1948 – Universal Declaration of Human Rights

1953 – European Convention on Human Rights

1961 – European Social Charter

1965 – Convention on Elimination of Racial Discrimination

1966 – International Covenant on Economic Social and Cultural Rights

1966—International Covenant on Civil and Political Rights

1979 – Convention on Elimination of Discrimination against Women

1981 – African Charter of Human and People's Rights

1988 – American Protocol of San Salvador

1989 – Convention on Rights of the Child

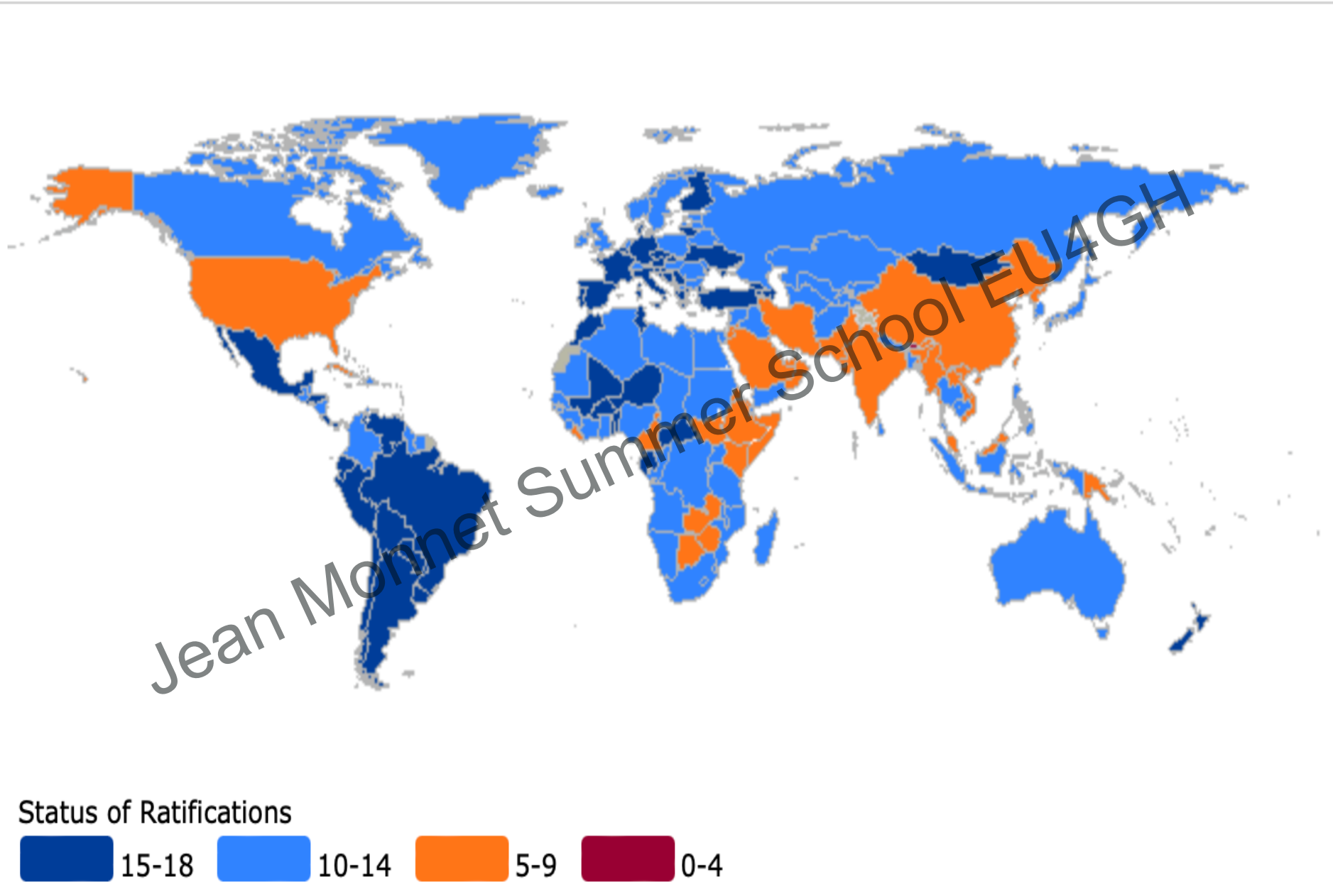
1999 – African Charter on Rights and Welfare of the Child

2002 – Convention on Protection of Rights of Migrants Workers

2008 – Convention on Protection of People with Disabilities



# Ratification of 18 International Human Rights Treaties



# Italy's ratified international treaties (17/18)

Human Rights Instrument	Ratified
International Convention on the Elimination of All Forms of Racial Discrimination	1976
International Covenant on Civil & Political Rights	1978
International Covenant on Economic, Social and Cultural Rights	1978
Convention on the Elimination of All Forms of Discrimination against Women	1985
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	1989
Convention on the Rights of the Child	1991
<b>International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families</b>	<b>N/A</b>
International Convention for the Protection of all Persons from Enforced Disappearance	2015
Convention on the Rights of Persons with Disabilities	2009

# Italy's ratified regional human rights treaties

- European Convention on Human Rights and [protocols](#)
- Revised European Social Charter
- COE Convention on Preventing and Combating Violence against Women and Domestic Violence
- COE Convention on Action against Trafficking in Human Beings
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
- Framework Convention for the Protection of National Minorities

# Constitution of the Italian Republic

**Art 3:** Equality before the law without distinction

**Art 13:** Personal liberty

**Art. 15:** Freedom and confidentiality of correspondence, communication

**Art. 16:** Free national travel

**Art. 17:** Free assembly

**Art 32:** Health as a fundamental right

# International Covenant on Economic, Social and Cultural Rights (1976)

## Article 12

1. States Parties recognize the **right of everyone to the enjoyment of the highest attainable standard of physical and mental health.**

2. The steps to be taken by States Parties to achieve the full realization of this right shall include those necessary for ...

**(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;**

**(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness**

## Article 15

1. States Parties **recognize the right of everyone ...**

**(b) To enjoy the benefits of scientific progress and its applications;**

**(c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.**

# What do these rights require in a pandemic?

- Governments must prevent, treat and control disease including through system of urgent medical care in epidemics/similar health hazards (UN 2000).
- Access to essential medicines and vaccines is an essential element and core obligation under the right to health (UN 2000)
- States must “prevent unreasonably high costs for access to essential medicines . . . from undermining the rights of large segments of the population to health” under the right to science (UN 2006)

# A right to access COVID-19 vaccines

- People have a right to access a safe, effective COVID-19 vaccine based on the right to health and right to benefits of scientific progress (UN 2020).
- Extraterritorial obligation to guarantee universal and equitable access to vaccines for COVID-19 globally

# International Covenant on Civil and Political Rights (1976)

Article 12.1. Everyone lawfully within the territory of a State shall, within that territory, have the **right to liberty of movement** and freedom to choose his residence.

Article 21: The **right of peaceful assembly** shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22.1. Everyone shall have the **right to freedom of association** with others, including the right to form and join trade unions for the protection of his interests.





# Restrictions of rights in the ICCPR

## Article 12.3

The [right to liberty of movement] shall not be subject to any restrictions except those which are provided by law, are **necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others**, and are consistent with the other rights recognized in the present Covenant

# Derogations in the ICCPR

## Article 4.1

**In time of public emergency which threatens the life of the nation** and the existence of which is officially proclaimed, the States Parties to the present Covenant **may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation**, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

# Siracusa principles for limitations of civil and political rights (1984)

Restrictions of rights must be

- Necessary
- Temporary
- Imposed by law
- Non-discriminatory
- Proportionate

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# Compare to Italian Constitution

**Art. 13:** Personal liberty is inviolable. In exceptional cases of **necessity and urgency, strictly defined by the law**, law-enforcement authorities may adopt **temporary** measures that must be communicated to the judicial authorities within forty-eight hours. ... All acts of **physical or moral violence** against individuals subject in any way to limitations of freedom shall be **punished**.

# Siracusa on 'public health'

- Public health may be invoked to limit rights to allow a State to deal with a **serious threat to individual or population health** and measures must be aimed at preventing disease or injury or providing care for the sick and injured.
- Due regard shall be had to the **International Health Regulations** of the World Health Organization.

# History of the IHR

- **(1951) International Sanitary Regulations:** first universal legal regime of surveillance and control of 'quarantinable diseases'
- **(1969) International Health Regulations:** narrow disease scope, inadequate state accountability, and inattentive to human rights
- **(1995) WHA** launched IHR revision process
- **(2000) Severe Acute Respiratory Syndrome (SARS)** shows limitations of IHR and need for human rights protections

# International Health Regulations (2005)

**Article 2:** Purpose and scope is to prevent, protect against, control and provide a public health response to the international spread of disease in ways commensurate with and restricted to public health risks, and which avoid unnecessary interference with international traffic and trade.

Create a range of state obligations for pandemic prevention, preparedness & response including:

- Developing minimum core public health capacities to respond to public health emergencies of international concern (PHEIC)
- Notify WHO of events that may constitute a PHEIC
- Authorize WHO to issue temporary recommendations during a PHEIC



# The IHR and human rights

- **Article 3.1:** The implementation of these Regulations shall be with full respect for the dignity, human rights and fundamental freedoms of persons
- **Article 3.2:** The implementation of these Regulations shall be guided by the Charter of the United Nations and the Constitution of the World Health Organization

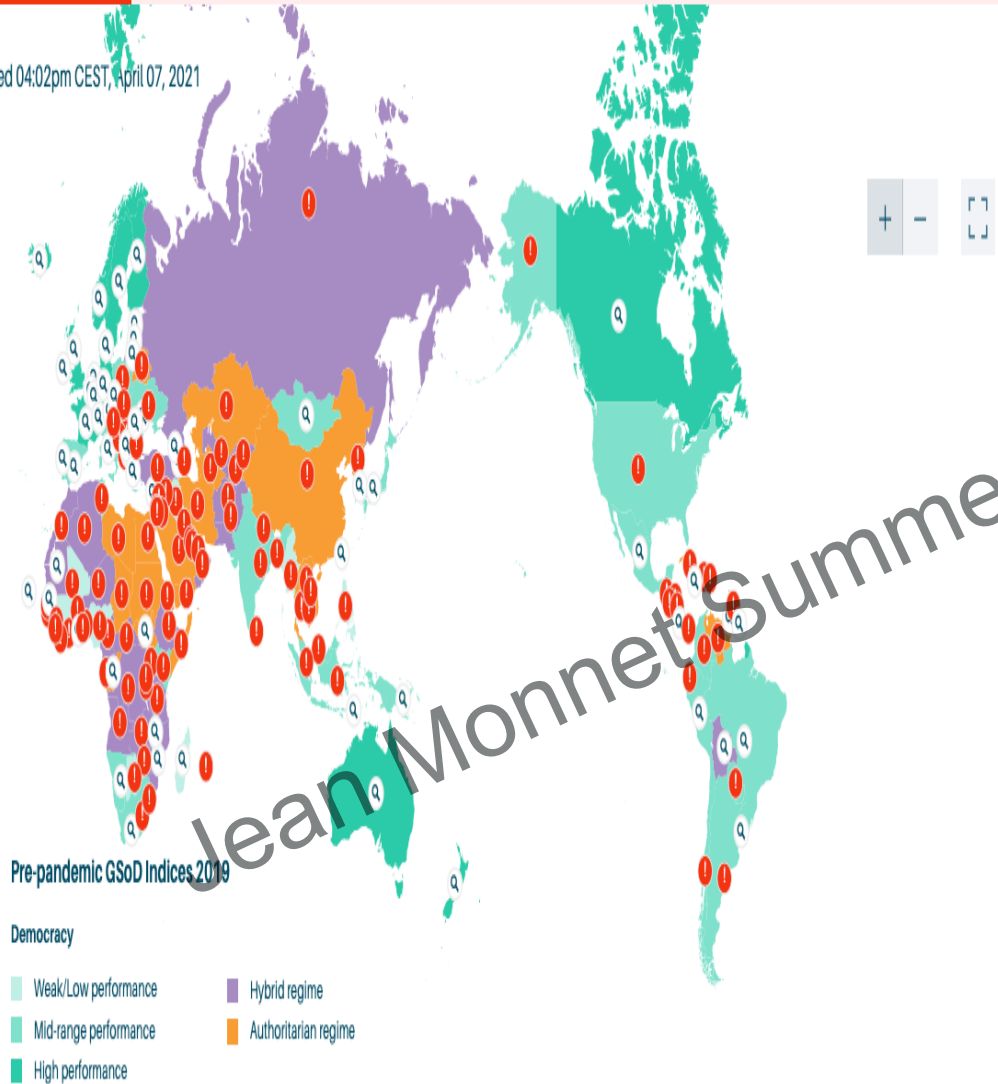
# Explicit human rights in the IHR

- **Article 32:** when implementing potentially invasive health measures states must “treat travelers with respect for their **dignity, human rights and fundamental freedoms** and minimize any discomfort or distress associated with such measures”
- **Article 42:** health measures “taken pursuant to these Regulations shall be initiated and completed without delay and applied in a **transparent and non-discriminatory** manner”

# Implicit human rights in the IHR

- **Article 17:** WHO recommendations for PHEICs suggest health measures “**not more intrusive to persons than reasonably available alternatives that would achieve the appropriate level of health protection**”
- **Article 31** permits non-consensual health measures to “**extent necessary** to control such a risk” and as long as they are “**the least invasive and intrusive**” measures that would achieve the public health objective

Updated 04:02pm CEST, April 07, 2021



## Were COVID-19 restrictions:

1. Necessary?
2. Temporary?
3. Imposed by law?
4. Non-discriminatory?
5. Proportionate?

# Hungary passes law that will let Orbán rule by decree

Fears over coronavirus legislation that gives no time limit for state of emergency

- [Coronavirus - latest updates](#)
- [See all our coronavirus coverage](#)



April 2, 2020

● Viktor Orbán  
Hungary's  
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# Philippines: President Duterte gives “shoot to kill” order amid pandemic response

Responding to orders from President Duterte to police, military officials and barangay officials to shoot ‘troublemakers’ protesting during community quarantine, Amnesty Philippine Section Director, Butch Olano, said:

“It is deeply alarming that President Duterte has extended a ‘shoot to kill’ policy to law enforcement agencies. Deadly, unchecked force should never be used in an emergency such as the COVID-19 pandemic.

“The abusive methods used to punish those accused of breaching quarantine and the vast number of mass arrests that have been carried out to date, against mainly poor people, are further examples of the oppressive approach the government takes against those struggling with basic needs.

WORLD NEWS APRIL 10, 2020 / 3:04 AM / 2 MONTHS AGO

# In parts of Africa, police are accused of excess force amid coronavirus lockdowns

Stanis Bujakera, Ayenat Mersie

5 MIN READ

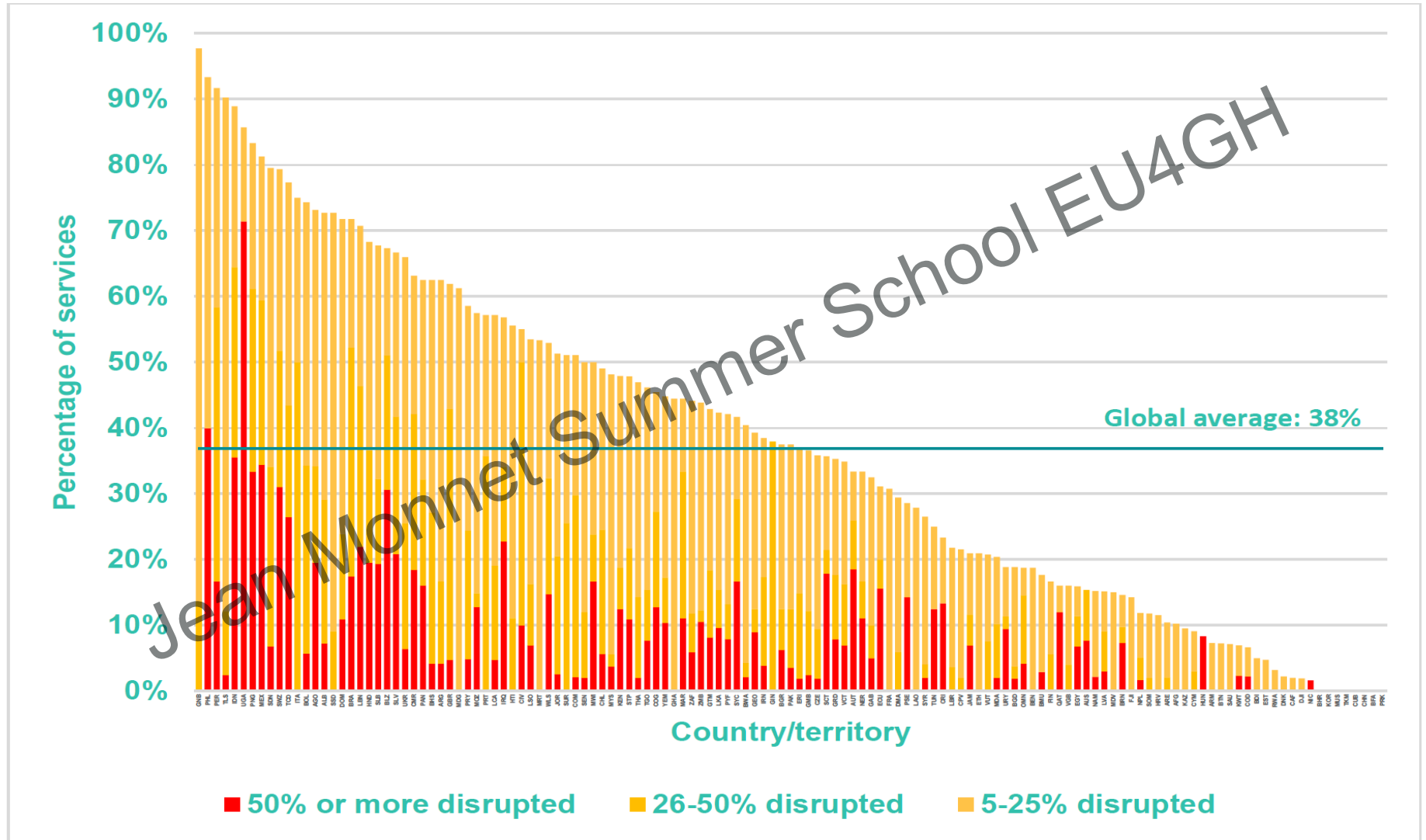


KINSHASA/NAIROBI (Reuters) - Days after Congo announced emergency restrictions to curb the new coronavirus, a police video started circulating online showing an officer in the capital beating a taxi driver for violating a one-passenger limit.



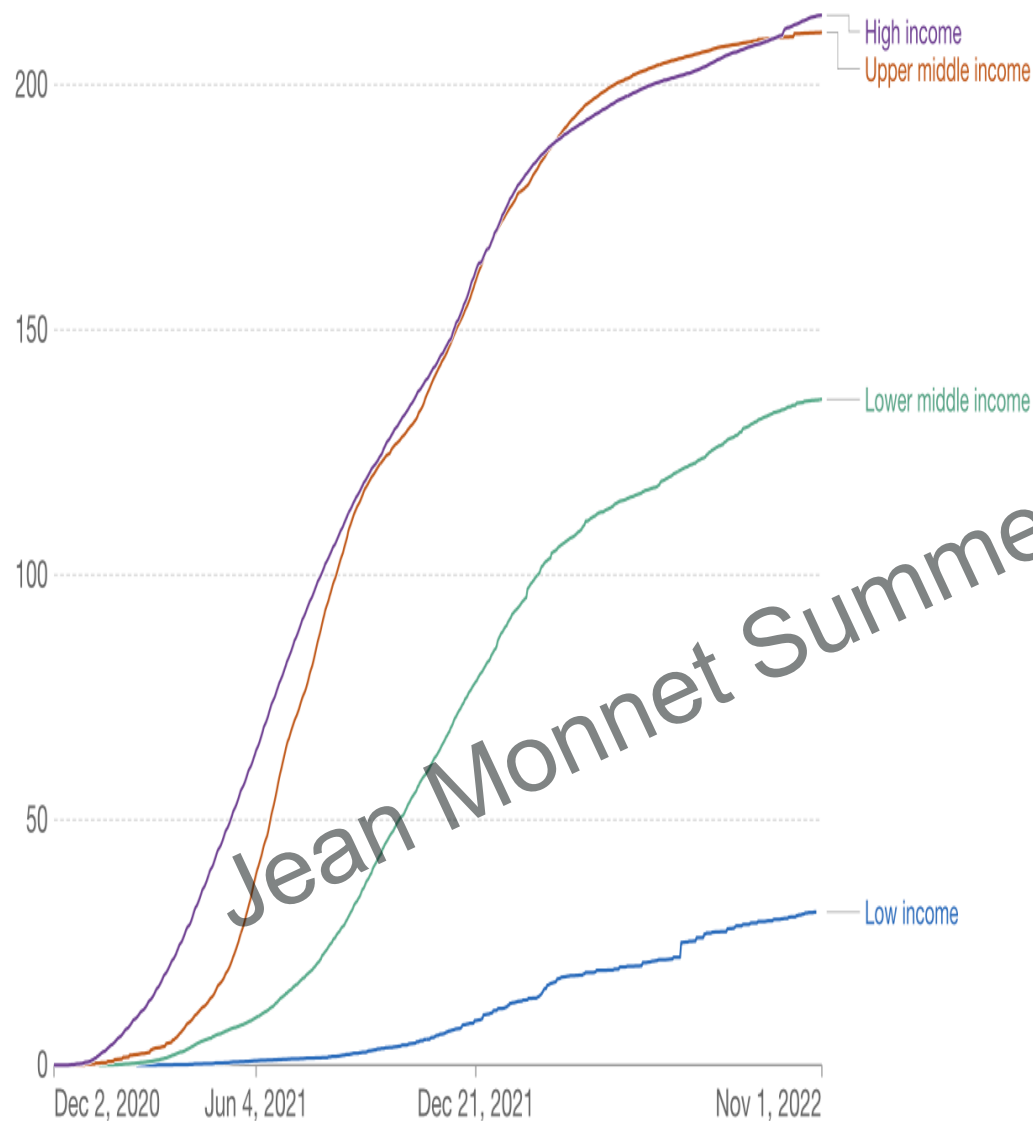
# Health service disruptions

Figure 1: Percentage of services disrupted per country (number of tracer services = 63)



# COVID-19 vaccine doses administered per 100 people, by income group

All doses, including boosters, are counted individually.



- Between 45-50% of deaths in low and middle-income countries could have been averted with similar vaccine access (Gozzi et al, 2023; Watson et al, 2022).
- Lack of global vaccination increased variants, prolonged the pandemic, re-exerted pressure on vaccine supply, increased vaccine hesitancy (Ye et al 2022, Moore et al, 2022, Kavanaugh and Singh, 2023; Gozzi et al, 2023).

# The Principles and Guidelines on Human Rights and Public Health Emergencies

## 16. Limitations and derogations to human rights during a rights-based and evidence-informed public health measure

16.1 Where States take measures ... that result in a limitation to human rights, such measures must be temporary, for a legitimate and specific public health purpose, and have strict regard for the principles of legality, necessity, proportionality, and non-discrimination. In addition:

- a. when a rights-based and evidence-informed public health measure results in limitations to freedom of movement, States must:
  - i. provide reasonable advance public notice of the decision to implement such a measure;
  - ii. resort to the measure that would achieve the public health purpose, is necessary and is least restrictive to the enjoyment of freedom of movement;
  - iii. tailor the scope of the measure to the differential needs of the population, avoiding disproportionate burdens on marginalized, disadvantaged and disproportionately impacted individuals and groups ...



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 120 OF 2020 (COVID 025)

LAW SOCIETY OF KENYA ..... APPLICANT/PETITIONER

VERSUS

HILLARY MUTYAMBAL, INSPECTOR GENERAL

NATIONAL POLICE SERVICE ..... 1<sup>ST</sup> RESPONDENT

FRED MATIANGI, CABINET SECRETARY FOR

INTERIOR AND

COORDINATION OF NATIONAL GOVERNMI

ATTORNEY GENERAL .....

THE HON. CHIEF JUSTICE .....

MUTAHI KAGWE,

CABINET SECRETARY FOR HEALTH .....

AND

KENYA NATIONAL COMMISSION

ON HUMAN RIGHTS .....

FIDA-KENYA .....

INDEPENDENT POLICE

OVERSIGHT AUTHORITY (IPOA) .....

# Let's observe the right to health in our response to coronavirus

MONDAY APRIL 13 2020



AFRICA CORONAVIRUS

## Malawi's president ordered a lockdown. The court said no

Golden Matonga 23 Apr 2020



Malawi became only the second country in Africa, after Kenya in 2017, and the fifth in the world, to see a president's victory overturned in the courts.

By Moses Mulumba

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As the State and non-state actors take steps in dealing with Covid-19, I would wish to remind th



## International Health Regulations (2005)

### *Article 3 Principles*

1. The implementation of these Regulations shall be with full respect for the dignity, human rights and fundamental freedoms of persons, **and shall promote equity and solidarity.**



## **Revised draft of the negotiating text of the WHO Pandemic Agreement**

### **Article 2. Objective**

The objective of the WHO Pandemic Agreement, **guided by equity**, and the principles and approaches set forth herein, is to prevent, prepare for and respond to pandemics.

### **Article 3. Principles**

To achieve the objective of the WHO Pandemic Agreement and to implement its provisions, the Parties will be guided, *inter alia*, by the following:

- 1. full respect for the dignity, human rights and fundamental freedoms of all persons, and the enjoyment of the highest attainable standard of health of every human being;**
2. the sovereign right of States to adopt, legislate and implement legislation, within their jurisdiction, in accordance with the Charter of the United Nations and the general principles of international law, and their sovereign rights over their biological resources;
- 3. equity as the goal and outcome of pandemic prevention, preparedness and response, ensuring the absence of unfair, avoidable or remediable differences among groups of people ...**

Are lockdowns legitimate restrictions of rights to protect public health?



Violent enforcement of lockdowns may be a human rights violation



Did vaccine mandates/green passes violate human rights?



## Rates of COVID-19 Deaths by Vaccination Status in Ages 5 and Older

Select Outcome

● Deaths

○ Cases

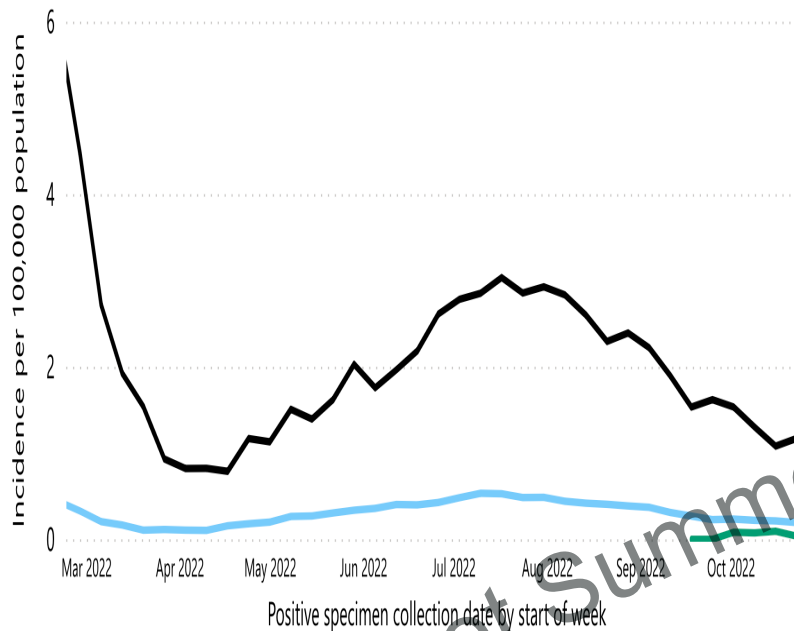
February 20, 2022–October 29, 2022 (22 U.S. jurisdictions)

● Unvaccinated ● Vaccinated without updated booster ● Vaccinated with updated booster

Date

2/17/2022

10/23/2022



People aged 5 and older vaccinated with an updated (bivalent) booster had:

18.6X

lower risk of dying from COVID-19

in October 2022, and

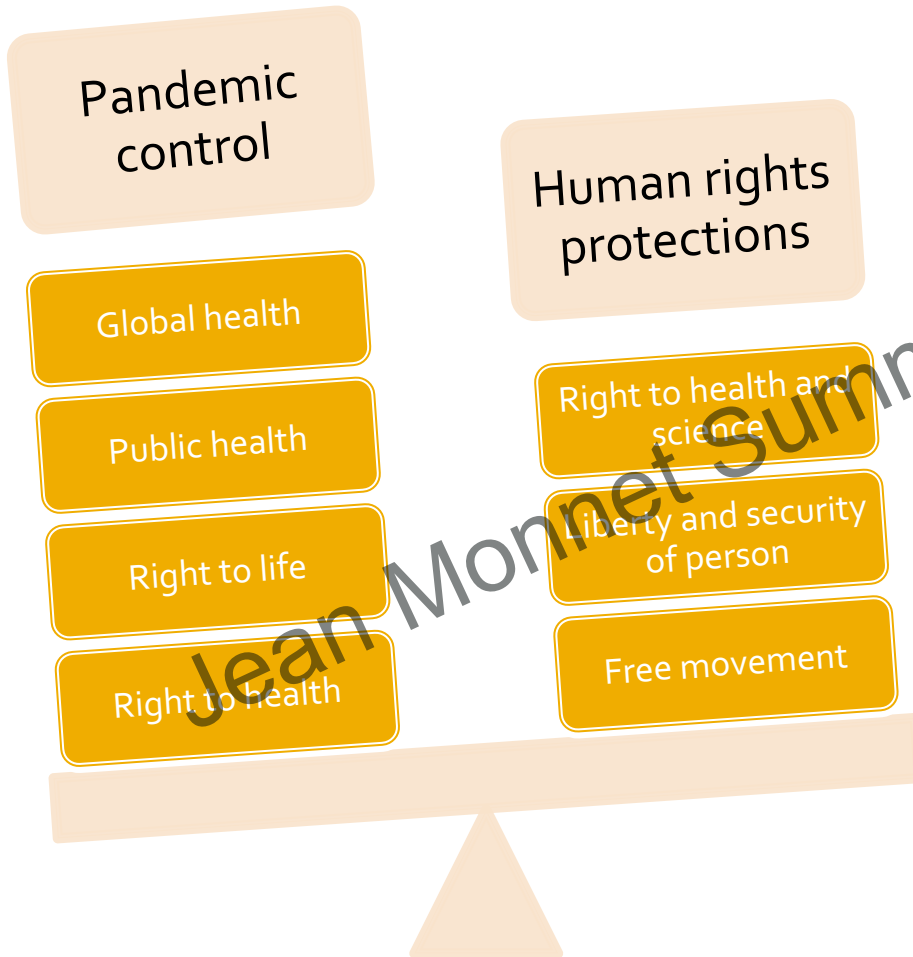
3.1X

lower risk of testing positive for COVID...

in November 2022, compared to unvaccinated people.

- Between 45-50% of deaths in low and middle-income countries could have been averted with similar vaccine access (Gozzi et al, 2023; Watson et al, 2022).
- Lack of global vaccination increased variants, prolonged the pandemic, re-exerted pressure on vaccine supply, increased vaccine hesitancy (Ye et al, 2022, Moore et al, 2022, Kavanaugh and Singh, 2023; Gozzi et al, 2023).

# Balancing rights in a pandemic





**Dalla Lana**

School of Public Health

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Comments and questions

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VAYSMORTE

