

# GUIDANCE ON LAW AND PUBLIC HEALTH EMERGENCY PREPAREDNESS AND RESPONSE

## Pilot Version



This document has been prepared for consultation purposes. IFRC Disaster Law is conducting a series of regional consultations on this document in Asia Pacific, Africa and the Americas. If you would like to participate in a regional consultation, please contact Rachel Macleod, IFRC Senior Disaster Law Officer: [rachel.macleod@ifrc.org](mailto:rachel.macleod@ifrc.org) You may provide feedback on this document by completing the [online survey](#). Please note that the consultation period will end on 31 October 2021.

## ABOUT IFRC DISASTER LAW

IFRC Disaster Law has 20 years of experience in providing technical assistance to governments to strengthen their disaster laws, and in building the capacity of domestic stakeholders on disaster law. To date, IFRC Disaster Law has assisted more than 40 countries to strengthen their disaster laws and has conducted disaster law activities in more than 90 countries.

IFRC Disaster Law's mandate derives from several resolutions<sup>1</sup> of the International Conference of the Red Cross and Red Crescent (**International Conference**), passed by the states parties to the Geneva Conventions and the components of the Red Cross and Red Crescent Movement. These resolutions mandate:

- National Red Cross and Red Crescent Societies (**National Societies**) to provide advice and support to their governments in the development and implementation of effective legal and policy frameworks relevant to disaster and emergency management at all levels; and
- IFRC Disaster Law to support states and National Societies in the area of disaster law, through technical assistance, capacity building, the development of tools, models and guidelines, advocacy and ongoing research.

To this end, IFRC Disaster Law has produced three key guidance documents that have been endorsed by the International Conference:

- the [Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance](#) (commonly known as the **IDRL Guidelines**);
- the [Checklist on Law and Disaster Risk Reduction](#) (the **DRR Checklist**); and
- the [Checklist on Law and Disaster Preparedness and Response](#) (the **DPR Checklist**).

These guidance documents are used by IFRC Disaster Law and other stakeholders as a benchmark and tool for evaluating and strengthening domestic disaster laws.

The work of IFRC Disaster Law is made possible by the generous support of its partners, who include academic institutions, law firms, governmental authorities and National Societies. If you would like to support IFRC Disaster Law's work, please contact [disaster.law@ifrc.org](mailto:disaster.law@ifrc.org)

For more information about IFRC Disaster Law, please visit [disasterlaw.ifrc.org](http://disasterlaw.ifrc.org)

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<sup>1</sup> [Resolution 4 of the 30th International Conference](#) (2007); [Resolution 7 of the 31st International Conference](#) (2011); [Resolution 6 of the 32nd International Conference](#) (2015); [Resolution 7 of the 33rd International Conference](#) (2019).

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Thanks are also owed to those who contributed to the report entitled 'Law and Public Health Emergency Preparedness and Response: Lessons from the COVID-19 Pandemic' upon which this Guidance is based. Those individuals are acknowledged in that report.

## ABBREVIATIONS AND ACRONYMS

<b>AMR</b>	Antimicrobial resistance
<b>Bangkok Principles</b>	Bangkok Principles for the Implementation of the Health Aspects of the Sendai Framework for Disaster Risk Reduction 2015-2030
<b>COVID-19</b>	Coronavirus Disease 2019 or SARS-CoV-2
<b>DPR Report</b>	Law and Disaster Preparedness and Response: Multi-Country Synthesis Report (IFRC 2019)
<b>DRM</b>	Disaster risk management
<b>DRR</b>	Disaster risk reduction
<b>ICRC</b>	International Committee of the Red Cross
<b>IFRC</b>	International Federation of Red Cross and Red Crescent Societies
<b>IFRC Network</b>	IFRC and its 192 member National Red Cross and Red Crescent Societies
<b>IHR</b>	International Health Regulations (2005)
<b>PHE</b>	Public health emergency
<b>PHEIC</b>	Public health emergency of international concern
<b>PHE Report</b>	Law and Public Health Emergency Preparedness and Response: Lessons from the COVID-19 Pandemic (IFRC 2021)
<b>RCRC Movement</b>	Red Cross and Red Crescent Movement
<b>Sendai Framework</b>	Sendai Framework for Disaster Risk Reduction 2015-2030
<b>WHO</b>	World Health Organization

## TERMINOLOGY

**Actors** refers to the key entities that are responsible for PHE risk reduction, preparedness, response and recovery. This usually comprises mainly governmental authorities and officeholders. Certain non-governmental actors may also play a critical role and fall within this category, including National Red Cross and Red Crescent Societies.

**COVID-19** is an infectious disease caused by the coronavirus SARS-CoV-2. It can also be referred to as **coronavirus disease**. The terms have been used interchangeably to describe the virus, the disease and the resulting pandemic. This Guidance uses the terms **COVID-19** and **COVID-19 Pandemic**.

**Disaster** is a serious disruption of the functioning of a community or a society at any scale due to hazardous events interacting with conditions of exposure, vulnerability and capacity, leading to one or more of the following: human, material, economic and environmental losses and impacts.<sup>2</sup>

**Disaster risk** is the potential loss of life, injury, or destroyed or damaged assets which could occur to a system, society or a community in a specific period of time, determined probabilistically as a function of hazard, exposure, vulnerability and capacity.<sup>3</sup>

**Disaster risk management (DRM)** is the application of policies, strategies and other measures to prevent new disaster risk, reduce existing disaster risk and manage residual risk (through disaster preparedness, response and recovery), contributing to the strengthening of resilience and reduction of disaster losses.<sup>4</sup>

**Disaster risk reduction (DRR)** is aimed at preventing new and reducing existing disaster risk and managing residual risk, all of which contribute to strengthening resilience and therefore to the achievement of sustainable development.<sup>5</sup>

**Exceptions** and **exemptions** are terms that are used interchangeably to refer to situations where the ordinary operation of the law is or may be disapplied.

**Legal facilities** are special legal rights that are provided to a specific organisation (or a category of organisations) to enable it or them to conduct operations efficiently and effectively. Legal facilities may come in the form of positive rights (i.e., to do a particular thing), access to simplified and expedited regulatory processes, or exemptions from ordinary laws.

**Lockdown** refers to the various exceptional, temporary restrictions that may be imposed during a PHE that: prohibit or limit individuals' freedom of movement and assembly; require individuals to quarantine, stay or shelter at home; or create curfews.

**One Health** is an integrated approach that recognises the relationships and interconnectedness between the health of animals, people, plants and the environment. It ensures that specialists in multiple sectors work together to tackle health threats to animals, humans, plants and the environment.<sup>6</sup>

**Pandemic** refers to the "worldwide spread of a new disease"<sup>7</sup> or a "worldwide outbreak of a disease in humans in numbers clearly in excess of normal".<sup>8</sup>

**Primary PHE** is a PHE where the health hazard is the direct or sole cause of the emergency.

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<sup>2</sup> <<https://www.undrr.org/terminology/disaster>>.

<sup>3</sup> <<https://www.undrr.org/terminology/disaster-risk>>.

<sup>4</sup> This Guidance uses the definition of DRM adopted by the IFRC Network (see <[https://media.ifrc.org/ifrc/wp-content/uploads/sites/5/2020/04/DRM\\_policy\\_Final\\_EN.pdf](https://media.ifrc.org/ifrc/wp-content/uploads/sites/5/2020/04/DRM_policy_Final_EN.pdf)>).

<sup>5</sup> <<https://www.undrr.org/terminology/disaster-risk-reduction>>.

<sup>6</sup> Food and Agriculture Organization of the United Nations, *One Health* <<http://www.fao.org/one-health/en/>>.

<sup>7</sup> WHO, *What is a Pandemic?* 24 February 2010

<[https://www.who.int/csr/disease/swineflu/frequently\\_asked\\_questions/pandemic/en/](https://www.who.int/csr/disease/swineflu/frequently_asked_questions/pandemic/en/)>.

<sup>8</sup> WHO, *Public Health for mass gatherings: Key considerations*, 2015

<[https://www.who.int/ihr/publications/WHO\\_HSE\\_GCR\\_2015.5/en/](https://www.who.int/ihr/publications/WHO_HSE_GCR_2015.5/en/)>.

**Public health emergency (PHE)** This Guidance uses the WHO definition of a PHE: “an occurrence or imminent threat of an illness or health condition, caused by bioterrorism, epidemic or pandemic disease, or [a] novel and highly fatal infectious agent or biological toxin, that poses a substantial risk of a significant number of human [fatalities] or incidents or permanent or long-term disability.”<sup>9</sup>

**Public health emergency of international concern (PHEIC)** is a concept introduced and defined by the IHR. It is an extraordinary event which is determined by the Director General of the WHO to: constitute a public health risk to other countries through the international spread of disease; and potentially require a coordinated international response.

**Public health emergency risk management (PHE risk management)** is an umbrella term to refer to all phases of managing PHEs from risk reduction, through to preparedness, response and recovery.

**Secondary PHE** refers to a PHE which arises from another, non-PHE disaster: for example, an outbreak of cholera following flooding.

**Stakeholders** refers to the wide variety of organisations and bodies that have an important role, contribution or stake in PHE risk management, but which do not qualify as ‘actors’ (see definition above). Stakeholders may be non-governmental and civil society organisations, as well as private sector entities. They may also include governmental departments or authorities that are not principally responsible for DRM or PHE risk management but that still have a role to play (e.g., housing department, school authorities). Importantly, the term stakeholders also includes communities and vulnerable groups that are at elevated risk during PHEs.

**States of exception** is an umbrella term for states of emergency, states of disaster and states of PHE.

**Vulnerability** means the conditions determined by physical, social, economic and environmental factors or processes which increase the susceptibility of an individual, a community, assets or systems to the impacts of hazards.<sup>10</sup>

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<sup>9</sup> WHO, *Definitions: Emergencies*: <<https://www.who.int/hac/about/definitions/en/>>. In the published definition the word “facilities” is used. It is however believed that the definition should instead refer to “fatalities”.

<sup>10</sup> <<https://www.undrr.org/terminology/vulnerability>>.

## INTRODUCTION

The COVID-19 Pandemic has shown that public health emergencies (**PHEs**) can have widespread and devastating impacts. As at the end of March 2021, the Pandemic had been responsible for over 153 million infections worldwide with over 3.2 million reported deaths.<sup>11</sup> In economic terms, the International Monetary Fund has estimated that the global costs of the Pandemic will amount to \$28 trillion in lost output with governments and central banks having to take fiscal action in the region of \$19 trillion.

As a result of the COVID-19 Pandemic, the vulnerability of countries and communities around the world to PHEs is now much more widely recognised. This vulnerability is forecast to increase as novel, zoonotic diseases emerge more frequently due, in part, to human encroachment onto pristine habitats, pushing domestic animals, humans and wildlife into closer and more frequent contact. With modern, global transport networks, novel and emerging diseases can spread rapidly and the risk of local outbreaks becoming public health emergencies of international concern (**PHEICs**) is significantly increased.

Zoonotic diseases such as COVID-19 are, however, not the only serious public health risks that countries face. Bioterrorism — the intentional release of viruses, bacteria, toxins or other harmful agents — is an ever-present threat. Antimicrobial resistance (**AMR**) — the resistance of bacteria, viruses or parasites to drugs — is also now recognised as a significant global public health risk. Globally, endemic diseases such as malaria and HIV/AIDS cause hundreds of thousands of fatalities annually.

Ensuring that effective arrangements are in place for PHEs should, therefore, be a high priority for all countries. However, it is not enough for arrangements simply to provide the means to *respond* to a PHE. In line with developments in general disaster risk management (**DRM**), it is important that the management of PHEs addresses: reducing the risk of PHEs occurring in the first place (**PHE risk reduction**); ensuring countries are prepared to respond to PHEs (**PHE preparedness**); effectively responding to PHEs (**PHE response**); and supporting recovery from the impacts of PHEs (**PHE recovery**). These four key phases are referred to collectively in this Guidance as **PHE risk management**.

Just as with general disaster risk management, effective PHE risk management requires comprehensive, clear, up-to-date and well implemented laws, policies and plans. This Guidance has been prepared by IFRC Disaster Law to support countries to review and strengthen their existing laws, policies and plans relating to PHE risk management.

### Background to this Guidance

IFRC Disaster Law is a leader in conducting research and developing guidance on domestic disaster law. It has developed several guidance documents and tools, which support decision-makers: to review and strengthen domestic disaster laws, policies and plans; to implement international standards and normative frameworks; and to address the common legal barriers that can impede effective DRM. IFRC Disaster Law's key guidance documents and tools include:

- the [Checklist on Law and Disaster Preparedness and Response \(DPR Checklist\)](#);
- the [Checklist on Law and Disaster Risk Reduction \(DRR Checklist\)](#) and the [Handbook on Law and Disaster Risk Reduction](#), which were both developed in collaboration with the United Nations Development Programme;

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<sup>11</sup> World Health Organization (**WHO**), *WHO Coronavirus Disease (COVID-19) Dashboard*, <<https://covid19.who.int>> (Accessed 5 May 2021).



- the [Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance \(IDRL Guidelines\)](#);
- the [Model Act for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance](#), which was developed in collaboration with the Inter-Parliamentary Union and the United Nations Office for the Coordination of Humanitarian Affairs (**UN OCHA**);
- the [Model Emergency Decree for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance](#) which was developed in collaboration with UN OCHA; and
- the [Checklist on the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance \(IDRL Checklist\)](#).

It is intended that this *Guidance on Law and Public Health Emergency Preparedness and Response* (the **Guidance**) will complement — and should therefore be read alongside — the guidance documents and tools listed above.

This Guidance is based on the recommendations provided in the report entitled *Law and Public Health Emergency Preparedness and Response: Lessons from the COVID-19 Pandemic (PHE Report)*. The PHE Report is itself based on country-level desktop research undertaken in two stages:

- a mapping of COVID-19 emergency decrees in 113 countries conducted during the initial stages of the response to the COVID-19 Pandemic in March to May 2020; and
- a more detailed mapping of 32 countries focusing on: (a) the legal and institutional frameworks for managing PHEs; and (b) the role of law in mitigating secondary impacts of PHEs and impacts on vulnerable groups conducted between August and November 2020.

The PHE Report is also informed by a literature review on legal approaches to public health emergencies and disaster risk management.

The PHE Report provides detailed analysis of: countries' existing laws and frameworks relating to PHE risk management; the laws and policies relevant to protecting vulnerable groups during a PHE; how law and policy can be used to mitigate secondary impacts during a PHE; and the legal facilities provided to the IFRC Network and other humanitarian organisations to enable them to operate during a PHE. While the PHE Report predominantly focuses on the COVID-19 Pandemic, several of the countries considered had experienced previous PHEs caused by, for example, the Zika, Ebola and SARS-CoV-1 viruses. The analysis and recommendations in the PHE Report therefore also draw, where possible, on the experiences of these other PHEs.

The PHE Report and the country mappings can be found on the [IFRC Disaster Law website](#).

### **Purpose of this Guidance**

The principal aims of this Guidance are to: identify key legal elements that underpin and support effective PHE risk management; serve as an assessment tool for those undertaking reviews of domestic laws, policies and plans relating to PHEs; and provide guidance on how to implement relevant international obligations and standards including the IHR, the Sendai Framework<sup>12</sup> and the Bangkok Principles.<sup>13</sup> This Guidance is not intended to be prescriptive. It is, instead, intended to

<sup>12</sup> Sendai Framework for Disaster Risk Reduction 2015-2030, UN Docs. A/CONF.224/CRP.1 <[bangkokhttps://www.preventionweb.net/files/43291\\_sendaiframeworkfordrren.pdf](https://www.preventionweb.net/files/43291_sendaiframeworkfordrren.pdf)>.

<sup>13</sup> Bangkok Principles for the Implementation of the Health Aspects of the Sendai Framework for Disaster Risk Reduction 2015-2030 <[https://www.preventionweb.net/files/47606\\_bangkokprinciplesfortheimplementati.pdf](https://www.preventionweb.net/files/47606_bangkokprinciplesfortheimplementati.pdf)>.

provide high-level guidance that can, and should, be adapted to each country's specific constitutional, legal, political, institutional and operational arrangements.

### How and when to use this Guidance

This Guidance comprises a list of nine key questions, which are designed to provide lawmakers, officials, and those supporting them, such as National Red Cross and Red Crescent Societies, with a structure for reviewing existing laws, policies and plans relating to PHEs. In addition to serving as an assessment tool, this Guidance may be used: to inform preparedness activities such as contingency planning and training and simulation exercises; and to guide discussions and consultations on enhancing domestic PHE and wider DRM arrangements.

The nine key questions in this Guidance can be used to guide a comprehensive analysis and assessment of a country's legal and policy framework relating to PHEs. For each question in this Guidance, there is a brief rationale, a set of more targeted sub-questions and a list of possible laws and policies to consider in the review process. There is also an indication about where to find further information on the topic. The numbering of the questions in this Guidance is not intended to indicate an order of priority; all the questions are, broadly, of equal importance. Their importance for a particular country will depend on the steps that a country has already taken to develop its PHE laws, and its national capacities, resources and priorities.

Each question and sub-question should be considered in turn, having regard to the country's specific circumstances. For each sub-question, it is recommended to undertake the following three-step analysis.

1. Do provisions of relevant laws address this issue adequately?
2. If not, does a non-legal document (e.g., policy, strategy, plan) address this issue adequately, so that legal provisions are unnecessary?
3. Are the relevant provisions (whether in law or policy) adequately implemented in practice?

This three-step analysis permits reviewers to identify: the strengths and gaps in the existing legal and policy framework; if a greater focus is needed on dissemination or implementation of existing laws, policies and plans; and whether new or updated legislation, policies or plans are required.

To answer the questions as fully as possible, reviewers should adopt a consultative process involving a wide range of actors and stakeholders, including all relevant ministries and levels of government, subject matter experts and practitioners, civil society organisations, the private sector and representatives of potentially vulnerable groups. In some cases, existing mechanisms such as national platforms for disaster management, risk reduction or climate change may be used to undertake this exercise. In other cases, new arrangements may need to be put in place. These may be led by health authorities but should still permit actors and stakeholders from outside the health sector to participate and contribute.

This Guidance may also be used as a tool to support evaluations undertaken under the WHO Monitoring and Evaluation Framework. These include State Parties Self-Assessment Annual Reporting, Joint External Evaluations and National Action Planning for Health Security. The Guidance may also be read in conjunction with the WHO Benchmarks for International Health Regulations (IHR) Capacities<sup>14</sup> and the three WHO toolkits produced to assist domestic implementation of the IHR in national legislation:

- *IHR (2005): A Brief Introduction to Implementation in National Legislation*;<sup>15</sup>
- *IHR (2005): Toolkit for Implementation in National Legislation - The National IHR Focal Point (NFP)*;<sup>16</sup> and

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<sup>14</sup> <<https://apps.who.int/iris/bitstream/handle/10665/311158/9789241515429-eng.pdf?sequence=1>>.

<sup>15</sup> <[https://www.who.int/ihr/publications/WHO\\_HSE\\_IHR\\_2009.2/en/](https://www.who.int/ihr/publications/WHO_HSE_IHR_2009.2/en/)>.

<sup>16</sup> <[https://www.who.int/ihr/publications/WHO\\_HSE\\_IHR\\_2009.4.4/en/](https://www.who.int/ihr/publications/WHO_HSE_IHR_2009.4.4/en/)>.

- *IHR (2005): Toolkit for Implementation in National Legislation: Questions and Answers, Legislative Reference and Assessment Tool and Examples of National Legislation.*<sup>17</sup>

### **Follow-up actions**

Every legal and policy framework relating to PHEs will have its strengths and weaknesses. Where weaknesses are identified, countries may wish to consider amending existing laws, policies and plans, or developing new ones. Countries should involve a wide range of actors and stakeholders in the amendment or development of laws, policies and plans. Where new or amended instruments are required, care should be taken to ensure that they: are fit for modern purpose; cover all phases of PHE risk management; are integrated with wider DRM laws; and reflect an all-government, all-of-society and One Health approach.

Following the introduction of new laws, policies or plans or any changes to existing ones, countries should also consider the development of an implementation plan to address: training and capacity development for actors and stakeholders; dissemination and awareness raising for the general public; the timeframe and key milestones for implementing the new instruments; and responsibility for monitoring and evaluating implementation.

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<sup>17</sup> <[https://www.who.int/ihr/publications/WHO\\_HSE\\_IHR\\_2009.3/en/](https://www.who.int/ihr/publications/WHO_HSE_IHR_2009.3/en/)>.

## GUIDANCE QUESTIONS

### 1. Do your country's laws and policies establish a strong institutional framework for managing PHEs?

It is critically important that a country's laws and policies relating to PHEs establish a strong institutional framework. Key components of a strong institutional framework include: (i) the allocation of clear roles and responsibilities for comprehensive PHE risk management, including leadership roles; (ii) the participation and inclusion of all relevant actors and stakeholders as part of a One Health, all-of-society and all-of-State approach; and (iii) effective coordination between all actors and stakeholders.

#### Roles and responsibilities

Laws, policies and plans should establish clear roles and responsibilities for *all* phases of PHE risk management: risk reduction, preparedness, response and recovery. Importantly, roles and responsibilities should reflect an 'all public health risks' approach that encompasses *all* types of health and biological hazards that may cause a PHE, including novel and emerging risks and slow-onset risks (e.g., anti-microbial resistance).

In many cases, roles and responsibilities are tied to the definition of a 'public health emergency'. Where this is the case, it is critical that the definition of 'public health emergency' is clear, comprehensive and used consistently in different instruments. The definition of 'public health emergency' should also reflect an 'all public health risks' approach and be broad enough to encompass both primary and secondary PHEs. Further, it should clearly identify the nature and severity of the circumstances that constitute a public health emergency (e.g., geographical extent, number of fatalities or incidents).

In a PHE, different types of leadership will be required: for example, legal leadership, operational leadership and political leadership. Laws, policies and plans relating to PHEs should clearly identify the nature of the leadership roles in a PHE and the functions and powers associated with each leadership role. Further, they should avoid or mitigate any potential duplication, overlap or conflicts between persons or agencies exercising leadership roles.

#### Participation and inclusion

The COVID-19 Pandemic has shown that a large-scale PHE can impact, or require action from, virtually every tier of government, every sector, every region, every community and every individual. It has, therefore, underlined the importance of a One Health, all-of-society and all-of-State approach that facilitates the participation of all actors and stakeholders. When implemented effectively, this approach can harness the capacity, knowledge and resources of all actors and stakeholders, while also promoting the protection and inclusion of vulnerable groups and communities.

Actors and stakeholders that need to be included in PHE risk management, and which may sometimes be overlooked, include: One Health actors; development cooperation actors; health and social care providers; National Red Cross and Red Crescent Societies and other humanitarian organisations; schools and school authorities; the financial sector; manufacturers and suppliers of essential goods and equipment; community representatives; and representatives of vulnerable groups.

#### Coordination

The effective participation of this multitude of actors requires strong coordination. Coordination is required *horizontally* between different governmental actors and sectoral agencies. For example, close coordination is required between the IHR Focal Point and One Health actors to enable the prompt detection, assessment and notification of relevant health events to the WHO (see **Question 3**). Coordination is also required *vertically* between different levels of government, especially in

federal states and states that have adopted a decentralised approach to PHE or disaster risk management. Finally, coordination is also required between governmental and non-governmental actors and stakeholders. Law and policy can facilitate effective coordination by establishing coordination mechanisms and imposing obligations on participants to meet regularly and share information with one another.

Unfortunately, the PHE Report finds that a strong institutional framework for comprehensive PHE risk management, with the key features described above, is not yet a reality in many states. This may be partly because a significant number of states have old PHE laws that predate the contemporary approach to PHE risk management, underlining the importance of regularly reviewing and updating PHE laws and policies (see [Question 9](#)).

## A. Guiding sub-questions

### i. Roles and responsibilities

1. Do laws, policies and plans assign actors and stakeholders clear roles and responsibilities for PHE risk management?
2. Do those roles and responsibilities:
  - a. address *all* phases of PHE risk management from risk reduction through to preparedness, response and recovery; and
  - b. reflect an ‘all public health risks’ approach that encompasses all types of health and biological hazards that may cause a PHE?
3. If there is a legal definition of ‘public health emergencies’, does the definition:
  - a. reflect an ‘all public health risks’ approach;
  - b. encompass both primary and secondary PHEs; and
  - c. clearly identify the nature and severity of the circumstances that constitute a PHE?
4. If there is a legal definition of ‘public health emergencies’, is this definition consistently used in *all* domestic instruments?
5. Do laws, policies and plans clearly identify the persons and/or actors with lead responsibility for key actions — including command and control of an emergency operations centre if there is one — before, during and after a PHE?
6. Do laws, policies and plans clearly identify the nature of the leadership roles in a PHE and the functions and powers associated with each role?
7. Do laws, policies and plans avoid or mitigate any potential duplication, overlap or conflicts between persons or agencies exercising leadership roles?

### ii. Participation and inclusion

8. Do laws, policies and plans relating to PHEs adopt a One Health, all-of-society and all-of-State approach that facilitates the participation of all actors and stakeholders?
9. In particular, do laws, policies and plans relating to PHEs facilitate the participation of the following actors and stakeholders:
  - a. One Health actors (i.e., public health, animal health, plant health and environmental actors);
  - b. development cooperation actors;
  - c. health and social care providers;
  - d. National Red Cross and Red Crescent Societies and other humanitarian organisations;
  - e. schools and school authorities;
  - f. the financial sector;
  - g. manufacturers and suppliers of essential goods and equipment;
  - h. community representatives (including minority or marginalised communities); and
  - i. representative of vulnerable groups (see [Question 8](#))?

10. If there is an ongoing presence or need for support from UN agencies and international non-governmental organisations, do laws, policies and plans facilitate their participation in national PHE risk management arrangements?

### **iii. Coordination**

11. Do laws, policies and plans relating to PHEs facilitate coordination:
  - a. horizontally between different governmental actors and sectoral agencies;
  - b. vertically between different levels of government; and
  - c. between governmental and non-governmental actors?
12. Do laws, policies and plans relating to PHEs establish coordination mechanisms that include representatives from:
  - a. all relevant sectoral agencies;
  - b. all relevant departments within sectoral agencies;
  - c. all levels of government; and
  - d. non-governmental actors and stakeholders?
13. Do laws, policies and plans impose obligations on actors and, where appropriate, stakeholders to meet regularly and share information with one another?

### **B. Check laws and policies related to:**

- Disaster risk management/emergency management/civil protection
- Public health/health or biological hazards/public health emergencies

### **C. Further information and guidance:**

PHE Report, Sections 4.2, 4.4, 4.5 and 5.4.

DPR Report, Chapter 1

DPR Checklist, Question 1

## 2. Are your country's laws and policies relating to PHEs integrated with your country's wider disaster risk management laws and policies?

It is important that laws, policies and plans relating to PHEs are well integrated with those relating to general disaster risk management (**DRM**). The Bangkok Principles for the Implementation of the Health Aspects of the Sendai Framework (**Bangkok Principles**) recommend the systematic integration of health risks and biological hazards into DRM and, conversely, the integration of DRM into health strategies and systems. They emphasise the importance of coherence and alignment between national DRM frameworks and those related to emergency and disaster risk management for health. The Bangkok Principles do not, however, clearly specify what integration, coherence and alignment requires in practical terms at the domestic level.

The PHE Report finds that there are three broad categories of framework for PHE risk management, exhibiting differing levels of integration with general DRM frameworks:

- **PHE dominant frameworks** are based solely on PHE or public health legislation, or based solely on such legislation but with the availability of DRM or state of emergency legislation in extreme circumstances;
- **hybrid frameworks** are mainly based on PHE or public health legislation, but with DRM and/or state of emergency laws supporting and supplementing that legislation to a lesser or greater extent; and
- **DRM dominant frameworks** are based *solely* on DRM legislation — that is, health risks, biological hazards and PHEs fall within the scope of the general DRM legislation.

By their very nature, DRM dominant frameworks achieve complete integration. However, the Bangkok Principles do not strictly require a DRM dominant framework to be adopted and integration can also be achieved in other types of framework by introducing appropriate linkages and eliminating any gaps, conflict, inconsistency or unnecessary duplication between DRM and PHE instruments. Further, there is currently no research or evidence on how effective the different types of framework are in practice. For these reasons, DRM dominant frameworks cannot be recommended as *necessarily* better than other types of framework, even though they do achieve complete integration.

The PHE Report finds that the most common type of framework is hybrid frameworks. Frameworks that rely on a combination of different types of laws — PHE, DRM and/or state of emergency laws — do carry a risk of a lack of integration. There may be gaps, conflict, inconsistency or unnecessary duplication between the powers, roles, and responsibilities created by the respective instruments. There may also be a lack of coordination and communication between health and general DRM actors. In practice, this may lead to inefficiency, ineffectiveness, uncertainty, confusion or delay. The risk of a lack of integration underscores the importance of taking a holistic approach to DRM and PHE laws and policies. Whenever a PHE or DRM instrument is developed, updated or reviewed, consideration should be given to how it relates to other applicable instruments and to avoiding any gaps, conflict, inconsistency or unnecessary duplication.

### A. Guiding sub-questions

#### i. Understanding what type of framework exists in your country

1. What laws, policies and plans are used to manage health risks, biological hazards and public health emergencies in your country?
2. What laws, policies and plans are used to manage disaster risks and disasters in your country?
3. Based on the answers to questions 1 and 2, does your country have a PHE dominant, DRM dominant, or hybrid framework for PHE risk management?

## **ii. Identifying areas for improved integration**

4. If your country has a PHE dominant or hybrid framework for PHE risk management, are the various laws and policies integrated with one another?
5. Are there any gaps, conflicts, inconsistencies or unnecessary duplication between the powers, roles and responsibilities created by the different instruments?
6. Is there sufficient coordination and communication between health and general DRM actors?

Note: In answering questions 5 and 6, consider your answers to the guiding sub-questions concerning roles, responsibilities and coordination in **Question 1**.

### **B. Check laws and policies related to:**

- Disaster risk management/emergency management/civil protection
- Public health/health or biological hazards/public health emergencies
- States of emergency or disaster

### **C. Further information and guidance:**

PHE Report, Section 4.2



### 3. Do your country's laws implement and facilitate compliance with the International Health Regulations?

The most important international instrument relating to PHEs is the International Health Regulations 2005 (IHR), an international treaty that is legally binding on its 196 member States. The IHR establish a comprehensive set of rights and obligations relating to public health risks and public health emergencies of international concern. The term 'public health emergency of international concern' (PHEIC) is defined by the IHR as an extraordinary event which is determined by the Director General of the WHO to: (i) constitute a public health risk to other countries through the international spread of disease; and (ii) potentially require a coordinated international response.<sup>18</sup>

The IHR require states parties to develop, strengthen and maintain the domestic capacities: to detect, assess, notify and report public health events; and to respond promptly and effectively to public health risks and PHEICs. These capacities are known as the **IHR core capacities**; Annex 1 to the IHR outlines exactly what is required to meet these core capacities. While the IHR core capacities are designed with the *international* spread of disease in mind, in practice many of the actions required are just as relevant to detecting and responding to more localised or less severe public health risks and PHEs that occur on a sub-national or national scale.

As the PHE Report finds, there have been widespread deficiencies in States' implementation of the IHR core capacities. The WHO has sought to promote domestic implementation of the IHR core capacities through its IHR Monitoring and Evaluation Framework, which includes: annual reporting; Joint External Evaluation; simulation exercises; and after-action (and, more recently, intra-action) review. External evaluation, in particular, has considerable potential benefit. However, it is voluntary and there is no obligation on States to implement findings or develop post-evaluation action plans. This is something that may be remedied through domestic laws and policies that mandate the development and implementation of post-evaluation action plans.

In addition to the IHR core capacities, other notable obligations imposed by the IHR are to:

- designate or establish a National IHR Focal Point and the authorities responsible for implementing health measures under the IHR;<sup>19</sup>
- require the competent authorities to communicate with the National IHR Focal Point on relevant public health measures taken pursuant to the IHR;<sup>20</sup>
- notify the WHO of all events that may constitute a PHEIC within its territory, as well as any health measure implemented in response to such events;<sup>21</sup> and
- continue to communicate to the WHO timely, accurate and sufficiently detailed public health information on the notified event (e.g., case definitions, laboratory results, number of cases and deaths etc).<sup>22</sup>

The fulfilment of these obligations can be supported by domestic laws and/or policies that explicitly address the above responsibilities, processes and actions. More generally, a good practice identified in the PHE Report is establishing a committee or other body responsible for overseeing and/or monitoring the implementation of the IHR. An IHR monitoring committee may also oversee the development and implementation of post-evaluation action plans.

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<sup>18</sup> IHR, Art 1.

<sup>19</sup> IHR, Art 4(1).

<sup>20</sup> Ibid, Art 22(1)(i).

<sup>21</sup> Ibid, Art 6.

<sup>22</sup> Ibid.

## A. Guiding sub-questions

### i. National IHR Focal Point

1. Does law and/or policy designate the National IHR Focal Point and clearly set out the Focal Point's role, responsibilities and powers?
2. Does law and/or policy require relevant actors to provide the National IHR Focal Point with the information the Focal Point needs to determine whether and when to notify the WHO of an event that may constitute a PHEIC?
3. Does the law provide the National IHR Focal Point with sufficient authority and powers to perform their functions, including authority to disclose information that may otherwise be subject to confidentiality or data protection laws?

### ii. Core capacities

4. Do laws, policies and plans implement the IHR core capacities to:
  - a. detect, assess, notify and report public health events; and
  - b. respond promptly and effectively to public health risks and PHEICs?

### iii. External evaluation

5. Do laws and/or policies require the production and implementation of post-evaluation action plans following external evaluation of IHR implementation?
6. Do laws and/or policies clearly identify the domestic actor(s) with responsibility for producing a post-evaluation action plan and monitoring its implementation?

### iv. IHR monitoring committee

7. Do your country's laws and/or policies provide for the establishment of a committee or other body specifically for overseeing the implementation of IHR obligations and monitoring ongoing operation and compliance?
8. If the answer to question 7 is 'yes':
  - a. Is the committee or body included in relevant coordination mechanisms?
  - b. Is the committee or body responsible for producing post-evaluation action plans and monitoring their implementation?
  - c. Does the committee or body have, or actively consult with, representatives of a wide variety of PHE actors and stakeholders?

## B. Check laws and policies related to:

- Disaster risk management/emergency management/civil protection
- Public health/health or biological hazards/public health emergencies

## C. Further information and guidance:

- PHE Report, Sections 3.3 and 3.4
- WHO, Benchmarks for International Health Regulations (IHR) Capacities<sup>23</sup>
- WHO, NAPHS for All: A Country Implementation Guide for National Action Plan for Health Security (NAPHS)<sup>24</sup>
- WHO, IHR (2005): A Brief Introduction to Implementation in National Legislation<sup>25</sup>

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<sup>23</sup> <<https://apps.who.int/iris/bitstream/handle/10665/311158/9789241515429-eng.pdf?sequence=1>>.

<sup>24</sup> <[https://www.who.int/ihr/publications/country\\_implementation\\_guide\\_for\\_naphs/en/](https://www.who.int/ihr/publications/country_implementation_guide_for_naphs/en/)>.

<sup>25</sup> <[https://www.who.int/ihr/publications/WHO\\_HSE\\_IHR\\_2009.2/en/](https://www.who.int/ihr/publications/WHO_HSE_IHR_2009.2/en/)>.

- WHO, IHR (2005): Toolkit for Implementation in National Legislation - The National IHR Focal Point<sup>26</sup>
- WHO, IHR (2005): Toolkit for Implementation in National Legislation: Questions and Answers, Legislative Reference and Assessment Tool and Examples of National Legislation<sup>27</sup>
- WHO, Health Emergency and Disaster Risk Management Framework<sup>28</sup>

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<sup>26</sup> <[https://www.who.int/ihr/publications/WHO\\_HSE\\_IHR\\_2009.4.4/en/](https://www.who.int/ihr/publications/WHO_HSE_IHR_2009.4.4/en/)>.

<sup>27</sup> <[https://www.who.int/ihr/publications/WHO\\_HSE\\_IHR\\_2009.3/en/](https://www.who.int/ihr/publications/WHO_HSE_IHR_2009.3/en/)>.

<sup>28</sup> <<https://apps.who.int/iris/handle/10665/326106>>.

#### 4. Do your country's laws and policies facilitate PHE preparedness, early warning and early action?

A core feature of an effective framework for managing disasters is the preparation and planning undertaken in advance — what is known as disaster preparedness or the preparedness phase. Preparedness comprises the development of the knowledge and capacity to enable governments and all actors, including communities, to effectively anticipate, respond to and recover from the impacts of likely, imminent and current disasters. Key preparedness activities include contingency planning and education, training and drills. It also includes the development of an effective early warning system that prompts early action. These preparedness measures are just as important for PHEs as for other types of disaster.

Contingency planning is a key preparedness process that involves identifying and recording the concrete actions that will be taken when a major emergency is predicted or begins to unfold. Contingency plans should establish operational procedures for response, based on anticipated resource requirements and capacity. This includes identifying the human and financial resources that may be required and how they will be managed; ensuring availability of emergency supplies; and outlining communication and coordination procedures. Contingency plans should be based on risk assessments that take into account the vulnerability of different groups, and should reflect the context in which they are developed, that is, the national, regional and local resources and capacities available.

It is essential that there are clear legal mandates and/or enforceable legal duties for contingency planning for PHEs, and that the contingency planning process provides opportunities for consultation with all relevant actors and stakeholders. Moreover, contingency plans should be integrated with a country's general disaster or emergency contingency plans to avoid gaps, conflicts, inconsistencies or unnecessary duplication between the different instruments and the arrangements they create. While the focus of contingency planning may tend to be on the actions necessary to combat the health impacts of a PHE, contingency planning is also needed to ensure continuity of government (including the legislature) and of essential services such as general health care, schooling and domestic violence services (see [Question 8](#)).

In order for contingency plans to be effective, they need to be well understood by the actors and stakeholders to whom they assign roles and responsibilities. This can be achieved in a number of ways, including imposing legal duties on actors and stakeholders to ensure that their personnel receive appropriate education and training, and participate in regular drills and simulation exercises. Drills and simulation exercises also provide an important opportunity to test the appropriateness of planned arrangements and update them if required. While drills and simulation exercises typically focus on operational issues, it is also important to use them as an opportunity to raise awareness of the applicable legal framework and to test legal preparedness for PHEs.

Another key preparedness activity is the development of an effective early warning system (**EWS**) that prompts early action. An effective EWS has four key interrelated components: (1) developing risk knowledge through comprehensive hazard mapping and risk assessments; (2) monitoring hazards using accepted scientific methodologies; (3) communicating and disseminating authoritative, timely, accurate, clear and actionable warnings; and (4) preparedness at all levels to respond to the warnings received.

While the IHR require States to notify the WHO of all events that may constitute a public health emergency of international concern within its territory (see [Question 3](#)), they do not require States to issue early warnings to the general population and the PHE Report finds limited evidence of domestic legal duties on public authorities to do so. This is a serious omission given the importance of early warning and early action in curbing the spread of a novel infectious disease. The law should impose enforceable duties on public authorities to provide early warning of health and biological hazards to the general population.

For early warnings to translate into early action there needs to be awareness at *all* levels of society and in *all* communities. Appropriate education, training, drills and simulation exercises can enable the general population to respond promptly and appropriately to warnings and, more generally, to become familiar with the types of measures that may need to be implemented during a PHE response (which, as the COVID-19 Pandemic has shown, can be highly restrictive). One way to provide education and training on PHEs to a broad segment of the population is through schools and other educational institutions.

#### **A. Guiding sub-questions**

1. Do laws and/or policies make provision for PHE preparedness and contingency planning?
2. Do laws and/or policies clearly outline roles and responsibilities for preparing for PHEs including producing, maintaining, and reviewing contingency plans?
3. Do laws and/or policies ensure all actors and stakeholders are consulted in PHE contingency planning?
4. Do laws impose enforceable contingency planning and preparedness duties on appropriate actors and stakeholders?
5. Do laws and/or policies specifically require contingency planning for continuity of government (e.g., the legislature) and essential services (e.g., schooling, general healthcare, domestic violence services) during PHEs?
6. Do laws and/or policies clearly outline roles and responsibilities for implementing an early warning system including:
  - a. developing risk knowledge;
  - b. monitoring hazards; and
  - c. disseminating clear and actionable warnings?
7. Do laws impose enforceable duties on appropriate actors to issue early warnings of health and biological hazards?
8. Do laws and/or policies recognise the importance of raising public awareness about PHEs including how to respond to early warnings?
9. Do laws and/or policies ensure communities are provided with the information, education and training necessary to enable them to prepare for and respond to PHEs?
10. Do laws and/or policies provide for regular PHE drills and simulation exercises to be conducted both for: (a) actors and stakeholders with a role in PHE response; and (b) for the general population?
11. Do laws and/or policies provide for training and simulation exercises to be designed to raise awareness of legal issues during PHEs and to test legal preparedness for PHEs?

#### **B. Check laws and policies related to:**

- Disaster risk management/emergency management/civil protection
- Public health/health or biological hazards/public health emergencies

#### **C. Further information and guidance:**

PHE Report, Section 4.6

DPR Report, Chapter 3

DPR Checklist, Question 3

## 5. Do your country's laws establish 'states of exception' for responding to a PHE that are tailored and proportionate to differing degrees and types of risk?

A common legal mechanism used to respond to a PHE is a declaration of a state of emergency, state of disaster or state of public health emergency (collectively referred to as **states of exception**).

A declaration of a state of exception causes a switch to an emergency legal modality characterised by the availability of special emergency powers. Emergency powers fall into two broad categories: (1) emergency *law-making* powers, which usually give the executive branch of government the ability to make laws, decrees, orders or regulations to address the disaster or emergency; and/or (2) pre-determined emergency powers such as powers to order evacuations, seize property, or restrict movement. The declaration of a state of exception may also trigger special governance arrangements or the release of funds and other resources.

It is common for countries to have two or more types of state of exception which relate to different kinds of disaster. Indeed, the law should ideally establish a variety of states of exception that are proportionate and tailored to the different types and magnitude of disaster that may occur, including PHEs. Such a system should be designed to operate at the lowest level initially, with escalation to higher levels, characterised by more extensive emergency powers, triggered only when strictly necessary.

The experience of the COVID-19 Pandemic has illustrated that the declaration of a state of exception is an important legal mechanism for responding to a PHE. However, for a state of exception mechanism to be effective in this context, a number of key features are required.

- **Declarant:** The law should clearly identify the person who has the authority to make the declaration and establish a hierarchy of officials authorised to make the declaration if the named official is unavailable. If more than one type of declaration can be made in respect of a PHE, the persons responsible for making those declarations should be required to coordinate with one another, and the law should clearly set out the circumstances in which each can act and/or who may have primacy.
- **Trigger and timing:** The law should clearly identify the trigger, or criteria, for making a declaration of a state of exception. The trigger should enable a declaration in respect of a PHE to be made *pre-emptively* where, for example, a PHE is imminent, proximate (both temporally and geographically) and/or would potentially have a severe impact.
- **Consultation:** Laws and/or policies should require the person who is authorised to make a declaration to consult with, or act on the advice of, specified individuals or agencies. For example, where the declaration is not made by the minister of health or equivalent, the minister should be consulted and, ideally, agree or approve the declaration. The same applies for heads of sub-national governments or administrations, especially in federal states.
- **Emergency powers:** The law should clearly specify the emergency powers that arise once a state of exception is declared in respect of a PHE. It is generally preferable for laws to include a pre-determined, precise and exhaustive list of emergency powers, although broader powers (including law-making powers) may be necessary for very severe PHEs.

As the COVID-19 Pandemic has shown, emergency powers and measures implemented during a state of exception may have significant human rights impacts. They may, for example, impinge upon the rights to freedom of movement and assembly. Most human rights instruments provide countries with some scope to limit certain rights to address serious threats to the health of the population or individuals. Any limitations on human rights introduced during a state of exception must, however, be necessary, temporary, proportionate and prescribed by law.

It is important that safeguards and transparency measures are in place during states of exception to maintain the rule of law, preserve democratic institutions, and promote government accountability. Two important safeguards are judicial and legislative supervision, whereby the judiciary and parliament have oversight over the executive branch's actions during a state of exception and can prevent or redress action that is unlawful or otherwise inappropriate or unwarranted. Another important safeguard is a time limit, whereby a state of exception terminates automatically after a specified period. An important transparency measure is to ensure that declarations of states of exception and emergency measures and regulations are published and made available to the widest possible audience.

## A. Guiding sub-questions

### (i) States of exception generally

1. Does the law establish a variety of states of exception that are proportionate and tailored to the different types and magnitude of disaster that may occur in your country, including PHEs?

### (ii) Responsibility for declaring a state of exception

2. Does the law clearly identify the person(s) who has the authority to make a declaration of a state of exception in relation to a PHE?
3. If more than one type of declaration can be made in respect of a PHE (e.g., under different sectoral legislation or at different levels of government), does the law:
  - a. clearly set out the circumstances in which each can act and/or who may have primacy;
  - b. require those persons to coordinate with one another?
4. Does the law establish a hierarchy of officials authorised to make a declaration of a state of exception if the named official is unavailable?

### (iii) Trigger and timing

5. Does the law clearly identify the trigger, or criteria, for making a declaration of a state of exception in relation to a PHE?
6. Does the law enable a declaration of a state of exception in respect of a PHE to be made pre-emptively?
7. Does the law prescribe the circumstances in which pre-emptive declarations can be made?  
For example: by requiring the PHE to be imminent, proximate (both temporally and geographically) and/or to potentially have a severe impact.

### (iv) Consultation

8. Does law and/or policy require that, before any state of exception is declared in relation to a PHE:
  - a. if the declaration is made by a person other than the health minister or equivalent, the health minister or equivalent should be consulted and/or approve the declaration;
  - b. if the declaration and any proposed emergency powers may affect the functions of a sub-national government or administration, the sub-national government or administration should be consulted before the declaration is made; and
  - c. the person making the declaration should consult, so far as is practicable in the circumstances, actors and stakeholders who may be involved in a PHE response?

### (v) Emergency powers

9. Does the law clearly specify the emergency powers that arise once a state of exception is declared in respect of a PHE?
10. Does the law include a pre-determined, precise and exhaustive list of emergency powers that may be used in response to a PHE?

11. Are broader powers (including emergency law-making powers) available in the case of a large-scale or severe PHE?

#### **(vi) Human rights**

12. Are the emergency powers that may be exercised during a PHE consistent with international law, particularly international human rights law?
13. Does the law ensure that human rights must be respected during a PHE and that human rights may only be impinged insofar as is necessary, proportionate and prescribed by law?

#### **(vii) Judicial and legislative supervision**

14. Does the law provide that the legislature:
  - a. must (wherever possible) approve the declaration of a state of exception within a prescribed period of time;
  - b. must (wherever possible) approve the extension of a state of exception, either prior to the extension or within a prescribed period; and
  - c. has the power to amend or terminate a state of exception, including power to amend details such as the geographical scope, time period and emergency powers?
15. Does the law ensure that a declaration of a state of exception in respect of a PHE, its subsequent extension and any emergency powers or emergency measures made under it can be subject to legal proceedings brought by those affected?
16. Does the law ensure that the judiciary has the jurisdiction and power to:
  - a. declare as unlawful a declaration of a state of exception, its subsequent extension and any emergency powers or emergency measures made under it; and
  - b. make appropriate orders to redress such illegality (for example, by way of declaration of invalidity, penalties or compensation)?

#### **(viii) Time limits**

17. Does the law impose a time limit so that a state of exception will terminate automatically after a specified period unless it is extended?
18. Does the law clearly specify:
  - a. the circumstances in which a state of exception may be extended;
  - b. the maximum period for which a state of exception may be extended; and
  - c. *either* the maximum number of times that the state of exception may be extended or the maximum period that a state of exception may be in force?

#### **(ix) Transparency**

19. Does the law require notice of a declaration of a state of exception in response to a PHE — and the detail of emergency powers or measures applying under it — to be published and to be accessible to the widest possible audience?

### **B. Check laws and policies related to:**

- Constitutional laws
- States of emergency or disaster
- Disaster risk management/emergency management/civil protection
- Public health/health or biological hazards/public health emergencies

### **C. Further information and guidance:**

PHE Report, Chapter 5  
DPR Report, Chapter 5  
DPR Checklist, Question 5



## 6. Do your country's laws provide legal facilities to eligible humanitarian actors for PHE preparedness and response?

National Red Cross and Red Crescent Societies, and other humanitarian actors, can play a key role in the response to disasters and emergencies of all kinds, including PHEs. However, to respond efficiently and effectively, humanitarian actors require **legal facilities**. The term legal facilities refers to special legal rights that are provided to a specific organisation or category of organisations to support their activities. Legal facilities may come in the form of positive rights (i.e., to do a particular thing), access to simplified and expedited regulatory processes, or exemptions from a law or legal requirement that would otherwise apply.

Since its inception in 2001, IFRC Disaster Law has had a strong focus on promoting legal facilities for DRM. The [DPR Checklist](#) identifies the legal facilities that domestic humanitarian actors require for disaster preparedness and response. The [IDRL Guidelines](#) provide recommendations for minimum legal facilities that should be provided to assisting States and humanitarian organisations for international disaster response. The DPR Checklist and the IDRL Guidelines have been endorsed by the states parties to the Geneva Conventions and the components of the Red Cross and Red Crescent Movement by resolutions of the International Conference of the Red Cross and Red Crescent.<sup>29</sup> A key principle underpinning these guidance documents is that legal facilities should be conditional on compliance with minimum quality standards and the humanitarian principles of humanity, neutrality, and impartiality. Moreover, it is the prerogative of the government of an affected State to determine which actors satisfy these requirements and should be eligible to receive legal facilities. These actors are referred to as 'eligible actors'.

Several of the legal facilities identified in the DPR Checklist and the IDRL Guidelines are just as relevant to PHEs as to other types of disaster. For this reason, it remains generally advisable for States to develop standing laws and policies that provide the legal facilities identified in the DPR Checklist and the IDRL Guidelines. In addition, the COVID-19 pandemic has illustrated that restrictions introduced to curb the spread of a novel infectious disease — such as restrictions on freedom of movement, assembly and business operations as well as border closures — can impede response activities, unless appropriate exemptions are granted. The legal facilities required by eligible actors during PHEs may include (but are not limited to):

- exemption from restrictions on internal movement (e.g., lockdowns, shelter-in-place orders or curfews) or business operations;
- exemption from border closures and, subject to health safeguards or criteria, exemption from requirements to quarantine or self-isolate upon arrival;
- waiver of the requirement for, or expedited provision of, visas and work permits for humanitarian personnel;
- automatic or expedited recognition of foreign (and, for federal states, interstate) qualifications and licences (e.g., for doctors, nurses);
- exemption from any restrictions on the import or export of goods and equipment (e.g., on PPE or medical supplies); and
- exemption from taxes and duties directly associated with PHE preparedness and response, including customs duties and taxes.

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<sup>29</sup> [Resolution 7 of the 33rd International Conference](#) (2019) endorsed the DPR Checklist and invited States to use the Checklist to evaluate and improve the content and implementation of their laws, regulations and policies. [Resolution 4 of the 30th International Conference](#) (2007) adopted the IDRL Guidelines and encouraged States to make use of the Guidelines to strengthen their national legal, policy and institutional frameworks.

In the context of a PHE, States may wish exemptions to be subject to health safeguards, rather than provided automatically. Where health safeguards are implemented they should: be used only where necessary and for the shortest time necessary; be proportionate and tailored to the health risk; and not be framed to, in effect, render the exemptions unusable or unworkable.

#### **A. Guiding sub-questions**

1. Do your country's laws establish the legal facilities identified in the DPR Checklist and the IDRL Guidelines for domestic and international disaster response, including PHE response?
2. Do laws that enable restrictions on internal movement or business operations during a PHE expressly provide for eligible actors to be exempted?
3. Do laws that enable border closures or restrictions during a PHE expressly provide for the personnel of eligible actors to be exempted (subject to appropriate health safeguards)?
4. Do laws waive requirements for, or significantly expedite, visas and work permits for the personnel of eligible actors during a PHE or other disaster?
5. Do laws provide for automatic or expedited recognition of foreign (and, for federal states, interstate) qualifications and licences during a PHE or other disaster?
6. Do laws that enable import or export restrictions to be introduced expressly provide for eligible actors to be exempted to enable them to continue importing and exporting relief goods and equipment?
7. Do laws and/or policies exempt eligible actors from taxes and duties directly associated with preparedness and response for PHEs and other types of disaster?
8. Where legal facilities are subject to health safeguards, are those health safeguards:
  - a. only applicable when, and for as long as, necessary;
  - b. tailored and proportionate to the relevant health or biological hazard; and
  - c. workable, in the sense of permitting eligible actors to conduct their activities?

#### **B. Check laws and policies related to:**

- Disaster risk management/emergency management/civil protection
- Public health/health or biological hazards/public health emergencies
- Charitable/not-for-profit/humanitarian organisations
- Red Cross or Red Crescent Law
- Immigration
- Employment
- Professional licensing
- Taxation
- Export and import controls

#### **C. Further information and guidance:**

PHE Report, Chapter 9

IDRL Guidelines

IDRL Checklist, Section 5

IDRL Model Act, Chapter VI

IDRL Model Emergency Decree IFRC, Articles 19-23

DPR Report, Chapter 6

DPR Checklist, Question 6

## 7. Do your country's laws and policies contain measures to address the specific issues relating to human mobility and migration that may arise during a PHE?

All types of disaster can have an impact on human mobility. Similar to other types of disaster, a PHE may prompt physical flight; fear of contagion or a desire to avoid restrictions may drive internal and international movement. PHEs can, however, affect human mobility in quite different ways than other types of disaster. As the COVID-19 Pandemic has shown, restrictions imposed to prevent the spread of disease can create the opposite of forced displacement: forced immobility. Border closures and travel restrictions introduced during COVID-19 had a negative impact on many migrants and expatriate workers wishing to return home. In most cases, citizens or permanent residents were exempted from inbound border restrictions and permitted entry. However, in some cases restrictions on outbound travel and/or practical impediments (e.g., a lack of flights) impeded repatriation.

The negative consequences of forced immobility can be especially serious for migrants experiencing loss of livelihood, irregular or uncertain migration status, or illness or disease without access to healthcare. During the COVID-19 Pandemic, some States provided assistance to migrants and stranded foreign citizens by, for example, permitting them to access healthcare or financial assistance and extending their visas. This was, however, by no means universal. Border closures and travel restrictions may also have very severe — potentially even life-threatening consequences — for refugees, asylum seekers and others fleeing irreparable harm. At least at the outset of the COVID-19 Pandemic, a significant number of States that fully or partially closed their borders did not make exceptions for asylum seekers. In some countries, there were also delays in the processing of applications for asylum due to the disruption caused by the Pandemic.

Border closures and travel restrictions potentially impinge on the right under article 12 of the International Covenant on Civil and Political Rights (ICCPR) to be free to leave any country including one's own, and not to be arbitrarily deprived of the right to enter one's own country. As occurred during COVID-19, border restrictions may also be inconsistent with temporary recommendations issued under the IHR. Moreover, where border restrictions result in the return of refugees and asylum seekers to the countries where they risk persecution or irreparable harm, this breaches the international legal prohibition on non-refoulement.

While border closures and travel restrictions *may* play a role in preventing the international spread of a novel infectious disease, they should be consistent with States' international legal obligations and include clear exceptions for migrants and foreign citizens wishing to be repatriated, and refugees, asylum seekers and others fleeing irreparable harm. Due to the likelihood that border closures and travel restrictions will be introduced during future PHEs, they should be addressed in standing laws, policies and plans. These instruments should: specify the criteria for border closures and/or travel restrictions; identify how such measures will be implemented; and address the needs of individuals who may be detrimentally impacted, including providing for visas to be extended for migrants or foreign citizens who become stranded during a PHE.

### A. Guiding sub-questions

1. Do your country's laws, policies and plans relating to PHEs address the potential need to introduce border closures and/or travel restrictions in response to the international spread of a novel infectious disease?
2. Do those laws, policies and plans:
  - a. clearly specify the criteria for border closures and/or travel restrictions;
  - b. outline how border closures or travel restrictions will be practically implemented;
  - c. include clear exceptions for migrants and foreign citizens that wish to be repatriated;
  - d. include clear exceptions for asylum seekers, refugees and others fleeing irreparable harm;

- e. outline measures to assist migrants and foreign citizens to be repatriated; and
  - f. outline measures to assist migrants and foreign citizens who are stranded, including extending visas or permissions to remain?
3. Are laws, policies and plans relating to border closures or travel restrictions during a PHE — including the criteria for border closures or travel restrictions — consistent with your country’s international legal obligations including article 12 of the ICCPR and obligations to asylum seekers and refugees (e.g., the prohibition on non-refoulement)?
4. Do laws, policies and plans relating to PHEs establish contingency arrangements to ensure that the reception of asylum seekers and the processing of asylum claims continues during PHEs?

**B. Check laws and policies related to:**

- Immigration/refugees and asylum seekers/complementary protection
- Disaster risk management/emergency management/civil protection
- Public health/health or biological hazards/public health emergencies

**C. Further information and guidance:**

PHE Report, Chapter 6

DPR Report, Chapter 7

DPR Checklist, Question 7

## 8. Do your country's laws and policies contain measures to ensure that vulnerable groups are included in, and protected by, the arrangements for preparing for and responding to a PHE?

Disasters have a propensity to disproportionately impact certain groups within society including: women and girls; children; older persons; persons with disabilities or illness; migrants; indigenous groups; racial and ethnic minorities; and sexual and gender minorities. This Guidance collectively refers to these groups as 'vulnerable groups' even though this term has shortcomings. Some of the underlying factors that contribute to vulnerable groups experiencing disproportionate disaster impacts include:

- a failure to make provision for their specific needs — for example, lack of warnings in different languages or evacuation assistance for those with physical impairments;
- vulnerable housing and livelihoods — for example, housing in disaster-prone areas, poor quality housing and limited job security;
- direct and indirect discrimination — for example, direct exclusion from government assistance or informal barriers to accessing government assistance; and
- exposure to violent, exploitative, or otherwise harmful behaviours that generally increase following a disaster — for example, sexual and gender-based violence, abduction and trafficking.

The groups identified above are potentially just as vulnerable during a PHE as in other types of disaster. As the COVID-19 Pandemic has illustrated, transmission of, and serious illness from, a new disease may be much higher among vulnerable groups, such as racial and ethnic minorities, indigenous communities, migrants, and people with lower socio-economic status due to increased exposure, decreased access to (appropriate and adapted) public health measures and/or pre-existing health inequalities.

The COVID-19 Pandemic has illustrated that, in a PHE, there may be additional categories of vulnerability. Further, compared to other types of disaster, different types of legal and policy measures may be required to mitigate impacts on vulnerable groups. In many cases, these legal and policy measures had to be rapidly improvised, pointing to the need to develop standing laws and policies for future PHEs. The additional categories of vulnerability and types of measures needed are discussed in turn below.

- **People susceptible to the relevant disease or health risk:** Those who are most immediately vulnerable during any PHE are the individuals who are susceptible to the disease (or other health risk) itself. This may vary from one PHE to another. Laws, policies and plans need, therefore, to be flexible and should not assume that any specific group will *necessarily* be susceptible. Measures to protect those susceptible to the relevant disease or health risk — such as shielding, self-isolation or mandatory treatment — may be warranted. However, to minimise interference with human rights, such measures should be time-bound and proportionate to the public health threat.
- **People at economic and financial risk:** PHEs can have devastating economic impacts on businesses and workers. This has been illustrated by the COVID-19 Pandemic but equally applies to more localised PHEs — for example, the World Bank estimated that the Ebola outbreak nearly halved the number of Liberians in employment. A flow on consequence of the economic impacts of a PHE can be on households' ability to continue making rental or mortgage payments. PHEs may, therefore, necessitate large-scale financial assistance programs and temporary legal protections against eviction or foreclosure.

- **People experiencing homelessness:** During a PHE, people experiencing homelessness may be at particular risk of contracting the relevant disease or illness due to: (a) living in crowded conditions where a disease may spread more easily; or (b) lack of access to sanitation, health care and information. Contingency planning for the specific needs of people experiencing homelessness is necessary and should address provision of accommodation, and measures to ensure that health care, sanitation, and information are equally accessible for this group.
- **People at risk of violence:** Incidents of domestic violence (including intimate partner violence and violence against children) have a propensity to increase during disasters of all kinds, including PHEs. As a result, contingency planning for continuity of protection services — shelters, healthcare, legal advice, police reporting, mental health and psychosocial support — is essential. Additionally, laws that introduce restrictions on freedom of movement should include exemptions for those that need to leave and/or remain away from home to escape violence and/or access protection services.
- **School children:** Schooling can be disrupted during most types of disaster, but the main difference with PHEs is that the disruption can be much more widespread and of much longer duration. Lengthy school closures can increase child protection risks and have a significant adverse impact on children’s education, social development and physical and mental health. This underlines the importance of contingency planning for educational continuity during PHEs. Equally, it underlines the importance of enabling the participation and representation of schools and school authorities in PHE preparedness and response.
- **Migrants and marginalised racial and ethnic groups:** During a PHE, migrants and marginalised racial and ethnic groups are at risk of being disproportionately impacted due to pre-existing health inequalities and language and cultural barriers to accessing healthcare and information. Additionally, irregular migrants or certain categories of visa holder may be ineligible for government assistance. Laws, policies and plans should ensure that migrants have full access to health care during a PHE regardless of their immigration status and establish measures to remove language and cultural barriers to accessing healthcare, information and other supports during a PHE.

In addition to the specific legal and policy measures discussed above, disaster impacts on vulnerable groups can be mitigated through more general measures, including a legal prohibition on direct and indirect discrimination in disaster and PHE risk management activities, and facilitating the participation and representation of vulnerable groups in disaster and PHE risk management activities.

## A. Guiding sub-questions

### i. General protections for vulnerable groups

1. Do laws relating to PHEs prohibit discrimination (both direct and indirect) in PHE preparedness and response?
2. Do laws relating to PHEs mandate contingency planning for the specific needs of vulnerable groups during PHEs?
3. Do laws, policies and/or plans relating to PHEs identify measures to ensure that health care, sanitation, information and other government assistance is accessible to, and adapted to the needs of, vulnerable groups during PHEs?
4. Do laws, policies and plans relating to PHEs facilitate the participation and representation of vulnerable groups — and agencies or organisations that represent or assist them — in PHE preparedness and response?

## **ii. People susceptible to the relevant disease or health risk**

5. Are laws, policies and plans relating to PHEs sufficiently flexible to accommodate the fact that different groups may be particularly susceptible to the relevant disease or health risk from one PHE to another?
6. Do laws and/or policies ensure that measures taken to protect those most at risk from the direct impacts of a PHE: (a) reflect the circumstances of the specific groups being protected; and (b) take into account and respect their human rights?
7. Do laws relating to PHEs require that protective measures that may interfere with human rights (e.g., compulsory shielding or self-isolation) are necessary, proportionate, time-bound prescribed by law?

## **iii. People at economic and financial risk**

8. Do laws, policies and plans relating to PHEs make provision for financial support to be provided to businesses and households (including migrant households) in the event that a PHE has significant economic impacts?
9. Do laws, policies and plans relating to PHEs make provision for temporary legal protections against eviction or foreclosure to be introduced in the event that a PHE has significant and widespread economic impacts?
10. Do laws, policies and plans relating to PHEs facilitate the participation and representation in PHE preparedness and response of agencies and organisations which may be required to provide economic and financial support during a PHE?

## **iv. People experiencing homelessness**

11. Do laws relating to PHEs require contingency planning for the specific needs of people experiencing homelessness during a PHE?
12. Do laws, policies and/or plans relating to PHEs identify measures to ensure that accommodation, health care, sanitation, and information are accessible for people experiencing homelessness during a PHE?

## **v. People at risk of violence**

13. Do laws and/or policies require agencies responsible for domestic or family violence prevention and protection services to develop contingency plans aimed at ensuring continuity of services during PHEs?
14. Do laws that impose or enable restrictions on freedom of movement during a PHE provide exceptions for people at risk of violence to leave and/or remain away from their homes or place of residence to seek safety or access services?

## **vi. School children**

15. Do laws, policies and plans relating to PHEs establish and reflect the principle that school closure should be a last resort during PHEs?
16. Do laws, policies and plans relating to PHEs facilitate the participation and representation of schools and school authorities in PHE preparedness and response?
17. Do laws relating to PHEs require school authorities and, where appropriate, individual schools to maintain contingency plans to address issues that may arise during a PHE including:
  - a. identifying alternative means of providing teaching if schools have to physically close;
  - b. addressing the needs of children who may have difficulty accessing alternative learning;
  - c. identifying practical measures (e.g., biosecurity protocols) to enable schools to remain open (or to re-open) during a PHE?

### **vii. Migrants and marginalised racial and ethnic groups**

18. Do laws, policies and plans relating to PHEs identify measures to remove language, cultural and other informal barriers to migrants and marginalised racial and ethnic groups accessing health care, information and other government assistance during PHEs?
19. Do laws and policies provide for migrants to have full access to health care and other government assistance during a PHE regardless of immigration status?
20. Do laws, policies and plans relating to PHEs facilitate the participation and representation of migrants and marginalised racial and ethnic groups in PHE preparedness and response?

### **B. Check laws and policies related to:**

- Disaster risk management/emergency management/civil protection
- Public health/health or biological hazards/public health emergencies
- Child protection/child abuse
- Education
- Immigration/refugees and asylum seekers/complementary protection
- Prevention of sexual violence/domestic violence/family violence/violence against women
- Human rights/anti-discrimination

### **C. Further information and guidance:**

PHE Report, Section 4.5, Chapters 7 and 8

DPR Report, Chapter 9

DPR Checklist, Question 9



## 9. Do your country's laws ensure that instruments relating to PHEs are regularly reviewed and updated?

The COVID-19 Pandemic has demonstrated the importance of ensuring that laws, policies and plans relating to PHEs are fit for purpose and address all current and emerging PHE risks. As the PHE Report finds, a significant number of States have relatively old PHE laws. The fact that a law is old does not *necessarily* make it unfit for purpose. However, the PHE Report finds that older laws tend not to reflect the contemporary approach to disaster and PHE risk management, which emphasises the importance of *all* DRM phases from risk reduction through to preparedness, response and recovery. Moreover, older laws may not take an 'all health risks' approach, instead applying only to a prescribed list of diseases. The prevalence of older legislation underscores the need for States to undertake reviews of their laws, policies and plans relating to PHE risk management and, where required, bring forward new or amending legislation as a matter of urgency.

Reviews should take place on a periodic basis and, additionally, after the occurrence of a PHE. If an IHR monitoring committee has been established (see [Question 3](#)), it should participate in the review and updating of laws, policies and plans. A review should encompass the key issues identified in this Guidance and, additionally, an assessment of how existing laws, policies and plans performed in any recent PHE. It is critical to implement the recommendations identified through reviews by updating laws, policies and plans. One way to ensure that reviews are undertaken and their findings are implemented is to impose legal duties on appropriate actors to conduct this task.

Simulation exercises designed to test operational preparedness for a PHE can also provide a valuable opportunity to identify strengths and weaknesses in existing PHE laws, policies and plan. Simulation exercises can be designed specifically to test *legal* preparedness for PHEs. Learnings from both types of exercises should be recorded and, where appropriate, implemented through amendments to applicable laws, policies and plans.

### A. Guiding sub-questions

1. Has your country recently undertaken a review of its laws, policies and plans relating to PHEs to ensure that they are fit for purpose and address all PHE risks?
2. Is there a legal requirement to review and (if necessary) update laws, policies and plans relating to PHE laws:
  - a. on a periodic basis (e.g., every five years); and
  - b. after the occurrence of a significant PHE?
3. Do laws and/or policies require reviews to consider the key issues identified in this Guidance?
4. Do laws and/or policies clearly identify the persons responsible for regularly reviewing and updating laws, policies and plans relating to PHEs?
5. If an IHR monitoring committee has been established (see [Question 3](#)), do laws and/or policies provide for the IHR monitoring committee to participate in the review and updating of laws, policies and plans relating to PHEs?
6. Do laws and/or policies require simulation exercises to be conducted to test legal and operational preparedness for PHEs?
7. Do laws and/or policies require the recommendations and lessons from reviews and simulation exercises to be implemented?

### B. Check laws and policies related to:

- Disaster risk management/emergency management/civil protection
- Public health/health or biological hazards/public health emergencies

### C. Further information and guidance:

PHE Report, Section 4.7

## **FUTHER INFORMATION AND SUPPORT**

Further information, tools, reports and updates on PHE law and disaster law more generally can be found at [disasterlaw.ifrc.org/](https://disasterlaw.ifrc.org/)

In case of any questions or request for technical disaster law assistance, IFRC Disaster Law can be contacted at [disaster.law@ifrc.org](mailto:disaster.law@ifrc.org)