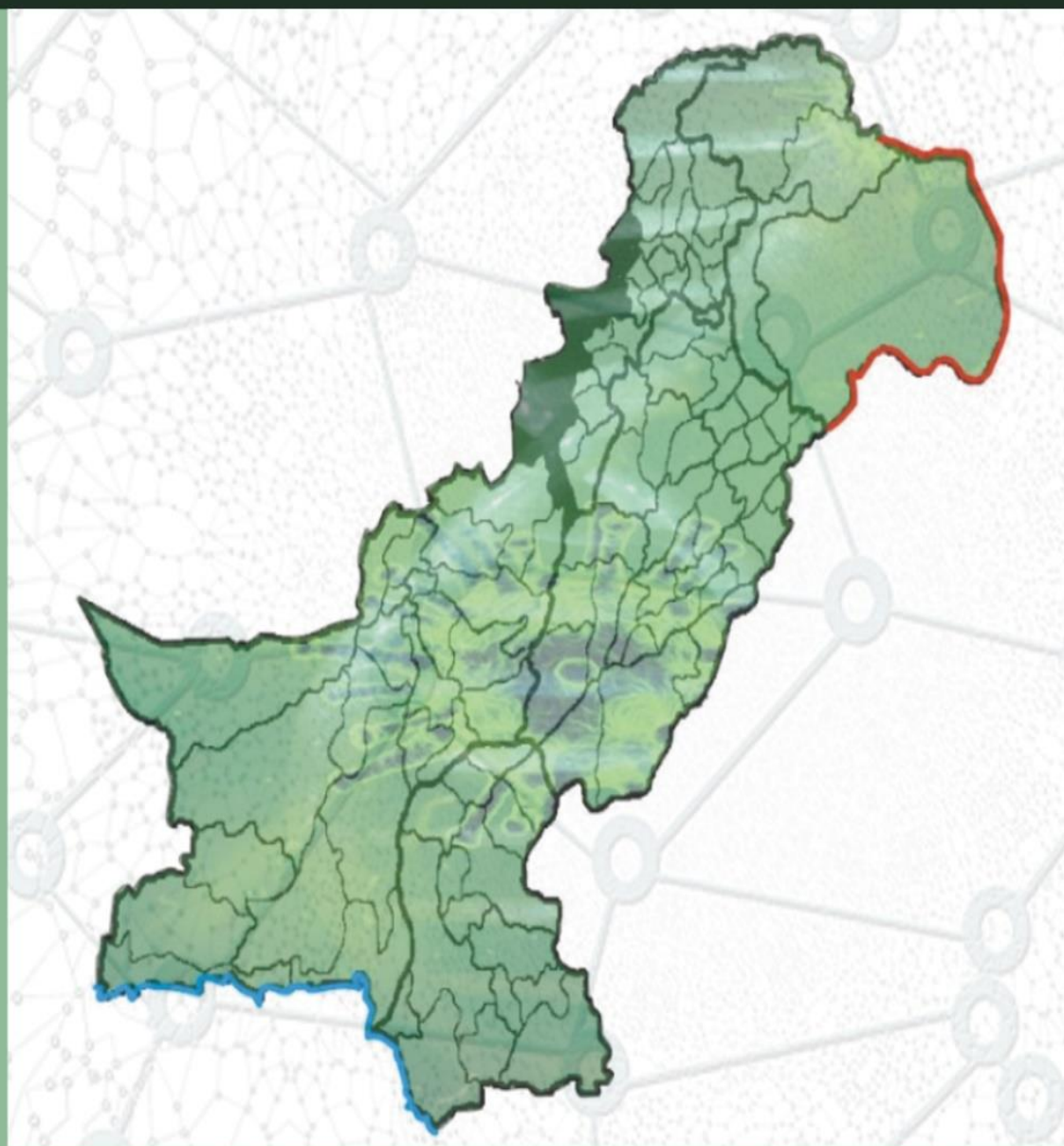


NATIONAL HEALTH SECURITY

Constitutional and Legal Framework

[Response to COVID-19]



National Framework Overview
Global Health Security Framework
International Legislative Developments
Covid-19 Legislative Response

Legislative Assessment
Strategic Legal Review
Proposal for Policy Framework
Legislative Memorandum



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This is a voluntary legal research work, subject to review and update from time to time, and nothing contained herein constitutes legal advice.

This first version of the document was prepared by the author and the contributors during the month of April 2020 with a view to providing a timely and useful overview of the legal issues and options to the stakeholders in Pakistan as they undoubtedly consider such matters at various Governmental, political and research forums.

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FOREWORD

The 21st century has brought with it various challenges exposing public health and safety to risks and dangers that were previously unknown to us. The universal nature of the threat to public health and security from mutated pathogens and viruses has also forced us to collectively respond to these biological threats. In this regard, various recommendations have been made by the World Health Organization and other international bodies to suggest legal and political frameworks to manage and mitigate these risks and dangers to public health. The IHR-2005 were translated in national legislation by countries in view of various pandemics and epidemics in recent times such as Ebola, SARS and MERS.

Pakistan as a state party to IHR 2005 is not only responsible to devise and develop safety mechanisms but it is also obliged by the Constitution to put forth a clear and comprehensive national strategy to respond to the COVID-19 pandemic by overcoming the constitutional and legal quagmire related to national health security. It is in this context that Mr. Khurram Chughtai volunteered to work on this subject, aided by a team comprising his own associates as well as members of Courting the Law's research team.

Mr. Chughtai is a prominent administrative and public law expert known for his work in relation to the legal issues surrounding the functioning of the public sector, interpretation of the constitutional and sub-constitutional frameworks for the federal and provincial governments and the complex web of federal and provincial legislations covering the delivery of public services in the country.

Courting the Law is Pakistan's only multi-dimensional law and justice initiative. It has evolved over the years from an online platform for legal discourse to multi project access to justice and legal literacy initiative. Apart from Courtingthelaw.com, the initiative operates Mohtasib.pk, a response driven website, in Urdu and English, from which a complainant can generate complaints to be filed with any federal or provincial Ombudsperson in Pakistan. It also manages Qanoondan.com and Insaaf Camp projects which generate law related content which has reached millions across Pakistan. The team of volunteer lawyers working on these projects also regularly advise stakeholders across the political spectrum on legal issues of academic and research significance.

This current work, led by Mr. Chughtai, has been undertaken as a proactive voluntary assignment by the team to provide an initial overview and analysis which can be used by policy makers to consider appropriate legal and regulatory steps to tackle the current crisis and to be better prepared for any future challenges. Considering the nature of the issues at hand, this is and will remain a work in progress.

The current health security challenge is a national security challenge without any precedent and undoubtedly will require a national health security strategy and implementation plan which must include consideration of relevant international and domestic legal issues. This report is a contribution by a team of concerned Pakistani lawyers in this regard and hopefully will be useful to all those tasked with developing and leading such action plans.

Taimur A. Malik

Barrister-at-law

April -2020



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This Framework Review Report was reviewed in draft form by individuals chosen for their diverse perspectives and technical expertise. The purpose of independent review was to provide candid and critical comments to ensure that the Report meets the standards of quality and objectivity.

The reviewer's comments remain confidential to protect the integrity of the deliberative process. We thank the following public security experts for their review of relevant parts of this report:

Mr. Sibtain Fazal Halim, Mr. Taimur Azmat Osman, Dr. Nasir Javed, Mr. Mohsin Abbas Syed, Mr. Hasnain Kazmi ASC, Mr. Sultan Mehmood Chaudhary ASC, Barrister Qasim Chowhan, ASC, Mr. Kamran Adil, Mr. Faisal Fareed, Ms. Sarah Jennifer Ataullah, Dr. Munir Ahmed, Dr. Shoaib Mirza, Dr. Ahmed Khan, Mr. Syed Imran Ali, Barrister Ahmed Pansota and Mr. Usama Malik.

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NATIONAL SECURITY AND PUBLIC HEALTH

Natural, accidental, and internationally caused outbreaks can have similar impacts for human health, the economy, and national security. Despite the initial cause of an outbreak, it also has similar requirements related to prevention, detection, response, and recovery initiatives. Natural, accidental, and intentional outbreaks may have ambiguous origin, but the capabilities needed to address them overlap.

The WHO views global public health security as the activities required to minimize the danger and consequences of acute public health events that endanger the collective health of populations living across geographical regions and international boundaries. Since the turn of this century, Severe Acute Respiratory Syndrome (SARS), highly pathogenic avian influenza, Middle East Respiratory Syndrome (MERS), Ebola and, more recently, the Zika virus outbreaks have demonstrated the ability of pandemics to devastate communities through both loss of life as well as adverse social and economic impacts that jeopardize global health security. These have underscored the need to invest in preparedness, the capacity to detect, prevent and respond to threats of infectious diseases and other biosecurity concerns. The world has experienced that responding to outbreaks once they have happened is far more expensive than investing in preparedness and disease surveillance.

Besides attention on policies, regulations, health security capacities and institutional framework that are needed to be in place in order to prevent, detect, and respond to outbreaks, the legal framework relating to national security is also to be revised and redefined by including the dangers posed by these pandemics to the physical integrity of the State. Pandemics, and Biological Threats are incalculable as they not only cause debilitating, sometimes fatal, consequences for those directly affected, they also have a range of negative economic, social and political impacts. These tend to be greater where the pandemic is a novel pathogen, has a high mortality and morbidity risk.

It is need of the hour that national security as perceived in the Constitutional Framework should be revised and redefined to include pandemics and biological threats to mean physical threat to State that may endanger physical, economic, health safety of the citizens of Pakistan.

Response to the pandemics and infectious outbreaks such as COVID-19 and considering these as also an issue of national security (besides these being a public security issue) is complex and requires a unified/integrated legal and institutional framework of strategies, implementation plan, and planning guidance that can be scaled-up and adapted across several sectors at national and subnational levels.

The world community has also recognized the potential threats of emerging and reemerging infectious diseases as public security issue, which is evident by the resolve in International Health Regulations, 2005, United Nations Sustainable Development Goals, the Global Health Security Agenda, the Global Health Initiative, and the Cooperative Threat Reduction, all of which aim to build collective, sustainable, and globally integrated health security systems.

The National Action Plan for Health Security (NAPHS) was formulated in 2018 by the NHSR&C. NAPHS addresses heterogeneity between provinces and erstwhile FATA in terms of vulnerability, socio-economic status, health service delivery and context. The plan ensures inclusive health security and prosperity for all citizens of Pakistan and beyond. Thus, the plan is inclusive of the consideration for resource mobilisation, allocation and cooperation Yet again the NAPHS was neither translated into legislative framework nor the pandemic infectious diseases were realized or considered to be issues concerning national security.

The structure and function of the current Health Security Framework in Pakistan is far below international standards. Pakistan does not have a unified health security system; even health priorities



are not properly defined and lack an integrated national health strategy particularly following the 18th Constitutional Amendment.

The only Federal legislation dealing with epidemics as a public safety issue is the Epidemic Disease Act of 1897, a hurriedly drafted short legislation to stonewall the bubonic plague that devastated life in Bombay in 1896, forcing people to migrate out of the city. The only power the Federal Government derives from the British Raj-era law is in relation to “inspection of any ship or vessel leaving or arriving at any port” that comes under its jurisdiction. The Act of 1897 does not even mention airports. It is understandable; there were no aero planes 123 years ago. The legislation is insufficient and scarcely deals with the dimension annexed with the public health security.

The West Pakistan Epidemic Diseases Act, 1958 was a provincial legislation that also covered some aspects of epidemics diseases. The province of Balochistan and Sindh also implemented the same in their provinces after the 18th constitutional amendment. Khyber Pakhtunkhwa enacted a new legislation the Khyber Pakhtunkhwa Public Health (Surveillance and Response) Act, 2017 which is in consonance with IHR-2005. In Punjab, initially the Epidemic Disease Act, 1958 was implemented but now the Punjab Infectious Diseases (Prevention and Control) Ordinance, 2020 is promulgated in order to cater very few aspects of COVID 19 outbreak. It is pertinent to mention here that the provincial legal regimes have only addressed the subject of prevention of infectious diseases that is significantly different from the biosecurity, biodefense, pandemics and infectious diseases beyond the territorial and constitutional domain of the provincial governments.

Provincial governments have declared health emergencies in their respective jurisdictions under the existing legislations. They have also invoked provision of Section 144 CrPC whereby certain restrictions have been imposed to ensure partial lock-down. The provincial governments have also sought the support of the Armed Forces in aid of civil power under Article 245 of the Constitution read with relevant legal provisions.

The lapse to prevent, detect and respond to a pandemic such as COVID-19 as an issue of national security has not been reported to be discussed earlier. However, the pandemics as a ‘national health security risk’ was known for long but no appropriate legislative or administrative steps had been taken to counter this issue at the time when COVID-19 was discovered in Pakistan. Considering the nature and impact of the COVID-19 disease outbreaks, the Federal Legislature does have the competence to make laws in this respect as held by the Apex Court as a public safety issue or an issue of national security.¹

The 2016-Report of the Joint External Evaluation (JEE) of the IHR-2005 (IHR)² had also emphasized on the immediate need of the development of a public health security framework to ensure public health preparedness, prevention and response to health security events in Pakistan. The JEE Report starts with these words:

*“The Islamic Republic of Pakistan is a signatory to the International Health Regulations – IHR (2005). However, despite multiple efforts, it has yet to meet the required core capacities, which could jeopardize the country’s travel and trade. Even more important, it means the country is not fully prepared to prevent, detect and respond to health threats to protect its population, irrespective of whether the threats arise internally or externally.”*³

¹ 2020 SCMR 1

² Joint External Evaluation of IHR Core Capacities of the Islamic Republic of Pakistan. Geneva: World Health Organization; 2017. License: CC BY-NC-SA 3.0 IGO

³ ibid



The perspective and approach of this document is to explore and propose a draft legislation covering public health security issues, such as COVID-19 and other pandemics and biosecurity threats as a vital component of national security as ‘national health security risk’ falling in the exclusive legislative and executive competence of the Federal Government to assist implementation of an appropriate national strategy and response to such matters.

In light of detailed analysis of the constitutional and legal for pandemics, infectious diseases, health emergencies, biosecurity, biodefense and recent legislative advancement worldwide, policy outline and legislative memorandum for unified national legal frameworks for National Health Security are proposed herein.

Khurram Chughtai

April-2020
Islamabad



EXECUTIVE SUMMARY

Part I	National Framework Review	<p>This part gives an overview of the existing legal framework of Pakistan for pandemics as a public safety issue and an issue of national security. It discusses the constitutional and sub-constitutional legal frameworks of Pakistan regarding pandemics to understand where legislative or executive competence lies within the country.</p> <p>It also includes a brief overview of the legislation on pandemics, biosecurity, the quarantine laws and emergency response in Pakistan.</p>
Part II	Global Health Security Framework	<p>An overview of the global health security frameworks along with international health law related to pandemics and biosecurity concerns. This section discusses the applicability of IHR-2005 and GHSA 2014 and 2024 alongwith the issues relating to biosecurity and biodefense.</p>
Part III	Health Security Legislative Developments	<p>Highlights the key legislative developments in Health Security and COVID-19 legislative response in countries such as Italy, China, Canada Australia, UK and USA while considering such situations as issues of national security and public health security. This part reviews response mechanisms to such pandemics and biosecurity</p>
Part IV	Legislative Assessment and Gap Analysis	<p>Legislative assessment and gap analysis of the existing pandemic and infectious diseases legal and institutional framework of Pakistan.</p>
PART V	Strategic Legal Review	<p>Strategic legal review of Pakistani laws and the legislative competence at federal and provincial level. This part also discusses the health governance initiative taken by the government and its assessment in compliance with IHR. This part also discusses the need for biosecurity laws in Pakistan.</p>



PART-I

NATIONAL FRAMEWORK OVERVIEW

1.1 Constitutional Framework

The Federal Government has the authority to exercise executive powers in relation to subjects mentioned in the Federal Legislative List [Fourth Schedule] of the Constitution (**“Federal List”**) and the Majlis-e-Shoora (Parliament) is empowered to legislate in respect of those matters.

Each provincial government is to act independently in its constitutionally defined spheres of legislative and executive competence.

The question of provincial autonomy and distribution of executive and legislative power between the Federation and the respective Provinces as provided in the Constitution and the 18th Amendment have been discussed in various judgements of Apex Court.

Article 142. Subject-matter of Federal and Provincial laws.

Subject to the Constitution-

- a) Majlis-e-Shoora (Parliament) shall have exclusive power to make laws with respect to any matter in the Federal Legislative List;
- b) Majlis-e-Shoora (Parliament) and a Provincial Assembly shall have power to make laws with respect to criminal law, criminal procedure and evidence.
- c) Subject to paragraph (b), a Provincial Assembly shall, and Majlis-e-Shoora (Parliament) shall not, have power to make laws with respect to any matter not enumerated in the Federal Legislative List.
- d) Majlis-e-Shoora (Parliament) shall have exclusive power to make laws with respect to all matters pertaining to such areas in the Federation as are not included in any Province



LEGISLATIVE AND EXECUTIVE COMPETENCE

1.1.1 Health services and healthcare

Before the Eighteenth Constitutional Amendment (the “18th Amendment”) Concurrent Legislative List dealt with certain subjects related to health. The Federal Ministry of Health primarily had the following executive mandate:

- National policy planning and coordination
- International health and donor coordination
- Human resource development and medical/allied education
- Standardization of manufacture of drugs and biologicals/legislation/licensing of drugs and medicines
- Prevention of infectious and contagious diseases
- Vital health statistics

In June 2011, as a result of the 18th Amendment the Federal Ministry of Health was abolished and various subjects including healthcare were devolved to the provincial level. Thereafter, a new ministry namely National Health Services Regulations and Coordination (“NHSR&C”) was established in May 2013.

NHSR&C was established with specific rules of business under the Federal List. In its stewardship role, NHSR&C is responsible for developing a vision for the health sector, interprovincial coordination, regulation in medical and allied education, research, national reporting for the health sector, establishing quality standards and meeting international obligations, including UN-SDG and IHR 2005. The development and implementation of health sector strategies and plans are, however, a provincial responsibility.⁵

Pre-18th Amendment Health related Subjects in C-List:

Drugs and medicines. Prevention of the extension from one province to another, of infectious or contagious diseases or pests affecting men, animals or plants. Poisons and dangerous drugs. Mental illness and mental retardation, including places for the reception Or treatment of the mentally ill and mentally retarded. Population planning. Health insurance. Environmental pollution and ecology medical and other professions inquiries and statistics for the purpose of any of these matters. ⁴

Post-18th Amendment Health related subjects in F-List:

⁶ Federal agencies and institutes for the following purposes, that is to say, for research, for professional or technical training, or for the promotion of special studies. International treaties, conventions and agreements and International arbitration. ⁷Legal, medical and other professions. Standards in institutions for higher education and research, scientific and technical institutions. Inter-provincial matters and coordination.

⁴ Entries 20, 21, 22, 23, 24, 25, 26, 43, and 45

⁵ Action Plans -IHR - NHS

⁶ Entries 16, 32 of Part – I of F - List

⁷ Entries 11, 12 and 13 of Part – II of F – List.



1.1.2 National Security

The subject of defense and security of Pakistan and the security of citizens from threats affecting the defense and security are within the exclusive domain of the Federal Government. The Federal Government is authorized by Parliament to make laws in relation to national security and defense that may include national health security risks emanating from pandemics, wide-spread of epidemics and infectious diseases. National Health Security Risk may be defined as an event *that might adversely affect the health of human populations; that effects of the event might spread within Pakistan; effects of the event might spread between Pakistan and another country*

Entry 1 F-List:

The defense of the Federation or any part thereof in peace or war; the military, naval and air forces of the Federation and any other armed forces raised or maintained by the Federation; any armed forces which are not forces of the Federation but are attached to or operating with any of the Armed Forces of the Federation including civil armed forces;

This becomes particularly relevant as emerging infectious diseases, biosecurity and biomedical, whether natural, accidental or intentionally caused, pose a serious threat to public health and consequently national security.

1.2 Sub-Constitutional Framework

Article 99 and 139 of the Constitution empowers the Federal Government and the Provincial Governments to frame rules for conduct and allocation of executive business.

These sub-constitutional rules are framed to achieve a certain objective and to achieve this within the channels relating to the devolution and flow of statutory authority. In the absence of compelling reasons to the contrary all rules are, and should be considered to be mandatory and binding. Constitutionally mandated rules are closely intertwined with the concept of good governance for and in the public interest⁸. The rules framed by virtue of the Constitutional power are not bound to follow any other statutory dispensation.⁹

⁸ Mustafa Impex case PLD 2016 SC 808

⁹ Baz Muhammad Kakar case PLD 2012 SC 923



1.2.1 Institutional and Administrative structure of Federal Government

1.2.1.1 National Security Division

The Rules of Business, 1973 (“**PRoB-73**”) prescribe the manner of conduct of business of the Federal Government and all of the powers vested in the Federal Government are to be exercised under these rules.

Pandemics, wide-spread epidemics and infectious diseases, biosecurity and biodefense as an issue of national security would be primarily dealt with by the National Security Committee under the National Security Division of the Federal Government’s Cabinet Secretariat (“**Pak-NSD**”).

The National Security Committee (the “**NSC**”) in consultation with the relevant ministries (Ministry of Interior, Ministry of Interprovincial Coordination and Ministry of National Health Services Regulation and Coordination) has to develop and devise the national security plan in response to pandemics and infectious diseases. The PAK-NSD is further empowered to coordinate the implementation of strategies and policies approved by the NSC through relevant Ministries and organizations.

The role of NSD in relation to the problem of pandemic as an issue of national security: The functions vested in NSD are as follows: 1. Function as Secretariat of the NSC. 2. Convene meetings of the NSC. 3. Collect, coordinate and collate proposals and input from all relevant Ministries and organizations for consideration of the NSC. 4. Formulation of a comprehensive National Security policy for approval of the National Security Committee. 5. Coordinate the implementation of strategies and policies approved by the NSC through relevant Ministries and organizations. Formulate strategies and implement them in collaboration with the Ministry of Information, Broadcasting and National Heritage to counter negative propaganda against Pakistan and its institutions through its internal and external publicity Wings, under the guidance of NSC.

7. Seek, analyze and utilize policy inputs from the Planning Committee on National Security, public and private sector think tanks and other experts in the fields of internal and external security, foreign affairs, defense and economy.

8. Brief the Parliament and its Committees on national security related issues.

9. Conduct national security dialogue with other countries in consultation with the Ministry of Foreign Affairs.

10. Interact with counterpart National Security Councils of other Countries.



1.2.2 Ministry of NHR&C

The Ministry of National Health Services Regulation and Coordination in consultation with the relevant ministries (Ministry of Economic Affairs Division, Ministry of Interprovincial Coordination and Cabinet Division) is responsible to ensure National Planning and Coordination, Drug Regulation and other medical professional regulatory frameworks.

International aspects of medical facilities and public health, International Health Regulations, health and medical facilities abroad. National Planning and Coordination in the field of health. National Health Emergency Preparedness and Response Network. National Institute of Health Drug Regulatory Authority of Pakistan. Directorate of Central Health Establishment. Pakistan Medical Research Council. Pakistan Medical and Dental Council. Pakistan Council for Nursing.

1.2.3 Provincial Sub-constitutional framework in relation to health:

The provincial frameworks in relation to health are dealt in the relevant provincial rules of business which are as follows:

1. The Baluchistan Rules of Business, 2012
2. KPK Rules of Business, 1972
3. The Punjab Government Rules of Business 2011
4. The Sindh Government Rules of Business, 1986

The Rules Of Business of all the Provincial Governments prescribe prevention and control of infectious and contagious diseases as a subject to be dealt by their Health Departments under diverse legal regimes in the Provinces but it is imperative to note that none of the provincial legal framework provide mechanism to address the problem ancillary to a cross-provincial pandemic posing grave threat to the national security. This conspicuous vacuum in the Provincial legal frameworks along with the phenomena of pandemics, wide-spread epidemics, biowarfare, biosecurity, cross-provincial infectious diseases as subjects of national security falling within the exclusive domain of the Federal Government.



1.3 Legal Framework

1.3.1 Federal

At the Federal level, the law dealing with public health security is the Epidemic Disease Act, 1897 which does not provide for any mechanism to treat the pandemics as threats to national security and public health security. The factors leading to the emergence and spread of communicable diseases have also changed over the years and it is not catering the present epidemic situation

The law specifies consequences that will be faced by those violating the remit of the Epidemic Act, with penalties being similar to the one provided in section 188 of the Pakistan Penal Code, 1860 (“PPC”) which is the law that deals with acts of disobedience to a government order.

PPC further provides offences and punishments in relation to spread of infectious diseases under its Sections 269 and 270.

Pakistan has recently passed COVID - 19 Prevention of Smuggling, 2020 to prevent smuggling in respect of certain articles including Foreign Currency, Gold and Silver, Precious stones, live stock and certain items of food consumption.

Sec.269.- Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Sec.270.- Whoever malignantly does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both

1.3.2 Balochistan

In Balochistan, the law regarding public health security is West Pakistan Epidemic Diseases Act, 1958. This Act of 1958 provides power to the provincial government to take special and appropriate measures and prescribe regulations in the case of wide spread of any dangerous epidemic disease when the existing laws are insufficient to cater the situation. It also empowers the provincial government for the inspection of persons travelling by railway or any other way and does segregation of the infected persons in the hospitals and other places at the time of the widespread of such disease.



1.3.3 Punjab

In Punjab, the recent legislation on public health security is the Punjab Infectious Diseases (Prevention and Control) Ordinance, 2020 (**the Ordinance of 2020**) which was promulgated in order to counter the effects of present infectious COVID – 19 outbreak. Under this Ordinance, the Secretary Health with the approval of Chief Minister Punjab has the powers to declare a serious and imminent infection threat and give precautionary measures in order to save the public health at large.

The Secretary is empowered to compel all registered medical practitioners and health facilities in the area to record, notify and treat cases of infection or contamination and it has the powers to obligate the local governments to monitor and control public health risks. The Secretary in case of a widespread infectious disease may impose further restrictions upon the general public in order to prevent and control the public health risks. The Secretary may also impose restrictions and directions relating to attendance of schools, burial and other public gatherings and closing or restricting entry and departure of certain places and locations in order to prevent the public from the epidemic disease. For the enforcement of certain directions by the Secretary, the Deputy Commissioner may take steps and pass orders to restrict the movements of persons in that particular area or place or may detain persons and can use force in order to prevent the general public from the infectious disease.

In case of the potentially infectious person, the medical officer will precede his screening and assessment and restrict his movement and put such infected person in a specified place in order to protect the general public from the epidemic disease. The notified medical officer should examine the infected person and take the information regarding his travel history or the information regarding other persons who might have contacted him.

Under the Ordinance of 2020, every person living in the province i.e. head of a family, health care provider, in-charge of school, in-charge of public transport or hotel or place of worship is under statutory obligation to inform the notified medical officer about any person who is infected or contaminated with an infectious disease immediately for the protection of public at large.

The offenses and penalties are also defined and prescribed in the Ordinance of 2020 regarding the non-compliance of the directions and orders of the provincial governments or absconding from a place of retention in order to enforce it on the general public for their protection from the epidemic disease. Violation of any clause will result in two months imprisonment and fine of Rs50,000. Violation of more than one clause will lead to six months imprisonment and fine of Rs0.1 million. A fine of up to Rs0.2 million will be imposed on an institution for the first time violation. For patients receiving treatment at a quarantine center or some other facility, a first escape attempt will lead to six months imprisonment and a fine of 50,000. A second escape attempt will lead to an 18 months imprisonment and fine of up to Rs0.1 million.



1.3.4 Sindh

The Sindh Epidemic Diseases Act, 2014 has adopted the identical provision of the West Pakistan Epidemic Diseases Act, 1958 mentioned above i.e. empowering the provincial government to take appropriate measures and prescribe temporary regulations during the spread of the dangerous epidemic disease.

The Sindh COVID-19 Emergency Relief Ordinance, 2020, has been promulgated to offer institutional concessions and facilities to people in the province in view of their economic hardships and sufferings due to the COVID-19 lockdown in place.

1.3.5 Khyber Pakhtunkhwa

The KPK Public Health (Surveillance and Response) Act 2017 (“**KPK Act 2017**”) deals with the public health issues in the KPK in line with guidelines as provided by the IHR-2005. The KPK Act 2017 provides establishment of KPK Public Health Committee (KPK - PHC), which has been established and headed by the Minister. The basic function of this Committee is to ensure the compliance of IHR-2005 with regard to coordination, surveillance, response, preparedness, risk communication and human resource. It also ensures the availability of all the necessary equipment, devices, machines and instruments to assist in the prevention and control of spread of notifiable diseases for the safety of public health. It also reviews the public health situations in the province and in case of any apprehension of spread of any notified diseases. The Committee has to collaborate and coordinate with the WHO and any other international organizations regarding any technical or financial assistance and support for prevention and control of spread of disease. It also has to take appropriate measures to deal with such health emergencies.

The chairperson while exercising powers under the KPK Act 2017 has the powers to declare a health emergency to enable the department to take necessary measures for preparedness, prevention, control and response throughout the province.

A provincial Disease Surveillance Centre has been established under the KPK Act 2017 whose function is to collect and exchange information with district disease surveillance centers and provide such information regarding diseases to the public health committee and forward the assessment of disease and events to the Federal Government.

1.4 Biosecurity and Biodefense

The biological threats are either natural or man-made. The benevolent and malevolent use of biological sciences intensifies the significance of Biosecurity. Despite its importance, Biosecurity receives inconsequential attention in Pakistan. The focus on Biosecurity in Pakistan is not much different from other developing countries. The people of Pakistan are vulnerable to Biosecurity related challenges. The complex nature of Biosecurity challenges and underscores that no nation and no institution is capable of dealing with them on its own. The only way to deal with these threats and challenges is through an



integrated and allied strategic approach, which includes both non-military and military capabilities.¹⁰

Existing Legislation and Policy Measures

Pakistan has taken initial steps towards reaching the targets for biosafety with the drafting of some national guidelines and rules. Legislation exists on biosafety but is missing for biosecurity. There is no systematic inventory of biohazards that could maintain and control biohazard materials.¹¹

Pakistan is a signatory to the Biological Toxic Weapon Convention (BTWC) since 1972. As a state party to this convention, Pakistan recognizes obligations to prevent potential negative use of biological and toxin agents. Some of the legal regimes partially deal with the issues of biotechnology.

Environmental Protection Act, 1997 the Biosafety Rules, 2005 and the Biosafety Guidelines, 2005 have been framed under the Environmental Protection Act, 1997.

Biosafety Rules are applicable to the manufacturing, importation and storage of microorganisms or their gene products for research purpose by any research institute and the importation, export sale or purchase of any living modified organisms and their products for commercial purpose. It also implies the field trials of genetically modified plants, animals and microorganisms.

Biosafety Guidelines were developed to avoid possible undesirable effects arising from laboratory work on recombinant DNA and deliberate release of GMOs and their products on human health and environment including regulations for conducting laboratory and field work as well as procedure for approval of GMOs for commercial use.

The Ministry of Environment has written national caution No. F.2(7)95-Bio) biosafety guidelines (Notified Organisms concerning Genetically Modified Organisms (GMOs) and products thereof. A national legislation exists in biosafety but falls under the Ministry of Environment and does not address human and animal health laboratories as such. c. Certain aspects of biosafety have been covered under Punjab PHCC/EPA Act 2010 which is being partially enforced.¹²

National Laboratory Biosafety & Biosecurity Policy- 2017 (“National Biosecurity Policy”)

The Ministry of NHR&C regards IHR 2005 as priority technical areas for Global Health Security but an effective biosafety and biosecurity system is required to be in place across the laboratories operational in different sectors. The policy framework for biosafety and biosecurity was a long-awaited need of the country and will serve as a starting point for establishing a biosafety and biosecurity system in Pakistan. This National Biosecurity Policy outlines the key element of biosafety and biosecurity management system such as legislation, capacity building, infrastructure,

¹⁰ Biosecurity and Pakistan: A Critical Appraisal Dr. Zafar Nawaz Jaspal

¹¹ JEE

¹² National Laboratory Biosafety & Biosecurity Policy- 2017



human resource, administration as well as operational requirements to mitigate the threats associated with unsafe practices.¹³

National Biosecurity Policy provided the following Policy Statements:

- 1.1 Establish regulatory and legal frameworks to ensure requisite biosafety and biosecurity requirements are prescribed and implemented for the field of life sciences.
- 1.2 There shall be certain imperative components for considerations while formulating the legislation, but not limited to the following:
 - a. Infrastructure.
 - b. Equipment & PPE.
 - c. Storage, Handling & Transport of Specimens.
 - d. Infectious Waste Management.
 - e. Training of Personnel.
 - f. Occupational Health.
 - g. Biosecurity.
- 1.3 There shall be a National Biosafety Committee responsible for overall guidance and implementation of legislation.
- 1.4 There shall be an Oversight Committee responsible for ensuring effective monitoring and implementation of the policies.
- 2.1 There shall be a body of national representatives of experts in laboratory biosafety and biosecurity endorsed at federal and provincial levels (National Biosafety Committee; clause 1.3).
- 2.2 The body shall be formed of representatives from each of the following public and private sectors:
 - 2.2.1 Human
 - 2.2.2 Animal
 - 2.2.3 Agriculture
 - 2.2.4 Environment
 - 2.2.5 Academia
 - 2.2.6 Civil society
 - 2.2.7 Representatives of Professional organizations/society [Pakistan Association of Pathologists (PAP); Pakistan Biological Safety Association (PBSA); Medical Microbiology & Infectious Diseases Society of Pakistan (MMIDSP)]

¹³ Ibid



2.2.8 Other relevant not addressed above.

2.3 Such a body shall be represented at Federal and Provincial levels.

1.5 Quarantine Laws in Pakistan

The Federal List provides border control and admission from all channels including marine, aviation, land and pilgrimages to places beyond Pakistan as a Federal Legislative subject, falling in the jurisdiction of the federal government but the port quarantines and hospitals connected with the port quarantines are also federally regulated. The plain reading of law makes it abundantly clear, that if the disease is emanating from a foreign destination, it is the exclusive jurisdiction and responsibility of the federation to take care of it. The Federal Government has the exclusive powers to control the entry and exit from the country. The devolution or 18th Amendment has not tackled this subject in any way. Even before independence, ports and connected quarantine hospitals were federal subjects under the Government of India Act, 1935.¹⁴

Despite the clear mandate of the Parliament, Pakistan does not have any specific Quarantine Law in relation to the inland quarantines relating to humans though the PPC provides certain penal provisions relating to quarantines under section 271.

The law relating to plant quarantines i.e. the Pakistan Plant Quarantine Act, 1976. The Act of 1976 was enacted to control and regulate the imports of the plants and other things, goods related to plant breeding in Pakistan. The Pakistan Animal Quarantine (Import and Export of Animal and Animal Products) Ordinance, 1979 dealt with the Animal Quarantine. This Ordinance of 1979 was enacted in order to regulate and prohibit the import and export of animals and animal products in Pakistan. Under this Act, the Federal Government is responsible to prohibit, restrict or regulate the import and export of any animal or class of animals or

Federal List

Border control and admission from all channels including marine aviation (land and pilgrimages to places beyond Pakistan squarely falls in the jurisdiction of the federal government but the port quarantines and hospitals connected with the port quarantines.¹⁵

271. Disobedience to quarantine rule:

Whoever knowingly disobeys any rule made and promulgated by the Federal or any Provincial Government for putting any vessel into a state of quarantine, or for regulating the intercourse of vessels in a state of quarantine with the shore or with other vessels, or for regulating the intercourse between places where an infectious disease prevails and other places, shall be punished with imprisonment of either description for a

¹⁴ Corona Epidemic and Constitutional Scheme – A Legal Perspective by Ch. Sultan Mahmood
<https://www.brecorder.com/2020/04/04/586476/corona-epidemic-and-constitutional-scheme-a-legal-perspective/>

¹⁵ F-List Entries 6, 19, 20 and 22



animal products likely to causes infection or any disease to any other animal, animal product or people and authorized to put any animal or class of animals into quarantine for the protection of other animals and products of animals of Pakistan.

term which may extend to six months, or with fine, or with both.

1.6 Emergency Response Framework

The West Pakistan National Calamities (Prevention and Relief) Act of 1958 was the first legislation for disaster management caused by calamities and Emergency Response Centres were also established but the focus was on management of consequences of the disasters. The Pakistan Emergency Service Ordinance, 2002 and National Disaster Management Ordinance, 2006 were issued in view of national calamities which constituted the National Disaster Management Commission and Authority (NDMC and NDMA). The floods in 2010 led the legislature to deliberate upon national disasters and the National Disaster Management Act, 2010 (“**NDMA Act-10**”) was passed which deals with the establishment, functions and powers of a statutory institutional framework for federal, provincial and district Disaster Management Authority functionaries. The constitutional mandate to legislate the NDM Act-10 was granted to the Parliament after a resolution was passed by all the provincial assemblies under Article 144 of the Constitution in this regard.

NDMA is the considered a comprehensive and exhaustive emergency response and coordination entity to prevent, regulate, preparedness, rehabilitation and reconstruction and also formulate the policies and guidelines for effective and synergized national response and relief.

NDM Act-10 establishes three tiers for the disaster management system: i.e., national, provincial and district levels. NDMC operates at the national level, and has the responsibility for laying down policies and guidelines for disaster risk management and approval of the national plan.

NDMA serves as the implementing, coordinating and monitoring body for disaster risk management at the national level Along with this National Disaster Risk Management Framework (NDRMF) has been prepared which serves as an overall guideline for disaster risk management at national, provincial and district levels.

Powers & Functions of NDMA:
Act as the implementing, coordinating and monitoring body for disaster management.

Prepare the National Plan to be approved by the National Commission.

Coordinate response in the event of any threatening disaster situation or disaster.

Lay down guidelines for or give directions to the concerned Ministries or Provincial Govt and the Provincial Authorities regarding measures to be taken by them in response to any threatening disaster situation or disaster.

For any specific purpose or for general assistance requisition the services of any person and such person shall be a co-opted member and exercise such power as conferred upon him.

Provide necessary technical assistance to the Provincial Governments and the Provincial



The NDMA has formulated the National Disaster Response Plan (NDRP) identifying specific roles and responsibilities of the relevant stakeholders in emergency response including SOPs.

Authorities for preparing their disaster management plans in accordance with the guidelines laid down by the National Commission. Lay down guidelines for preparing disaster management plans by different Ministries or Departments and the Provincial Authorities. Perform such other functions as the NDMC may require it to perform.



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PART-II

GLOBAL HEALTH SECURITY

2.1 Defining Global Health Security

The concept of ‘health security’ has been increasingly apparent in recent years in both academic and policy discourses on transborder infectious disease threats. Yet it has been noted that there are a range of conceptualizations of ‘health security’ in circulation. It begins by looking at the different ‘health securities’ that characterize the contemporary global health discourse. In particular there is a high level of agreement evident over what the major threats to ‘health security’ are and what should be done about them, and contemporary global responses often couched in the language of global health security have a tendency to focus on containment rather than prevention.

Global health security may be defined liberally, so that it would extend well beyond the threats of pandemics and bioweapons of mass destruction.¹⁶ The spread of infectious disease can be deadlier than world wars. Compare World War I—one of the deadliest conflicts in human history, with 20 million military and civilian deaths combined—with the 1918 Spanish flu, which killed as many as 50 million people¹⁷ and infected one-third of the then global population.¹⁸ In the last few years, eight in ten outbreaks requiring an international response have occurred in countries affected by fragility, conflict, and insecurity.¹⁹

Global Health Security A 2007 report from the World Health Organization articulated the objects and aims of global health security. The report, titled “A Safer Future: Global Public Health Security in the 21st Century,” began by noting the success of traditional public health measures during the twentieth century in dealing with devastating infectious diseases such as cholera and smallpox. But in recent decades, it continued, there had been an alarming shift in the “delicate balance between humans and microbes.” A series of factors—including demographic changes, economic development, global travel and commerce, and conflict—had “heightened the risk of disease outbreaks,” ranging from new infectious diseases such as HIV/AIDS and drug-resistant tuberculosis to food-borne pathogens and bioterrorist attacks. The WHO report proposed a strategic framework for responding to this new landscape of threats, which it called “global public health security.” The framework emphasized a space of global health that was distinct from the predominantly national organization of traditional public health. “In the globalized world of the 21st century,” the report began, simply stopping disease at national borders was not adequate. Nor was it sufficient to respond to diseases after they had become established in a population. Rather, it was necessary to prepare for unknown outbreaks in advance,

¹⁶ Bouskill, Kathryn E. and Elta Smith, *Global Health and Security: Threats and Opportunities*. Santa Monica, CA: RAND Corporation, 2019. <https://www.rand.org/pubs/perspectives/PE332.html>.

¹⁷ Updating the accounts: global mortality of the 1918-1920 “Spanish” influenza pandemic.

¹⁸ Centers for Disease Control and Prevention, National Center for Immunization and Respiratory Diseases (NCIRD): <https://www.cdc.gov/flu/pandemic-resources/1918-pandemic-h1n1.html> [Accessed 16 April 2020].

¹⁹



something that could be achieved only “if there is immediate alert and response to disease outbreaks and other incidents that could spark epidemics or spread globally and if there are national systems in place for detection and response should such events occur across international borders.”²⁰

Global health security as visualized in Global Health Security Agenda 2014 focuses on “emerging infectious diseases”—whether naturally occurring or man-made. Its exemplary pathogens include weaponized smallpox, SARS, and highly virulent influenza; but what is crucial is that this regime is oriented toward outbreaks that have not yet occurred. For this reason, it seeks to implement systems of preparedness for events whose likelihood is incalculable but whose political, economic, and health consequences could be catastrophic. Its ambitious sociotechnical agenda is to create a real-time, global disease surveillance system that can provide “early warning” of potential outbreaks in developing countries and link such early warning to immediate systems of response that will protect against their spread to the rest of the world. To achieve this, global health security initiatives draw together various organizations including multilateral health agencies, national disease control institutes, and collaborative reference laboratories and assemble diverse technical elements such as disease surveillance methods, emergency operations centers, and vaccine distribution systems.

2.2 International Health Law

The term “international health law” began to appear in the literature in the 1950s; for most authors, the term signified the rules of international law aimed at providing enhanced legal protection for the victims of armed conflicts, with particular reference to certain provisions of the 1949 Geneva Conventions. In 1953, the Sixth World Health Assembly, after considering a suggestion by the Belgian Government that a preliminary study be undertaken of the problems relating to international medical law and comparative health legislation, adopted resolution WHA6.40 inviting the Director-General to undertake such a study. The responses received clearly reflected the general interest shown by governments, organizations, and individuals in an analysis and study of problems relating to international medical law.²¹

²⁰ Lakoff, Andrew. “Two Regimes of Global Health.” *Humanity: An International Journal of Human Rights, Humanitarianism, and Development*, vol. 1 no. 1, 2010, p. 59-79. Project MUSE, [doi:10.1353/hum.2010.0001](https://doi.org/10.1353/hum.2010.0001).

²¹ Michel Belangera -The future of international health legislation -International Digest of Health Legislation, 1989, 40 (I)



2.2.1 Health Security and the United Nations

The United Nations General Assembly in Paris on 10 December 1948 proclaimed the Universal Declaration of Human Rights (UDHR), a milestone document drafted by representatives with different legal and cultural backgrounds from all regions of the world; the UDHR is a common standard of achievements for all peoples and all nations. It sets out, for the first time, fundamental human rights to be universally protected. The right to health was again recognized as a human right in the 1966 International Covenant on Economic, Social and Cultural Rights.

Article 25- UDHR

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, and housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection

For the first time in history, the United Nations Security Council the UN Security Council (“UNSC”) discussed a health issue as a threat to international peace and security in a UNSC meeting on January 10, 2000 as UN Secretary-General Kofi Annan explained the security implications of the pandemic:

The impact of AIDS in [southern and eastern Africa] is no less destructive than that of warfare itself. Indeed, by some measures it is far worse. Last year, AIDS killed about ten times more people in Africa than did armed conflict. By overwhelming the continent's health services, by creating millions of orphans and by decimating health workers and teachers, AIDS is causing social and economic crises which in turn threaten political stability. It also threatens good governance, through high death rates among the elites, both public and private.

In already unstable societies, this cocktail of disasters is a sure recipe for more conflict. And conflict, in turn, provides fertile ground for further infections. The breakdown of health and education services, the obstruction of humanitarian assistance, the displacement of whole populations and a high infection rate among soldiers—as in other groups which move back and forth across the continent—all these ensure that the epidemic spreads ever further and faster.

In 2014, UNSC declared Ebola a threat to “international Peace and Security,” leading to exercise of its powers under Chapter-VII and marking the first time it had ever made this declaration for a disease outbreak. The UN Secretary General subsequently activated the first ever UN emergency health mission, the UN Mission for Ebola Emergency Response (“UNMEER”), to provide a singular, UN approach in responding to Ebola.²² The mission was credited with bringing high level political and donor attention to the outbreak,

²² UNMEER, <https://ebolaresponse.un.org/un-mission-ebola-emergency-response-unmeer>.



but drew criticism for its own operational response, which bypassed existing organizational frameworks.²³

Some observers have seen the UNSC's power as a means toward increasing compliance with the IHR-2005, including through the threat of UNSC sanctions.²⁴ Others have argued that sanctions would be counter-productive in health emergencies.²⁵ And tying the global health security regime even more closely to the UNSC's powers under Chapter-VII of the UN-Charter could further politicize pandemic response and bring even greater legitimacy challenges to these institutions. Others have sought enforcement mechanisms through cooperation with other international organizations. For example, it has been argued that international financial institutions such as the World Bank and the International Monetary Fund could "condition" certain health-related funding on meeting capacity-building targets or otherwise complying with the IHR-2005.²⁶

These emerging global health security threats have created new prospects among international institutions, leading at once to new operational challenges and new possibilities for the enforcement of states' international health obligations.

2.3 World Health Organization

Founded in 1946, the WHO has matured during a time when many feared air travel, mass migration, and the pace of globalization enabled diseases to cross the globe at previously unknown speeds.²⁷ Today, the organization remains "the directing and coordinating authority on international health work."²⁸

In 2000, the WHO established the Global Outbreak Alert and Response Network (GOARN), a network of over 250 technical institutions and networks globally that respond to acute public health events with the deployment of staff and resources to affected countries.²⁹ GOARN is a network of surveillance systems that includes a number of formal and informal sources. The WHO gathers this raw intelligence and converts it into "meaningful intelligence," using six main criteria "to determine whether a reported disease event constitutes a cause for international concern."³⁰

2.3.1 WHO and Health Emergencies

Following the 2013–2016 Ebola crisis, the Sixty-ninth World Health Assembly adopted decision WHA69 (9) regarding the reform of WHO's work in health emergency management. The WHO Health Emergencies Programme (WHE) was officially launched in July 2016 to address the full risk management cycle, including prevention, preparedness, response and recovery.³¹ WHE leads and coordinates international responses to contain

²³ Ebola Interim Assessment Panel, ¶ 78.

²⁴ Ebola Interim Assessment Panel, 19

²⁵ Ebola Review Committee, 77

²⁶ Gostin & Katz, *IHR*, 302.

²⁷ Gian Luca Burci & Jakob Quirin, *Ebola, WHO, and the United Nations* (ASIL Insights, 14 November 2014)

²⁸ WHO Constitution (22 July 1946) 14 UNITS 186 (entered into force 7 April 1948), art. 2(a).

²⁹ <https://extranet.who.int/goarn/>

³⁰ <https://www.loc.gov/law/help/health-emergencies/who.php>

³¹ WHO in emergencies [website]. Geneva: World Health Organization; 2018 (<http://www.who.int/emergencies/en/>).



disease outbreaks, and provides effective relief and recovery to affected people... The common structure of the programme across the three levels of the organization comprises five technical and operational departments: Infectious Hazards Management; Country Health Emergency Preparedness and the IHR-2005; Health Emergency Information and Risk Assessments; Emergency Operations; and Emergency Core Services. WHO Influenza Preparedness and Response Unit is located within WHE. During a health emergency, WHE would manage the response as operationalized through the Incident Management System outlined in the WHO Emergency Response Framework³².

2.3.2 WHO- Global Influenza Strategy

The WHO released a global influenza strategy for 2019–2030, 104 outlining strategic objectives and actions for stakeholders. The high-level goals for the strategy include “better global tools to prevent, detect, control, and treat influenza” and to focus on building stronger country capacities that are integrated within national health security planning and universal health coverage efforts.³³

2.4 International Health Regulations -2005

Background History

SARS heightened awareness among the international public health and political communities that every country faced biothreats, ranging from newly emerging diseases to bioterrorism that might not be foreseeable.³⁴

In 2005, the WHO commenced a Pandemic Preparedness Program that requires the Member States to create national preparedness plans. Also, in 2005, the World Health Assembly agreed on new health regulations³⁵ that create an international pandemic risk management system by requiring the Member States to report on an expanded list of diseases and. In May 2005, WHO Member States adopted the IHR-2005, which then entered into force on 15 June 2007.³⁶

The IHR-2005 are an international legal instrument that aims to prevent, protect against, control and enable public health response to the international spread of disease in ways that are commensurate with avoiding unnecessary interference with international traffic and trade. The IHR-2005 requires States Parties to strengthen core public health capacities, including preparedness, surveillance and response. All States Parties were expected to begin implementing plans of action to ensure that core capacities required by the IHR-2005 were present and functioning throughout their territories by the deadline of 15 June 2012. In 2016, WHO, in collaboration with Member States and other partners developed the Joint External Evaluation (JEE) tool to assess countries’ capacities and assist them with identifying the most urgent needs within their health systems. Additionally, Member States

³² Emergency response framework – second edition. Geneva: World Health Organization; 2017 (<http://apps.who.int/iris/bitstream/handle/10665/258604/9789241512299-eng.pdf?sequence=1>)

³³ World Health Organization. (2019) .Global influenza strategy 2019-2030.

³⁴ National Academies of Sciences, Engineering, and Medicine 2020. A Strategic Vision for Biological Threat Reduction: The U.S. Department of Defense and Beyond. Washington, DC: The National Academies Press. <https://doi.org/10.17226/25681>.

³⁵ IHR-2005 (23 May 2005) 2509 UNTS 79 (entered into force 15 June 2007)

³⁶ WHO: legal responses to health emergencies. <https://www.loc.gov/law/help/health-emergencies/who.php> last accessed: 4th April 2020



developed the national action plans for health security (NAPHS) planning process, to address national gaps and accelerate implementation of the IHR-2005.³⁷

The IHR-2005 are not limited to specific diseases, although all human cases with a novel influenza A subtype are required to be notified by States Parties to WHO under the IHR-2005. However, the ongoing influenza capacity-building efforts positively contribute to countries' overall IHR-2005 core capacity requirements. WHO has the role of ensuring alignment of this strategic plan with the Global Strategy for Influenza.³⁸

Because influenza capacity-building efforts contribute to countries' IHR-2005 core capacities, pandemic preparedness planning should be aligned with national health security efforts, such as the JEE and NAPHS planning processes and simulation exercises, to maximize efficiency and consistent utilization of existing systems.³⁹

2.4.1 IHR-2005 - Roles and Obligations of the States

From the perspective of the IHR-2005, states are treated as constituent parts of an internationalized response to public health emergencies. States are expected to monitor health threats, report outbreaks, and then accordingly implement their obligations under the IHR-2005, and they are obligated to build the capacity necessary to meet these expectations. In practice, state compliance with these obligations is uneven at best, and the ability of the WHO to effectively coordinate an international response has also been called into question. But, by design, the IHR-2005 envisions a hub-and-spoke model, where an international organization coordinates the response to international health emergencies, even if states are the prime movers within their own jurisdictions.⁴⁰

The IHR-2005 requires that member states develop the capacity to “detect, assess, notify and report” potential health emergencies in all areas within their territory and to respond “promptly and effectively.”⁴¹ As a result of these provisions, the IHR-2005 reflects a kind of administrative law, with significant implications for how states structure their primary health systems. States must notify the WHO of a potential public health emergency in their territory within twenty-four hours.⁴²

In deciding whether to notify, States shall consider a range of factors including the cause of the outbreak, the seriousness of the public health impact, whether the event was unexpected, the risk of international spread, and the risk of states adopting travel or trade restrictions.⁴³ While certain diseases smallpox, poliomyelitis, SARS, and new subtypes of influenza must always be notified, “any event of potential international public health concern, including those of unknown causes or sources,” can constitute an international emergency.⁴⁴

³⁷ World Health Organization. (2019) .Global influenza strategy 2019-2030, 20

³⁸ National plans for pandemic preparedness and risk management. In: Strategic partnership for International Health Regulations (2005) and health security (SPH) [website]. Geneva: World Health Organization; 2018

³⁹ World Health Organization. (2019) .Global influenza strategy 2019-2030, 20

⁴⁰ Fidler, ‘Constitutional Outlines’, 267-269; Alvarez, *Impact*, 208-233.

⁴¹ IHR 2005, art. 6(1)

⁴² Ibid

⁴³ Ibid

⁴⁴ Ibid, Annex 2



2.5 Global Health Safety Agenda [GHSA 2014 & GHSA 2024]

The Global Health Security Agenda is an effort by nations, international organizations, and civil society to accelerate progress toward a world safe and secure from infectious disease threats; to promote global health security as an international priority; and to spur progress toward full implementation of the WHO, IHR-2005, the World Organization for Animal Health (OIE) Performance of Veterinary Services (PVS) pathway, and other relevant global health security frameworks.⁴⁵

IHR-2005 mandated that countries were to be in compliance with WHO Regulations by 2012. Despite the mandate, only some 20% of countries reported to WHO having developed IHR-2005 core capacities in 2012. Many observers asserted the regulations needed a funding mechanism to help resource-constrained countries with compliance. In 2014, WHO and the United States jointly launched the Global Health Security Agenda, a five-year (2014-2018) multilateral effort to accelerate IHR-2005 implementation, particularly in resource-poor countries lacking the capacity to adhere to the regulations.

2.5.1 GHSA Action Packages

In order to encourage progress toward these goals, the “Action Packages” concept was developed to facilitate regional and global collaboration toward specific GHSA objectives and targets. Following the May 2014 GHSA Commitment Development meeting in Helsinki countries identified eleven discrete GHSA Action Packages, which were discussed further at the August 2014 Global Infectious Diseases Meeting in Jakarta. All countries that support the GHSA are welcome to participate in one or more Action Packages and are asked to consider specific commitments across these areas on a national, regional, or global basis. The purpose of Action Packages and the underlying Prevent-Detect-Respond framework is to:

- a. Focus international discussion toward specific, coordinated actions in support of the GHSA;
- b. Highlight measurable approaches countries can adopt to accelerate, monitor and report GHSA progress; and
- c. Provide a mechanism by which countries can make specific commitments and take leadership roles in the GHSA. Countries can consider commitments to one or more Action Packages and may agree to lead, co-lead or actively participate in work with other countries regionally or globally to implement a unified set of actions.⁴⁶

⁴⁵ Preamble - Global Health Security Agenda (GHSA) dated _____

⁴⁶ Preamble GHSA-2014



International efforts to address global health security have long focused on public health science rather than on enabling legislation and authorizing regulations that empower, mandate, and authorize governments to prevent, detect, and respond to public health emergencies.⁴⁸ To achieve GHSA objectives and targets, new or supplemental legislative and institutional are required to strengthen and implement the IHR-2005 and OIE frameworks. For the GHSA to function optimally, national governments must establish a minimum package of elements that comprise the necessary legal framework to support the GHSA Action Packages.⁴⁹

At the end of the first phase of GHSA 2014, WHO found that more than 70% of surveyed countries were prepared to address a global pandemic. In 2017, participating countries agreed to extend the GHSA through 2024 and expand membership to non-state actors. In November 2018, the GHSA Steering Group released the Global Health Security Agenda (GHSA) 2024 Framework, also referred to as “GHSA 2024.” Whereas the first phase of GHSA lacked a clear governance structure, GHSA 2024 “aimed to be strategic and streamlined, have clear governance and collaboration structures and processes, and increase engagement of the broader GHSA community.

⁴⁷ [https://ghsagenda.org/]

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2.6 International Biosecurity Framework

In the early 1980s this trend was reversed, as a result of the international treaty governing the inspection and (control of) proliferation of biological weapons is the Biological Weapons Convention (BWC) of 1975. The BWC forbids the development, manufacture and stockpiling of bacteriological (biological) and toxin weapons and requires the destruction of existing stockpiles.

In recent years, the concept of biothreat has continued to evolve to include natural, accidental, and intentional threats and their social, economic, political, and security consequences; exploitation of biotechnologies for malicious and/or military use; and unauthorized access to biological data. This evolution reflects the significant changes that have been observed in human and animal health, the biotechnology landscape, the bio-based economy, and international sample and data-sharing policies.

These changes have been enabled by globalization of the biological and biotechnological sciences, Internet-connected facilities and information systems, an influx of new funders and practitioners, and increased investments in biodiversity and environmental scanning. Biological threats originate from multiple sources.

Each State Party to this Convention undertakes never in any circumstances to develop, produce, stockpile or otherwise acquire or retain:

- (1) Microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes;
- (2) Weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict. .

Each State Party to this Convention shall, in accordance with its constitutional processes, take any necessary measures to prohibit and prevent the development, production, stockpiling, acquisition or retention of the agents, toxins, weapons, equipment and means of delivery specified in Article I of the Convention, within the territory of such State, under its jurisdiction or under its control anywhere.

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Each State Party to this Convention shall, in accordance with its constitutional processes, take any necessary measures to prohibit and prevent the development, production, stockpiling, acquisition or retention of the agents, toxins, weapons, equipment and means of delivery specified in Article I of the Convention, within the territory of such State, under its jurisdiction or under its control anywhere.



manufacture and stockpiling of bacteriological (biological) and toxin weapons and requires the destruction of existing stockpiles.

In recent years, the concept of biothreat has continued to evolve to include natural, accidental, and intentional threats and their social, economic, political, and security consequences; exploitation of biotechnologies for malicious and/or military use; and unauthorized access to biological data. This evolution reflects the significant changes that have been observed in human and animal health, the biotechnology landscape, the bio-based economy, and international sample and data-sharing policies.

These changes have been enabled by globalization of the biological and biotechnological sciences, Internet-connected facilities and information systems, an influx of new funders and practitioners, and increased investments in biodiversity and environmental scanning.⁵⁰ Biological threats originate from multiple sources.

2.6.1 United Nations and Biosecurity

United Nations Security Council Resolution (UNSCR) 1540 Committee Resolution 1540 (“UNSCR 1540”) imposes binding obligations on all States to adopt legislation to prevent the proliferation of nuclear, chemical, and biological weapons, and their means of delivery, and establish appropriate domestic controls over related materials to prevent their illicit trafficking. It also encourages enhanced international cooperation in this regard.

All States, in accordance with their national procedures, shall adopt and enforce appropriate effective laws which prohibit any non-State actor to manufacture, acquire, possess, develop, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery, in particular for terrorist purposes, as well as attempts to engage in any of the foregoing activities, participate in them as an accomplice, assist or finance them;

2.6.2 GHSA 2024 and Biosecurity

In the November 2018 GHSA Ministerial Meeting in Bali, Indonesia. More than 600 delegates from 49 countries attended. At the Ministerial Meeting and in several side meetings, GHSA Action Package 3 on Biosafety and Biosecurity was discussed at length. GHSA provided to advance awareness and collaboration on global health security broadly and on biosafety and biosecurity specifically, while maintaining the important catalytic role of GHSA through the newly approved GHSA 2024 framework.

2.7 GHS-WHO Response to COVID-19

According to IHR-2005, WHO member states have the obligation “to notify WHO of events that may constitute a public health emergency of international concern according

⁵⁰ National Academies of Sciences, Engineering, and Medicine. 2020. A Strategic Vision for Biological Threat Reduction: The U.S. Department of Defense and Beyond. Washington DC: The National Academies Press. <https://doi.org/10.17226/25681>. p.35



to defined criteria.” Fulfilling this obligation, the Chinese government notified the WHO of the COVID-19 outbreak, identified the pathogen swiftly, and shared its genome sequence. After two Emergency Committee meetings pursuant to the global concerns around the pandemic potential of COVID-19, the Director-General of WHO declared the outbreak of COVID-19 a Public Health Emergency of International Concern on 30 January 2020.

Since the COVID-19 outbreak, the WHO has acted swiftly and played an important role in guiding and coordinating international efforts. However, unlike sovereign governments which can put their whole bureaucracies into full gear with a highest-level alert or the UN Security Council which can adopt legally-binding resolutions assigning responsibility to its member states, the WHO has little leverage over national policies and actions. As a result, when the world is struck by a lasting public health emergency, the WHO can only consult and coordinate with governments of sovereign states and has difficulties in ensuring policy consistency and establishing an accountability system, which weakens their authority and leadership.

Indeed, governments of sovereign states are obligated to take care of their people, but the international flow of public health risks makes it difficult for any country to fulfill its public health obligation alone. Collective actions against global health emergencies led by the WHO and other agencies sometimes conflict with government’s actions to protect its people’s well-being. International cooperation is thus impeded and effective response to health threats is hard to be executed. The Global Preparedness Monitoring Board (GPMB) emphasizes in its annual report the importance of strong political leadership in response to health threats at national and global levels. The GPMB calls for heads of government in every country to make a commitment to preparedness by implementing their binding obligations under the IHR-2005.



PART-III

HEALTH SECURITY LEGISLATIVE DEVELOPMENTS

This part of the document reviews the existing legislative framework in various jurisdictions in the context of COVID – 19 outbreak and health security. This review is an attempt to explore and identify the suitable approach to respond to issues of national health security including but not limited to pandemics and widespread infectious diseases.

3.1 Commonwealth of Australia

Australia has a federal system of government with powers divided under the Constitution between the Commonwealth government and the country's six states and two mainland self-governing territories. Most of the legislative powers are concurrent, meaning that they are shared with state and territory parliaments. Where there is a conflict between state and federal laws, the federal law will override the state law to the extent of the inconsistency.⁵¹

All of the states and territories signed the National Health Security Agreement⁵² in 2008, which supports the Aus NHS Act and NHS Regulations 2008. These enactments give effect to the WHO's IHR-2005 which required Australia to “develop multi-level capacities in the health sector to effectively manage public health threats and to develop, strengthen and maintain the capacity to detect, report and respond to public health events.”⁵³

The National Health Security Act 2007 (“Aus NHS Act”) authorises the exchange of public health surveillance information (including personal information) between the Australian Government, states and territories and the WHO. The National Health Security Agreement supporting the Aus NHS Act formalises decision-making and coordinated response arrangements that have been refined in recent years to prepare for health emergencies.

The Biosecurity Act 2015 authorises activities used to prevent the introduction and spread of target diseases into Australia. People reasonably suspected to have a listed human disease (LHD) specified under the Act are required to comply with a range of biosecurity measures and requests for information as directed by the Director of Human Biosecurity (DHB), Australia's Chief Medical Officer (CMO); Minister for Health; or a biosecurity official or human biosecurity officer as stipulated in the Biosecurity Act. The Governor-General also has the power to declare a human biosecurity emergency, which authorises the Health Minister to implement a broad range of actions in response. These could be applied to respond to a serious infectious disease outbreak or a pandemic. ‘Human coronavirus with pandemic potential’ is an LHD. Diseases can be added to the list of LHDs (as declared under Biosecurity Act) at any time by the DHB at short notice.

⁵¹ Kelly Buchanan, Australia: Legal Responses to Health Emergencies, 2015

⁵² The National Health Security Arrangement is primarily concerned with strengthening Australia's public health surveillance and reporting system. It spells out the responsibilities of entities at the national and state levels of government with regard to surveillance and reporting of communicable diseases and responding to significant public health events.

⁵³ *ibid*



Australia has also established institutional structure for health security such as the Australian Health Protection Committee, National Health Emergency Management Subcommittee, Communicable Diseases Network Australia, Public Health Laboratory Network, and Australian Medical Assistance Teams. They respond to, and coordinate efforts during disease outbreaks.

The Australian Government provides a nationally coordinated approach to health disaster management through the AHPPC which was established in 2003 and previously known as the Australian Health Disaster Management Policy Committee (AHDMPAC).

It is responsible for “high level cross jurisdictional collaboration in public health protection, planning, preparedness, response and recovery in relation to public health emergencies arising from man-made emergencies or natural disasters. Its membership includes the Commonwealth Chief Medical Officer and the Chief Health Officer of each state and territory, as well as health disaster officials, clinical experts, and representatives from the federal Department of Health, Australian Defense Force, and the Emergency Management Australia division of the Attorney-General’s Department.⁵⁴ The roles of the AHPC include:

1. advising and making recommendations to AHMAC on health protection matters; to mitigate emerging health threats related to infectious diseases, the environment, natural disasters and disasters related to human endeavor in a context of prevention, preparedness, response and recovery;
2. advising on national health protection priorities and coordinating the allocation of health resources to these priorities;
3. national coordination of emergency operational activity in health responses to disasters and health protection issues of national significance;
4. Enabling development and adoption by states and territories of national health protection policies, guidelines and standards.

Australian Quarantine Law

The Australian Constitution provides that the federal government has legislative powers with respect to quarantine. The quarantine legislation provides measures for, or in relation to:

1. the examination, exclusion, detention, observation, segregation, isolation, protection, treatment and regulation of vessels, installations, human beings, animals, plants or other goods or things; or
2. the seizure and destruction of animals, plants, or other goods or things; or
3. the destruction of premises comprising buildings or other structures when treatment of these premises is not practicable; and

⁵⁴ Legal response to health emergencies – Report for congress LL File no 2015-011358 last accessed: 3rd April 2020



4. Having as their object the prevention or control of the introduction, establishment or spread of diseases or pests that will or could cause significant damage to human beings, animals, plants, and other aspects of the environment or economic activities.⁵⁵

The Federal Quarantine Law clearly defines what quarantine is and lays out for what purposes people can be quarantined along with enforcement and penalties.

3.2 Canada

Canadian Constitutional federalism involves centralized federal jurisdiction alongside provincial governance, with neither subordinate to the other. Within this structure, the area of health is not specifically assigned to either level of government, which means the federal and provincial governments share public health responsibilities.⁵⁶

In Canada, emergency measures and emergency management requirements at the federal level are governed by the Emergency Act of 1988 and the Emergency Management Act 2007.

Most provinces also have their own Health legislations that clearly delineate measures that are to be implemented in case of a health emergency. However, the federal government takes the lead in the situation of a health emergency. Therefore, most health crises in Canada are handled at the provincial level, in close coordination with the Central government. The Public Health Agency of Canada Act of 2006 led to the creation of the Public Health Agency of Canada (PHAC) which is responsible for the promotion of health, prevention and control of chronic diseases, prevention and control of infectious diseases, and preparation and response to public health emergencies.

The Public Emergency Act gives the power to the Federal government to regulate movement of people, the requisition and disposition of property, the regulation of distribution of essential goods, the establishment of emergency hospitals, and the imposition of fines.

Moreover, the Quarantine Act of 2005 “authorizes the Minister of Health to establish quarantine stations and quarantine facilities anywhere in Canada, and to designate various officers, including quarantine officers, environmental health officers, and screening officers.” Indeed, the provincial governments have greater powers to quarantine and impose penalties.

Human Pathogens and Toxins Act, 2009 establishes a safety and security regime to protect the health and safety of the public against the risks posed by human pathogens and toxins. Prohibited Human Pathogens and Toxins and Risk Groups Human Pathogens Agents pathogens human. The 2009 Act provides a very detailed, institutional, regulatory and enforcement biosecurity framework.

3.3 Republic of China

⁵⁵ <https://www.legislation.gov.au/Details/C2014C00612> last accessed: 23rd April 2020

⁵⁶ <https://theconversation.com/the-limits-of-canadas-federal-emergency-law-during-the-coronavirus-pandemic-134309>



The public health crisis system of the People's Republic of China (PRC or China) has been significantly restructured primarily as a result of the SARS Crisis of 2002–2003. Although a statutory and regulatory framework to handle public health emergencies had been in place prior to the SARS crisis, major laws, regulations, and government measures have been amended or newly enacted since then to curb health emergencies.

For the purpose of preventing and reducing emergent hazards such as natural disasters, industrial accidents, public health crises, and public security hazards, the first PRC Law on Emergency Response (Emergency Response Law) was promulgated in 2007.

Since the passage of the Emergency Response Law, China has established a national system of contingency plans for emergencies, as provided by the Law on Emergency Response. The PRC Law requires the government at all levels, including the State Council and its departments, to formulate contingency plans for emergencies, which these government bodies are to apply according to their level of authority.⁵⁷

A major set of provisions specifically addressing public health emergencies comprise the Regulations on Contingent Public Health Emergencies (Health Emergency Regulations), promulgated by the State Council on May 9, 2003. The Health Emergency Regulations define “public health emergencies” as “major epidemic situations of infectious diseases, broad-spectrum diseases with an unknown cause, major food and occupational poisoning incidents, and other serious public health incidents that occur unexpectedly and cause or may cause The central government departments also established the following measures to specifically manage information reporting, transportation administration, and border quarantine when public health crises occur:⁵⁸

Although the PRC's delay in responding to SARS was partially attributed to concerns about economic repercussions, the PRC first treats an infectious disease as a medical problem requiring a medical response. Thus, the delay may have been due in part to (former) bureaucratic procedures that required classification of an infectious disease as a category B disease before local health authorities were required to report it to the central government. It may also have been unclear whether the disease fell under the WHO's IHR-2005 that makes reporting to the WHO mandatory.⁵⁹

PRC Frontier Health and Quarantine Law

This PRC Law is formulated in order to prevent infectious diseases from spreading into or out of the country, to carry out frontier health and quarantine inspection and to protect human health. Frontier health and quarantine offices shall be set up at international seaports, airports and ports of entry at land frontiers and Boundary Rivers (frontier ports) of China. These offices shall carry out the quarantining and monitoring of infectious diseases, and health inspection in accordance with the provisions of this Law. Health administration departments under the State Council are in charge of frontier health and quarantine work throughout the country.⁶⁰

⁵⁷ Legal response to health emergencies – Report for congress LL File no 2015-011358

⁵⁸ *ibid*

⁵⁹ Laney Zhang, China: Legal Responses to Health Emergencies, 2015

⁶⁰ http://www.fdi.gov.cn/1800000121_39_3329_0_7.html last accessed: 14th April 2020



Infectious diseases specified in this Law shall include quarantinable infectious diseases and infectious diseases to be monitored. Quarantinable infectious diseases shall include plague, cholera, yellow fever and other infectious diseases determined and announced by the State Council. Infectious diseases are to be monitored, determined and announced by health administration departments under the State Council. Persons, conveyances and transport equipment, as well as articles such as baggage, goods and postal parcels that may transmit quarantinable infectious diseases, undergo quarantine inspection upon entering or exiting the country. No entry or exit is allowed without the permission of a frontier health and quarantine office. Specific measures for implementation of this Law are stipulated in detailed regulations.⁶¹

On discovering a quarantinable infectious disease or a disease suspected to be quarantinable, a frontier health and quarantine office, in addition to taking necessary measures, immediately notifies the local health administration department; at the same time, it also makes a report to the health administration department under the State Council by the most expeditious means possible, within 24 hours at the latest. Messages exchanged between China and foreign countries on the epidemic situation of infectious diseases are handled by the health administration department under the State Council in consultation with other departments concerned. When a quarantinable infectious disease is prevalent abroad or within China, the State Council may order relevant sections of the border to be blockaded or adopt other emergency measures.⁶²

Threatened by a newly identified virus that is far more contagious than the SARS outbreak, China has adopted unprecedented emergency measures in a declared “people’s war.” Chinese counterparts conclude that in implementing “a comprehensive set of non-pharmaceutical interventions...to interrupt the chains of transmission nationwide,” China has provided “vital lessons for the global response.” Besides restricting movement under the Emergency Response Law 2007 various financial measures have also been taken by China that includes the following:

Employment-related measures

The finance ministry cut social insurance payments by RMB 1 trillion to incentivize companies to retain employees. In late January the ministry announced that workers’ compensation would be subsidized for infected medical workers, and local finance departments rolled out daily stipends for them.

Trade restrictions

In China’s major cities (Beijing / Shanghai / Guangdong), companies that are found to be in temporary difficulties owing to the coronavirus outbreak and do not lay off employees or minimize the layoffs can get a refund of unemployment insurance premiums.

In Guangdong province, China’s manufacturing heartland, over 6.08 million migrant workers had returned to work, which represents around a third of the overall migrant worker population in the province.

⁶¹ *ibid*

⁶² Legal response to health emergencies – Report for congress LL File no 2015-011358



Economic stimulus measures

The People's Bank Of China, 3rd of February, 2020 Launched 1.2 trillion Yuan of the public market reverse repurchase operation on February 3rd: Maintain the liquidity of the banking system in the special period of epidemic prevention and control, meet the reasonable financing needs of the market, reduce the reverse repurchase rate by 10 basis points, and provide targeted low-cost special re-loan fund.

The People's Bank Of China 10th of February, 2020 Issuing the first batch of the special re-loans: Support them to provide preferential loans to the enterprises under the list management system, which are the key protection enterprises for epidemic prevention and control. For enterprises that enjoy special re-loan support from the PBOC, the Ministry of Finance will provide fiscal interest discounts support.

The People's Bank Of China, 17th of February, 2020

Carry out medium-term lending facility (MLF) of RMB 200 billion and 7-days reverse repos of RMB 100 billion, and the interest rate of this MLF is 10 BP lower than the previous: In order to hedge the impact of factors such as the maturity of PBOC's reverse repos and maintain a reasonable and sufficient liquidity of the banking system.

3.4 Italian Republic

Health protection and the handling of public health crises in Italy are regulated by statutory and regulatory provisions based on the constitutional principle of the protection of health as a fundamental individual right and a public interest. The Constitution further states that health treatments may be imposed by law only if they do not violate the principle of respect for the human personality. Italy's National Health Service, under the Ministry of Health, aims at ensuring the sanitary and epidemiological well-being of the whole population. It assures the coordination of all activities and interventions of agencies, institutions, and services that perform any duty concerning individual and collective health. The central and local governments are jointly responsible for the implementation of the National Health Service. The law provides health authorities with the necessary powers to perform mandatory health controls and treatments.⁶³

The Consolidated Health Laws contain specific provisions concerning infectious diseases. It establishes that the Minister of Health may, on the advice of the Superior Council of Health, issue a list of infectious and communicable diseases subject to special procedures and measures. The Act imposes a system of reporting such diseases through the various levels of responsible authorities up to the Minister of Health. It provides for preventative measures, necessary assistance, and disinfection interventions for such diseases. It further grants the Minister of Health, when the nation is threatened with an infectious disease epidemic, the authority to issue special orders for the inspection and disinfection of premises, the organization of special services and medical assistance, and the adoption of protective measures against the spread of such diseases.

Preventing, monitoring, and responding to public health emergencies including epidemics, even when caused by terrorists, is the responsibility of government officials and civil servants at the central, regional, and municipal levels.

⁶³ Ibid



3.5 United Kingdom

The Public Health (Control of Disease) Act of 1984 (CoD Act 1984) was brought into force with the aim of creating specific functions for different authorities in response to a national health emergency. The CoD Act 1984 provides for a clear hierarchical chain in which the primary, secondary and tertiary responders need to operate when dealing with a health challenge. Responsibilities from the local level up till the national level are clearly defined in the CoD Act 1984.

A primary piece of legislation that addresses public health emergencies is CoD Act 1984 which serves to consolidate a number of pieces of legislation from the nineteenth century, much of which was “directly derived from Victorian antecedents.” The laws were based on the scientific knowledge and social circumstances of those times and, therefore, did not address modern risks, such as contamination from chemicals or radiation. CoD Act 1984 was reformed in 2009 after the Law Reform Commission recommended that public health legislation was overdue for review, noting that the scientific understanding of disease contagion at the time the laws were drafted were not congruent with today’s scientific knowledge. Additional powers to detain individuals suffering from diseases caused concern that the Law would not stand up to a challenge brought under the Human Rights Act 1998, as it would be “difficult [for the government] to argue that exercise of these powers is ‘necessary’ or even effective in disease control.”⁶⁴

As a result of these concerns, the government enacted the Health and Social Care Act 2008, which repealed a large number of provisions in the CoD Act 1984. The amendments aimed to bring the provisions concerning infections up to date and take into account other concerns, such as radiation and chemical contamination. The updated provisions of the CoD Act 1984 provide two areas under which regulations may be made in relation to diseases. The first relates to in-country provisions and the second to the UK’s international borders.⁶⁵

In addition to these laws Emergency regulations can also be promulgated under Civil Contingencies Act 2017 (Contingencies Act) where the existing legislation cannot be relied upon without the risk of serious delay, or it is not possible without the risk of serious delay to ascertain whether the existing legislation can be relied upon, or the existing legislation might be insufficiently effective.

The Secretary of State has a legal duty to protect public health in England from disease and other dangers. The Secretary has established a number of bodies and programs to meet this duty. The National Resilience Capabilities Programme (NRCP) is the core framework through which the government is preparing for emergencies across all parts of the UK. This program aims to ensure that the UK has a well-prepared infrastructure that is able to address rapidly and effectively a wide range of emergencies. The program is divided into a number of different groups, one of which includes infectious diseases in humans.⁶⁶

The Department of Health (UK-DoH), the National Health Service (UK-NHS), Public Health England (UK-PHE), and local government authorities are the main organizations responsible for addressing public health crises and, under the NRCP, infectious diseases. These organizations are responsible for different aspects of planning for public health

⁶⁴ Clare Feikert-Ahalt England: Legal Responses to Health Emergencies, 2015

⁶⁵ Ibid

⁶⁶ Ibid



crises. The UK-DoH is the lead organization in planning for this type of emergency. UK-PHE, an Executive Agency of the UK-DoH, is the national public health agency and responsible for fulfilling “the Secretary of State’s duty to protect the public’s health from infectious diseases and other public health hazards.”

UK-DoH is involved on an organizational level in the prevention and control of infectious diseases by developing policies and setting standards. It is the lead government department involved in planning for a human influenza pandemic. Responsibility for the functions of the UK-DoH rests with the Chief Medical Officer, the government’s principal medical advisor. There are a number of bodies that advise the UK-DoH and the UK-NHS on the control and prevention of infectious disease.

The role of UK-PHE is to “protect and improve the nation’s health and wellbeing and reduce health inequalities” and its general duty is to fulfil the Secretary of State’s statutory duty to protect public health. It works in a number of areas to discharge these functions, such as providing the government, the UK-NHS, public health professionals, and the public with scientific advice; supporting local government with advice on how to protect health; and ensuring that effective local and national arrangements are in place to respond to health protection concerns and emergencies. UK-PHE is responsible for the Secretary of State’s duties under the Health and Social Care Act 2012.

It replaced the Health Protection Agency as a “category 1” responder under the Contingencies Act in respect of health hazards and emergencies caused by infectious diseases, chemicals, poisons, and radiation. UK-PHE operates in a number of ways to both respond to and help prevent health emergencies, such as by providing advice to the public on how to remain healthy and avoid hazards, conducting surveillance to detect any threats, and preparing plans to ready the nation for any future threats to its health.⁶⁷

UK-NHS is responsible for the diagnosis and treatment of individuals with infectious diseases, as well as for improving and protecting the health of the population. Regarding the latter two functions, the UK-NHS has a broad array of responsibilities to prevent and control infectious diseases that include implementing health programs, preventing the spread of the disease, surveying the local community, and monitoring any emergence or transmission of infectious disease.

UK-NHS must demonstrate the ability to effectively respond to an emergency, including infectious disease outbreaks under the Contingencies Act. This type of preparation in England is known as emergency preparedness, resilience, and response (EPRR).⁶⁸

The public health crisis system in the UK is based on broadly drafted modernized legislation and regulations under CoD Act, 1984. The Coronavirus Act, 2020 (“**Coronavirus Act**”) has been enacted in view of recent pandemic and it operates on a local level with primary health care providers using national guidelines to draft emergency plans. Designated agencies or departments are responsible for coordinating local efforts if the crisis becomes national or spills over into more than one local area. Multi Agency groups help to coordinate the response. Cooperation and coordination is emphasized as essential to manage public health crises. The legislation regarding infectious diseases has

⁶⁷ Clare Feikert-Ahalt England: Legal Responses to Health Emergencies, 2015

⁶⁸ Ibid



recently been amended to take into account modern-day challenges and scientific knowledge.⁶⁹

The Coronavirus Act gives the government wide-ranging powers unlike any other recent legislation. Key measures intended to increase capacity in the National Health Security include:⁷⁰

- a. High-profile measures in the Coronavirus Act are the power to restrict events and shut down premises such as pubs. The government initially appeared to be relying on the goodwill of landlords and other business owners to comply with the implied threat of action through local licensing powers, but the Coronavirus Act will give them sweeping powers to force shutdowns. If UK and devolved ministers decide an event or venue poses a threat to public health, the owner of a venue or an organizer of the event can be forced to cancel, close down or restrict access. Failure to do so could result in a fine.
- b. Coronavirus Act also makes a provision for emergency volunteering leave - a new form of unpaid statutory leave - and compensation for any loss of earnings and expenses incurred by volunteers. The government says this measure will enable relevant authorities, such as councils and health and social care bodies, to "maximize the pool of volunteers that they can draw on to fill capacity gaps" by addressing the risk to employment and loss of income.⁷¹
- c. Moreover, court hearings could take place by phone or video while the Border Force could temporarily suspend operations at airports and other transport hubs if there are insufficient resources to maintain border security. Some more measures that in happier times would appear draconian: the police could force people who are displaying symptoms of illness into isolation. Ports could be shut with little warning. And regulations are being rapidly thrown aside to allow some medical students and retired clinicians to treat patients. Protection for tenants from eviction is also added to the Coronavirus Act.
- d. There are multiple sections aimed at reducing the pressure on other frontline sectors, for example by relaxing rules around detention under mental health

⁶⁹ Clare Feikert-Ahalt England: Legal Responses to Health Emergencies, 2015

⁷⁰ <https://www.bbc.com/news/uk-politics-51964163> last accessed: 9th April 2020

⁷¹ Ibid



laws and increasing the use of audio and video links in courts.

The government has decided to use secondary legislation to enforce the new social distancing rules, announced by the prime minister on Monday evening. Using secondary legislation allows ministers to enforce new rules without waiting for the full bill to pass. They can do so using powers included in CoD ACT 1984.

Officials will have the power to close the borders in the event that the Border Force is under intense pressure due to staffing shortages. It also puts into law powers to isolate or detain individuals who are judged to be a risk to containing the spread of Covid-19.

Since the outbreak of coronavirus, there has been pressure on the government to support workers who are unable to work during the crisis. To support businesses, Coronavirus Act will allow employers to reclaim statutory sick pay funds from HMRC to help with the burden of increased staff absence. For workers, it will scrap the three-day waiting period so that they can receive the payments from the day they stop working.⁷²

3.6 United States of America

The US legislation on the subject of Healthcare, Health Security, Biosecurity and Biodefense is The Public Health Services Act 1944 and (42 US Code), it is comprehensive enough to facilitate necessary action and creates an administrative framework through which any public health emergency can be channeled. It even foresees the need for supplemental personnel by creating a reserve corps. The law was amended through the Pandemic and All – Hazard Preparedness Act 2006, the Pandemic and All-Hazard Preparedness Reauthorization Act, 2013, and the Pandemic and All-Hazard Preparedness and Advancing Preparedness Act, 2019. Apart from US-PHS Act 1944, the US President, Donald Trump has also invoked the Defense Production Act 1950 to battle the pandemic.

The decentralization of the public health system (which includes human, animal, environment and other relevant health sectors), in the USA provides considerable benefits in focusing and supporting public health action at the local level. However, it also brings challenges in ensuring consistent and coordinated action across the public health system from federal to state and local levels.

Based on legislative and policy reviews led by the Assistant Secretary for Preparedness and Response (ASPR) following implementation of the IHR in 2007, the USA developed a national IHR policy and organizational framework. There are established laws, regulations and policies in place, such as the US-PHS Act 1944, the Disaster Relief Act (1974), Stafford Act (1988), and the Project Bioshield Act (2004), which provide a foundation for disease surveillance and multisectoral coordination and emergency response. Public health in the USA is a multi agency task, with complementary authorities, roles and responsibilities and involves the Centers for Disease Control and Prevention (CDC), United States Department of Agriculture (USDA), Food and Drug Administration (FDA), Environmental Protection Agency (EPA), Nuclear Regulatory Commission (NRC), Federal Emergency Management Agency (FEMA), Department of Defense (DoD), Department of Homeland Security (DHS) as well as other relevant authorities. All these

⁷² <https://www.bbc.com/news/uk-politics-51964163> last accessed: 9th April 2020



agencies have defined roles in national health security, and coordinate with state and local authorities of the USA.

American's Quarantine Laws:

The federal government derives its authority for isolation and quarantine from the Commerce Clause of the U.S. Constitution. Under section 361 of the US – PHS Act, 1944, the U.S. Secretary of Health and Human Services is authorized to take measures to prevent the entry and spread of communicable diseases from foreign countries into the United States and between states. The authority for carrying out these functions on a daily basis has been delegated to CDC.

CDC is authorized to detain, medically examine, and release persons arriving into the United States and traveling between states that are suspected of carrying these communicable diseases. As part of its federal authority, CDC routinely monitors persons arriving at U.S. land border crossings and passengers and crew arriving at U.S. ports of entry for signs or symptoms of communicable diseases. When alerted about an ill passenger or crew member by the pilot of a plane or captain of a ship, CDC may detain passengers and crew as necessary to investigate whether the cause of the illness on board is a communicable disease.⁷³

States have police power functions to protect the health, safety, and welfare of persons within their borders. To control the spread of disease within their borders, states have laws to enforce the use of isolation and quarantine. These laws can vary from state to state and can be specific or broad. In some states, local health authorities implement state law. In most states, breaking a quarantine order is a criminal misdemeanor.⁷⁴

The Coronavirus Aid, Relief, and Economic Security (CARES) Act, passed by the Senate on March 25 and expected to be rapidly approved by the House and President, is the largest aid package in history. The bipartisan deal allocates \$2 trillion in an effort to mitigate the mounting fallout from the COVID-19 pandemic, including \$1.5 trillion in spending and tax cuts and \$500 billion in loans—\$454 billion of which was allocated to the Federal Reserve as the basis for additional lending. The Act hits the mark in several key respects. It is big, it is timely, and it directly helps individuals, businesses, and state and local governments.

State and local government officials have established a myriad of policies to counter the coronavirus outbreak. With the public health at risk, many state and local governments have taken decisive action to control the spread of COVID-19. These policies vary greatly from state to state. We have created a comprehensive report highlighting state and local government actions in response to the ever-changing Coronavirus Pandemic. The State and Local Government Responses to COVID-19 Report includes State Legislation, Executive Orders and local actions related to paid leave proposals, mandated business closures, appropriations for state responses to the coronavirus outbreak and Executive actions such as the creation of task forces and declarations of emergency. Selected state agencies, regulatory and rulemaking actions are also being included as they are announced

⁷³ <https://www.cdc.gov/quarantine/aboutlawsregulationsquarantineisolation.html> last accessed: 7th April 2020

⁷⁴ *ibid*



or emerge. We are also identifying those legislatures that are suspending activities as a result of this public health crisis. Updates are continuously being made to this Coronavirus report as new actions emerge.



PART-IV

LEGISLATIVE ASSESSMENT AND GAP ANALYSIS

The legislative review enabled the identification of possible gaps in corresponding federal, provincial and municipal legislation, illustrating that this type of assessment may have larger national or even global implications, in terms of identifying priority areas for future legislative development across diverse legal systems. This Part legislative further identifies numerous legislative gaps that, if filled, could support the government to be better equipped to protect the health and life of citizens of Pakistan in pandemic outbreaks and biological adversaries. Importantly, this Report demonstrates the utility of legislative assessment as an essential and effective tool for strengthening health security capacity more broadly.

An effective and dedicated legislative framework is necessary to give effect to the obligations under Articles 5 and 13 of IHR-2005 and is an indicator under the prevent pillar of the JEE Report 2010. Following the COVID-19 outbreak ⁷⁵

JEE Report identified key legislative gaps and potential areas of conflicting authorities within and between different statute functionaries. Consequently, this Part identifies lack of formal legislative, regulatory and institutional mechanism.

Pakistan's Prime minister's special adviser, Dr. Zafar Mirza, while addressing a virtual meeting of the Organization of Islamic Cooperation's Steering Committee on Health to discuss the ongoing situation around the world that has been triggered by the spread of coronavirus:

"Emphasizing the importance of health security as a key component of national security, he underlined the need to develop health regulations at international level and a legal framework at national level to enhance investment in health care security infrastructure," ⁷⁶

JEE CORE AREAS

DESCRIPTION

⁷⁵ Global health security: the wider lessons from the west African Ebola virus disease epidemic - David L Heymann, Lincoln Chen, Keizo Takemi, Thomas R Frieden, our president, Sania Nishtar and Ors - Public Policy| Volume 385, Issue 9980, P1884-1901, May 09, 2015 -

⁷⁶<http://mofa.gov.pk/foreign-minister-makhdoom-shah-mahmood-qureshi-held-a-telephone-conversation-this-morning-with-the-foreign-minister-of-the-republic-of-korea-ms-kang-kyung-wha-the-discussion-focussed-on-the-covid-1>



Prevent	National legislation, policy and financing; International Health Regulations coordination, communication & advocacy; antimicrobial resistance; zoonotic diseases; food safety; biosafety & biosecurity; immunization
Detect	National laboratory system; real time surveillance; reporting; workforce development
Respond	Preparedness; emergency response operation; linking public health and security authorities, and medical countermeasures and personnel deployment; risk communication; quarantine and compulsory measures
Other IHR related hazards & PoE	Point of entry policies; chemical and radio-nuclear risks

JEE INDICATORS	GAPS ANALYSIS	ACTIONS REQUIRED
PREVENT - National legislation, policy and financing	There are gaps, overlaps between the health laws of the federal government and provinces.	Government should conduct legal and regulatory assessment and should pass new and pending legislation as needed.
PREVENT- International health regulations coordination, communication and advocacy	The composition of the IHR task force should be reviewed to include additional sectors to cover the 19 technical areas.	Coordination between Federal Government and Provincial Governments as well as international cooperation is required.
PREVENT - Immunization	No systematic laboratory-linked surveillance for VPDs exists other than polio.	Limited capacity exists for data management and analyses in federal EPI and most provincial programmes.
PREVENT - Zoonotic diseases	Surveillance system in place for priority zoonotic diseases/ pathogens but one health hub should be established with defined terms of reference and operational mechanism.	Mechanism of joint action needs to be developed and implemented against major zoonosis by all the stakeholders at national and provincial level.
PREVENT - Biosafety and biosecurity	Implement and strengthen biosafety/ biosecurity legislation and or regulations in the country.	Federal and provincial authorities to develop a comprehensive biosafety/biosecurity programme, including resource identification and allocation.
DETECT - National laboratory system	National diagnostic algorithms for performance of core laboratory tests should be developed and utilized at all levels in the country.	GAP: Roles and responsibilities of national laboratories network in surveillance and reporting activities; the regulation of biological agents and toxins; transport and handling of biological substances; laboratory (research or clinical) waste management; mandatory sharing of diagnostic information relevant to health security to animal and environmental health authorities; no provisions to facilitate sharing of



		samples across sectors; no provision for inclusion of environmental health laboratories.
DETECT - Surveillance	A legal framework for surveillance to be formulated and enacted.	Existing public health labs to be strengthened, extended, and linked with surveillance programmes.
DETECT - Reporting	There is a lack of legislation authorizing the IHR NFP as a national multisectoral communication hub with WHO; in addition, continuously changing ministries hosting the IHR NFP team, devolution, and acting responsibilities limit its performance.	Formally approved reporting networks need to be established.
RESPOND – Emergency response operations	Develop a multisectoral, all-hazards, national health EPR plan based on a hazards/risk profile.	Adapt or develop a ‘One Health Emergency Response Operation’ body led by the Ministry of NHR&C, to coordinate, manage, develop, enforce, and sustain a One Health event management and response, integrated, collaborative, multi-disciplinary and multi-hazard plan. This body can work under, and obtain its authority and support from the governing structure of NDMA for an effective, efficient, and evidence-based coordination and response to health threats under a One Health approach.
RESPOND - Linking public health and security authorities	Establish SOPs for coordination across public health and security sectors within the framework of the National and Provincial Health Emergency Preparedness and Response Plans. The SOPs should clearly define the authorities, commitment of resources, roles and responsibilities of health and law enforcement and security agencies.	Finalize the National and Provincial Health Emergency Preparedness and Response Plans.
RESPOND - Medical countermeasures and personnel deployment	Develop a comprehensive plan and strategy that identifies procedures and decision-making	Establish a mechanism to allow agreements with national and international manufacturers and/or distributors for rapid procurement of medical countermeasures during public health emergencies.



	mechanisms, including roles and responsibilities related to sending and receiving health personnel during a public health emergency.	
RESPOND - risk communication	Establish a formal risk communications system by initially creating a risk communication unit at the federal and provincial levels with dedicated staff who will be formally trained in risk communication	Develop a mechanism to ensure sustained coordination among all communications focal persons in the different levels of the federal and provincial health structures, and develop guidelines reflecting the roles and responsibilities of these departments during non-emergency and emergency times.
RESPOND - Case management, quarantine, and compulsory measures	Limited capacity exists in the hospital setting for infection prevention and case management of IHR-related events such as avian influenza, CCHF and Ebola.	The National and Provincial Health Emergency Preparedness and Response Plans should rapidly be finalized.
Other international health regulations-related hazards and points of entry	SOPs for the management and transport of potentially infectious patients should also be available at other PoE (land crossings and sea ports).	No provision on response to chemical events; no mention of radio-nuclear hazards; no criteria for port of entry denials.

Five major cross cutting themes emerged from review of 19 areas. According to a JEE report related to Pakistan, legislation, reporting, risk communication, points of entry, national laboratory systems, chemical events, food safety, biosafety- biosecurity and immunization, all scored as 2/5. Domestic legislations, policies, administrative arrangements were adjusted/ aligned (scores 3/5). Functional mechanism for coordination, communication and advocacy is established (scored 3/5). Linking public health and security authorities, zoonotic disease and surveillance was scored as 3/5. Indicator/ event based surveillance was scored as 3/5 while electronic reporting and data analysis and syndromic surveillance scored 2/5. Workforce development. Human resource availability and existence of epidemiological training were scored as 3/5 while workforce strategy as 2/5. Preparedness and anti-microbial resistance detection, surveillance, stewardship and infection control was scored as 1/5. Emergency response operations scored 3/5 while case management and operating procedure plans as 2/5. Medical countermeasures and personal deployment scored



4/5 and radiation emergencies scored 5/5.⁷⁷ The JEE Report also mentions a draft legislation on the subject i.e. The draft Pakistan Public Health Act, 2010.

This evaluation provided an opportunity to identify strengths & weaknesses and to prioritize opportunities for preparedness, detection & response, capacity building and resource allocation.

4.1 WHO-IHR-2005- Legal Preparedness

The IHR- 2005 requires all countries to achieve minimum core competency to detect, assess, report, and respond to public health, plant, and animal health risks and emergencies of national and international concern. Pakistan has not met these requirements, in significant part because of inadequate resources to implement assessment and capacity strengthening support at the country level.

– Legislative gaps: The Ministry of NHR&C should initiate a review with the Ministry of Law and Justice to identify whether gaps exist in the legislative system to support the roadmap and examine the need to accelerate finalization and approval of important national and provincial legislation and plans. Examples include legislation for notifiable diseases, the National Animal and Plant Health Inspection Service (NAPHIS) legislation currently under consideration, and the national and provincial Health Emergency Preparedness and Response Plans. However, efforts to start development should not depend on completing the legislative reform but rather be initiated immediately

Infectious disease specialists have documented the emergence and re-emergence of pathogens throughout the world. IHR-2005 establishes a set of rules to support the Global Outbreak Alert and Response Network, and requires countries to improve international surveillance and reporting mechanisms for public health events, and strengthen their national surveillance and response capacities. Every government was obligated to develop, strengthen, and maintain the capacity to detect, assess, notify, and report events, and to respond to public health threats and emergencies of international concern within 5 years of coming into force, with the possibility of two 2-year extensions.

⁷⁷ Joint External Evaluation of IHR core capacities of the Islamic republic of Pakistan



In Dec-2016 chaired by the then State Minister of Health with participation of relevant stakeholders but the IHR-GHSA NAP has not been translated into the constitutional and legislative framework. Later the National Action Plan for Health Security (NAPHS) was also formulated in 2018 by the NHR&C.

The plan ensures inclusive health security and prosperity for all citizens of Pakistan and beyond. Thus, the plan is inclusive of the consideration for resource mobilisation, allocation and cooperation. Yet again the NAPHS was neither translated into legislative framework nor the pandemic or infectious diseases were realized or considered to be issues concerning national security.

4.2 Global Health Security Index 2019:

Pakistan's score on the Global Health Security Index overall is 35 out of 100 and it ranks 105 out of 195 countries. Pakistan country score is only strengthened by the laboratory capability and skilled professionals but this report evaluated that Pakistan scored almost zero in cross border agreements, ability to track infections, communication with health professionals during health emergencies, emergency planning, infections control practices in health centers and health system capacity.⁷⁸

	PAKISTAN'S SCORE	AVERAGE SCORE
Prevention	24.1	34.8
Health System	19.9	26.4
Detection and Reporting	41.7	41.9
Compliance with international norms	49.7	48.5
Rapid Response	38.7	38.4
Risk Environment	38.7	55.0

⁷⁹

This report clearly indicates that the Pakistan is seriously lacking mechanism of prevention of diseases, risk controls mechanism as well as health systems and is even behind the average score according to the Global health Security Index. All these categories denote that Pakistan has gaps in its existing frameworks to cope with the upcoming risk, hazards and epidemics and also lacks preventive mechanism and health care systems and some serious actions needs to be taken to improve these areas.

⁷⁸ Global Health Security Index 2019

⁷⁹ Ibid



4.3 GHSA Package 2014

The Global Health Security Agenda (GHSA) is an effort by nations, international organizations, and civil society to accelerate progress toward a world safe and secure from infectious disease threats; to promote global health security as an international priority; and to spur progress toward full implementation of the World Health Organization (WHO) International Health Regulations 2005 (IHR), the World Organization for Animal Health (OIE) Performance of Veterinary Services (PVS) pathway, and other relevant global health security frameworks.

In order to encourage progress toward these goals, the “Action Packages” concept was developed to facilitate regional and global collaboration toward specific GHSA objectives and targets. Following the May 2014 GHSA Commitment Development meeting in Helsinki countries identified eleven discrete GHSA Action Packages, which were discussed further at the August 2014 Global Infectious Disease Meeting in Jakarta.

President Obama and Prime Minister Sharif discussed the importance of enhancing measurable capability of Pakistan to prevent, detect, and respond to infectious diseases. Building from that shared understanding, they reaffirmed their commitment to fully implement the Global Health Security Agenda (GHSA), including a mutually-developed five-year plan to achieve the GHSA targets and advance the World Health Organization International Health Regulations, with a view to advance global cooperation across sectors to counter biological threats, whether naturally occurring, accidental or deliberate. President Obama and Prime Minister Sharif also discussed efforts to improve the health of mothers and children in Pakistan and globally.⁸⁰

Natural, accidental, and internationally caused outbreaks can have similar consequences for health, the economy, and national security. Despite the initial cause of the outbreak, they also have similar requirements related to common prevention, detection, response, and recovery initiatives. There are advantages to addressing these events as different manifestations of the same family of challenges. An integrated view of biological threats prevents bureaucratic boundaries from interfering with partnerships and progress. Natural, accidental, and intentional outbreaks may have ambiguous origins but the capabilities needed to address them overlap. Ultimately, needs of force protection and national health and safety may be similar in most cases, especially those with the broadest potential national security impact

⁸⁰ <https://america.cgtn.com/2015/10/22/us-presses-pakistans-pm-sharif-during-state-visit>



PART-V

STRATEGIC OVERVIEW

5.1 Human Security

The UN Commission on Human Security mentions ‘Human Security’ as:

“...to protect the vital core of all human lives in ways that enhance human freedoms and human fulfillment. Human security means protecting fundamental freedoms – freedoms that are the essence of life. It means protecting people from critical (severe) and pervasive (widespread) threats and situations. It means using processes that build on people’s strengths and aspirations. It means creating political, social, environmental, economic, military and cultural systems that together give people the building blocks of survival, livelihood and dignity.” (CHS: 2003: 4)

5.2 Healthcare system and State:

Within the domestic public health law field, legal epidemiology has emerged as a transdisciplinary practice, defined as the scientific study of law as a factor in the cause, distribution, and prevention of illness and injury in a population.

Two activities of this practice include legal mapping and legal evaluation. Legal mapping documents what the law says, and legal evaluation helps with understanding the impact of law. Health agencies at all levels of government in the United States have used evidence from legal mapping and evaluation studies to promote public health programs and activities. In the global context, mapping a country’s legal landscape can assist with gap analyses and identifying opportunities to align its laws and national action plans with IHR commitments. Additionally, data gathered through legal mapping, such as observed practices from other countries, can serve as practical examples of how law is being used to address priority public health issues.

As countries strive to build their public health capacity for improved prevention, detection, and response to infectious disease threats, the law can be used as a tool to address public health challenges and improve outcomes. As several case studies demonstrate, law can be used not just as a reactive measure, but proactively to strengthen health systems and IHR implementation. In the case of global health security, laws can enable government agencies to develop, oversee, and coordinate programs to address antimicrobial resistance and zoonotic diseases, regulate laboratory biosafety and biosecurity, encourage routine vaccinations, establish national laboratory systems and surveillance and reporting requirements for certain diseases or public health events, and authorize emergency operation centers with specific authorities, among other functions. Understanding the existing legal landscape is critical for countries to determine opportunities to use law as a tool to strengthen public health infrastructure and support IHR compliance. As countries continue to face new disease threats and public health emergencies, laws are a strategic tool that can serve as a reference point to provide guidance that transcends government regimes.

The role of any welfare state on the subject of health is usually outlined in the seven conventional health systems domains, namely: health governance, service delivery, health



financing, health information systems, and human resources for health, medicines and related products and technology for health. These domains were traditionally catered by the Central Government in colonial India but after the independence of Pakistan and various constitutional interventions these domains have been redefined among three tiers of governments to ensure healthcare to every citizen.

Pakistan is a member state of the WHO and it is also a signatory to the ICESCR and UDHR but it has not formally recognized the citizen's access to healthcare as a fundamental right under the Constitution. The 18th Amendment recognized the right to education, fair trial and access to information as fundamental rights but the access to healthcare was not listed as a fundamental right.

5.3 Health Security constitutionalism in Pakistan:

The health security, biosecurity and biodefense have not been enumerated as separate subjects in the Federal Legislative List, but the potential threats posed by these are not only fatal to human life, but they also have a range of negative social, economic and political consequences. Entry 1 in the Federal Legislative List relates to national defense and the potential threats posed by pandemics such as COVID-19 permits the Federal Government to liberally construe the Entry 1 to address and devise the national response plan to the pandemics that know no borders.

The Supreme Court in *Sui Southern Gas Company Limited v. Federation of Pakistan*, 2018 SCMR 802 and *Government of Sindh v. Nadeem Rizvi*, 2020 SCMR 1 has held the view that in construing the words in an Entry conferring legislative power on a legislative authority, the most liberal construction should be put upon the words.

The august Supreme Court of Pakistan in the case titled *Government of Sindh v. Dr. Nadeem Rizvi*, 2020 SCMR 1 while dwelling upon the right to have access to healthcare accepted it as part of right to life in the following manner, "right to life undoubtedly entailed the right to health care which meant that everyone had the right to the highest attainable standard of physical and mental health and this comprised of access to all kinds of medical services including but not limited to hospitals, clinics, medicines and services of medical practitioners which must not only be readily available and easily accessible to everyone without discrimination, but also of high standard. The Federal Government had an obligation to carry out all necessary steps to ensure realization of this goal."

5.4 Emerging Health Security challenges:

The questions in relation to the constitutional basis of the agencies and departments working under the Health Services Division and Provincial Health Department along with the complete absence of framework in relation to the COVID – 19 pandemic has posed a grave threat to the state in relation to this aspect of security. In addition, the impact and disruption caused by a global pandemic has identified a need for self-resilience and domestic capability and capacity building to address and manage such challenges at a national level as all countries are addressing the issue from their respective national security and interest perspective. While international co-operation is taking place, countries appear to be pursuing a domestic agenda.

5.5 Redefining National Security:



Traditionally, national security has been narrowly defined as the preservation of the state from physical threats. The last 50 years has seen sharp rises in more non-traditional threats, such as terrorism, drugs, ethnic cleansing, and disease. Emerging and re-emerging diseases, and their pandemic potential, pose a challenge to national security that cannot be ignored. COVID-19 and other outbreaks of viruses like Influenza H1N1 (2009) and SARS are just a few examples of diseases that can profoundly threaten the physical integrity of a state.

National security must be redefined for a new era where conventional war is not the only physical threat to a state; instead, the focus must shift to include threats from diseases that can have a more devastating effect on the State.

The review of existing constitutional and legal framework, international obligation, legal frameworks and practices in other jurisdictions establishes that the pandemics, widespread epidemics and infectious diseases poses grave threat to the national security and therefore to respond to this threat a uniform appropriate action plan should be devised by the Federal Government as custodian of national security.

National Action Plan on Health being the domain of the Federal Government and the National Security Committee must be devised encompassing the requisite legal framework and systems to ensure a comprehensive response to the threats such as pandemic and other incidents involving biosecurity, biodefense and bioterrorism.

5.6 National Health Security Risk

The risks that emergencies pose to communities are directly related to the communities':

- a) exposure to hazards,
- b) vulnerabilities to those hazards, and
- c) risk management capacity before, during and after events.

Countries and communities can therefore most effectively minimize the health and other consequences of emergencies by preventing or mitigating hazards, reducing exposure to those hazards, minimizing their vulnerabilities, and/or strengthening their capacities.

Health security essentially the protection from threats to health is recognized as one of the most important non-traditional security issues.⁸¹

National security is a holistic concept that also includes health security, something which the current public health system has limited capacity to cope with. This comment analyzes how lack of policy continuity, amongst other factors, has eroded Pakistan's efforts towards achieving sustainable state security.⁸²

This strategic review of the existing Legal Framework for National Health Security, the Global Health Security Framework, the Covid19 legislative response and the existing legislation shows that Pakistan is short of a legal architecture to effectively detect, prevent and respond a pandemic like COVID-19 and without an updated and comprehensive National Health Security, the Federation and Provincial governments are resorting to the use of those laws which are unable to cope with the existing problems.

⁸¹ Nuancing national security - The News International - August 22, 2009

⁸² On national security policy -The News International - April 03, 2010:



Following a risk-based approach a detailed policy and set of rules ought to be developed that are intended to enable the State and its constituents to deal with hazards in the most appropriate, effective and efficient manner to not only contain a hazard but also rehabilitate those affected during and following the aftermath of a hazard.

5.7 Biological Threats and Bio-preparedness

The WHO has in place several proactive measures including the IHR 2005 and Biorisk Reduction, which provide guidance and training on the safe handling and control of disease agents. The guidelines provided by the WHO could translate into national standards for biosafety and biosecurity.

High-level outlook on the evolving nature of the biothreat, specifically focusing on how global changes in the biotechnology landscape may affect Pakistan and what actions Pakistan should take now to keep pace with these changes. The development of threat-specific prevention and detection approaches can be improved through anticipation of current and future threats presented by natural, accidental, and intentional incidents involving high-consequence pathogens and toxins and by misuse of advances in scientific research, development, and application.

5.8 Integrated National Health Emergency Response Framework:

The integrated approach refers to a series of closely interrelated prevention/mitigation, emergency preparedness (including operational readiness), response, and recovery measures.

It is based on the premise that prevention and mitigation measures can reduce the likelihood and severity of emergencies; that sound preparedness will lead to more timely and effective response; that coordinated response will result in appropriate targeting of health services to the needs of those affected with a focus on the most vulnerable and containment of the hazard; and that recovery and reconstruction should be designed to reduce the risks of future emergencies (referred to as the Build Back Better approach, including strengthening of health systems) and better, well-coordinated and synchronized response.

The One Health Approach

Effective management of the risks that emergencies pose to health requires strong, ongoing inter-sectoral collaboration.

The One Health approach, for example, is based on collaboration, communication, and coordination across public health, animal health and other relevant sectors and disciplines to address a health threat at the human–animal–environment interface with the goal of achieving optimal health outcomes for both people and animals.

While the health sector traditionally takes a leading technical role in managing and addressing the risk of infectious diseases, for most types of hazards and events other sectors may play lead technical roles. Many Emergency Disaster Risk Management activities required to protect health are also managed by other sectors, e.g. maintenance of



critical infrastructure, water and sanitation for human needs and functioning of health facilities, construction, transportation, logistics, emergency services, and food security. Also, there is a need for collaboration and convergent approaches between the public and private sector, e.g. private health providers etc.

The health sector needs to have strong relationships with the many actors who have a role to play in managing risks of emergencies to health. These include urban planners, civil engineers, operators of hazardous facilities, universities and research centers, climate information providers, animal health professionals, the media and emergency services.

Effective coordination among many disciplines in the health community is also required, such as emergency medicine, disease surveillance, mental health, nutrition, water and sanitation, health information management and many more.

Inclusive, people and community-centered approach:

Community members are central to effective Health Emergency Disaster Risk Management, as it is their health, livelihoods and assets that are at risk of any hazardous event including emergencies and disasters. They are often well placed to manage their own risks through actions that provide protection to themselves, their families and communities; and are often the first responders to an emergency

5.9 Economic Health

This is the basic component which will be the yardstick to measure the physical health of the nation. It is the backbone of the country. Any National level program has a direct relation with the economic conditions of the country. No matter whether it is a nuclear program or war against terror or pandemic infectious disease.

Constitution level measures need to be taken. Council of Common Interest and National Economic Council should be on board concerning special funds to deal with Nation health in pandemic circumstances.

5.10 International Cooperation

Viruses respect no borders. National level strength is for global cooperation. There is no second opinion in strengthening international community and cooperation. We have to support the regional common interests and to promote international peace and security. This is important for public safety and protecting our national interests.



GLOSSARY OF TERMS

Containment: Contain an outbreak to the affected region(s) and limit the spread of the pandemic through aggressive attempts to contain.

Countermeasures: Refers to pre-pandemic and pandemic influenza vaccine and antiviral medications.

Competent authority: means any governmental, administrative or statutory authority, statutory functionary or institution in Pakistan responsible for the implementation of any function of State warranted under any law for the time being enforced;

Contamination: means the presence of an infectious or toxic agent or matter on a human or animal body surface, in or on a product prepared for consumption or on other inanimate objects, including conveyances, that may constitute a public health risk;

Critical infrastructure: Systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems and assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters. Specifically, it refers to the critical infrastructure sectors and key resources identified in Homeland Security

Data: means all information, statistics, reports, statements and studies, whether individual or collective, describing health and disease situation within Pakistan, and in the case of any other country, within that country;

Decontamination: means a procedure adopted to remove or eliminate contamination from any person, animal, goods or conveyance;

Department: means any ministry or department of Government of Pakistan, Provincial Government or any other statutory authority, institute or body corporate managed controlled or funded by Government of Pakistan or Provincial Government whether directly or indirectly as well as District or City District Governments established under local government laws.

Department of Health: means the Health Department of any Province of Pakistan responsible for health administration within the province;

Departure: means, for persons, animals, goods or conveyances, the act leaving from one country;

Disease: means an illness or medical condition, irrespective of origin or source, that presents or could present significant harm to humans

Disinfection: means the procedure whereby health measures are taken to control or kill infectious agents on a human or animal body surface or in or on baggage, cargo, containers, conveyances, goods and postal parcels by direct exposure to chemical or physical agents;

Disease Surveillance Unit: the Disease Surveillance Cells established in the office of District Coordination Officer of each District Government in the Provinces and offices of Deputy Commissioners for the federal areas.

Devolution: The capability to transfer and sustain authority and responsibility for essential functions from an organization's primary operating staff and facilities, to other employees and facilities.

Disaggregation of disease transmission networks: The disruption of activities and social interactions that facilitate transmission of influenza (e.g., closure of schools, canceling public meetings or large social gatherings, keeping school children home, and restriction of travel).

Epidemic: A pronounced clustering of cases of disease within a short period of time; more generally, a disease whose frequency of occurrence is in excess of the expected frequency in a population during a given time interval.

Ground crossing: means a point of land entry and exit in Pakistan as notified by Government of Pakistan through a Notification in the Official Gazette;

H5N1: An infection of poultry caused by any influenza A virus that meets the World Organization for Animal Health (OIE) definition for high pathogenicity based on the mortality rate of chickens exposed to the virus intravenously or on the amino acid sequence of the cleavage site of the virus' hemagglutinin molecule.

Health Security Threat: means a manifestation of disease or an occurrence that creates a potential for disease;

Health emergency area: means the specific area of Pakistan where, on account of health situation of serious nature, the Chairperson of Health Emergency Council of Pakistan has declared state of health emergency;



Health measure: means procedures applied to prevent the spread of disease or contamination; of any governmental Health Establishment or Private Health Establishment;

Health Professional: means registered medical practitioner, dentist, doctor, surgeon, pathologist, radiologist, paramedical staff and other person qualified and permitted by law to provide health care services in Pakistan whether in the service of any governmental Health Establishment or Private Health Establishment;

Isolation: Separation of infected individuals from those who are not infected.

IHR: means the IHR-2005 as well as any subsequent amendments made therein from time to time;

Infectious individual: means an individual suffering from or affected with a physical ailment that may pose a public health risk;

Infection: means the entry and development or multiplication of an infectious agent in the body of humans and animals that may constitute a public health risk;

Inspection: means the examination, by the competent authority or under its supervision, of affected areas, goods, conveyances including relevant data and documentation, to determine existence or apprehension of a public health risk;

International traffic: means the movement of persons, goods, conveyances across an international border, including international trade;

International voyage: means travel of any person or movement of any conveyance from one country to any other country;

Local Government: means the District and City District Governments established in provinces under Local Government Laws.

National Health Emergency: means the state of health emergency declared by the Nation Health Security Commission;

Notified Diseases: means all such diseases notified by the Government of Pakistan through a Notification in the Official Gazette which may have serious public health impact including but not limited to Smallpox, poliomyelitis due to wild-type poliovirus, Human influenza caused by a new subtype (e.g., H5N1 in human), severe acute respiratory syndrome (SARS) as well as such disease which have potential to spread rapidly at international levels including but not limited to Cholera, Pneumonic plague, Yellow fever, Viral hemorrhagic fevers (Ebola, Lassa, Marburg), West Nile fever and any other diseases that are of special national or regional concern, e.g., dengue fever, Rift Valley fever, and meningococcal disease etc.;

Outbreak: An epidemic limited to localized increase in the incidence of disease, e.g., in a village, town, or closed institution; a cluster of cases of an infectious disease.

Outbreak containment: Disruption of epidemic amplification through the use of medical countermeasures and infection control techniques; “containment” also refers more generally to delaying the geospatial spread of an epidemic.

Pandemic: A worldwide epidemic when a new or novel strain of influenza virus emerges in which humans have little or no immunity, and develops the ability to infect and be passed between humans.

Personal data: means any information relating to an identified or identifiable natural person;

Point of entry and exit: means a passage in Pakistan for international entry or exit of travelers, conveyances, goods and postal parcels;

Port: means a major seaport notified by the Government of Pakistan under the Ports Act, 1908;

Private Healthcare Establishments means and includes hospitals, surgeries, blood centers, maternity homes, nursing homes, clinics, dispensaries, dentists and other medical and health care centers which are owned and operated by private persons, natural or corporate;

Public Healthcare Establishments means and includes Basic Health Units, Rural Health Centers, Tehsil Headquarter Hospitals, District Headquarter Hospitals, teaching hospitals, all other hospitals, surgeries, blood centers, maternity homes, nursing homes, clinics, dispensaries, dentistry’s, laboratories, and other medical and health care centers established and operated by Federal or Provincial Governments or under their direct or indirect administrative or financial control as well as doctors and dentists appointed by the Federal or Provincial Governments in any departments, institutions, establishments, statutory bodies & authorities, ports, airports and prisons hospitals;

Provincial Disease Surveillance Unit means the Disease Surveillance Units established in the office of Director General Health, Departments of Health of each Province.



Public Health Risk: means a likelihood of an event that may affect adversely the health of human populations through spread of disease at international level;

Quarantine: Separation of individuals who have been exposed to an infection but are not yet ill from others who have not been exposed to the transmissible infection.

Rapid diagnostic test: Medical test for rapidly confirming the presence of infection with a specific influenza strain.

Registered medical practitioners: mean the medical practitioners and dentists registered under the Medical & Dental Council Ordinance, 1962.

Social distancing: Infection control strategies that reduce the duration and/or intimacy of social contacts and thereby limit the transmission of influenza. There are two basic categories of intervention: transmission interventions, such as the use of facemasks, may reduce the likelihood of casual social contacts resulting in disease transmission; contact interventions, such as closing schools or canceling large gatherings, eliminate or reduce the likelihood of contact with infected individuals.

Standard of care: The level of care that is reasonably expected under the extant circumstances.

Surveillance: means the systematic ongoing collection, collation and analysis of data for public health purposes and the timely dissemination of public health information for assessment and public health response as necessary;

Ship: means a seagoing or inland navigation vessel on an international voyage;

Suspect: means person, animals, plants, goods, containers, conveyances or postal parcels considered by competent authorities as having been exposed, or possibly exposed, to a public health risk and that could be a possible source of spread of disease;

Telework: Refers to the activity of working away (home) from the workplace through telecommunication (computer access).

Traveler: means a natural person undertaking an international voyage to and from Pakistan including transit traveler;

Virulence: Virulence refers to the disease-evoking severity of influenza.

Vector: means an insect or other animal which normally transports an infectious agent that constitutes a public health risk;

Wave: The period during which an outbreak or epidemic occurs either within a community or aggregated across a larger geographical area. The disease wave includes the time during which disease occurrence increases rapidly, peaks, and declines back toward baseline.

WHO: means World Health Organization