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Human Rights Restrictions under COVID-19 Pandemic:

Comparison between Japan and Portugal

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## Abstract

The new coronavirus has spread all over the world in a short time through the movement of people. States have been forced to take measures to mitigate human to human contact which is the only effective way to combat the virus until vaccines or medicines are developed. To combat the virus, human rights have been restricted in most countries in the world. Many countries have declared a state of emergency, including Japan and Portugal.

The following thesis will examine how the measures taken by Japan and Portugal and the recommendations and guidelines issued by WHO show the human rights violations, focusing in particular on those caused by the Japanese government in its COVID-19 measures.

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## Chapter 1 Introduction

The new form of coronavirus that emerged in 2019 has threatened global public health in a way that hasn't been for many years. The epidemic started in Wuhan province, China, and has spread to every single region and country. According to the first WHO situation report, issued on 21 of January 2020, with data reported up to 20 of January, the WHO has received a report about cases of pneumonia with unknown cause in Wuhan, Hubei Province of China on 31 December 2019.<sup>1</sup> Initially, the National Health Commission of China reported spread through exposures in one of the seafood markets in Wuhan. However, as less than 15% of new cases that had been reported a week before had visited the seafood market, the cause of the outbreak of COVID-19 remain undiscovered.<sup>2</sup> The virus has spread to the entire world through the global movement of people. The spread of disease with no vaccine or treatment terrorises people and the WHO declared the epidemic to be a worldwide pandemic on 11 March 2020. Thus, COVID-19 is a new phenomenon into which considerable research is currently being undertaken.

This thesis focuses on the restrictions on human rights due to the global pandemic, especially as this relates to the WHO, Japan and Portugal. Therefore, the effectiveness of public health measures in the fight against COVID-19 is not the main focus of this thesis.

Due to the lack of vaccine or medicines, states are forced to take measures to restrict human contact to mitigate the spread of the virus. However, the authorities should not be allowed to take advantage of an emergency situation to take away human rights from people disproportionately. Restrictions on human activities have a great economic crisis and some media channels have reported that it is as serious as the Lehman bankruptcy.<sup>3</sup> The vulnerable became even more vulnerable under the restrictions, including groups such as refugees, homeless people, elderly people, children, the poor, people who are ill, people who have unstable jobs, etc. Therefore, the restrictions should not last forever. Many countries have declared a state of emergency under the constitution or the basic law, including Japan. Japan has succeeded in achieving a high quality of education, a very low rate of poverty and unemployment, and the world's longest life expectancy

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<sup>1</sup> WHO situation report 1, 2020, p.1

<sup>2</sup> WHO situation report 3, 2020, p.1

<sup>3</sup> Bart van Ark and Lynn Franco, Consumers might be too optimistic -- there may be a 'Lehman moment' coming, 2020, CNN at <https://edition.cnn.com/2020/05/11/perspectives/consumer-confidence-coronavirus/index.html>

along with the first-class and affordable medical care, etc. through economic development. However, I believe that there is a gap in understanding of the ideas of human rights from international standards due to its traditional and historical view. This research is important for Japan to be ready for the second wave of COVID-19 and for future pandemic regarding human rights protection. My research question is whether Japan is following the idea of an international standard of human rights regarding the measures to combat COVID-19, what Japan has done wrong and what Japan could have done better. Therefore, I aim to find out what human rights violations have been caused by the Japanese government and what could have done to protect human rights.

To provide a comparison with the situation in Japan, I selected the World Health Organization (WHO) and one European country, Portugal. I will analyse WHO situation reports, guidelines, recommendations, the press release, Japanese law, the expert meeting's recommendations, national polls, the Portuguese constitution, Portuguese law, EU guidelines and directives, and news articles regarding COVID-19.

The thesis begins with a description of the current situation of COVID-19 and its nature. I review the only existing international instrument that can be applied to the fight against epidemics, and finally, I will analyse if the WHO guidelines and recommendations restrict human rights and if they are acceptable. In the second and the third section of the thesis, I will review the measures and laws implemented in Japan and in Portugal. The fourth section describes the differences between the WHO, Japan and Portugal by making comparisons between them. Finally, I summarise and provide a conclusion and recommendations for this research.

## 1.1 Nature of the new coronavirus

The official names for the virus and the disease caused by the virus have been announced by the WHO. The disease is called Coronavirus disease or COVID-19 and the virus is named Severe Acute Respiratory Syndrome coronavirus 2 or SARS-CoV-2.<sup>4</sup> There are several coronaviruses that are already known, such as Severe Acute Respiratory Syndrome (SARS) and Middle East

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<sup>4</sup> WHO Director-General's remarks at the media briefing on 2019-nCoV on 11 February 2020

Respiratory Syndrome (MERS).<sup>5</sup> Thus, Covid-19 is a recently discovered virus and is now known to spread through human-to-human contact: it is thought when infected persons are in the sickest state, they are most contagious. However, it is also possible that people who don't show symptoms can be strongly contagious.<sup>6</sup> Therefore, as the President Emmanuel Macron stated in a 20-minute televised address: "We are at war... we're fighting neither another army nor our own nation. But the enemy is here, invisible, untouchable... and is advancing"<sup>7</sup>.

It does not seem to be simple to prevent the spread of COVID-19 around the world or in each nation. So far, COVID-19 is more likely to cause deaths in older adults and people who have severe chronic diseases.<sup>8</sup> The virus that causes COVID-19 spreads through droplets when an infected person coughs, sneezes or speaks.<sup>9</sup> It is also possible that one can be infected by touching a contaminated surface and then touching the nose, mouth, and/or eyes.<sup>10</sup> Therefore, washing hands, wearing a mask and gloves, not touching the face prior to washing hands, and keeping at least one meter of distance from other people is the most effective way to protect oneself from the virus. The Centers for Disease Control and Prevention (CDC) advises people to use a facecloth covering to prevent the spreading of respiratory droplets and thus slow the spread of virus.<sup>11</sup> Yet the CDC highlights that cloth face coverings are not the same as the medical face masks, surgical masks, and respirators such as the N95 respirator, which are used by healthcare persons.<sup>12</sup> The WHO has launched the Solidarity Trial aimed at assessing the most promising

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<sup>5</sup> Centers for Disease Control and Prevention (CDC), Human Coronavirus Types, 2020 at <https://www.cdc.gov/coronavirus/types.html>

<sup>6</sup> Centers for Disease Control and Prevention (CDC), Groups at Higher Risk for Severe Illness, 2020 at <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-increased-risk.html>

<sup>7</sup> BBC, Coronavirus: Europe plans full border closure in virus battle, 2020 at <https://www.bbc.com/news/world-europe-51918596>

<sup>8</sup> Centers for Disease Control and Prevention (CDC), Groups at Higher Risk for Severe Illness, 2020 at <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-increased-risk.html>

<sup>9</sup> WHO mythbusters, COVID-19 IS NOT transmitted through houseflies, 2020 at <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/advice-for-public/myth-busters>

<sup>10</sup> *ibid.*

<sup>11</sup> Use of Cloth Face Coverings to Help Slow the Spread of COVID-19(CDC), 2020 at <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-to-make-cloth-face-covering.html>

<sup>12</sup> *ibid.*



treatments, but as of mid-2020 there are no drugs licensed for the treatment or prevention of COVID-19.<sup>13</sup>

## 1.2 World map of COVID-19

Japan is facing a particular unique situation. Firstly, there were 10 cases of COVID-19 on the Diamond Princess cruise ship, which ultimately was reported to have 712 positive cases with 13 deaths by 16 April.<sup>14</sup> This news gained world-wide attention because it caused a mass infection due to insufficient measures to prevent the spread of the virus and the passengers came from many different countries.<sup>15</sup> Secondly, the Japanese government and International Olympic Committee (IOC) president, Thomas Bach, agreed to postpone the Olympics Games until the next year, 2021.<sup>16</sup> This decision was made on 24 March, almost two months after WHO declared a PHEIC (Public Health Emergency of International Concern). Within Japan itself, a state of emergency was declared on 7 April for only seven prefectures out of 47. On 17 April, the declaration was extended to the whole country and, later, the declaration was extended until the end of May.

After the outbreak in China, Italy became one of the epicentres of the virus in Europe. As of 3 August, the number of deaths caused by COVID-19 in Italy is 35,154, with 248,070 infected cases reported.<sup>17</sup> It is said that one of the reasons why COVID-19 has spread so fast and caused so many deaths is because Italy has the second oldest population in the world after Japan<sup>18</sup>;

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<sup>13</sup> WHO, "Solidarity" clinical trial for COVID-19 treatments, 2020 at <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/global-research-on-novel-coronavirus-2019-ncov/solidarity-clinical-trial-for-covid-19-treatments>

<sup>14</sup> Statista, Cumulative number of coronavirus-positive (COVID-19) patients confirmed on Diamond Princess cruise ship docked in Japan as of April 16, 2020 at <https://www.statista.com/statistics/1099517/japan-coronavirus-patients-diamond-princess/>

<sup>15</sup> BBC, Coronavirus: Two passengers dead from quarantined Diamond Princess, 2020 at <https://www.bbc.com/news/world-asia-51568496>

<sup>16</sup> Akiko Iwata and Naoko Baba, The backside of Tokyo Olympic games postponement, NHK politic magazine, 2020 at <https://www.nhk.or.jp/politics/articles/feature/32725.html>

<sup>17</sup> WHO situation report 196, 2020, p.13

<sup>18</sup> Reuters, Italy's coronavirus deaths surge by 627 in a day, elderly at high risk, 2020 at <https://www.reuters.com/article/us-health-coronavirus-italy-tally/italys-coronavirus-deaths-surge-by-627-in-a-day-elderly-at-high-risk-idUSKBN2172VL>

cultural characteristics are also blamed. Moreover, Italy's weak health care system has helped the spread of the virus.

The United States, as of 3 August, registered 4,582,276 confirmed cases which is about a quarter of global total and 153,757 deaths.<sup>19</sup> These are the largest numbers in the world by far. Some Americans are against wearing a mask due to beliefs and concern over civil liberties and personal freedoms. President Donald Trump has also proven reluctant to do so.<sup>20</sup> A survey by the Pew Research Center in June showed that 83% of liberal Democrats wore a mask most of the time in May, while only 49% of conservative Republicans did so.<sup>21</sup> It is also important to mention the wider context of the protests of 'Black Lives Matter', which was inspired by the death of George Floyd who was killed by a Minneapolis police officer. However, there are some media reports that the protests throughout the country did not contribute to the spread of the virus.<sup>22</sup>

Brazil has the world's second-highest death toll and number of confirmed cases after the US. The President of Brazil, Jair Bolsonaro, has garnered attention from all over the world because of his various speeches and his behaviour, even joining in an anti-lockdown protest. He states that coronavirus was just like a "little flu" even though he also became infected by the COVID-19. As of early August, Brazil has recorded 2,707,877 confirmed cases and 93,563 deaths.<sup>23</sup>

As of 3 August, globally, there are a total of 17,918,582 confirmed cases and 257,677 new cases were registered in the last 24 hours with 686,703 deaths in total and 5,810 deaths in the last 24 hours.<sup>24</sup>

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<sup>19</sup> WHO situation report 196, 2020, p.10

<sup>20</sup> Tara McKelvey, Coronavirus: Why are Americans so angry about masks? BBC, 2020 at <https://www.bbc.com/news/world-us-canada-53477121>

<sup>21</sup> Anthony Zurcher, Coronavirus: Things US has got wrong - and right, BBC, 2020 at <https://www.bbc.com/news/world-us-canada-53337483>

<sup>22</sup> Leah Asmelash, Black Lives Matter protests have not led to a spike in coronavirus cases, research says, CNN, 2020 at <https://edition.cnn.com/2020/06/24/us/coronavirus-cases-protests-black-lives-matter-trnd/index.html>

<sup>23</sup> WHO situation report 196, 2020, p.10

<sup>24</sup> WHO situation report 193, 2020, p1

### 1.3 IHR as the only International instrument

There was no international law to regulate communicable diseases until the middle of the 19<sup>th</sup> Century.<sup>25</sup> During the European cholera epidemics of 1830 and 1847, each country started to understand that infectious diseases can go beyond geopolitical boundaries, and the first Sanitary Conference was convened by France in 1851.<sup>26</sup> A century afterwards, in 1951, the WHO adopted the International Sanitary Regulations, which were an outcome of the Sanitary Conferences in the 19 century.<sup>27</sup> This was renamed to the International Health Regulations (IHR) in 1969. The IHR is the legally binding set of regulations that were adopted at the 58 World Health Assembly in 2005, entering into force in 2007. The difference between the International Sanitary Regulations and the IHR is that the former was only able to consider epidemics that were on pre-specified list of diseases. Now the IHR can be applied to new diseases like COVID-19 as well. The IHR is only international instrument that can be applied to COVID-19.

One of the complications, however, that IHR causes is under its article 43. This article is the only one that includes an obligation for member states to follow under the IHR. IHR article 43(1) and (3) states that:

*“1. These Regulations shall not preclude States Parties from implementing health measures, in accordance with their relevant national law and obligations under international law, in response to specific public health risks or public health emergencies of international concern, which: (a) achieve the same or greater level of health protection than WHO recommendations; (b) are otherwise prohibited under Article 25, Article 26, paragraphs 1 and 2 of Article 28, Article 30, paragraph 1(c) of Article 31 and Article 33”<sup>28</sup>*

*“3. A State Party implementing additional health measures referred to in paragraph 1 of this Article which significantly interfere with international traffic shall provide to WHO the public health rationale and relevant scientific information for it. WHO shall share this information with other States Parties and shall share information regarding the health measures implemented.*

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<sup>25</sup> International law and communicable diseases, Obijiofor Aginam, Global Public Health and International Law. Bulletin of the World Health Organization 2002, 80 (12), p.947

<sup>26</sup> *ibid.*

<sup>27</sup> *ibid.*

<sup>28</sup> Article 43(1) of the International Health Regulation, 2005

*For the purpose of this Article, significant interference generally means refusal of entry or departure of international travellers, baggage, cargo, containers, conveyances, goods, and the like, or their delay, for more than 24 hours.”*<sup>29</sup>

This article makes it unclear whether member states are in breach of the IHR when they implement a measure that achieves the same or greater level of health protection than WHO recommendations and, if they do, how they are supposed to implement measures beyond the WHO recommendations.<sup>30</sup> Therefore, one of the weaknesses of the IHR is that the member states are encouraged to ignore WHO recommendations and institute restrictions at different levels of intensity. Moreover, under the IHR, States Parties are obliged to develop and maintain minimum core capacities for surveillance and response to any potential public health events of international concern, but not all the states are able to do so. Similarly, the IHR is lacking both a dedicated funding mechanism and a formal mechanism for compliance monitoring.<sup>31</sup>

#### 1.4 WHO and Human Rights Restrictions

The right to movement has been restricted due to measures such as lockdowns, quarantines, and travel bans to/from certain countries in order to stop the spread of the virus. These measures place many restrictions on people's daily lives. Quarantines and the isolation of people should be implemented in accordance with Article 3 of the IHR (2005), with the measure being respectful of people's dignity, human rights and fundamental rights.<sup>32</sup>

##### 1.4.1 Right to movement

ICCPR Article 12 ensures freedom of movement as stated below:

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<sup>29</sup> Article 43(3) of the International Health Regulation, 2005

<sup>30</sup> Gian Luca Burci, The Outbreak of COVID-19 Coronavirus: are the International Health Regulations fit for purpose? EJIL:Talk! 2020 at <https://www.ejiltalk.org/the-outbreak-of-covid-19-coronavirus-are-the-international-health-regulations-fit-for-purpose/>

<sup>31</sup> *ibid.*

<sup>32</sup> WHO, Considerations for quarantine of individuals in the context of containment for coronavirus disease (COVID-19) p.1

1. *Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.*
2. *Everyone shall be free to leave any country, including his own.*
3. *The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.*
4. *No one shall be arbitrarily deprived of the right to enter his own country.*

The first paragraph ensures the liberty of movement and freedom to choose residence, the second paragraph ensures the right to leave any country, including his own country. The fourth paragraph ensures the right to enter a person's own country. However, the third paragraph shows that possible restrictions may be applied to paragraph 1 and 2, while the use of the adverb "arbitrarily" in paragraph 4 places an important qualifier on the ability of the state to refuse entry to ones of its own citizens. The General Comment No.27 states that the restrictions which may be imposed have to match the principle of freedom of movement and the requirements provided under paragraph 3, and that consistency with other rights in the Covenants is essential.<sup>33</sup>

Paragraph 3 mentions that "restrictions which are not provided for in the law or are not in conformity with the requirements of article 12, paragraph 3, would violate the rights guaranteed by paragraphs 1 and 2".<sup>34</sup> Thus, to impose restrictions, the law has to be established and the conditions under which the rights may be limited have to be clarified. Moreover, the restrictions must be appropriate, at the least intrusive level, and proportionate to achieve the purpose intended. Finally, consistency with other rights in the Covenant and the fundamental principles of equality and non-discrimination must be guaranteed.<sup>35</sup>

The WHO continued to advise after the first recommendation against the application of travel or trade restrictions to countries experiencing COVID-19 outbreaks because, in general, evidence shows that restricting the movement of people and goods during public health emergencies is

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<sup>33</sup> ICCPR General Comment No. 27: Article 12 (Freedom of Movement), p.3

<sup>34</sup> ICCPR General Comment No. 27: Article 12 (Freedom of Movement), p.12

<sup>35</sup> ICCPR General Comment No. 27: Article 12 (Freedom of Movement), p.4

ineffective in most situations and may divert resources from other interventions.<sup>36</sup> The WHO did not recommend any restrictions on travel and hence it did not affect freedom of movement protected under the article 12 of ICCPR. While there are strong doubts that the WHO could have advised countries to close their borders to prevent the further spread of the virus, this passive measure has led countries to implement different intensities of travel restrictions.<sup>37</sup>

Furthermore, the WHO recommends that all suspected cases should be identified, tested, isolated and cared for, and their contacts identified, traced, and quarantined.<sup>38</sup>

“Public health measures to achieve these goals may include quarantine, which involves the restriction of movement, or separation from the rest of the population, of healthy persons who may have been exposed to the virus, with the objective of monitoring their symptoms and ensuring early detection of cases.”<sup>39</sup>

This measure affects ICCPR article 12 paragraph 1 because once the person is quarantined it restricts his choice of residence. Even so, this measure has a clear purpose which is to protect infected persons and prevent people being exposed to the virus. The quarantine measure that the WHO recommended are applicable within the IHR framework of Articles 30 (Travellers under public health observation), 31 (Health measures relating to entry of travellers), and 32 (Treatment of travellers).<sup>40</sup> Therefore, it is acceptable to implement this WHO measure.

#### 1.4.2 Right to health

First of all, it is important to point out that the definition of health defined in the WHO preamble was not adopted by the Covenant, the Third Committee of the United Nations General Assembly, when drafting article 12. The WHO defines health as “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity”<sup>41</sup>: article 12 extends the

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<sup>36</sup> Updated WHO recommendations for international traffic in relation to COVID-19 outbreak, COVID-19 Travel Advice, 29 February 2020

<sup>37</sup> Gian Luca Burci The Outbreak of COVID-19 Coronavirus: are the International Health Regulations fit for purpose? EJIL:Talk! 2020 at <https://www.ejiltalk.org/the-outbreak-of-covid-19-coronavirus-are-the-international-health-regulations-fit-for-purpose/>

<sup>38</sup> WHO Director-General's opening remarks at the media briefing on COVID-19 - 1 July 2020

<sup>39</sup> Considerations for quarantine of individuals in the context of containment for coronavirus disease (COVID-19), p.1

<sup>40</sup> *ibid.*

<sup>41</sup> ICESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12), p.1

definition of health to cover a wide range of socio economic factors, such as access to safe drinking water and adequate sanitation, safe food, adequate nutrition and housing, healthy working and environmental conditions, health-related education and information, and gender equality.<sup>42</sup> It doesn't only mean access to health care, but the right contains an entitlement which includes the right to prevention, treatment and control of diseases, and access to essential medicines, health services, goods and facilities, which must be provided to all without any discrimination. All services, goods and facilities must be available, accessible, acceptable and of good quality.<sup>43</sup>

Article 4 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) is the limitation clause that can be applied for the right to health. It states that “the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.”<sup>44</sup> In case of the right to health, states may limit the rights with regard to public health for the purpose of protecting the people: it should not be understood as permission for states to limit the right *per se*.

There are several WHO measures which affect the right to health. The WHO made recommendations in order to prevent and control infections. What should be done in all health care facilities includes the following: “triage and early recognition; an emphasis on hand hygiene, respiratory hygiene, and medical masks to be used by patients with respiratory symptoms; appropriate use of contact and droplet precautions for all suspected cases; prioritization of care of symptomatic patients; when symptomatic patients are required to wait, ensuring a separate waiting area; and the education of patients and families about the early recognition of symptoms, the basic precautions to be used, and which health care facility they

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<sup>42</sup> ICESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12), p.1

<sup>43</sup> *ibid*.

<sup>44</sup> Article 4 of ICESCR

should go to.”<sup>45</sup> Moreover, the WHO recommended that any public and private buildings prepare one or several hand hygiene stations at the entrance and oblige people to use them before entry.<sup>46</sup>

In preparing and packing a body for transfer from a patient room to an autopsy unit, mortuary, crematorium, or burial site, it is also required that personnel who interact with the body have sufficient protection and apply all the standard precautions not to transmit the virus. In a funeral home or mortuary, the family can see the body but they are recommended not to touch or kiss the body. This is especially the case with people who is over 60 years old or who have pre-existing health conditions.<sup>47</sup>

These measures made by WHO relate to the right to health from the aspect of the right to prevention, treatment and control of diseases and access to essential medicines, although at the moment (early August 2020) there are not yet effective cures or vaccines that are approved by the WHO. More issues will inevitably emerge when the vaccine for COVID-19 is finally made. The WHO will need to make a maximum effort to increase production, then distribute fairly to all countries both the knowledge and equipment required. Overall, these measures are acceptable as the WHO is protecting the core content of the right to health.

The core content of the right to health includes access to safe drinking water, adequate sanitation, and safe food. It is extremely important for the population to have a food system that operates as usual, even with the COVID-19 situation. However, the WHO says that authorities will need to prioritise the most important services to keep food circulating in a country: to do so can involve the introduction of temporary suspension of low-risk control activities due to interruptions in transport or imports as long as it does not jeopardise the supply of safe food.<sup>48</sup> For example, the WHO indicates that temporary suspension of annual residues monitoring programmes that aim to ensure compliance with contaminants regulations is acceptable. Another practical example would be when a food business uses an approved ingredient that has the same technical function

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<sup>45</sup> WHO, Infection prevention and control during health care when COVID-19 is suspected, WHO, 19 March 2020, p.3

<sup>46</sup> WHO, Recommendations to Member States to improve hand hygiene practices to help prevent the transmission of the COVID-19 virus, 2020, p.1

<sup>47</sup> WHO, Infection Prevention and Control for the safe management of a dead body in the context of COVID-19, 24 March 2020, p.1

<sup>48</sup> WHO, COVID-19 and Food Safety: Guidance for competent authorities responsible for national food safety control systems Interim guidance 22 April 2020, p.1



as a previously available ingredient, enabling food businesses which used to sell products to the catering sector or food industry to sell their products in the new market under certain circumstances, given the reduced capacity in public sector laboratories to test foods.<sup>49</sup> In order to have healthy working and environmental conditions, the WHO published ‘Considerations for public health and social measures in the workplace in the context of COVID-19’, which recommends measures such as maintaining workplace hygiene and reducing the number of working people in the same place.<sup>50</sup> This measure affects laboratories that test food safety and analyse substances.<sup>51</sup> Despite the WHO emphasizing that these measures should be adopted when they do not jeopardise the safety of foods, the health of the consumer, or international trade, there is always possibilities that these measures may be misused when implemented. In conclusion, the WHO’s measures affect the core content of the right, but this is acceptable as long as the member states follow the WHO’s guidance strictly.

The WHO requests that states should ensure adequate sanitation for vulnerable groups such as refugees and indigenous people within its interim guidances, yet it is quite challenging for member states to implement this when there is a lack of resources and staffs. Moreover, the WHO has mentioned that COVID-19 does not spread through drinking water unless it is untreated.<sup>52</sup> Thus, there are no WHO measures that restrict the right to access water.

Not only the measures directly related to health but also quarantine measures affect people’s health. The increase of domestic violence against women and gender-based violence have reported because as people are in lockdown with their abusive partners under stressful situations.<sup>53</sup> Under the situations such as crisis and natural disasters, it is proved that the cases of domestic violence increase.<sup>54</sup> Moreover, not being able to access family or friends who may provide help, and not being able to access services are also triggers to exacerbate the risk of

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<sup>49</sup> WHO, COVID-19 and Food Safety: Guidance for competent authorities responsible for national food safety control systems Interim guidance 22 April 2020, p.2

<sup>50</sup> WHO, Considerations for public health and social measures in the workplace in the context of COVID-19, 10 May 2020, p.2

<sup>51</sup> WHO, COVID-19 and Food Safety: Guidance for competent authorities responsible for national food safety control systems Interim guidance 22 April 2020, p.2

<sup>52</sup>WHO, Water, sanitation, hygiene, and waste management for the COVID-19 virus Interim guidance ,23 April 2020 p.2

<sup>53</sup> Daniel Johnson (Audio Credit) UN news, News in Brief 6 April 2020

<sup>54</sup> WHO Violence and disasters, 2005 at

[https://www.who.int/violence\\_injury\\_prevention/publications/violence/violence\\_disasters.pdf?ua=1](https://www.who.int/violence_injury_prevention/publications/violence/violence_disasters.pdf?ua=1)

domestic violence. Violence against women, whether physical or psychological harm and suffering among women, is also a violation of their right to health. Domestic violence includes sexual abuse. Sexual and reproductive health is also a key aspect of women's mental and physical health. Accessibility to vital sexual and reproductive health services may also become limited. The WHO highlights that governments and policymakers must ensure women can access essential services that address violence in the process of preparedness and response plans for COVID-19<sup>55</sup>, ensuring adequate funding and access.<sup>56</sup>

#### 1.4.3 Right to peaceful assembly and Freedom of religion

ICCPR Article 21 states the right to peaceful assembly as following:

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

Needless to say, considerations around freedom of assembly play an extremely important role during the coronavirus epidemic. UN expert on the rights to freedoms of peaceful assembly and of association, Mr Clément Voule, said: "Civil society organisations are key in helping States to frame inclusive policies, disseminate information, and provide social support to vulnerable communities in need"; however, "civil society organizations have rarely been consulted in the process of designing or reviewing appropriate measures of response."<sup>57</sup> Therefore, blanket restrictions on the freedom of assembly and association for civil society are not acceptable. Civil society have the responsibility to make sure that those laws and regulations are not broad and vague, but rather are appropriate, if widely spread, and impose penalties that are clear and proportionate, ensuring that the implications of the law are entirely considered even under the situation of a contagious disease where it is difficult to gather physically.<sup>58</sup>

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<sup>55</sup> WHO COVID-19 and violence against women What the health sector/system can do, 2020, p.2

<sup>56</sup> *ibid.*

<sup>57</sup> OHCHR, "States responses to Covid 19 threat should not halt freedoms of assembly and association" – UN expert on the rights to freedoms of peaceful assembly and of association, Mr. Clément Voule 14 April 2020

<sup>58</sup> *ibid.*

There are several restrictions that can be implemented on the freedom of assembly and association. General Comment No.37 Revised draft, prepared by the Rapporteur, Mr Christof Heyns, states that the latter part of the second sentence of Article 21 identifies the exhaustive list of incidents where the right to peaceful assembly may be restricted:<sup>59</sup> the protection of public health is the case for the COVID-19 pandemic. It states that “the “protection of public health” reason may exceptionally permit restrictions to be imposed, for example where there is an outbreak of infectious disease and gatherings are dangerous.”<sup>60</sup> WHO key planning recommendations for mass gatherings in the context of COVID-19 recommend that people should be advised to stay away from the event if they feel ill, that they should not join again until they recover, and that people who become ill while at the event should be isolated.<sup>61</sup> These recommendations affect freedom of assembly given they are limitation on participation in gatherings. However, considering the characteristic of COVID-19 that transmits human to human through droplets, which is highly infectious, and for there are no vaccines or specific pharmaceutical treatments, the limitations are acceptable in order to prevent the virus spreading further. In addition, the WHO’s quarantine and isolation measures also affect people who want to join a gathering. General Comment No.37 states: “In general, States parties should not place a limit on the number of participants in assemblies. Any such restriction can be accepted only if there is a clear connection with a legitimate ground for restrictions as set out in article 21.”<sup>62</sup> The WHO recommends that crowding should be minimised where possible, and event organisers should consider using distancing measures to reduce close contact among people during the gathering: this is also acceptable because of the high risk of infection.<sup>63</sup>

Religious assemblies may also be limited under certain circumstances. Article 18 of the ICCPR ensures the right to freedom of thought, conscience and religion. The last part of article 18 states: “Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the

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<sup>59</sup> General comment No. 37 Article 21: right of peaceful assembly Draft prepared by the Rapporteur, Christof Heyns, p.8

<sup>60</sup> *ibid.*

<sup>61</sup> WHO, Key planning recommendations for mass gatherings in the context of COVID-19, 2020, p3

<sup>62</sup> General comment No. 37 Article 21: right of peaceful assembly Draft prepared by the Rapporteur, Christof Heyns, p.10

<sup>63</sup> WHO, Key planning recommendations for mass gatherings in the context of COVID-19, 2020, p3

fundamental rights and freedoms of others.”<sup>64</sup> WHO concerns regarding ‘Safe Ramadan practices in the context of the COVID-19’ that call for social distancing measures and the closing of mosques, monitoring of public gatherings and other restrictions on movement had a direct impact on Ramadan, which was held between the end of April and the end of May.<sup>65</sup> The WHO recommendation to cancel social and religious gatherings following a standardised risk assessment exercise. The WHO recommends to hold the event outdoors, shorten the length of the event, conduct smaller services more often, with fewer attendees, adhere to physical distancing among attendees, regulate the number and flow of people, and facilitate contact tracing in the event.<sup>66</sup> Furthermore, according to Draft General Comment No.37 authorities are allowed to collect relevant information and data under certain situations in order to “improve public accountability and constitute part of a proactive approach to preventing violations and abuses of rights from occurring.”<sup>67</sup> The WHO recommends that meeting organisers must liaise with public health authorities and facilitate the sharing of information about all symptomatic participants.<sup>68</sup> This is only acceptable under the scope that the collected information is used only for the means to prevent or monitor the spread of the virus: collecting information and the way in which data is retained and accessed must be done strictly in line with international standards.

#### 1.4.4 Freedom of expression and right to information

ICCPR Article 19 ensures the freedom of opinion and expression as follows:

- 1. Everyone shall have the right to hold opinions without interference.*
- 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, ...It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the right or reputations of others; (b) For the protection of national security or of public order, or of public health or morals. [...]*

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<sup>64</sup>Article 18 of ICCPR

<sup>65</sup> WHO, Safe Ramadan practices in the context of the COVID-19, p.1

<sup>66</sup> *ibid.*

<sup>67</sup> General comment No. 37 Article 21: right of peaceful assembly Draft prepared by the Rapporteur, Christof Heyns, p.11

<sup>68</sup> WHO, Key planning recommendations for mass gatherings in the context of COVID-19, 2020, p.2

*5. Freedom of opinion is one such element, since it can never become necessary to derogate from it during a state of emergency.*<sup>69</sup>

The first paragraph of article 19 requires protection of the right to hold opinions without interference. The second paragraph requires states to ensure that freedom of expression, along with the right to seek information held by public bodies, notably that authorities should provide reasons for any refusal to provide access to information. The freedom of expression includes political discourse, commentary on one's own and on public affairs, canvassing, the discussion of human rights, journalism, cultural and artistic expression, teaching, religious discourse and, potentially, commercial advertising.<sup>70</sup> However, expressions that intensely offend people can be restricted under paragraph 3 and ICCPR article 20. Thus, paragraph 3 shows the possible limitations of article 19. Public health is one of them. The restrictions must be identified by law and must be proportionate. In the general remarks of the General Comment of ICCPR article 19, it says that freedom of expression and freedom of opinion are closely related and both are crucial not only for a free and democratic society but also for the protection and promotion of human rights.<sup>71</sup> While freedom of expression and freedom of opinion are not in the list under Article 4 paragraph 2 of the ICCPR, i.e. that which should be protected no matter what, even under the state of emergency, according to the Committee's opinion in ICCPR General Comment No. 29 Article 4: Derogations during the State of Emergency, it does not mean that any rights are subjected to derogation.<sup>72</sup>

Free-flow information is important during the pandemic. However, erroneous information about health may endanger people's bodies and lives. People need clear guidelines to know how to protect themselves and how not to infect others. According to paragraph 16 of General Comment No.34, the government should make sure that broadcasting services can work independently and that the right to access information from public bodies is ensured.<sup>73</sup>

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<sup>69</sup> Article 19 of ICCPR

<sup>70</sup> General Comment No.34 Article 19: Freedoms of opinion and expression, p.3

<sup>71</sup> *ibid*, p.1

<sup>72</sup> General Comment No. 29 Article 4: Derogations during the State of Emergency, p.3

<sup>73</sup> General comment No.34 Article 19: Freedoms of opinion and expression, p.4

The WHO defines infodemic as “an over-abundance of information, some accurate and some not that makes it hard for people to find trustworthy sources and reliable guidance when they need it”<sup>74</sup> and that this is a global-scale emergency, given that information is spread and consumed mainly through social media and other ways. The WHO reports that it has been managing the infodemic by providing correct information about COVID-19 through technical guidance, online training, press conferences, situation reports, and ‘MythBusters’ where the WHO counters rumours about the virus, etc. The WHO Information Network for Epidemics(EPI-WIN) also established a framework for governments and public health institutions to guide actions to combat the infodemic.<sup>75</sup> One of the key principles of the framework is that ‘interventions and messages must be based on science and evidence.’<sup>76</sup> This is extremely important for the policymaking process. Policies set to combat the coronavirus should not be built with political decisions but on scientific fact and proof. Yet, the WHO does not mention the protection of freedom of expression. It is open to question if the WHO should have made a concrete recommendation about the protection of freedom of speech, for example not to criminalise disinformation or, whether under a state of emergency, the government should not refuse to provide access to information. The Director for Policies and Strategies regarding Communication and Information at UNESCO, Guy Berger, said, “When disinformation is repeated and amplified, including by influential people, the grave danger is that information which is based on truth, ends up having an only marginal impact.”<sup>77</sup> He also pointed out that disinformation may lead people to take medications that are not yet proven to be effective against COVID-19.<sup>78</sup> In addition, the New York Times reported that social media is now full of misinformation about COVID-19 vaccinations.<sup>79</sup> For all kinds of vaccines, there always are groups of anti-vaccination or concerned parents. In order to enable medical persons and researchers to interact and exchange information about vaccinations and cures, they need extra protection for freedom of expression.

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<sup>74</sup> WHO situation report 83, p.2

<sup>75</sup> WHO situation report 83, p.2

<sup>76</sup> *ibid.*

<sup>77</sup> UN news During this coronavirus pandemic, ‘fake news’ is putting lives at risk: UNESCO, 2020

<sup>78</sup> *ibid.*

<sup>79</sup> Kevin Loose, Get Ready for a Vaccine Information War, 2020, New York Times at <https://www.nytimes.com/2020/05/13/technology/coronavirus-vaccine-disinformation.html>

#### 1.4.5 Right to employment

Article 6 of ICESCR defines the right to work as “the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right”<sup>80</sup>. While the right to work is not an absolute right, the right does include access to a system of protection and it implies that nobody shall be deprived of their work without any reason. Article 7 of ICESCR ensures the right of everyone to enjoy just and favourable conditions of work. This include safe and healthy working conditions.

In the guidelines within ‘Getting your workplace ready for COVID-19’, published on 19 March by the WHO, it calls upon employers to remind their employees, contractors and customers if anyone in their community have the symptoms of COVID-19 that they should stay at home and inform their employees that they will be able to take sick leave in these circumstances.<sup>81</sup> Moreover, employers should avoid sending their employees to areas where the virus is spreading and employees who are old and those who have diabetes, heart and lung diseases should be considered as higher risk.<sup>82</sup> The WHO also provides advice to promote regular teleworking in firms so that they can keep their business going and at the same time employees can stay safe by avoiding crowded areas such as public transportations.<sup>83</sup> Although the range of work may be limited depending on their status such as age and pre-existing conditions, under the pandemic situation, it is necessary to protect their bodies and lives. As long as employees are treated fairly regardless their conditions, WHO recommendations are acceptable and they bring positive effect on people.

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<sup>80</sup>Article 6 of ICESCR

<sup>81</sup> WHO Getting your workplace ready for COVID-19, 2020, p.2

<sup>82</sup> *ibid*, p.6

<sup>83</sup> *ibid*, p.7

## Chapter 2 COVID-19 in Japan

Although the New York Times reported that a two-week quarantine of Diamond Princess, a cruise ship arrived in Yokohama port in Japan, was “an epidemiological nightmare”<sup>84</sup>, the Director-General of the WHO praised Japan for having a low death rate for COVID-19 at a press briefing on 25 May.<sup>85</sup> However, it is difficult to know why Japan has been able to keep a low death rate.

### 2.1 State of emergency

The state of emergency declared on 16 April has an impact on several rights especially the right of movement.

On 13 March, the law to revise a part of the Act on Special Measures Against New Influenza was passed and put in force on 14 March. This amendment was undertaken for the purposes of ensuring that coronavirus should be considered and treated as same as New Influenza and the provisions of the Act and orders based on the Act should be applied until 31 January 2021. The new Coronavirus Infectious Diseases Control Headquarters were installed and the Headquarters were constituted with the prime minister as its head. Under article 32 of the Act on Special Measures Against New Influenza, the head of the new Coronavirus Infectious Diseases Control Headquarters is responsible for the public announcement of the occurrence of the emergency, such as new influenza, and the following matters (the announcement of the state of emergency) and for reporting to the Diet.<sup>86</sup> The matters include: a period during which emergency measures should be implemented; areas where emergency measures should be implemented; and an overview of the situation of emergency. The state of emergency cannot be longer than two years in total and it cannot be extended for more than one year. The requirements that need to be filled in order for the state of emergency to be declared are: when a disease may cause serious damage to the lives and health of the people; when its nationwide; and when its rapid spread has a great impact on national life and national economy.

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<sup>84</sup> Motoko Rich and Edward Wong, They Escaped an Infected Ship, but the Flight Home Was No Haven, The New York Times, 2020 at <https://www.nytimes.com/2020/02/17/world/asia/japan-cruise-ship-coronavirus.html>

<sup>85</sup> The Japan Times, WHO chief deems Japan's battle against coronavirus a 'success', 2020 at <https://www.japantimes.co.jp/news/2020/05/26/national/who-japanese-success-coronavirus/>

<sup>86</sup> Article 32 of the Act on Special Measures Against New Influenza



Under article 33 of the same Act, the prime minister can give necessary instructions to prefectural governors and designated public institutions.<sup>87</sup> The governors of each prefecture can request people to refrain from going out, close schools, and suspend business based on the law. These requests restrict the right to movement, the right to education, and the right to property. The governors can also restrict the use of facilities, which affect the freedom of assembly. However, there is no set fine, so it is possible for people and companies to choose not to comply. For example, in Osaka prefecture, the second-largest metropolitan area in Japan, the governor announced the names of six pachinko parlours (pinball saloons) that did not comply with the requests for suspension of business.<sup>88</sup> Simultaneously, the decision to lift the measures was also left to the governors' discretion.

One of the characteristics of the state of emergency in Japan is that there is no legal force to lockdown the country or the cities. Therefore, the governors have to promote and convince companies to comply with the measures by “naming and shaming”. The media plays an important role in restraining people's behaviour. More significantly, some people have become virus vigilantes (or quarantine vigilantes). These actions cause anxiety and conflicts among people, which may lead to discrimination against a certain group of people.

Each prefecture has introduced their own guidelines after lifting the state of emergency.<sup>89</sup>

## 2.2 State of emergency and revision of the constitution

The prime minister of Japan, Shinzo Abe, has mentioned the need to introduce the provisions regarding national emergencies into the Japanese constitution: this refers to the authority to suspend constitutional order and take emergency measures to maintain the existence of the nation during an emergency situation, such as war, civil war, economic depression, large-scale natural disaster, etc.<sup>90</sup> The provision regarding a national emergency concentrates authority

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<sup>87</sup> Article 33 of the Act on Special Measures Against New Influenza

<sup>88</sup> Nikkei newspaper, 大阪府、パチンコ 6 店公表 休業要請応じず 全国初[Osaka prefecture named 6 pinball saloons for not complying to suspension of business which is the first case in Japan], 2020 at <https://www.nikkei.com/article/DGXMZO58445240U0A420C2AC1000/>

<sup>89</sup> Nikkei newspaper, 「東京アラート」発動 都、新たに 34 人の感染確認[‘Tokyo alert’ into operation, 34 newly confirmed cases in Tokyo], 2020 at <https://www.nikkei.com/article/DGXMZO59875410S0A600C2000000/>

<sup>90</sup> Sankei News, 「緊急事態条項」の必要性に言及 安倍首相の「改憲メッセージ」判明[Prime Minister Abe mentioned the necessity of the national emergency provision], 2020 at <https://www.sankei.com/politics/news/200502/plt2005020009-n1.html>

within the government. The draft issued by the Liberal-Democratic Party shows there are five main effects from the declaration of a state of emergency: (1) The Cabinet can make an order in Cabinet that has the same effect as a law; (2) The Prime Minister can make necessary financial dispositions and other dispositions; (3) The Prime Minister can give necessary instructions to the heads of local government; (4) As required by law, people must follow the directives of the state and other public institutions issued to protect the lives, bodies and property of the people; (5) As required by law, the House of Representatives shall not be dissolved and exceptions to the stated election dates can be established.<sup>91</sup>

If the provisions regarding national emergencies are abused, the negative impact on human rights would be immeasurable because the provisions suspend safeguards for human rights.

Under the current system, the national emergency provision is not part of the constitution.

Therefore, in order to limit the movement of people and activities, revision of the Act on Special Measures Against New Influenza and the infectious disease law article 33 is required. However, the Act on Special Measures Against New Influenza does not have a provision to set a fine for people who fail to comply with it. This is one of the reasons why a complete lockdown was not achievable and why Prime Minister Abe wishes to introduce the provision into the constitution.

However, there are several problems that have emerged. Additionally, in the Q&A of the draft of revised Japanese constitution issued by the Liberal Democratic Party, it is said that there is no need to introduce it into the constitution.<sup>92</sup> This demonstrates by itself that the state of the emergency provision is not necessary to better protect the people but is intended for the government to gain increased powers. It is possible to introduce have a provision to set a fine the Act on Special Measures Against New Influenza instead of the constitution. Moreover, in the constitution there is already a provision that may restrict rights due to the public welfare.<sup>93</sup>

Compared to other countries that have decided to take lockdown measures, that Japan is not able to legally enforce a lockdown has been reported as not being the optimal situation with regard to being able to take action against the worldwide pandemic. However, it is not yet proved that lockdown is the most effective way to combat coronavirus, while maintaining economic growth

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<sup>91</sup> The Liberal-Democratic Party, Draft of revised Japanese constitution, 2012, p.24, 25

<sup>92</sup> The Liberal-Democratic Party, Draft of revised Japanese constitution Q&A, 2012, p.34

<sup>93</sup> Article 13 of the Japanese constitution

at the same time is important that the impact on people's lives can be diminished. This issue is still under research. Therefore, this argument will not be addressed in this thesis.

### 2.3 Entry ban on foreigners

On 31 January, the Ministry of Justice announced an entry ban on Foreign nationals who have Chinese passports issued in either the Hubei Province or the Zhejiang Province of China. After this, the Ministry of Justice decided to widen the scope of the entry ban to more countries. The Ministry of Justice announced that, from 3 April, those who passed the "immigration restricted area" based on the Immigration Control Act and those who are non-Japanese nationals cannot enter the country unless there are special circumstances. At the beginning, the special circumstances only included humanitarian reasons but later the ministry announced that the case of visits and funerals of relatives in critical condition, medical treatment and childbirth at foreign medical institutions, request for an appearance by a foreign court, etc.<sup>94</sup>

The Immigration Control Act Article 5(1)(xii) states the following:

*Any alien who falls under any of the following items shall be denied permission for landing in Japan....(xiv) In addition to those persons listed in items (i) to (xiii), a person whom the Minister of Justice has reasonable grounds to believe is likely to commit an act which could be detrimental to the interests or public security of Japan.*<sup>95</sup>

Permanent residents, spouses and parents of Japanese nationals would also be refused permission to enter the country. According to the 'New measures for strengthening border measures' announced on 25 May, from 27 May a strict entry ban is introduced to those who have stayed in the 'immigration restricted area' based on the Immigration Control Act within the previous 14 days on the day of entry.<sup>96</sup> Over 100 countries are specified as the 'immigration restricted area' and no Japanese nationals are refused permission to enter the country.

However, the risk for Japanese nationals and non-nationals is the same with regard to COVID-19. Everyone is equally in danger of getting infected no matter what nationality or residence status they have. Therefore, a blanket ban on the entry of foreign nationals due to "public

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<sup>94</sup> The Ministry of Affairs, 新型コロナウイルス感染症の拡大防止に係る上陸拒否の措置に関し、個別の事情に応じて特段の事情があるものとして入国・再入国を許可することのある具体的な事例[Regarding the prevention of new coronavirus, specific cases that may permit entry/reentry], 2020 at <http://www.moj.go.jp/content/001321919.pdf>

<sup>95</sup> Article 5(1)(xii) of the Immigration Control Act

<sup>96</sup> The Ministry of Affairs, New measures for strengthening border measures of 25 May, 2020

security” is not reasonable and acceptable. It is quite ambiguous why allowing foreign nationals legally residing in Japan or the family of a Japanese national to enter the country could cause confusion in society. Therefore, the entry ban strictly limits the right to movement of non-Japanese nationals.

## 2.4 Freedom of assembly

During the state of emergency, the mayor of each prefecture can make requests regarding the use of facilities based on the Act on Special Measures Against New Influenza Article 45 paragraph 2. In accordance with this, for example, there were 12,705 cancellations and postponements of live music and plays, and 1150 cancellations of professional sports games between March and May.<sup>97</sup> The government of Japan published guidelines for the gradual removal of event restrictions on 25 May after lifting the state of emergency. Following three steps, the government aims to lift event restrictions through to having no limitation on a maximum number of people and for 50% of capacity at indoor events, with enough distance preferably two meters at outdoor events by 1 August.<sup>98</sup> Since 10 July, although cases in Japan have been increasing every day, events with up to 5000 people have able to take place, considering that most of the cases in Japan are amongst young people who rarely have advanced symptoms and the breakdown of medical care is unlikely, as Minister of Economy Nishimura has pointed out.<sup>99</sup> From the aspect of freedom of assembly, this is a positive thing but because of the rapid increase in the number of cases in Japan, the re-restriction on events or the renewed declaration of the state of emergency could be expected and freedom of assembly may be restricted at any point. Additionally, the Japanese government started to limit the number of journalists that were able to participate in events for reasons of coronavirus<sup>100</sup> and thus limited the freedom of the press: in

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<sup>97</sup> NHK, 新型コロナ イベント中止・延期の経済損失を推計 3 兆円余 [Estimated economic loss of event cancellation/postponement is more than 3 trillion yen due to the new coronavirus], 2020 at <https://www3.nhk.or.jp/news/html/20200629/k10012487251000.html>

<sup>98</sup> The Japanese government, イベント開催制限の段階的緩和の目安 [Guidelines for gradual lifting of event restrictions], 2020 at [https://www.city.utsunomiya.tochigi.jp/\\_res/projects/default\\_project/\\_page/\\_001/024/843/dankaitekikanwa1.pdf](https://www.city.utsunomiya.tochigi.jp/_res/projects/default_project/_page/_001/024/843/dankaitekikanwa1.pdf)

<sup>99</sup> JIJI.com, イベント制限、10日から緩和 [Limitations on events, lifting from 10th], 2020 at <https://www.jiji.com/jc/article?k=2020070600702&g=pol>

<sup>100</sup> Kyodo, 首相取材、感染防止で人数制限 官邸が要請、フリーは抽選も [Prime Minister interview, limited number of journalists requested by the government], 2020 at <https://news.yahoo.co.jp/articles/f9fa8eba79b1369192aed78a4f9f65085db2a5f5>

this case, freelance journalists were more likely to be removed. This move may strongly threaten the freedom of the press.

## 2.5 Employment

The new lifestyle guidelines issued on 4 May were based on suggestions from the New Coronavirus Infectious Diseases Experts Meeting. The guidelines consist of four main sections. The fourth section outlines a ‘new style of working’ and recommends teleworking, staggered working hours, ensuring distance is kept in the office, shifting conferences online, wearing a mask, and ventilating the room during face-to-face meetings.<sup>101</sup> However, there is a question as to whether Japanese companies and workers can adopt to the new methods. After lifting the state of emergency, the percentage of teleworking has decreased. On 29 May, research showed that 30.5% of workers were teleworking but, on June 1, the rate had decreased to 23%.<sup>102</sup> This shows that many people went back to the office immediately after the state of emergency was lifted. Teleworking is important to avoid an extremely packed train, which is very common and a social issue in Japan.

Furthermore, the coronavirus pandemic affected employment from several perspectives. It became clear that atypical employment and part-time jobs are the most vulnerable under the pandemic and economic restrictions. People who are in these employment types are mainly women.<sup>103</sup> University students are also affected since many students in Japan do part-time jobs to support themselves with life expenses and tuition fees. Freelancers are not as secure as was thought. More and more people are teleworking in order to balance work and family time. Thus, changes to working hours and a minimum wage should be reconsidered, especially for essential workers who are fighting against the virus and risking their own lives.

People in non-stable employment are one of the most vulnerable groups during the pandemic. All people who had residency on 27 April are eligible to apply for Special Cash Payments of

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<sup>101</sup> The Minister of Health, Labour and Welfare 「新しい生活様式」の実践例 [Practical examples of “New lifestyle”], 2020 at <https://www.mhlw.go.jp/content/000641913.pdf>

<sup>102</sup> Nikkei newspaper, テレワーク実施率、緊急事態解除後に低下民間調べ[Telework implementation rate declines after lifting the state of emergency], 2020 at <https://www.nikkei.com/article/DGXMZO60232970R10C20A6TJ2000/>

<sup>103</sup> The Ministry of Internal Affairs and Communications statistic bureau, 労働力調査の結果を見る際のポイント No.16 [Key points when looking at the results of the labour force survey No.16], 2013 at <https://www.stat.go.jp/data/roudou/pdf/point16.pdf>

100,000 yen (about 800 euro). This is far from enough to support everyday life. In April, the number of atypical staff and employees decreased by 970,000 compared to the previous year: 73% of these were women.<sup>104</sup> In 2017, according to the Minister of Health, Labour and Welfare, the average wage for full-time workers is 1,973 yen per hour (about 16 euro), while for part-timers the average wage is 1,293 yen per hour (about 11 euro).<sup>105</sup> It shows that women are in a difficult situation under the pandemic.

Those in atypical employment, such as a part-timer, are eligible for compensation for absence from work if the company meets certain conditions. However, many companies misunderstand that they did not need to compensate atypical employees for taking leave although they can apply for the employment adjustment subsidy.<sup>106</sup> This subsidy is a system in which the state covers the cost of leave allowances paid to employees by business owners who have been forced to reduce their business activities for economic reasons. The idea is to maintain employment. However, sometimes employers don't recognise their duty to provide compensation to their employees for absence from work or the process takes too long until employees actually receive the compensation.<sup>107</sup> To solve this situation, the government established another compensation fund for employees who work for small- and middle- sized companies: the emergency employment security grant. Through this, employees can directly receive up to 11,000 yen per day, dependent upon their average wage and the number of working days per month.<sup>108</sup> If the employer does not cooperate with submitting the required documentation, the prefectural labour bureau can request a report.<sup>109</sup> However, in this case, the payment of the compensation will be delayed.

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<sup>104</sup> Reuters, 非正規単身女性を容赦なく「コロナ切り」の過酷 [Cruelty of “corona dismissals” without mercy on atypical, single and female workers], Toyokeizai online, 2020 at <https://toyokeizai.net/articles/-/356334>

<sup>105</sup> The Minister of Health, Labour and Welfare, 「非正規雇用」の現状と課題 [“atypical work” the current situation and issues], 2017, p.5

<sup>106</sup> Tokyo web, 「遊び金なら出さない」学生バイトに休業補償なし [“We will not give money to have fun” no compensation for student part-timer], 2020 at <https://www.tokyo-np.co.jp/article/36756>

<sup>107</sup> Keiichiro Hamaguchi 新型コロナ休業支援金／給付金の諸問題 [The problem of new coronavirus business suspension support/benefits], 2020, JIJI.com at <https://www.jiji.go.jp/tokusyu/covid-19/column/011.html>

<sup>108</sup> The Minister of Health, Labour and Welfare 新型コロナウイルス感染症対応休業支援金・給付金 [New coronavirus business suspension support and benefits], 2020 at <https://www.mhlw.go.jp/stf/kyugyoshienkin.html>

<sup>109</sup> ibid.

The support for employees due to school closures will be provided to employers if their employees apply for paid leave for childcaring purposes.<sup>110</sup> This amount is 7500 yen per day until 31 March 31 and 15,000 yen per day until 30 September. However, freelancers are only able to receive 4100 yen a day until 31 March, before being raised to 7500 yen until 30 September.<sup>111</sup> Apart from this subsidy, the government has established special measures for emergency small funds and comprehensive support funds and created sustainable benefits of up to 1 million yen (about 8,300 euro) for self-employed workers.<sup>112</sup> However, the issues remain that there is no safety net for freelancers in the first instance.

People who are working on the front line in the fight against the coronavirus are called key workers, critical workers, and essential workers. This means that the work these workers do is necessary for people's everyday life even during the crisis. At the same time, they are endangered through the risk of infection. However, historically many of these professions are underpaid, as they are traditionally viewed as 'blue-collar' positions: some of them work at the minimum wage level. Therefore, besides compensation for their hardworking efforts, it is important to discuss a rise in the minimum wage.

Over the last four years, the Japanese government has raised the minimum wage by 3% every year, aiming to reach 1000 yen (about eight euro) per hour throughout the country.<sup>113</sup> However, the small- and middle-sized companies called for the cancelling of the rise this year due to the economic crisis.<sup>114</sup> It is currently planned that around the beginning of October, the new minimum wage will be implemented.

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<sup>110</sup> The Minister of Health, Labour and Welfare, 小学校等の臨時休業に伴う保護者の休暇取得支援のための新たな助成金 [New subsidies to support parents to take leave due to temporary closure of elementary schools], 2020 at [https://www.mhlw.go.jp/stf/seisakunitsuite/bunya/koyou\\_roudou/koyou/kyufukin/pageL07\\_00002.html](https://www.mhlw.go.jp/stf/seisakunitsuite/bunya/koyou_roudou/koyou/kyufukin/pageL07_00002.html)

<sup>111</sup> The Minister of Health, Labour and Welfare, 小学校等の臨時休業に伴う保護者の休暇取得支援のための新たな助成金 [New subsidies to support parents to take leave due to temporary closure of elementary schools], 2020 at [https://www.mhlw.go.jp/stf/seisakunitsuite/bunya/koyou\\_roudou/koyou/kyufukin/pageL07\\_00002.html](https://www.mhlw.go.jp/stf/seisakunitsuite/bunya/koyou_roudou/koyou/kyufukin/pageL07_00002.html)

<sup>112</sup> The Ministry of Economy, Trade and Industry, 持続化給付金に関するお知らせ [Notice regarding sustainable benefits], 2020

<sup>113</sup> Taku Takizawa, Takashi Yoshida, Kazuhito Suwa, 最低賃金引き上げ率、「3%」は実現困難か コロナ影響 [Difficult to achieve the minimum wage increase rate of "3%"? Impact of Corona], Asahi news digital, 2020 at <https://www.asahi.com/articles/ASN637JTRN637ULFA01S.html>

<sup>114</sup> *ibid.*



## 2.6 PCR and the decision-making process

Currently, the decision-making process within the government is unclear. If the state of the emergency provision is added to the constitution, it is possible that it will become even more difficult for people to know the current state of affairs. For example, it is not clear until when the state of emergency should be maintained because the Japanese government has failed to carry out enough number of examinations and publicly release information about case levels.<sup>115</sup> The deputy representative of the experts meeting, Shigeru Omi, insists at a press release that according to WHO recommendation if the positive rate is between 3% to 12 % the country is performing a decent number of tests and in Japan, most of the prefectures meet the criteria.<sup>116</sup> However, if we take notice of Tokyo, the capital of Japan and where most cases are registered, it barely meets the criteria of 3% to 12 %. In April, Tokyo has recorded more than 12% until 29 April of tests being positive and the maximum was 31.6%.<sup>117</sup> On the contrary, from May 10 to June 24, it kept recording below 3%.<sup>118</sup> In other words, Tokyo has satisfied the criteria only from April 30 to May 9 and after June 25 when there was a rapid increase in cases in Tokyo. In addition, A national survey conducted by Kyodo World Service reported on May 31 that 77.4% of the respondents said the government's efforts to improve the system for PCR testing were “insufficient” and 15.0 % said “Sufficient”.<sup>119</sup>

Thus, it is not possible to assess if the current situation meets the requirements of the declaration of the state of emergency. On the one hand, the WHO and many countries believe that science-based evidence and conducting PCR tests is the best way to fight against coronavirus.<sup>120</sup> On the other hand, the Japanese government seems to be worried about a breakdown in medical care as they were reluctant to substantially increase number of tests that could be carried out.<sup>121</sup> In this

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<sup>115</sup> Kenta Yamada, 緊急事態宣言がむしろ社会の崩壊を招く [The state of emergency collapses society], 2020, Yahoo Japan News at <https://news.yahoo.co.jp/byline/yamadakenta/20200331-00170230/>

<sup>116</sup> Yoshiko Hashimoto, 「人口 10 万人当たり 0.5 人」の根拠は？ [What is the basis for "0.5 people per 100,000 population"?], 2020, m3.com at <https://www.m3.com/open/iryolshin/article/771922/>

<sup>117</sup> The government of Tokyo, 東京都新型コロナウイルス感染症対策サイト [Tokyo website for new coronavirus infectious disease measures], 2020 at <https://stopcovid19.metro.tokyo.lg.jp/>

<sup>118</sup> *ibid.*

<sup>119</sup> Kyodo, 共同世論調査、PCR 検査態勢不十分 77% [National poll, 77% said inadequate], 2020, Yahoo Japan News at <https://news.yahoo.co.jp/articles/613bbf63ea327e3edfb6d8ecd3897dc7b5dc6412>

<sup>120</sup> WHO Director-General's opening remarks at the media briefing on COVID-19 - 16 March 2020

<sup>121</sup> The new coronavirus infectious disease expert meeting 「新型コロナウイルス感染症対策の状況分析・提言」 (2020 年 5 月 4 日) [Analysis and recommendations by the expert meeting on May 4, 2020] p.19



case, whether the measures should be strengthened or not depends entirely on political decisions that may unreasonably endanger human rights.

In the ‘Guidelines for the Management of Administrative Documents’, which was partially amended in May 2020, there is a chapter called ‘Ensuring the composition of records at conferences, etc. in response to historical emergencies.’<sup>122</sup> It says that

*Records shall be created according to the nature of the meeting as follows: when there is a government-wide meeting for emergencies that may result in large-scale and serious damage to the lives and property of the people; when it is a historically important policy matter for which records should be preserved as a nation/society; and when the social impact is great and the whole government will respond. The lessons shall be applied to the future.*<sup>123</sup> (translated by the author)

According to this chapter, there are two types of conferences.<sup>124</sup> One is a conference where policy-making decisions or approvals take place and the other is a conference where these actions don't happen. For the second one, composing records is depends on the decision of the government. Therefore, the expert meeting of 27 March did not make a record of proceedings that shows the speakers and the contents because the government considered the expert meeting as the latter type of conference.<sup>125</sup> It is a fact that this decision does not depart from the guidelines because there was no decision making undertaken in the meeting. However, considering the characteristics of coronavirus and related situations, and considering that government decisions are based on the expert meeting, it is important that people can monitor that the government is, in fact, considering the opinions of medical experts. People thus need to know what these opinions are. Furthermore, in the peacetime chapter of the guidelines, it says that experts’ meetings are required to compose a record of proceedings.<sup>126</sup> Here, we can find a contradiction in that in peacetime documents regarding experts’ meetings should be made and

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<sup>122</sup> The Cabinet Office, 行政文書の管理に関するガイドライン [Guidelines for the Management of Administrative Documents], 2020, p13

<sup>123</sup> *ibid.*

<sup>124</sup> *ibid.*

<sup>125</sup> Jiji.co, 新型コロナ議事録、何が問題？ [What is the problem with the new coronavirus record of proceedings?], 2020 at <https://www.jiji.com/jc/article?k=2020060600160&g=pol>

<sup>126</sup> The Cabinet Office, 行政文書の管理に関するガイドライン [Guidelines for the Management of Administrative Documents], 2020, p13

kept, while on the other hand this is not needed in historical emergencies.<sup>127</sup> There is also the coronavirus liaison conference, which is held every day in the prime minister's official residence, which is not considered as a meeting that requires records of proceedings. Some press reporting indicates that key decisions have been made in these meetings, such as regarding the closure of schools from 2 March until the spring break.<sup>128</sup> The risk of infectious disease can change suddenly and risk varies between diseases. Therefore, it is important to undertake detailed risk assessments in proportion to the extent of the risk rather than implement an inflexible legal response. Civil society needs to be able to monitor the government's decision.

## 2.7 Protection of information

The Ministry of Health, Labour and Welfare established the guidelines for publishing information about COVID-19 patients. The information that may be published includes country of residency, age, sex, the prefecture of residency, when symptoms developed, the estimated country or city where infection took place, the duration of the visit, if there was a contact that seems to be the source of infection, and where they have been.<sup>129</sup> The guidelines include a warning not to publish information that may identify individuals.<sup>130</sup> LGBT people in Japan are worried about being outed, revealing their sexual orientation or gender identity against their will.<sup>131</sup> With discrimination and prejudice against sexual minorities persisting in Japan, revealing their personal information against their will can destroy their lives. However, it is not known at the prefectural levels. So far, only 10% of all the prefectures and government ordinance cities have established guidelines to prohibit disclosure without that person's consent.<sup>132</sup>

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<sup>127</sup> JIJI.com, 新型コロナ議事録、何が問題？ [What is the problem with the new coronavirus record of proceedings?], 2020 at <https://www.jiji.com/jc/article?k=2020060600160&g=pol>

<sup>128</sup> JIJI.com, コロナ連絡会議、発言記載なし [New coronavirus liaison conference, no listed statement], 2020 at <https://www.jiji.com/jc/article?k=2020061201126&g=pol>

<sup>129</sup> The Ministry of Health, Labour and Welfare 一類感染症が国内で発生した場合における情報の公表に係る基本方針 [Basic policy regarding publication of information in the event of a Class I infectious disease occurring in Japan], 2020, p.2

<sup>130</sup> *ibid.*

<sup>131</sup> The Japan Times, LGBT people in Japan worry that getting COVID-19 may result in outing, 2020 at <https://www.japantimes.co.jp/news/2020/04/21/national/social-issues/lgbt-coronavirus/>

<sup>132</sup> Tokyo web, L G B T暴露禁止 指針 1 割 [prohibition of LGBT outing, only 10% made a guideline], 2019 at <https://www.tokyo-np.co.jp/article/19978>

The Ministry of Health, Labour and Welfare officially released an app for contact tracing. This app makes use of Bluetooth and allows app users to be informed when they have spent 15 minutes or more at a distance of less than 1m in the last 14 days with a person who has tested positive for COVID-19.<sup>133</sup> The Ministry of Health, Labour and Welfare guarantees that there will not be an invasion of privacy. Yet it is questionable if this app is effective in combating coronavirus because downloading the app is voluntary and there are not many people registered.

## 2.8 Violence against women

According to the Cabinet Office, the number of domestic violence consultations relating to spousal violence at support centres in Japan increased by nearly 30% in April 2020 when compared to April 2019, giving a total of 13,468 cases.<sup>134</sup> In March, there had been a 20% increase.<sup>135</sup>

When people were informed about the Special Cash Payment of 100,000 yen (about 800 euro), domestic violence became especially visible. The Special Cash Payment is the benefit for people who have residency in Japan. They receive the payment by bank transfer to the head of the household (more often male). Therefore, victims of domestic violence are less likely to actually receive the payment. Afterwards, the government revised the system so that victims of domestic violence can receive the payment directly if they submit an application with a certificate issued by a Women's Consultation Centre.<sup>136</sup>

The Cabinet Office launched a new project for victims of domestic violence. The victims can call the service 24 hours a day, or it can be consulted by email or social media.<sup>137</sup> Since May, the service is available in ten languages are available.

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<sup>133</sup> The Ministry of Health, Labour and Welfare, COVID-19 Contact-Confirming Application, 2020 at [https://www.mhlw.go.jp/stf/seisakunitsuite/bunya/cocoa\\_00138.html](https://www.mhlw.go.jp/stf/seisakunitsuite/bunya/cocoa_00138.html)

<sup>134</sup> NHK, DV 相談 外出自粛要請が拡大した 4～5 月は例年より増加 [DV counselling increased from April to May], 2020 at <https://www3.nhk.or.jp/news/html/20200627/k10012486141000.html>

<sup>135</sup> *ibid.*

<sup>136</sup> The Ministry of Health, Labour and Welfare 配偶者からの暴力を理由とした避難事例における特別定額給付金関係事務処理について [Special fixed benefit related paperwork in case of evacuation due to violence from spouse], 2020, p.2

<sup>137</sup> Gender Equality Bureau Cabinet Office, DV 相談について [About counselling related to DV], 2020 at [http://www.gender.go.jp/policy/no\\_violence/dv\\_navi/](http://www.gender.go.jp/policy/no_violence/dv_navi/)

## Chapter 3 Portugal

### 3.1 International law and the Portuguese constitution

In the constitution of the Republic of Portugal Article 8 regulates the relationship between Portuguese internal law and international law.

“The norms and principles of general or common international law”, “The norms contained in duly ratified or approved international conventions”, “The norms issued by the competent organs of international organisations to which Portugal belongs”, “The provisions of the treaties that govern the European Union and the norms issued by its institutions in the exercise of their respective competences”<sup>138</sup> are applicable in Portuguese internal law with certain conditions. Therefore, during the pandemic, law passed at the EU level was significant for Portugal.

### 3.2 State of emergency

It was 18 March when the state of emergency was declared, based on the state of calamity in Portugal. It was enacted through Decree of the President of the Republic no.14A-2020 of 18 March and Decree no.2-A/2020 of 20 March, which regulates the application of the state of emergency. The president of the Republic declared the state of emergency after taking the advice of the government and this gaining approved from parliament.<sup>139</sup> The state of emergency is enacted in the Portuguese constitution under Articles 19 (suspension of the exercise of rights), 134(d) (the competence of the President of Republic to declare the state of siege or state of emergency), 138 (declaration of the state of siege or state of emergency), 161(l) (the competence of the Assembly of the Republic to authorise and confirm declarations of a state of siege or a state of emergency), 197 (1) (d) (the competence of the Government to present and submit government bills and draft resolutions to the Assembly of the Republic) and Law 44/86, of 30 September 1986 that regulates the state of siege and state of emergency regime.

Decree of the President of Republic no.14A-2020 Articles 5 (1) and (2) ensure the rights to life, personal integrity, personal identity, civil capacity and citizenship, the non-retroactivity of criminal law, the protection of defendants the freedom of conscience and religion and the freedom of expression and information.<sup>140</sup>

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<sup>138</sup> Article 8 of the Portuguese constitution

<sup>139</sup> Article 161 (1) of the Portuguese constitution

<sup>140</sup> Article 5(1), (2) of Decree of the President of Republic no.14A-2020

The state of emergency has not been declared in Portugal since 25 April, 1974: it is the first time it has been declared in the democratic era. When consideration was being given to the declaration of a state of emergency, there was an argument about the justification for it among Portuguese constitutionalists.<sup>141</sup> Some said that it should have been declared sooner, while others said that the necessity for the declaration wasn't proved yet.<sup>142</sup> The constitutional law expert and former adviser to President Cavaco Silva, Paulo Otero, believed that the declaration of the state of emergency was necessary because the government should anticipate future risks at both the internal and international levels.<sup>143</sup> Moreover, the government should take measures with democratic and legal legitimacy. On the other hand, the constitutionalist Bacelar Vasconcelos said that it did not make sense to declare the state of emergency unless there was a necessity to take enforcement measures that included police activity.<sup>144</sup> He also said it is better if people listen to the health authority and take precautionary measures then there is no need to use police force to ensure the compliance of people.

Vera Lúcia Raposo, Associate Professor at the Faculty of Law of Macau University, China, made it clear in her thesis that undertaking compulsory measures can be part of the state's duty, which can be found in the constitution as the right to physical integrity.<sup>145</sup> However, she also admits the necessity to provide legal legitimacy to suspend some rights.

The Decree of the President of Republic specified the rights which are restricted. The following rights are clarified to be restricted under Decrees that were published during the state of emergency.

*a) Right of movement and fixation anywhere in the national territory*

This includes the government being able to enforce compulsory quarantine at the home, in health facilities or other places specified by the government, setting up sanitary fences that prevent the exit of the residents or the entry of people except for supervisory authorities and supply chains.

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<sup>141</sup> Estado de emergência divide constitucionalistas [State of emergency divides constitutionalists], 2020, Expresso at <https://expresso.pt/politica/2020-03-16-Estado-de-emergencia-divide-constitucionalistas>

<sup>142</sup> *ibid.*

<sup>143</sup> *ibid.*

<sup>144</sup> *ibid.*

<sup>145</sup> Vera Lúcia Raposo, PORTUGAL, FIGHTING COVID-19 IN THE EDGE OF EUROPE, 2020, p.2

Travelling and movement on public roads that are not justified are also prohibited with a level of proportionality.

There are two categories of people with mandatory confinement<sup>146</sup> : (a) Patients with COVID-19 and those infected with SARS-Cov2; and (b) Citizens for whom the health authority or other health professionals have determined active surveillance. Persons who are over 70 years old and persons with pre-existing conditions that make them vulnerable to COVID-19 are under a special duty of protection. They are only allowed to leave their homes for groceries, receiving medications or health care, to go to the post office or bank, or to undertake individual physical activity and walking pets.

Persons who are not covered with the special duty of protection are under a general duty of 'home collection'.<sup>147</sup> They are allowed to do more various things than people with the special duty. They are allowed to travel for work, job hunting, to work, to assist the vulnerable, etc. However, they must stay at home unless it is urgent.

During Easter, the movement was especially restricted.<sup>148</sup> Internal airports were closed except for cargo and humanitarian reasons. It was prohibited to leave the city of residency and gather with more than five people (except for family members). Moreover, Decree No. 2-D/2020 regulates the state of emergency and the state of disaster for the period between 1 and 3 May 2020. Since 1 May is Labour Day it was viewed as important to prevent the spread of the virus due to people's gathering and celebrations. Therefore, the movement of citizens outside the municipality of habitual residence was prohibited with some exceptions.<sup>149</sup>

#### *b) Private property and economic initiative*

The competent authorities can demand the provision of any services and the use of movable and immovable property, health care, commercial and industrial facilities, companies and other production units, as well as being able to enforce obligation to open or to close them. They can impose other limitations or modifications on the respective activity. Furthermore, price control measures and measures to combat speculation or hoarding of certain products or materials can be

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<sup>146</sup> Article 4(1) of Decree No. 2-C/2020

<sup>147</sup> Article 5(1) of Decree No. 2-C/2020

<sup>148</sup> Reuters, Portugal tightens Easter travel restrictions due to coronavirus, 2020 at <https://www.reuters.com/article/us-health-coronavirus-portugal/portugal-tightens-easter-travel-restrictions-due-to-coronavirus-idUSKBN21K1UQ>

<sup>149</sup> Article 2 of Decree No. 2-D/2020

adopted. The payment of rents, interest, dividends and other property or capital income can be reduced or deferred, without penalty. Limitations on dismissals can be requested as well.

*c) Workers' rights*

Decree no.14-A/2020 of 18 March suspended the right to participate in the drafting of labour laws by workers' commissions, unions and employers. This suspension was terminated in Decree no.2-A/2020 20 March, before being suspended again in Decree no.17-A and then subsequently, restored in Decree 20-A/2020.

Decree no.2-A/2020 of 20 March Article 6 regulates telecommuting with an obligation to adopt teleworking, whenever duties allow, regardless of the employment relationship.

The competent public authorities can obligate, if necessary, employees regardless of the type of employment or sector to perform functions in a different place, in a different entity and under different conditions in a domain such as health, civil protection, security, defence, and those working to assist vulnerable persons.

The exercise of the right to strike is suspended as long as it may affect the functioning of critical infrastructures, health care units, and essential public services, as well as in economic sectors vital for the production and supply of goods and services essential to the population.

*d) International movement*

The competent public authorities may impose border controls on people and goods, including sanitary and phytosanitary controls at ports and airports. This is coupled with measures taken together with the European authorities in line with the European Union Treaties.

Portugal first decided to suspend flights from Italy even before the declaration of the state of emergency.<sup>150</sup> Thereafter, Portugal and Spain decided to suspend air traffic between Portugal and Spain as well as rail and two river connections, based on Article 8 of the Schengen Borders Code, Regulation (EU) 2016/399 of the European Parliament, and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders and regulating border checks on persons.<sup>151</sup> In line with "COVID-19, temporary restrictions on non-essential travel to the European Union" concluded by the President of the European Council and

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<sup>150</sup> Order No. 3186-D / 2020

<sup>151</sup> Resolution of the Council of Ministers no. 10-B / 2020

its Member States, regulated by Order No. 3427-A/2020, Portugal suspended all flights to and from countries outside the EU, with certain exceptions such as countries associated with the Schengen Area, Portuguese speaking countries and some countries, where there are large Portuguese communities.<sup>152</sup> Thus, the Foreigners and Borders Service (SEF) established border control procedures with exceptions. In addition to the exceptions of Order No. 3427-A/2020, citizens with a residence permit and people who are allowed in special circumstances are permitted to enter the country.

*e) Right of assembly and demonstration*

The limiting or prohibiting of the holding of meetings or demonstrations may be imposed by the supervisory authorities to prevent the spread of the virus.

*f) Freedom of religion in its collective dimension*

Religious celebrations such as mass, and other worship-related events that involve a gathering of people are prohibited to prevent and combat the epidemic. A funeral can be held under certain conditions, with the local authorities managing each cemetery.

*g) Freedom to learn and teach*

Learning in a classroom may expose students to the virus. The competent authorities may impose limitations and prohibitions including on face-to-face classes and implement an obligation for distance learning by telematic means, such as the internet or television. The postponement or extension of school periods, the adjustment of assessment methods and the suspension or re-scheduling of exam tests, and changing the dates of the opening of the school year may also be undertaken.

*h) Right to personal data and information.*

Telecommunications operators send their customers written messages (SMS) from the competent public authorities with alerts from the Directorate-General for Health or others related to the fight against the epidemic.

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<sup>152</sup> Order No. 3427-A/2020



After receiving some complaints, CNPD, the Portuguese Data Protection Authority, established guidelines on the disclosure of information. The complaints were from citizens who found their personal identification and contact data, including those of children, displayed online and within social networks under the responsibility of the local authority after the confirmation of a positive COVID-19 diagnosis. The CNPD states that local authorities should not publish health data in which it is possible to identify the relevant person.<sup>153</sup> Moreover, health data cannot be published when the confirmed cases are few and the population of the community is also small.<sup>154</sup>

### 3.3 State of calamity and gradual lifting plan

Since the state of emergency can only last for 15 days, it was renewed twice through Decree no.17A-2020 of 2 April and Decree no.20A-2020 of 17 April before the state of emergency was finally lifted on 2 May. The Portuguese government announced that notwithstanding the lifting of the state of emergency and transition to the state of calamity, the message ‘Stay home to avoid COVID-19 unless the need is urgent’ would stay the same. The government also declared a plan for the gradual lifting of restrictions using three steps.<sup>155</sup> The first phase was from 4 May for 15 days, the second phase is from 18 May, and the third phase is from 1 June. The third phase of the plan for the gradual lifting of restrictions began except in the Lisbon metropolitan area due to an increase of cases. The state of calamity was extended a few times until the end of June. From July, it was changed to the situation of calamity, contingency and alert. During the state of calamity, about 200,000 students in the last two years of high school (16 and 17 years old) went back to classes from 18 May as part of the second phase, while other students continued with online classes.<sup>156</sup> Cafes and restaurants also reopened with limitations on capacity due to the size of the stores and where they are located.<sup>157</sup>

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<sup>153</sup> CNPD, Orientações Sobre divulgação de informação relativa a infetados por Covid-19 [Guidelines on disclosing information related to infected by Covid-19], 2020, p.3

<sup>154</sup> *ibid.*

<sup>155</sup> Reuters, Portugal relaxes coronavirus lockdown with 'sector-by-sector' plan, 2020 at <https://www.reuters.com/article/us-health-coronavirus-portugal/portugal-relaxes-coronavirus-lockdown-with-sector-by-sector-plan-idUSKBN22C36R>

<sup>156</sup> Globo.com, Portugal tem =ta às aulas parcial nesta segunda-feira, com medidas de proteção e distanciamento [Portugal has partial back to school on Monday, with protection and distance measures], 2020 at <https://g1.globo.com/educacao/noticia/2020/05/18/portugal-tem-volta-as-aulas-parcial-nesta-segunda-feira-com-medidas-de-protecao-e-distanciamento.ghtml>

<sup>157</sup> *ibid.*

As additional protective measures with the lifting of the travel ban in Europe, Portugal established a maximum passenger limit on flights at two-thirds of the normal capacity on both scheduled flights and chartered flights.<sup>158</sup> This was later revoked as it was important to align national rules with European rules in terms of civil aviation transport. The number of passengers on taxi and busses are also limited to two-third of the capacity.<sup>159</sup> From 11 July, Portugal imposes the obligation on non-Portuguese and foreigners without residency permits to submit a negative COVID-19 test result, upon departure, otherwise individual can be fined between 500 euros to 2,000 euros and airlines that transported such passengers can be fined up to 3,000 euros.<sup>160</sup> Moreover, airports authority of Portugal (ANA) is obliged to perform temperature checks at the airport.<sup>161</sup>

### 3.4 Legal procedure on disobedience

During the third period of the state of emergency, 136 people in total were arrested for disobedience by the National Republican Guard (GNR) and the civilian Public Security Police (PSP): 44 of them violated the obligation of mandatory confinement and 60 of them violated the duty of home confinement.<sup>162</sup>

Under the state of emergency, any person may be punished for a crime of disobedience if they fail to comply with the provisions of Law 44/86, which regulates the state of calamity and the state of emergency, Decree No.2-A/2020 and Article 348 of the Portuguese Criminal Code. Some said that Decree of the state of emergency does not make it clear that the persons with the general home confinement duty should be subject to punishment, however, the security forces must monitor people's compliance with the state of emergency.<sup>163</sup> Thus, it is reasonable if people don't obey the order of the security forces, they may be arrested.

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<sup>158</sup> Article 1 of Ordinance No. 106/2020

<sup>159</sup> Article 1 of Ordinance No. 107-A / 2020

<sup>160</sup> Schengenvisanews, Portugal Fines Airlines and Passengers Arriving Without Negative COVID-19 Test Results, 2020 at <https://www.schengenvisainfo.com/news/portugal-fines-airlines-and-passengers-arriving-without-negative-covid-19-test-results/>

<sup>161</sup> *ibid.*

<sup>162</sup> Negócios, Detidas 136 pessoas por desobediência no terceiro período do estado de emergência [136 people arrested for disobedience in the third period of the state of emergency], 2020 at <https://www.jornaldenegocios.pt/economia/coronavirus/detalhe/detidas-136-pessoas-por-desobediencia-no-terceiro-periodo-do-estado-de-emergencia>

<sup>163</sup> Mariana Oliveira, Sónia Trigueirão, Ana Henriques Covid-19: há 175 detidos por desobediência, mas só 18 julgamentos [Covid-19: 175 detained for disobedience, but only 18 trials], 2020, Publico at

As a result, there is some doubt regarding the effectiveness in ensuring people obey the state of emergency. The crime of disobedience does not seem to be proceeded as a serious crime and the police work on this is “more preventively than repressively”.<sup>164</sup>

### 3.5 Domestic violence against women

Unlike other European countries, during the confinement, Portugal recorded 39% decrease of police complaints compared to the same period in 2019.<sup>165</sup> This may be explained by the fact that in Portugal domestic violence did not increase but the existing abuses became worse due to confinement.<sup>166</sup> Moreover, domestic violence has several forms. Psychological and sexual violence might not be as obvious as physical violence.

### 3.6 Ensuring immigrants their legal status

Based on Order No. 3863/2020 of 27 March, foreign citizens are guaranteed their rights with lawsuits pending or in other situations where processes are pending in the SEF at the date of the declaration of the state of emergency (18 March 2020), i.e. it is considered to be a regular stay in Portugal.<sup>167</sup> This means that the Portuguese government ensures citizenship rights to all asylum-seekers and immigrants who are not in a stable situation due to coronavirus and enable them to access public services. This decision was applauded by Richard Danziger, a regional director of UN Migration, for protecting people who may be deprived of the rights to health and public service under emergencies.<sup>168</sup> In fact, in Portugal, by Order of the Ministry of Health no. 25 360/2001, any person, no matter what legal status, is eligible to receive health care by the national health service.<sup>169</sup>

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<https://www.publico.pt/2020/04/10/sociedade/noticia/covid19-ha-175-detidos-desobediencia-so-18-julgamentos-1911767>

<sup>164</sup> *ibid.*

<sup>165</sup> Publico, Covid-19: confinamento durante pandemia fez aumentar casos de violência na Europa [Covid-19: Confinement during a pandemic has increased cases of violence in Europe], 2020, at <https://www.publico.pt/2020/05/07/mundo/noticia/covid19-confinamento-durante-pandemia-fez-aumentar-casos-violencia-europa-1915499>

<sup>166</sup> Publico, Covid-19. Pandemia agudizou situações de violência doméstica já existentes [Covid-19. Pandemic has exacerbated existing situations of domestic violence], 2020 at <https://www.publico.pt/2020/06/16/sociedade/noticia/covid19-pandemia-agudizou-situacoes-violencia-domestica-ja-existentis-1920817>

<sup>167</sup> Order No. 3863/2020

<sup>168</sup> Euronews, Coronavirus: Portugal grants temporary citizenship rights to migrants, 2020, at <https://www.euronews.com/2020/03/29/coronavirus-portugal-grants-temporary-citizenship-rights-to-migrants>

<sup>169</sup> Order of the Ministry of health no. 25 360/2001

### 3.7 Releasing prisoners

The rights to health should not be deprived of convicts even when they are sentenced to prison and lose some other rights. Portugal has decided to release some inmates to mitigate the risk of coronavirus not only for inmates but also for workers at prisons.

Parliament passed a government bill into Law 9/2020 on 10 April. This law allows the taking of measures such as: a) a partial pardon of prison sentences; b) a special regime for pardoning sentences; c) a special regime for the administrative leave of convicted prisoners; d) a special anticipation of release on parole.<sup>170</sup>

However, these measures cannot be undertaken when the crime is one against persons. Thus, the measures do not cover homicides, domestic violence, crimes against physical integrity, crimes against personal freedom or sexual crimes. Persons convicted for organised crimes, money laundering, corruption and some serious drug trafficking offences are also excluded.<sup>171</sup> Crimes committed by certain categories of people such as members of the police and security forces, armed forces or prison officials, those who exercised political or other high office, including judges and prosecutors, are also exempted.

As a result, Portugal has the sixth-highest rate released inmates in Europe at about 15%.<sup>172</sup>

Between 11 and 29 April 2020, 1,186 inmates were released following an amnesty; 14 were granted a pardon; and 647 were granted a 45days longs prison leave.<sup>173</sup>

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<sup>170</sup> Law No. 9/2020

<sup>171</sup> Vera Lúcia Raposo, PORTUGAL, FIGHTING COVID-19 IN THE EDGE OF EUROPE, 2020, p.7

<sup>172</sup> Marcelo F. Aebi and Melanie M.Tiago Prisons and Prisoners in Europe in Pandemic Times, 2020, Council of Europe, p.6

<sup>173</sup> *ibid*, p.12

## Chapter 4 Comparison

In this chapter, I am going to compare the measures of COVID-19 taken by the Japanese government to the Portuguese government summarizing each aspect on entry ban, the declaration of the state of emergency, lift of lockdown measure, the intention towards the PCR test, information protection, immigrants, and prisoners, referencing WHO measures if necessary.

### 4.1 Entry of foreigners

The WHO made a recommendation against imposing travel restrictions to prevent the interruption of the economy. The WHO also claimed that interrupting the movement of people and goods is not effective to prevent the spread of the virus.<sup>174</sup>

However, the Japanese government decided to refuse entry to Chinese nationals who had a passport issued in certain provinces. Moreover, Japan refuses the entry of non-nationals to Japan. Therefore, a non-Japanese national is not allowed to re-enter the country after 3 April even if they had a residence permit, unless it was for the reason related to visits and funerals of relatives in critical conditions, medical treatment and childbirth at foreign medical institutions, a request for an appearance by a foreign court, etc.<sup>175</sup> Thus, once they decide to leave Japan, there is no guarantee of being able to re-enter, while Japanese nationals can enter and observe two weeks of self-quarantine.

The Japanese government interprets Article 12 paragraph four (“No one shall be arbitrarily deprived of the right to enter his own country”) as the right of a person to enter the country from which the person has nationality.<sup>176</sup> Nevertheless, Article 12 does not distinguish between nationals and non-nationals.

In Portugal, the government allowed travel of “citizens of a European Union member state, Schengen Associated countries and their family members; citizens repatriated through consular assistance; third-country nationals travelling for professional purposes, study, family reunions, health and humanitarian reasons and under the reciprocity principle”. This measure has the same

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<sup>174</sup> Updated WHO recommendations for international traffic in relation to COVID-19 outbreak, COVID-19 Travel Advice, 29 February 2020

<sup>175</sup> Bunshun online, 外国人再入国拒否、当事者への偏見 [Rejection of re-entry of foreigners, prejudice against them], 2020 at <https://news.yahoo.co.jp/articles/caf0ec561a029c954c54b778c717a074aabfc682>

<sup>176</sup> *ibid.*

scope as a temporary restriction on non-essential travel to the EU, which the EU declared on 16 March.

The similarity between the measures is that they both restricted entry to the country against the WHO recommendation. The difference is that Japan has an even stricter scope of entry. Japan treats third-country nationals with residency or who have family in Japan differently from Japanese nationals. The risk of contamination from the virus is equal to everyone regardless of their legal status. I believe restricting the freedom of movement of foreigners by refusing them entry is unreasonable and has put many foreigners living and working in Japan in a difficult situation.

According to these measures, Japanese nationals who have legal residency in the EU or in Schengen countries or who are the family of EU citizens and citizens in Schengen states can leave for Japan and come back without the fear of being refused entry. On the other hand, foreign nationals legally residing in Japan or the family of a Japanese national can leave the country but are less likely to be able to come back for any reason. This might affect business and research cooperation between Japan and other countries.<sup>177</sup>

Atsushi Kondou, the dean of the Faculty of Law and Professor of Meijou University in Japan stated that Japan limits the interpretation of “his own country” within Article 12 as being nationality based on the idea of sovereignty and that this lacks security for the right of a family to reunite.<sup>178</sup>

Thus, Japan claims sovereignty as an excuse to violate the rights of foreigners to return to where they reside. This is incompatible with the government policy to encourage foreigners to reside in Japan due to population decrease and a lack of workers.<sup>179</sup> In effect, the government exploits the foreign workforce but doesn't want to ensure their protection during the emergency. Compared to this, the Portuguese Constitution Article 67 ensures the protection of families from society and the state: Japan does not have such a provision in the constitution. The state has the authority to decide the shape of families in Japan. For example, the state rejected of the lawsuits for the right

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<sup>177</sup> Régis Arnaud 日本が外国人の「一律入国拒否」を貫く大問題 [The big problem of Japan refusing entry of all foreigners], 2020, Toyokeizai online at <https://toyokeizai.net/articles/-/352557>

<sup>178</sup> Bunshun online 外国人再入国拒否、当事者への偏見 [Rejection of re-entry of foreigners, prejudice against them], 2020 at <https://news.yahoo.co.jp/articles/caf0ec561a029c954c54b778c717a074aabfc682>

<sup>179</sup> Myoung-Jung Kim 日本における外国人労働者受け入れの現状と今後の課題 [Current status and future challenges of accepting foreign workers in Japan], 2019, NLI Research Institute at <https://www.nli-research.co.jp/report/detail/id=63059?site=nli>

of same-sex marriage referring that same-sex marriage is not supposed in the constitution.<sup>180</sup> And the lawsuit fighting for the right for married couples to have different family names was rejected.<sup>181</sup> The Japanese government has to admit that the shape of the family is changing, as there are more mixed race couples, LGBTQ, and people who desire to have different family names among married couples in Japan: the government should not swim against the current of globalisation.

#### 4.2 Nature of the state of emergency

Japan declared the state of emergency on 7 April for seven main prefectures and widened the scope to all prefectures on 16 April. The state of emergency declared by the Japanese government is based on the Act on Special measure against New Influenza. The state of emergency allows the prime minister to instruct each head of prefecture to: (a) make requests for lockdowns and the suspension of events, including the closure of schools; (b) request the carrying out of vaccination to citizens; (c) secure of medical facilities; (d) demand emergency goods; (e) request or expropriate the sale of specific goods enacted by a Cabinet Order; (f) request the undertaking special measures for burial and cremation; (g) request the stabilization of the price of daily commodities; (h) request the extending of administrative deadlines; (i) request financing by governmental financial institutions.<sup>182</sup> However, even when breaching requests, any person may not be punished or fined under the current law. The governors of prefectures may decide to publish the name of enterprises that don't comply with the requests. The duration of the state of emergency was 29 days, later extended until 31 May, lifted on 25 May when it was considered that the emergency situation was stabilised. Under law the state of emergency cannot last more than two years, and the duration must be specified when it's declared. The declaration does not need the approval of the parliament but only notification in advance.

Portugal declared the state of emergency in March. It has a legal basis in the Portuguese constitution and a law issued by the Assembly of the Republic. During the state of emergency, several rights are suspended under the following categories; (a) the right to move and settle

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<sup>180</sup> Takuya Kitazawa, 同性婚求める訴訟で初弁論 [First pleading in a lawsuit seeking same-sex marriage], 2019, Asahi Shinbun Digital at <https://www.asahi.com/articles/ASM4H33L1M4HUTIL005.html>

<sup>181</sup> Eri Araya, 夫婦別姓訴訟、原告の控訴棄却 [lawsuit to seek separate name for married couples, dismissal of the appeal], 2020, Asahi Shinbun Digital at <https://www.asahi.com/articles/ASN2V6TSBN2VUTIL042.html>

<sup>182</sup> Article 45 of the Act on Special measure against New Influenza

anywhere in the national territory; (b) the right of ownership and private economic initiative; (c) the rights of workers; (d) right of international circulation; (e) the freedom of assembly and demonstration; (f) the freedom of religion expression; (g) the freedom to learn and teach; and (h) the protection of personal data.<sup>183</sup> Any persons can be punished for the crime of disobedience (Portuguese Criminal Code Article 348) if there is failure to comply with the lockdown measure. The duration of the state of emergency is 15 days and was lifted after being twice extended. Portugal was praised for the timely state of emergency when there were only two deaths and 650 confirmed cases.<sup>184</sup> Whereas Japan declared the state of emergency when there were seven deaths and over 4,000 cases registered.<sup>185</sup> This was almost one month after the declaration of a pandemic by WHO and two months after the outbreak on the cruise ship Diamond Princess. It is said that the delay of the declaration was due to the revision of the Act of New Influenza to include COVID-19 and this revision was criticised for its redundancy.<sup>186</sup> Furthermore, this revision is seen as being a step in the revision of the constitution to add a national emergency provision.<sup>187</sup> I believe that discussion of the revision of the constitution must be exhausted and this should not be a trigger for the revision of Article 7, which enacts the renunciation of war which the current government claims is needed to exercise the right of collective defence. Thus, some of the parts of what the governor of a prefecture can request or demand in Japan are consistent with the rights restricted in Portugal. However, its legal enforcement, its duration and the parliamentary process of the declaration are different. Japan should clarify those rights to limit and establish the monitoring system based on Article 13 of the Japanese constitution, which restricts the rights due to public welfare<sup>188</sup>. The Act comes with a supplementary resolution that evaluates the result of the response taken by the government from an independent, objective and scientific perspective.<sup>189</sup> However, this supplementary resolution is not legally binding. The

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<sup>183</sup> Decree of the President of the Republic no. 17-A / 2020

<sup>184</sup> Ana Santos Rutschman, Portugal's Response to COVID-19, 2020, The Regulatory Review at <https://www.theregreview.org/2020/07/01/rutschman-portugal-response-covid-19/>

<sup>185</sup> 新型コロナウイルス国内感染の状況 [Status of new coronavirus infection in Japan], 2020, Toyokeizai online at <https://toyokeizai.net/sp/visual/tko/covid19/>

<sup>186</sup> Ryoichi Hasegawa コロナで改憲「緊急事態条項」の新設 [Revising the constitution "emergency provision" due to Corona], 2020, NewsSocra at <https://news.yahoo.co.jp/articles/602140e7775c19d50b93224bf34ceef450ffcfa4>

<sup>187</sup> *ibid.*

<sup>188</sup> Article 13 of the Japanese constitution

<sup>189</sup> section 19 of the supplementary resolution for the revised Act on Special measure against New Influenza



government can suspend the rights as long as it is in line with the provision that the “suspension of rights must be minimum”.<sup>190</sup> As a result, many commercial facilities and restaurants did not comply with the suspending or limiting their business (in fact, it was difficult to comply due to the lack of compensation), and many companies kept their conventional way of working and many people not complying with lockdown. The fight against COVID-19 is depending on the commitment of people rather than the protection from the state.

Although Portugal has enforced mandatory confinement and lockdowns, there is a question of effectiveness in the enforcement of Law 44/86 due to the difference amongst judges and public prosecutors about the understanding of the crime of disobedience against lockdown measures.<sup>191</sup> Moreover, the GNR and PSP did not seem to take the initiative to conduct arrests. If there was no fear of being arrested and charges filed, it is difficult to keep a valid lockdown measure. In fact, Japan has fewer confirmed cases, deaths and death rate than Portugal as of 30 July. Moreover, people have lost trust in the health authority in Portugal (DGS) due to remarks from Graça Freitas who would not admitting the fear of the virus and downplayed its effectiveness.<sup>192</sup> She discouraged people from wearing masks because it gave a false sense of security.<sup>193</sup>

Notwithstanding they should have encouraged people to wear masks, especially surgical masks that can successfully prevent the spread of the virus. DGS also failed to communicate with local authorities that the Porto Chamber criticised the propositions for sanitary fence measures based

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<sup>190</sup> section 7 of the supplementary resolution for the revised Act on Special measure against New Influenza

<sup>191</sup> Mariana Oliveira, Sónia Trigueirão, Ana Henriques Covid-19: há 175 detidos por desobediência, mas só 18 julgamentos [Covid-19: 175 detained for disobedience, but only 18 trials], 2020, Publico at <https://www.publico.pt/2020/04/10/sociedade/noticia/covid19-ha-175-detidos-desobediencia-so-18-julgamentos-1911767>

<sup>192</sup> Cofina media, Quando a diretora-geral da Saúde desvalorizou o impacto do coronavirus [When the Director-General for Health devalued the impact of the coronavirus], 2020 at <https://www.sabado.pt/portugal/detalhe/quando-a-diretora-geral-da-saude-desvalorizou-o-impacto-do-coronavirus>

<sup>193</sup> João Céu e Silva, Máscaras dão "falsa sensação de segurança", diz Graça Freitas, mas China envia-as para Portugal [Masks give "false sense of security", says Graça Freitas, but China sends them to Portugal], 2020, Diário de Notícias at <https://www.dn.pt/vida-e-futuro/mascaras-dao-falsa-sensacao-de-seguranca-diz-graca-freitas-mas-china-envia-as-para-portugal-11967840.html>

on a lack of scientific consistency and the reliability of the data issued by DGS, which made basic mistakes in counting confirmed cases.<sup>194</sup>

#### 4.3 Lifting of lockdown measures

Although the WHO does not specifically mention the decision-process for lockdown measures in each country, the WHO published advice on the lifting of COVID-19 lockdown restrictions. The six criteria that a country must ensure are as follows:

(1) Disease transmission is under control; (2) The health system is able to detect, test, isolate and treat every case and trace every contact; (3) The risk of outbreak hotspots is minimized in vulnerable settings like health facilities; (4) Workplaces, schools and other essential places have preventative measures in place; (5) Measures are in place to manage the risk of importing new cases; and (6) Communities are fully educated, engaged and empowered to adjust to the new norms.<sup>195</sup> The WHO warns to lift measures slowly to avoid an increase in new cases because there no vaccines or medicines that are effective against COVID-19. Nevertheless, lifting restrictive measures should be based on the assessment of the disease in each country.

The Japanese government lifted the state of emergency on 14 May, except for eight prefectures where the situation had not stabilised and on 25 May all the prefectures transferred to the gradual lifting of restrictions on movement through to 31 July until the ‘new norms’ are adopted by people.

The expert meeting recommends three indicators for lifting the measures; (a) the status of infection; (b) the status of the medical service system; and (c) the establishment of the inspection system.<sup>196</sup> The recommendation gives an especially limited number for (a). It indicates that the number of newly confirmed cases must be less than 0.5 per 100,000 population per week and the total number of new infections in the last week should be less than the number in the previous

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<sup>194</sup> Lusa, Covid-19: Câmara do Porto não reconhece autoridade à DGS e rejeita cerco sanitário [Covid-19: Porto Chamber does not recognise DGS authority and rejects sanitary siege], 2020, Visão at <https://visao.sapo.pt/visaosaude/2020-03-30-covid-19-camara-do-porto-nao-reconhece-autoridade-a-dgs-e-rejeita-cerco-sanitario/>

<sup>195</sup> WHO, The 6 steps, 2020 at [https://www.who.int/docs/default-source/searo/thailand/who-tha-six-steps.pdf?sfvrsn=b81cac2b\\_0](https://www.who.int/docs/default-source/searo/thailand/who-tha-six-steps.pdf?sfvrsn=b81cac2b_0)

<sup>196</sup> The new coronavirus infectious disease expert meeting 「新型コロナウイルス感染症対策の状況分析・提言」 (2020年5月14日)[analysis and suggestion for the new coronavirus measures on 14 May, 2020], 2020, The new coronavirus infectious disease expert meeting, p.8, 9, 10

week.<sup>197</sup> This number was come up with by referring to criteria used in Germany and New York in the US. The criteria in Germany is that the number of new infections per 100,000 people is 50 or less in 7 days and in New York, the criteria is that the number of newly admitted patients should be less than 2 per 100,000 (an average of 3 days).<sup>198</sup>

The Japanese government has established the guidelines for lifting the restrictions on movement. It plans to lift gradually in three terms and from August the ‘Go to travel campaign’ was going to be launched to promote internal travel and support the tourism industry.<sup>199</sup> It also mentions the possibility of re-tighten measures should there be a mass infection and the possibility of the declaration of a state of emergency. However, despite the rapid increase of cases from June to July, the government advanced the launch of the campaign for a week, whereas each prefecture started to re-tighten measures.<sup>200</sup> There is a deep gap between the government and the prefectures, and the result is that people are confused in indications to follow. This campaign was the biggest mistake to not only fail to mitigate the virus but one that contributed to its spread. From this perspective, Japan did not meet the WHO criteria contained under (2).

The “Joint European Roadmap towards lifting COVID-19 containment measures” was issued by the President of the European Commission and the President of the European Council. All Member States have taken restrictive measures and more than half of EU Member States declared a state of emergency, including Portugal.<sup>201</sup> This roadmap gives advice and recommendations to each Member State on how to lift those measures and to go back to normality: these correspond to WHO criteria.

The tourism industry of huge importance for economic growth and employment in Portugal. The reopening of tourism from abroad has started. At the same time, Portugal has exercised

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<sup>197</sup> The new coronavirus infectious disease expert meeting 「新型コロナウイルス感染症対策の状況分析・提言」 (2020年5月14日) [analysis and suggestion for the new coronavirus measures on 14 May, 2020], 2020, The new coronavirus infectious disease expert meeting, p.8

<sup>198</sup> *ibid.*

<sup>199</sup> Ryutsuu News, 政府／外出自粛「段階的緩和の目安」公表 [The government published the guideline for the gradual lifting], 2020, at <https://www.ryutsuu.biz/government/m052643.html>

<sup>200</sup> Jiji.com, 政府、新型コロナ感染急拡大に苦慮 [The government struggles to the wide spread of the new coronavirus], 2020 at <https://www.jiji.com/jc/article?k=2020073001196&g=pol>

<sup>201</sup> Joint European Roadmap towards lifting COVID-19 containment measures, 2020, p.2

requirements for additional measures for arrivals at the airports.<sup>202</sup> Portuguese citizens who don't have a certificate with a negative COVID-19 result must take a test at the airport. Non-citizens who did not bring a certificate and the airline which transported passengers without a certificate will be fined. After lifting the state of emergency with its transference into a state of calamity, wearing a mask is mandatory where people gather.<sup>203</sup> Since then, a rapid increase in cases wasn't seen and it is gradually decreasing. However, there hadn't been a day when less than 100 new cases have been registered. Thus, Portugal is on the Red List for many European countries: for example, travellers from the United Kingdom must self-quarantine for two weeks after returning from Portugal.<sup>204</sup> Moreover, people are not able to undertake social distancing during rush hour on the boats, buses and metros, which increases the risk of infection.<sup>205</sup> This shows that Portugal has not achieved to a radically mitigation of the virus. It seems that both countries rushed to reopen the tourism industry regardless of the assessment of the disease.

#### 4.4 Importance of testing

The WHO has repeatedly recommended measures to find, test, isolate, quarantine, and track down contacts.<sup>206</sup> On 16 March in the WHO Director-General's opening remarks to the media briefing on COVID-19, the Director-General said: "You cannot fight a fire blindfolded. And we cannot stop this pandemic if we don't know who is infected". He later said: "Test, test, test. Test every suspected case."<sup>207</sup> However, the WHO does not recommend testing who does not show symptoms of COVID-19.<sup>208</sup> On 1 July, at the media briefing, the Director-General repeated his urging for testing along with physical distancing, contact tracing, and wearing masks.<sup>209</sup>

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<sup>202</sup> Schengenvisanews, Portugal Fines Airlines and Passengers Arriving Without Negative COVID-19 Test Results, 2020 at <https://www.schengenvisa.info.com/news/portugal-fines-airlines-and-passengers-arriving-without-negative-covid-19-test-results/>

<sup>203</sup> The Portugal News, Masks mandatory in shops, schools and on public transport, 2020, at <https://www.theportugalnews.com/news/masks-mandatory-in-shops-schools-and-on-public-transport/53964>

<sup>204</sup> BBC, Coronavirus: Portugal still on quarantine list for holidaymakers, 2020 at <https://www.bbc.com/news/business-53528490>

<sup>205</sup> Helder Gomes, Jose Fernandes Covid-19. Apanhar transportes públicos em Lisboa pode significar "ficar ao colo uns dos outros" para "continuar a vida normal" [Covid-19. Taking public transport in Lisbon can mean "being on each other's laps" to "continue normal life"], 2020, Expresso at <https://expresso.pt/coronavirus/2020-06-26-Covid-19.-Apanhar-transportes-publicos-em-Lisboa-pode-significar-ficar-ao-colo-uns-dos-outros-para-continuar-a-vida-normal>

<sup>206</sup> Updated WHO recommendations for international traffic in relation to COVID-19 outbreak, 2020

<sup>207</sup> *ibid.*

<sup>208</sup> WHO Director-General's opening remarks at the media briefing on COVID-19 - 16 March 2020

<sup>209</sup> WHO Director-General's opening remarks at the media briefing on COVID-19 - 1 July 2020

Performing PCR tests as much as possible will help to diagnose individuals so that that person can receive medical care immediately. The testing is also required to know how widely COVID-19 has spread in the country and to decide whether strengthen or lift measures.

However, Japan has maintained a low testing rate despite its large population. Even now, as of 20 July, total PCR tests stand at just 863,670 or 0.68% of Japan's population.<sup>210</sup> In Tokyo, 137,338 tests are performed in total as of July 20 and it is 0.36% of the population<sup>211</sup>. The capital of Japan, Tokyo has 37.393 million inhabitants and is the most populated city in the world.<sup>212</sup> PCR tests started to be fully covered by public expense and insurance from 6 March. If the person has COVID-19 symptoms, insurance will be applied. The PCR test for those who need a certificate to travel abroad and who do not have symptoms at their own expense. Before insurance covered the PCR test, you could only make an appointment at a Returnees/Contacts Consultation Center operated by the public health service to take a test. If the centre confirmed the need to perform a PCR test, you would be sent to an outpatient care for COVID-19. Now, there are hospitals which perform PCR tests even without symptoms: yet there are gaps between prefectures.<sup>213</sup>

It is important to show the leadership of the government to boost the number of tests, especially in Tokyo. Tokyo is not only the capital of Japan but also the most crowded city in the world. Increased cases in Tokyo mean the spread of the virus to other prefectures as well due to the movement of people. Although the representative of the expert meeting mentioned that most of the prefectures meet the WHO criteria of 3% to 12% of positive cases in terms of the total number of tests, the fact that Tokyo does not meet the criteria should have gained more attention. Therefore, even though the expert meeting indicated the need to accomplish the small number in order to lift the state of emergency, the number of tests were also small and hence the correct number of infections was not determined.

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<sup>210</sup> Toyokeizai online, 新型コロナウイルス国内感染の状況 [Status of new coronavirus infection in Japan], 2020 at <https://toyokeizai.net/sp/visual/tko/covid19/>

<sup>211</sup> *ibid.*

<sup>212</sup> Madeline Diamond, The 20 most crowded cities on Earth, 2019, Insider at <https://www.insider.com/most-crowded-places-on-earth-2017-10>

<sup>213</sup> GHC Evolving Media for Medicine, 「医師の判断で無症状者にも PCR 検査を実施可能」な旨、地域差なく認識せよ [we should inform to all the regions that we can perform tests to the patients without symptoms], 2020 at <https://gemmed.ghc-j.com/?p=33973>

In Portugal, there are several ways to take a PCR test. People can take it in a national reference laboratory, hospital laboratories trained for COVID-19, in a complementary network of private laboratories, and at other stations, such as drive-through locations<sup>214</sup> and at the Truck of Hope, which travels from the north to the south of the country carrying out more than 2,500 PCR tests for members of the populations in the interior of the country where there are great difficulties in mobility.<sup>215</sup> Moreover, there is also a municipality that performs PCR tests for all the residents.<sup>216</sup>

By 25 May, Portugal was amongst the top 10 in terms of countries carrying out the most tests per head of population.<sup>217</sup> The Prime Minister of Portugal, Antonio Costa, criticised the EU for adopting criterion that does not reference the number of tests performed per population.<sup>218</sup> He said that performing tests helps to show the reality of the situation in country and helps people in being isolated and offered treatment they need as soon as possible. Conversely, the President of the United States, Donald Trump, said that the PCR test was overrated and that it made the US look bad.<sup>219</sup> Japan has 1,012 deaths and about 38,687 confirmed cases and Portugal has 1,738 deaths and 51,463 confirmed cases on August 3.<sup>220</sup> It is difficult to simply compare because, as I mentioned above, there is a huge gap between Japan and Portugal in the number of performed tests per head of population. Therefore, I believe that what Antonio Costa said was right. It is too early to say that Japan has successfully reduced the virus as the WHO praised due to the lack of a decent number of tests and scientific evidence.

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<sup>214</sup> Centro de Contacto do Serviço Nacional de Saúde (SNS24), Teste COVID-19 at <https://www.sns24.gov.pt/guia/teste-covid-19/>

<sup>215</sup> Marco Silva, Um camião que leva esperança testes COVID-19 e esperança [A truck that takes COVID-19 tests hope and hope], 2020, imagens de marca at <https://www.imagensdemarca.pt/artigo/um-camiao-que-leva-esperanca-testes-covid-19-e-esperanca/>

<sup>216</sup> Cascais.pt, Covid-19 | Desconfinamento: Cascais vai testar toda a sua população [Covid-19 | Deflation: Cascais will test its entire population], 2020 at <https://www.cascais.pt/noticia/covid-19-desconfinamento-cascais-vai-testar-toda-sua-populacao>

<sup>217</sup> Jorge Branco, Why Portugal's Covid-19 test rate is more than double almost every other nation, The Telegraph, 2020 at <https://www.telegraph.co.uk/global-health/science-and-disease/portugals-covid-19-test-rate-double-almost-every-nation/>

<sup>218</sup> Cofina Media, Covid-19: Costa critica que UE não tenha em conta número de testes por milhão de habitante [Covid-19: Costa criticises EU not taking into account the number of tests per million inhabitants], 2020 at <https://www.sabado.pt/portugal/detalhe/covid-19-costa-critica-que-ue-nao-tenha-em-conta-numero-de-testes-por-milhao-de-habitante>

<sup>219</sup> Grace Panetta Trump says coronavirus testing is 'overrated' and repeats his claim that more testing makes the US 'look bad' as cases rise in many states, 2020, Business Insider at <https://www.businessinsider.com/trump-coronavirus-testing-is-overrated-makes-us-look-bad-2020-6>

<sup>220</sup> WHO situation report 193, p.14, 16

#### 4.5 Information protection of COVID-19 patients

The Minister of Health, Labour and Welfare published the guidelines for publishing information about COVID-19 patients with a warning not to reveal personal information in February.

However, some media reported that there are people who were pinpointed via their name or workplace after the local government published their industry of work and their family structure.<sup>221</sup> The family structure was published due to the necessity of reporting close contacts. CNPD, the Portuguese Data Protection Authority, established its guideline after receiving some complaints.<sup>222</sup> As it was possible to find out who was infected in small towns or villages, local authorities cannot publish health data with the identification of people to whom they relate. Moreover, health data cannot be published, even without identifying the patients, when the size of the prefecture is small.

Although originally both countries have a similar system in providing information about the number of cases and the status of the patients, Portugal has stepped in to protect personal information in less populated areas. When information about infected patients are published in small communities, people might be pinpointed and become a target of rumour and harassment. In Iwate prefecture, Japan, the very first case was confirmed in July and was reported widely throughout the country.<sup>223</sup> Media has played an absolute role to inspire people to ‘witch-hunt’ the patient online and his personal information such as his workplace and a picture of him were revealed. The Japanese government and the Minister of Health, Labour and Welfare should not depend on the decisions of each prefecture to protect patients’ rights. Revealing the personal information of other people should be punished strictly. At the same time, educating people in media literacy is also important.

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<sup>221</sup> Asahi Shinbun Digital, 「自宅や勤務先特定された」 [My home and workplace was identified], 2020 at <https://www.asahi.com/articles/ASN4Z6FTNN4ZPTLC025.html>

<sup>222</sup> CNPD, Orientações Sobre divulgação de informação relativa a infetados por Covid-19 [Guidelines on disclosing information related to infected by Covid-19], 2020, p.3

<sup>223</sup> Shoko Mifune 岩手初の感染者に中傷続く [Vilipend against the first patient in Iwate prefecture], 2020, Asahi Shinbun Digital at <https://www.asahi.com/articles/ASN813J27N70ULUC00B.html>



#### 4.6 Immigrants and refugees

Japan has extended visas for foreigners who have difficulties in returning to their home country and extended the deadlines for renew a residency card. Refugees who don't have a residence qualification may be located in a refugee reception centre or have provisional release. They are excluded from the Special Cash Payment for COVID-19 due to a lack of residency. However, refugees who are in provisional release do not have insurance nor are they allowed to work. This means that medical care is extremely expensive for them, and given their financial state, it is almost impossible for them to receive medical care even when they are seriously ill.

Japan receive extremely small number of immigrants or refugees compared to European countries. In 2019, there were 10,375 asylum seekers in Japan and only 44 of them received recognition as refugee.<sup>224</sup> Moreover, Japan is promoting a wish to receive foreign workers, especially from China, Vietnam and the Philippines. The OHCHR highlights the difficult situation of immigrants being affected by COVID-19 and that they need extra attention and protection.<sup>225</sup> The health of immigrants in detention centres is also problematic due to the lack of access to health care. Moreover, Japan should release immigrants from detention centres and give them a temporary residency. Education for people is necessary. Some people think that refugees who seek asylum in Japan do not have legitimate reasons to stay in Japan: in other words, they are 'fake' refugees, thanks in part to the mass media coverage of this.<sup>226</sup>

Portugal ensures immigrants with any legal status to be able to access health care and social and financial services from the government under the same conditions as national citizens. However, not all of them are getting the help that they need. In Portugal, there is a huge Brazilian immigrant community and due to the pandemic and the social distancing measures, many of them have lost their source of income. Immigrants who were working without contracts may face difficulties in receiving social services.<sup>227</sup> Prior to the pandemic, an average Brazilian receives

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<sup>224</sup> The Ministry of Justice, 令和元年における難民認定者数等について [About the number of refugee recognition in 2019], 2020

<sup>225</sup> OHCHR, COVID-19 does not discriminate; nor should our response, 2020

<sup>226</sup> Japan Association for Refugees, 日本に来るのは「偽装難民」ばかりなのか？ [Are only "fake refugees" coming to Japan?], 2020 at <https://www.refugee.or.jp/jar/report/2018/02/13-0002.shtml>

<sup>227</sup> Giuliana Miranda, Brasileiros em situação irregular em Portugal se desesperam com impactos do coronavirus [Brazilians in an irregular situation in Portugal despair at the impact of the coronavirus], 2020, Folha de S.Paulo at <https://www1.folha.uol.com.br/mundo/2020/03/brasileiros-em-situacao-irregular-em-portugal-se-desesperam-com-impactos-do-coronavirus.shtml>



14% less of in payments than a Portuguese.<sup>228</sup> The African community is also struggling, with clusters in poor areas: 472 unsuitable clusters were found in Lisbon, which had not been recognised for years.<sup>229</sup> This was found due to the spread of the virus, given that in June many of the cases were confirmed in poorer areas. In the poor districts, the food distribution that they receive from a church or institution is insufficient.<sup>230</sup> Therefore, it is important to isolate those areas to mitigate the spread of the virus and ensure medical treatment especially for elderly people, persons with pre-existing conditions, and pregnant women.

#### 4.7 Treatment of prisoners

Regarding the rights to health for prisoners and persons who work in prisons, the ideal measure is to release inmates who are less of a threat into society as the UNODC, WHO, UNAIDS and OHCHR asked in the joint statement, “We urge political leaders to consider limiting the deprivation of liberty, including pretrial detention, to a measure of last resort”.<sup>231</sup> Prisons are one of the facilities with a high risk of infection because of the difficulty of social distancing, limited medical resources, a large number of old prisoners and prisoners with a pre-existing conditions that are vulnerable to the virus.

Portugal released 1186 people between 11 and 29 April for the purpose of preventing the spread of the virus.<sup>232</sup> The release was done under certain conditions. Inmates who had committed a crime against people were not released. Some do not have a family or home outside of prison. According to the Directorate-General for Reinsertion and Prison Services (DGRSP), there are a few dozen of them. In fact, even without the case of a pandemic, accommodation for ex-prisoners is always an issue. Some people decide to stay on the street through their own choice.<sup>233</sup>

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<sup>228</sup> Swissinfo.ch Crise do coronavírus agrava adversidades de imigrantes brasileiros em Portugal [Coronavirus crisis aggravates adversity of Brazilian immigrants in Portugal], 2020 at <https://www.swissinfo.ch/por/reuters/crise-do-coronav%C3%ADrus-agrava-adversidades-de-imigrantes-brasileiros-em-portugal/45714626>

<sup>229</sup> Bloomberg: pandemia expõe dificuldades dos migrantes africanos em Portugal [Bloomberg: pandemic exposes difficulties for African migrants in Portugal], 2020, Executive Digest at <https://executivedigest.sapo.pt/bloomberg-pandemia-expoe-dificuldades-dos-migrantes-africanos-em-portugal/>

<sup>230</sup> DW.COM, Covid-19: Famílias africanas passam dificuldades em bairros pobres de Portugal [Covid-19: African families struggle in poor neighborhoods in Portugal], 2020 at <https://www.dw.com/pt-002/covid-19-fam%C3%ADlias-africanas-passam-dificuldades-em-bairros-pobres-de-portugal/a-53808242>

<sup>231</sup> UNODC, WHO, UNAIDS and OHCHR joint statement on COVID-19 in prisons and other closed settings, 2020

<sup>232</sup> Marcelo F. Aebi and Melanie M. Tiago Prisons and Prisoners in Europe in Pandemic Times, 2020, Council of Europe, p.12

<sup>233</sup> *ibid.*

In Japan, after the confirmation of a case of an infected prison officer in Osaka prison and some more cases in other prefectures, limitations on visitation were imposed.<sup>234</sup> Before the declaration of the state of emergency, the Minister of Justice established guidelines for prisons to mitigate the risk of infection. However, despite the request from Human Rights Watch, the Ministry of Justice did not consider releasing inmates.<sup>235</sup>

In Japan, the rights of prisoners or suspects are constantly violated. For example, ‘Daiyo-Kangoku’ is known to the world.<sup>236</sup> It is supposed to be a detention centre where people stay before going to court. However, it often becomes the place where suspects are forced to confess, even resulting in false confessions. It is also known for the extremely long duration of detention.<sup>237</sup> In Japan, the maximum duration for detention is more than 20 days, while many European countries including Portugal can only detain for a day or two.<sup>238</sup> This detection system is one of the biggest reasons for false charges in Japan. This is against ICCPR Article 9(3) “Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer”.<sup>239</sup> Nevertheless, Japan is one of the countries that keeps the system of capital punishment. These facts show that the rights of suspects and prisoners have been violated for a long time. Therefore, releasing inmates is especially difficult in Japan. Therefore, it is critical to educate society so that human rights are never deprived disproportionately, even if you are a suspect or a prisoner.

Although when Japan declared the state of emergency, Japan was likely to record fewer cases than many parts of the world (without considering the extremely small number of tests), it is essential to consider this when the second wave hits Japan.

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<sup>234</sup> Teppei Kasai, 日本の受刑者らが直面する新型コロナウイルスのリスク [Risk of new coronavirus facing Japanese prisoners], 2020, Human Rights Watch at <https://www.hrw.org/ja/news/2020/05/14/375132>

<sup>235</sup> *ibid.*

<sup>236</sup> The Japan Federation of Bar Associations, 「代用監獄」と国連拷問禁止委員会・人権理事会・自由権規約委員会勧告 ["Substitute prison" Recommendations by the UN Commission on Torture, Human Rights Council, and Freedom Covenants Commission], 2012, p.2

<sup>237</sup> *ibid.*

<sup>238</sup> *ibid.*

<sup>239</sup> Article 9(3) of ICCPR

## 5 Conclusion

The aim of this research aims were to identify what human rights violations are being caused by the Japanese government and what could be done to protect human rights during the second wave of COVID-19 or in the event of future pandemic.

By analysing the influence of restrictive measures on human rights taken by the WHO, Portugal and Japan, this thesis has shown that there are the violations in the freedom of movement and the right to unite with the family, the right to prevention, treatment and control of diseases due to the lack of tests, and also the rights of prisoners and immigrants in Japan. Moreover, there is a lack of monitoring and an investigation system for the Japanese state of emergency and a lack of protection of personal information.

Against the WHO recommendation not to restrict the freedom of movement, both of the countries of Japan and Portugal have limited the entry. The pronounced difference was in Japan's strictness of entry for foreigners who have residency or who have family in Japan, which is thought to be based on the idea of sovereignty and family, which is a violation of the rights. Japan declared the state of emergency based on the Act of New Influenza. This Act does not come with enforcement measures and it has faced criticism from inside and outside of the country. There is a doubt about the effectiveness of the declaration of the state of emergency in Portugal and a mistrust of the health authority that has surely had an influence on misguiding the population. In lifting the restrictions, Japan has failed to meet the WHO criteria for establishing an inspection system and through rushing to promote internal travel and boost the economy has ended up with a rapid increase of cases. Portugal has also started to accept tourists, but Portugal remains on the Red list from other European countries due to the daily number of cases. Moreover, the lack of PCR tests is especially critical in Tokyo, the capital of Japan. Refugees in Japan who do not have insurance are likely to face difficulties in receiving medical care whereas immigrants of any legal status in Portugal can access health care but also have difficulties accessing social services. Information protection is also an issue in Japan due to social ostracism and exposure of personal data online, based on information that local authorities publish. Through guidelines, Portugal has prohibited the publishing of information about patients in smaller communities. Finally, releasing prisoners is not considered in Japan while Portugal has released about 2,000 inmates.

This thesis was limited in reach and the depth of the issues regarding education, homeless people and pregnant women despite their importance in COVID-19 measures due to a lack of information.

This study suggests that in addition to the protection of personal information, immigrants and prisoners in Japan, education of society and discussion about privacy immigrants and prisoners plays an important role not only during the pandemic but also for people to understand their rights.

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