

STG Resilience Papers

Health Resilience Requires Rigorous Human Rights Assessment

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Summary

- Compliance with human rights is an important element of health resilience, generating popular legitimacy and trust, legality and legal certainty, and favourable effects for the economy. Crucially, it will save lives when societies will be confronted with new pandemics.
- Comprehensive, structured and evidence-based assessment of national responses to pandemics for their conformity with human rights is possible. It requires a rigorous methodology. We have developed a model for COVID-19 (see, Chart 1) that can be verified and then adapted to future pandemics by defining those elements of the model that are constant and those that will need to be modified for a new epidemic.
- A piloting exercise in respect of 17 countries and their performance during the second half of 2020 allows for a set of comparative observations (see, Table 1 for all grades and Table 2 for top-three and bottom-two countries). Most importantly, the pilot study supports the conclusion that strong human rights performance in respect of any category of human rights entails and requires general compliance across all categories of human rights. This conclusion reflects the principle of interdependence and indivisibility of all human rights.
- A global study of the human rights compatibility of national strategies against COVID-19 in the course of 2021 should be commissioned, building on the expert assessment methodology applied in the pilot study. A clear objective should be included to produce a generalizable model that can be adapted to future pandemics, through a modular structure that allows for adaptation to the biological and epidemiological specificities of each pathogen and pandemic.
- Such a model could become a self-assessment tool in addressing national strategies. Importantly, it would generate interaction between different epistemic communities such as epidemiologists, economists, sociologists and psychologists, lawyers and other experts on regulation, and human rights experts. Collaboration between national experts or functionaries in various fields would mainstream well-informed human rights considerations into national strategic decision-making on health emergencies. This would significantly improve health resilience.

1. Background

In a recent [EUI Working Paper](#) we developed a structured model for the comprehensive and indicator-based assessment of the human rights conformity of strategies by governments (or other actors) in the fight against COVID-19. The model covers all categories of human rights and all types of state obligations that flow from them. It applies state-of-the-art methodology of structural, process and outcome indicators, and relies on marking by volunteers from a pool of recognized experts. This short paper presents the results from a pilot exercise of assessing the human rights compliance of 17 countries' responses to COVID-19 during the second half of 2020.

2. The pilot study (the evidence)

Basing themselves on uniform instructions from the principal investigator, as provided in [Chapter 3 and Annex 1](#) of the EUI Working Paper, country experts or teams of experts assigned marks on a scale from 0 to 10 for twelve aspects of human rights compliance. These twelve aspects, called '*items*' were selected so as to be representative in respect of all main categories of human rights and all types of state obligations flowing from them. The items were clustered into four '*baskets*', each representing one of the main categories of human rights, namely: (1) economic, social and cultural rights where compliance primarily was measured in respect of so-called positive human rights obligations; (2) civil and political rights where attention shifts to restrictions that must have a legal basis, serve a legitimate aim and meet the tests of necessity and proportionality; (3) equality rights, including prohibitions against discrimination or arbitrariness as well as paying special attention to vulnerable groups whether for reasons of age, gender, or disability; and, finally (4) the rule of law dimension of human rights, including but not limited to the use of emergency powers and the question of effective remedies for grievances during COVID-19.

Human rights obligations, and hence human rights assessments, focus on states and not directly on private actors. That said, our assessment included equal emphasis on states' obligations not only to *respect* human rights by not violating them but also to *protect* the human rights of their inhabitants against intrusions by third parties, including private actors, and to *fulfil* their obligations by facilitating the effective enjoyment of human rights in society.

For each item, a set of *indicators* was identified, relying on a [framework](#) produced by the Office of the United Nations High Commissioner for Human Rights, of *structure*, *process* and *outcome* indicators. Within each basket, the respective three items had predefined *weights* between 25 and 50%, reflecting

their importance in assessing overall human rights compliance. The initial marks and the weighting produced percentage grades (0 to 100) for each basket. The overall outcome of the assessment was as an average value of the four grades. However, only countries that received a minimum 50% grade for every one of the four baskets, were assessed as human rights compliant. The right to life, measured through an outcome indicator based on COVID-19 deaths, had the highest weight, 50% within Basket 1. Even a very high number of deaths would not alone cause a fail grade, if the country received strong marks within the same basket (based on the provision of income support and securing the right to education). Italy is an example of this. Notably, if a country received a grade below 50% for any one of the four baskets after a weighted combination of its marks for the three items within it, this was treated as failing, not only under the basket in question but also in the overall assessment. Japan is a case in point: the average of its four grades was slightly above 50% but it nevertheless failed in overall assessment of human rights compliance because it failed under Basket 3 (equality rights).

Chart 1 presents the modular structure of the assessment model.

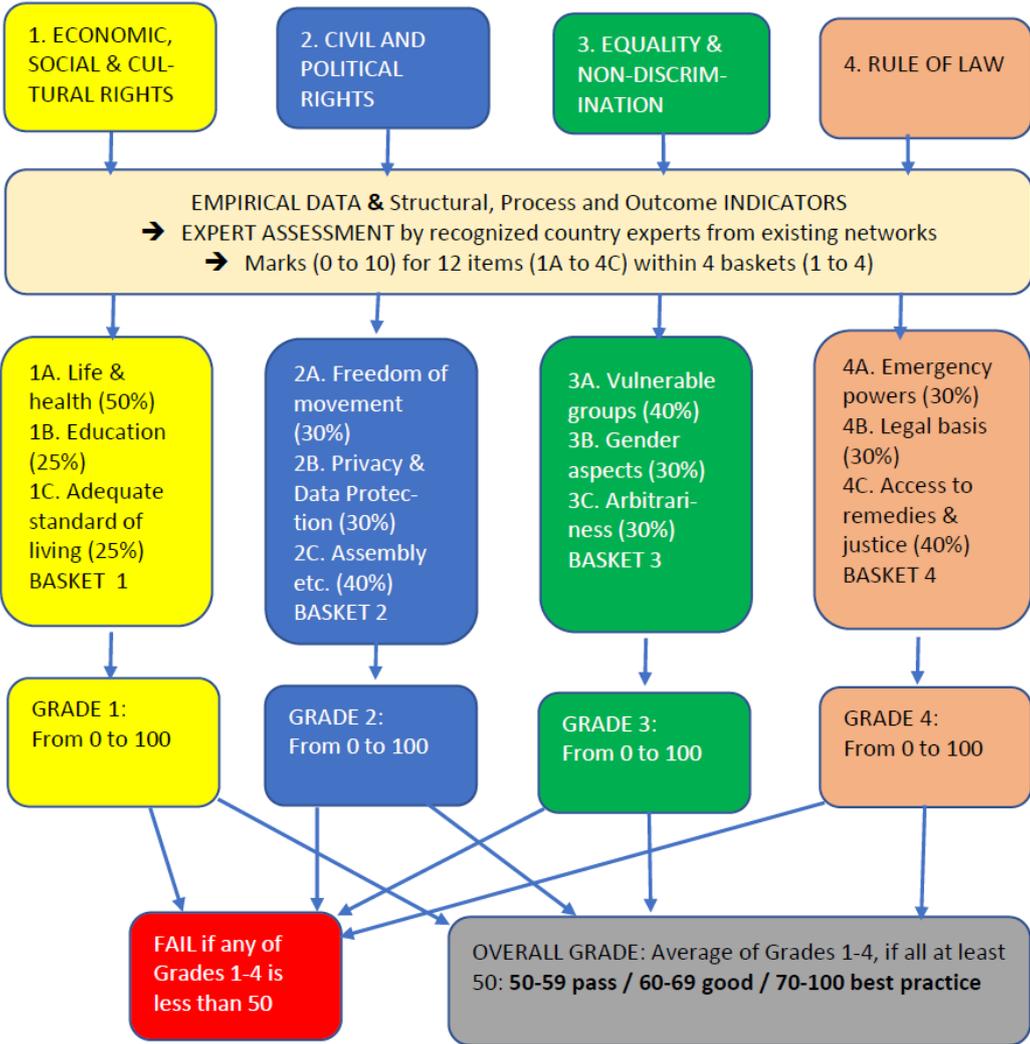


Table 1 presents the results from the assessments of 17 pilot countries mainly from Europe and Asia, across twelve substantive human rights issues clustered into four baskets that represent the main categories of human rights. For each country, the percentage grade for each basket resulting from the weighted marks for the three items within the basket, as well as the overall outcome as the average of the four grades and as 'pass or fail' are presented. Here, 'pass' requires at least a 50% grade for every one of the four baskets.

Country	Basket 1: Economic, social, cultural rights				Basket 2: Civil and political rights				Basket 3: Equality & non-discrimination				Basket 4: Rule of law (procedural rights)				Overall Outcome	
	1A	1B	1C	Grade 1	2A	2B	2C	Grade 2	3A	3B	3C	Grade 3	4A	4B	4C	Grade 4	Average	Fail/Pass
Bangladesh	5	2	3	37,5	1	0	1	7	5	3	2	35	5	4	3	39	29,6	Fail
Brazil	0	3	2	12,5	5	5	6	54	2	5	5	38	2	6	5	44	37,1	Fail
Chile	5	5	5	50	5	7	5	56	5	5	7	56	5	6	6	57	54,8	Pass
Denmark	6	7	8	67,5	5	8	7	67	4	6	6	52	9	5	6	66	63,1	Pass
Finland	8	8	8	80	6	9	8	77	7	7	9	76	10	8	8	86	79,8	Pass
France	2	3	3	25	3	2	1	19	1	1	2	13	1	1	1	10	16,8	Fail
Hong Kong	6	7	-	63,3	8	7	0	45	4	3	5	40	5	7	6	60	52,1	Fail
Indonesia	5	6	5	52,5	6	1	3	33	4	3	4	37	5	3	3	36	39,6	Fail
Italy	6	6	6	60	6	7	6	63	5	6	7	59	6	6	6	60	60,5	Pass
Japan	5	5	5	50	5	7	5	56	5	5	4	47	5	5	5	50	50,8	Fail
N Macedon.	1	5	5	30	6	6	3	48	3	3	3	30	5	5	5	50	39,5	Fail
Philippines	3	6	5	42,5	4	5	5	47	4	-	4	40	4	4	-	40	42,4	Fail
Portugal	5	7	7	60	7	7	9	78	5	6	10	68	10	10	10	100	76,5	Pass
Taiwan	10	10	10	100	8	4	10	76	7	10	10	88	10	5	8	77	85,3	Pass
Turkey	6	5	4	52,5	0	2	0	6	4	1	4	31	0	0	2	8	24,4	Fail
Ukraine	3	6	4	40	5	5	8	62	3	6	4	42	3	2	3	27	42,8	Fail
UK	2	1	2	17,5	5	5	6	54	2	3	2	23	6	5	6	57	37,9	Fail

3. Discussion

The results from the pilot demonstrate clear variation in the assessments of some countries' performance in respect of different categories of human rights, reflecting the idea of these countries having made a choice between, for instance civil and political rights versus economic and social rights. Turkey allowed economic and social rights and equality to trump civil and political rights and the rule

of law, while the United Kingdom, Brazil and Ukraine did almost the opposite, by prioritizing traditional liberties over the health and welfare of their inhabitants. All these countries failed the assessment.

However, there were also many cases of very consistent marks across the four categories of human rights, demonstrating that compliance with human rights during COVID-19 has not been a zero-sum game, for instance between liberty and equality. Taiwan, Finland, Portugal, Denmark, Italy and Chile were the six countries that were assigned a passing grade throughout. Of these countries, the three first ones received excellent (or ‘best practice’) grades throughout (7 or more on a 10-point scale) and the three latter ones ‘good’ (Denmark and Italy) or ‘pass’ (Chile) grades. The assessments for Japan and the Philippines were also quite consistent across the four categories, even if not reaching the passing grade overall. (Japan came very close, though.)

For the overall pass or fail outcome, Basket 3 (equality rights) proved to be the most critical. Here, only six countries were assigned a passing grade. As none of them failed under any other basket, they were also the six countries that came through as human rights compliant overall. Japan narrowly failed exactly here. Even if overall pass were to be determined on the basis of a simple average of the grades from the four baskets, only Japan and Hong Kong would be added to the top-six that received a passing grade for every basket independently.

For the three other Baskets (1. economic and social rights, 2. civil and political rights, 4. rule of law), always ten out of 17 countries received a passing grade. The top-six countries listed above of course were always there, but the other four countries differed from basket to basket and included Japan (the three Baskets 1, 2 and 4), Hong Kong (Baskets 1 and 4), the United Kingdom (Baskets 2 and 4), Indonesia (Basket 1), Turkey (Basket 1), Ukraine (Basket 2), Brazil (Basket 2) and North Macedonia (Basket 4).

Table 2 presents the top-three and bottom-two country assessments for the four baskets, with the numerical grades rounded up or down along a 10-point scale:

Basket	1. Economic, social and cultural rights	2. Civil and political rights	3. Equality and non-discrimination	4. Rule of law
Top three	Taiwan 10 Finland 8 Denmark 7	Portugal 8 Finland 8 Taiwan 8	Taiwan 9 Finland 8 Portugal 7	Portugal 10 Finland 9 Taiwan 8
Bottom two	Brazil 1 United Kingdom 2	Turkey 1 Bangladesh 1	France 1 North Macedonia 2	Turkey 1 France 1

With the single exception of Denmark making it into the top-three for Basket 1, the three highest grades were always assigned to the same three countries (Taiwan, Finland and Portugal, the last one sharing fourth place for Basket 1), albeit in different order and with differing margins between themselves and also between the group of three and the fourth or fifth country. Portugal and Taiwan alternated as number 1, while Finland was consistently number 2. This outcome supports the conclusion that strong human rights performance in respect of any category of human rights entails or requires general human rights compliance across all categories. In human rights law this phenomenon is referred to as the principle of interdependence and indivisibility of all human rights.

Interestingly, there was more variation as to the countries that received the lowest grades for each category of human rights. This outcome indicates that countries that in their strategies allowed liberty to trump over equality or over social rights, or vice versa, may often, and unsurprisingly, have ended up violating the deprioritized rights.

The geographical location of the ten countries that received the highest grades allows for some observations: while Taiwan, an island state, emerged as number 1, the next Asian countries Hong Kong and Japan came, respectively as 7th and 8th, having both received an average grade just above 50% but a failing grade for equality rights (and Hong Kong also for civil and political rights). Between these three Asian countries came a cluster of four EU countries (2nd to 5th) and also the sole Latin American country that received a passing grade, Chile (6th). These findings dismiss the perception that Asian countries would have fought the epidemic at a high cost to human rights while the high death toll in the West has been unavoidable because of their respect for human rights. Finland and Denmark came through as highest-ranking Western countries for general human rights compliance, even if their death rates were, [and still are](#), among the lowest in Europe.

The right to life, assessed by using as indicator the [number of COVID-19 deaths](#) during the second half of 2020, was weighted heavily in the assessment model (50% within Basket 1). Still, there were countries with a heavy death toll that otherwise received high grades: Portugal came 3rd despite a surge of deaths towards the end of 2020, and Italy and Chile came 5th and 6th even with their heavy overall death tolls. The other three countries that received an overall passing grade, Taiwan (1st), Finland (2nd) and Denmark (4th) nevertheless had comparatively low death rates within their respective region.

[The Bloomberg COVID Resilience Ranking](#) of 26 April 2021 included 15 of the 17 countries assessed here. Taiwan (5th) and Finland (9th) were in the top-ten (out of 53). Portugal came 23rd, while Japan and

Hong Kong were 7th and 10th, respectively. The four countries that received lowest grades in our study (Brazil, Turkey, Bangladesh and France), also had very low (41st or lower) health resilience according to the Bloomberg ranking.

Overall, the pilot study demonstrated that a structured assessment of national strategies against COVID-19 as to human rights compliance, informed by concepts, categorisations and indicators developed in international human rights law, is possible and can produce significant results that will have added value for strategy, policy and governance. An assessment model such as the one presented here, with a modular structure that can be adapted to the specific characteristics of a particular pathogen or pandemic, can become an important dimension in building up global, regional and national health resilience.

It is clear that the methodology applied here has its limitations. The fact that most country assessments were conducted by a single country expert on the basis of uniform instructions from the principal investigator may have affected some marks or grades. Relying on a multi-member team for each country, with the close participation by an international expert to assist them in conducting the assessment, would mitigate any risks here. The project team conducted parallel assessments of two countries (Denmark and Finland), resulting in either very similar (Denmark) or virtually identical (Finland) marks and grades as those reported in **Table 1**. Hence, the assessment model and accompanying instructions appear successful in producing meaningful results, even if this does not exclude that relying on one single expert per country does entail the risk of producing results that may entail bias. All country experts were recruited as volunteers from pre-existing expert networks working on human rights issues related to COVID-19. Another limitation of the methodology relates to drastic variations over time in both the COVID-19 epidemic and national policies. This risk was mitigated by instructing all country experts to assess the respective country's performance during the second half of 2020 (which importantly was neither the initial nor the final phase of the pandemic) and by conducting all assessments fairly soon after the end of the period under assessment.

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