Leave no one behind : Human rights-based approach to crisis management legislation and policy on Aruba

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The first two cases of COVID-19 were reported on 13 March 2020. Soon hereafter the Aruban government declared a state of emergency. During the COVID-19 pandemic the Aruban government needed to make quick and difficult decisions, often on the basis of limited data, to respond to imminent threats. The state of emergency lasted more than two years and within this period the Aruban government took several measures to protect the public health, limit the spread of the COVID-19 virus and address the socio-economic consequences of the pandemic. Some of the measures taken, such as the curfews, *shelter in place* and prohibition to visit elderly homes resulted in interferences with several human rights and freedoms such as the right to enter one's own country and to move freely within the territory of Aruba (freedom of movement), the freedom of press (freedom of information) and the freedom of religion.

In this contribution the Aruban crisis and disaster management legislation and plan that were used during the COVID-19 pandemic are studied in light of international human rights standards. Of relevance is whether and to what extent COVID-19 response measures were in conformity with human rights standards. The main questions at the core of this contribution, thus, are: Firstly, to what extent do the Aruban crisis management legislation, plan and responses that were used during the COVID-19 pandemic integrate a human rights-based approach? And secondly, were the government's responses compatible with international human rights standards?

In attempting to reach satisfactory answers to these questions, desktop research is adopted as the primary research method. Sources used are the ECHR,[1] ICCPR,[2] ICESCR[3], interpretative documents of these treaties,[4] Aruban emergency legislation, the Aruban Crisis Management Plan, case law, and secondary literature. The

1. Council of Europe, *Convention for the Protection of Human Rights and Fundamental Freedoms*, Rome 4.XI.1950.
2. UN General Assembly, *International Covenant on Civil and Political Rights*, Treaty Series vol. 999, p. 171, 1966.
3. UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, Treaty Series vol. 993, p. 3, 1966.
4. ECHR factsheets and general comments of UN treaty bodies.

latter is selected based on relevancy to the topic. The data is collected through various databases and websites[5] using the snow-ball method.

The first paragraph describes what a human rights-based approach (hereafter: HRBA) to crisis management entails. Based on UN and WHO reports and studies, a set of guidelines for a human rights based approach to crisis management is developed. The second paragraph provides an overview of the measures that were adopted by the Aruba government during the COVID-19 pandemic. The Aruban crisis and disaster management legislation, plan and measures are subsequently examined in the third paragraph. The fourth and final paragraph offers a summary conclusion.

1. A human rights-based approach to crisis management

A human rights-based approach can be described as a practical framework for addressing specific topics or challenges that integrate human rights standards and principles.[6] When addressing a (health) crisis a HRBA equips countries to respond in ways that put peoples' needs, rights and freedoms at the centre. Human rights standards and norms are, in this way, powerful guiding tools for navigating a (health) crisis in a manner that contributes to the development of crisis management programs and recovery plans that protect and advance human rights. A human rights-based approach, furthermore, enables countries to address inequalities and redress discriminatory practices and unjust distributions of power that impede development progress.[7]

At the onset of the COVID-19 pandemic UN agencies urged countries to integrate a human rights-based approach to address the pandemic.[8] Human rights treaty bodies equally urged global leaders to ensure that measures to address the pandemic were respectful of human rights.[9] Specifically, governments were directed to take extra care of those particularly vulnerable to the effects of COVID-19, including older people, people with disabilities, minorities, indigenous peoples, refugees, asylum seekers, migrants, people deprived of their liberty, homeless people, and those living in poverty. To assist countries in meeting these calls, several reports, papers and guidelines were produced by, among others, the UN and the WHO throughout the pandemic that provided instructions for integrating a human rights-based approach in responding to the pandemic.

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5. E.g. Kluwer navigator, rechtspraak.nl, HUDOC, echr.coe.int, UN treaty body database.
6. *Human Rights and Disaster Risk Reduction: Strengthening the implementation of the Sendai Framework for Disaster Risk Reduction 2015-2030 – Considerations from the Asia-Pacific Region,* New York and Geneva: United Nations (represented by UNDRR) 2023, p. 11.
7. 'What is a human rights based approach?', hrbaportal.org; *COVID-19 and Human Rights: We are all in this together*, United Nations 2020 (online), p. 2-3.
8. *Checklist for a Human Rights-Based Approach to Socio-Economic Country Responses to COVID-19,* New York: United Nations 2020; *UN framework for the immediate socio-economic response to COVID-19*, United Nations 2020, p. 9.
9. 'UN Human Rights Treaty Bodies call for human rights approach in fighting COVID-19', ohchr.org.

1.1 Principles and key features of a human rights-based approach

A HRBA underpins several principles, namely: the principle that human rights are universal, inalienable, indivisible, interdependent and interrelated, the principle of equality and non-discrimination, the principle of participation and inclusion and the principles of accountability and the rule of law.[10]

The principle of universality, inalienability, indivisibility, interdependence and interrelatedness of human rights underpin the notion that all people are entitled to human rights which cannot be given up nor taken away. The principles of equality and non-discrimination dictate that all individuals are equal '*by virtue of the inherent dignity of [their] human person*' and that discrimination of any kind is prohibited.[11] Furthermore, when it comes to crisis management, this principle imposes an obligation on States to take into consideration existing inequalities in socio-economic statuses within the population, identify the most vulnerable people within a crisis and tailor responses accordingly to ensure that the rights of all persons are protected on an equal standard.[12] The principle of participation and inclusion entails that all persons, including right holders and vulnerable groups, are involved and can give meaningful contribution (participation) to the decisions that affect them.[13] Lastly, the principle of accountability and the rule of law requires that State and other duty-bearers abide by rule of law, even during a crisis, and demands that right holders have effective means to hold duty-bearers accountable where they fail to do so.[14]

A HRBA to crisis management has three key features. Firstly, responses and recovery plans should aim to protect human rights and further the realisation of human rights for all people of all people during the crisis. Secondly, human rights standards and principles should be integrated within crisis management legislation, processes and measures as well as within all crisis management responses and recovery plans. Thirdly, crisis management and recovery responses should lead to outcomes that foster the compliance of human rights obligations by duty-bearers and that empower right holders to claim their rights.[15]

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10. *Human Rights and Disaster Risk Reduction: Strengthening the implementation of the Sendai Framework for Disaster Risk Reduction 2015-2030 – Considerations from the Asia-Pacific Region,* New York and Geneva: United Nations (represented by UNDRR) 2023, p. 11, 14.
11. 'The Human Rights Based Approach to Development Cooperation Towards a Common Understanding Among UN Agencies', United Nations 2003 (online), p. 2.
12. *Human Rights and Disaster Risk Reduction: Strengthening the implementation of the Sendai Framework for Disaster Risk Reduction 2015-2030 – Considerations from the Asia-Pacific Region,* New York and Geneva: United Nations (represented by UNDRR) 2023, p. 22, 23.
13. 'The Human Rights Based Approach to Development Cooperation Towards a Common Understanding Among UN Agencies', United Nations 2003 (online), p. 2.
14. 'The Human Rights Based Approach to Development Cooperation Towards a Common Understanding Among UN Agencies', United Nations 2003 (online), p. 2.
15. Ibid., p. 1-2.

1.2 Guidelines for a HRBA approach

The protection of human life and dignity is crucial especially during a national crisis. The following guidelines are generated by studying and summarising the instructions from the 'UN Framework for the immediate socioeconomic responses to COVID-19'[16], the 'UN paper COVID-19 and Human Rights', 'Checklist for a Human Rights-Based Approach to Socio-Economic Country Responses to COVID-19'[17] and the 'COVID-19 Strategic preparedness and response plan'.[18] During crisis countries should strive to:

a. Ensure response and recovery policies and programmes that integrate HRBA and that the humanitarian principles of humanity, neutrality and independence are respected.
b. Adopt adequate crisis responses that protect people, that are informed, risk-analysis driven and sustainably oriented.[19] More specifically this entails prioritising that the essential (health) services and systems remain operational and are strengthened.
c. Make impact assessments of direct responses and recovery measures on human rights. States should continuously monitor the accessibility and appropriateness of emergency response and recovery for all groups of society in order to ensure that particular groups are not (in)directly excluded.
d. Conduct a mapping of vulnerable groups and those most at risk and assess the vulnerabilities, among the population that arise from personal factors (e.g. children, disabled), occupational factors (e.g. first-line health care workers), location (detention centres, elderly homes) and legal-status (e.g. migrants, refugees, undocumented persons). In doing so States should strive to identify pre-existing inequalities and discrimination, assess how various vulnerabilities intersect and consider country specific factors (e.g. the socio-economic, institutional capacity and geographical realities).
e. Take measures that prioritise basic economic and social rights to increase resilience. In doing so countries are encouraged to adopt fiscal, financial and economic policies, to stimulate economy and employment, ensure income security, support small and medium enterprises, the self-employed and informally employed persons, and protect vulnerable workers.
f. Ensure the flow of accurate information to the public through government interventions (e.g. regular press briefs), the press and civil society organisations. This facilitates accountability of the adopted responses and guarantees transparency in governments' actions.
g. Diversify actors involved emergency responses by including the input of women, men, local business and civil society organisations. This ensures inclusivity and participation of all relevant stakeholders.
h. Ensure that emergency measures are lawful, temporary and proportionate. States must declare the emergency publicly and officially and a notification

16. *UN framework for the immediate socio-economic response to COVID-19*, United Nations 2020 (online).
17. *COVID-19 and Human Rights: We are all in this together*, United Nations 2020 (online).
18. *COVID-19 Strategic preparedness response plan*, World Health Organization 2021 (online).
19. This means that responses should be long-term and national owned.

must be sent to the UN- Secretary General and the Secretary General of the Council of Europe respectively.[20] State emergency legislation must be clear and accessible to the public at large,[21] contain review clauses and ensure the returning to ordinary law as soon as possible.[22] The State must swiftly provide public information on the exact scope and implications of the state emergency legislation and the emergency responses. Such information must be clear, accessible and concise.[23] Periodic and independent reviews of the emergency legislation and responses by the State legislator must be executed.[24] And finally, restrictions to human rights must be provided by law, serve a legitimate aim, meet a 'pressing social need' and must not be discriminatory.[25]

i. Prioritise international cooperation.
j. Conduct post-crisis assessments and identify lessons learned and best practices.

2. Adopted measures

The Constitution of Aruba (*Staatsregeling Aruba*) and Calamity Ordinance (*Calamiteitenverordening*) provided the legal basis for COVID-19 responses by the Government. Complementary to these laws the Crisis Management Plan (CMP)[26] was followed during the COVID-19 pandemic.

In Aruba, curfews were introduced on 21 March 2020. Persons were prohibited to be outside their homes between 21.00-06.00. Several sectors, such as health care providers, police officers and employees of utilities services were exempted. Notably, during the first few days of the curfew no exemptions were made for the press. After some protests an agreement was reached on 24 March 2020 whereby the government allowed, on a rotation basis, three journalists per day to be exempted from the curfew.[27] Inbound fights were restricted on 19 March 2020, with the exception of cargo and returning residents. However this measure was shortly thereafter updated to an entry-ban of all persons, including returning residents.[28] On 29 March 2020 a 'shelter in place' was announced which prohibited all persons to leave their homes, other than for essential activities such as buying food,

20. Art. 4 (3) ICCPR; art. 15 (3) ECHR. NB: The invocation of art. 15 ECHR is dependent on there being a notification. Where this is not the case, art. 15 ECHR does not apply and the general ECHR standards have to be applied instead. Omitting to notify the UN-Secretary General, however, does not seem to affect the application of art. 4 ICCPR; UN Human Rights Committee, *General Comment No. 29: Article 4: Derogations during a State of Emergency*, CCPR/C/21/Rev.1/Add.11, 2001, para 17; Council of Europe, European Court of Human Rights, *Guide on Article 15 of the European Convention on Human Rights – Derogation in Time of Emergency*, 2022, p. 14.
21. Office of the High Commissioner for Human Rights, *Emergency measures and COVID-19: Guidance*, 2020, p. 1.
22. Ibid.
23. This implies that communications should be in *'all official languages of the State, as well as in as many other languages widely spoken in the country.'*
24. Office of the High Commissioner for Human Rights, *Emergency measures and COVID-19: Guidance*, 2020, p. 3.
25. Ibid., p. 1-2.
26. Bureau Rampenbestrijding, *Crisisbeheersingsplan – Deel 1 – Basisplan 2018,* 2017.
27. S. Hendriquez, 'Arubaanse pers protesteert tegen verplichte avondklok', *Caribisch Netwerk*, 20 March 2020 (online).
28. Algemene regeling bestrijding Covid-19, AB 2020 no. 38.

going to the pharmacy, exercising or getting gasoline.[29] Visiting family members and friends or holding social activities was prohibited. Similarly visiting nursing homes was prohibited. Attendance of funerals was restricted to 10 persons and the opening of coffins of deceased persons who at the time of death had been found to have the coronavirus was prohibited.[30]

Stores were allowed to be open until 20.00.[31] 'Essential services' were allowed to continue albeit with as limited as possible workers. The catering and entertainment industries remained open from June 2020 onwards, albeit with earlier closing times.[32] Schools were closed for months and had a delayed start for the academic year 2020-2021. Sport activities were restricted, agglomeration in public places (e.g. beaches) and private spaces (homes) was prohibited. Social distancing and the wearing of face masks were imposed when being in public places.

To reduce the spread of the virus the Aruban Government was quick to update and disseminate information to the public. The *Bureau Voorlichting* had the main task of informing the population about the COVID-19 pandemic, the disease, hygiene protocols and the measures taken by the government. Information was disseminated via regular televised press briefings by the Prime-Minister,[33] social media pages, the official website of the government, radio broadcasts, digital new sources and newspapers in Papiamento, Spanish, English and Dutch which are the four main spoken languages in Aruba. Efforts were also taken to provide information in Chinese, for the Chinese speaking population.[34] On the mental and health aspect, hotlines were established for the elderly, due to many social activities having come to a halt. Similarly, telephone hotlines were established for those experiencing mental health issues and for women in violent domestic circumstances. The Government also provided access to COVID-19 testing facilities and vaccination to all persons, regardless of legal status.

To curb the negative economic consequences of the pandemic, the Aruban government was quick to introduce several (temporary) subsidy programmes for employers, medium and small businesses and persons who had lost employment as a consequence of the pandemic.[35] To prevent high unemployment rates, the government subsidised up to 60% of employers' salary costs. The government also introduced the FASE programme. This subsidy programme provided a financial relief of 950 AWG to any legal resident who lost her/his jobs due to the pandemic. Financial relief was also provided to medium and small businesses. These received

29. Algemene regeling bestrijding Covid-19, AB 2020 no. 43.
30. 'Decisionan di Gobierno di Aruba', arubacovid19.org.
31. 'Decisionan di Gobierno di Aruba', arubacovid19.org.
32. This approach was taken to minimise the disruptions to the tourism sector since, similar to other countries within the Caribbean, the tourism sector provided and continues to provide a large contribution to the total GDP of Aruba as well as the Island's employment market. More specifically, the contribution by the tourism sector to Aruba's GDP was estimated in 2019 to be 86,5%, whilst the sector also contributed 89% to the island's employment rate.
33. In the first 7 months these were daily and got scaled down as the pandemic continued.
34. Ministerie van Algemene Zaken, *Jaarverslag 2020*, January 2021, p. 6.
35. Ibid., p. 8.

4.000 florin per quarter in order to address their operational costs.[36] Humanitarian aid was provided by among others Red Cross Aruba and Fundacion pa Nos Comunidad (FPNC). In cooperation with the Fundacion pa Nos Comunidad (FPNC) the Aruban Government set up a project to distribute food packages to those in need. This primarily concerned persons residing legally in Aruba.

Finally, migrants without a legal status primarily sought relief from local NGO's such as the Red Cross, HIAS[37] and Response for Venezuela (R4V).[38] Government led economic and humanitarian relief was overall less accessible to migrants without a legal status, due to registration requirements whereby the '*persoonsnummer*' (social security number) was required.

3. An assessment of Aruba's performance

The Constitution of Aruba and the Calamity Ordinance describe conditions that may constitute a national crisis, the fundamental rights and freedoms that may be restricted during a crisis and the specific powers attributed to the government to manage a crisis. The Crisis Management Plan is a policy document that details the strategies and processes for navigating national crises and outlines the organisation of the crisis management task forces. It also attributes powers and responsibilities to various authorities and stipulates recovery strategies. The CMP is divided in three parts, namely the Base Plan, the Sub-plans (*Deelplannen*)[39] and the Roadmap (*Draaiboeken*).[40] For the purpose of this contribution only the Base Plan, which broadly outlines the crisis management plan, was accessible for inquiry.

3.1 The Crisis Management Plan

The CMP follows a Coordinated Disaster and Incident Response Procedure (*Gecoördineerde Rampen- en incidentenbestrijdingsprocedure*) or abbreviated as GRIP. Specifically for national crises, such as was the case with the COVID-19 pandemic, this approach demands nationally coordinated large-scale operations. The CMP places great emphasis on a process-oriented approach to crisis management. Specific processes are identified, distinguished and categorically placed within four main processes.[41] These main processes are then allocated to four government agencies/

36. Ibid., p. 8. Accordingly, 18.778 employers were supported by the salary subsidy programme. The FASE programme which ended in November 2021 provided financial relief to a total of 12.246 persons. Via the financial relief for medium and small businesses the Aruban government was able to assist 2522 businesses.
37. A. Bailey e.a., *COVIDCAS- Research into the resilience of Dutch Caribbean Society – Final report*, 2024, p. 12. HIAS assisted migrants among others with 'medical vouchers'.
38. Ibid. Response for Venezuela (R4V) assisted 2295 Venezuelans in 2020 among others with food, health and educational material.
39. This part details the 25 processes described within the Base Plan further
40. This part elaborates further on the Base Plan and provides a roadmap for the processes.
41. The four main processes are 'source and effect control', 'legal order and traffic', 'medical assistance' and 'population care'. Bureau Rampenbestrijding, *Crisisbeheersingsplan – Deel 1 –Basisplan 2018*, 2017, p. 13.

services[42] (four head clusters) who carry the main responsibility of ensuring that all the processes placed within their respective clusters are implemented accordingly. These processes include among others: preventive health care, medical assistance, provision of basic needs, public warnings and dissemination of public information.[43] The crisis management plan contains additional supportive processes which are more general in nature and primarily relate to internal organisation, coordination and communication.

3.1.1 *Organisational structure*

Diversification of emergency responders is reflected in the composition of the Crisis Team. The Crisis Team consists of the minister in charge, assisted by the Policy Team (*Beleidsteam*),[44] Operational Team (*Operationeel Team*)[45] and the Crisis Management Office (*Bureau Rampenbestrijding*).[46] Specifically, during the COVID-19 pandemic it has been submitted that advisors with human rights expertise were included within the Crisis Team where they offered human rights consideration during the decision-making process.[47]

3.1.2 *Accountability*

The Aruban crisis management system has a well-defined organisational structure with a clear chain of command, tasks and responsibilities. The overall command is designated to a minister in conformity with the Calamity Ordinance.[48] The minister in command is accountable to Parliament for the policy, decisions, and measures taken by the Crisis Team during a crisis. Similarly, at the lower levels of command each process is designated to a specific process manager and a department or agency is assigned the responsibility for the implementation thereof. In this way responsibility and accountability are at all levels of command clear.

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42. Ibid. The Fire Department, The Police Department, The Department of Public Health and the Department of Social Affairs. Bureau Rampenbestrijding, *Crisisbeheersingsplan – Deel 1 – Basisplan 2018,* 2017, p. 13.
43. Ibid.
44. The Policy team consists of the Operational leader, Fire Brigade, Police Department, Department of Health, Department of Social Affairs, the Crisis Management Office and Secretary of the Council of Ministers. Where necessary the operational team is supported by advisors and liaisons from other agencies as well as companies. It advises the minister on administrative considerations and policy decisions and is among others responsible for the legal, and administrative formulation and communication of all crisis management decisions and measures. Bureau Rampenbestrijding, *Crisisbeheersingsplan – Deel 1 – Basisplan 2018,* 2017, p. 16.
45. Ibid., p. 19. The Operational Team consists of a trained team of managers from eight clusters. It is responsible for the coordinated implementation of crisis management responses and processes.
46. The Crisis Management Office supports the crisis management and coordination of disaster relief.
47. During the COVIDCAS Dissemination seminar on 21 November 2023, organised by the author, a member of the crisis team as well as a staff member from the Department of Legislation and Legal Affairs briefly addressed this subject. They indicated the presence of advisors within the crisis team who provided human rights expertise and considerations in relation to the crisis responses.
48. Art. 7 of the Calamity Ordinance.

3.1.3 *Crisis measures assessments and data collection*

The CMP also places great importance on the assessment of crisis management measures and the collection of data during and post-crisis. During the crisis the Operational Team has to assess the response measures, collect data and provide situation reports regarding the crisis. Similarly, all agencies and services involved in managing the crisis are expected to record data in standardised logbooks. This data may be used for the situational reports and for post-crisis assessments and evaluations.[49] After the crisis all collected data must be archived according to the rules of the Internal Services Bureau.[50]

3.1.4 *Vulnerable groups*

The CMP also identifies a number of vulnerable groups for a number of the response processes. For example when it comes to public warnings, the CMP stipulates '*specific target groups will be taken into account, including foreigners present in the area, tourists, recreationists and the disabled (after all, hearing impaired people do not hear broadcast messages)*'.[51] When describing the responses related to shelter and care, the following is stated: '*The purpose of shelter and care is to shelter and care for homeless people, persons to be sheltered and lightly injured people at the time of and after a crisis, for the period when those affected cannot yet return to their homes*'.[52] The crisis management plan also briefly considers the aftercare (*nazorg*) which takes place during the crisis. Accordingly, the aim of the after care is to provide necessary assistance to 'victims' with the aim of preventing and alleviating damage on mental, physical, and societal levels after an incident or calamity. Similarly, for the registration of 'affected persons', the CMP provides: '*the aim of the CRIB (Central Registration and Information Bureau) victim registration process is to provide good personal information about victims, evacuees and missing persons in the event of a crisis*'.[53]

3.1.5 *International support*

The establishment of support within the Kingdom of the Netherlands with neighbouring countries and internationally, is considered a priority and a crucial aspect for crisis management and disaster relief. Depending on the scale of the incident, assistance may be requested within the Dutch Caribbean, the Kingdom of the Netherlands or at the international level.[54]

3.1.6 *Recovery phase*

Finally, when it comes to the recovery phase, the CMP provides limited detailed instructions and only provides a succinct description of the institutional frame-

49. Bureau Rampenbestrijding, *Crisisbeheersingsplan – Deel 1 – Basisplan 2018,* 2017, p. 40-41.
50. *Ibid.*, p. 41.
51. *Ibid.*, p. 35.
52. *Ibid.,* p. 39.
53. *Ibid.*, p. 39.
54. *Ibid.*, p. 11.

work and seven areas of focus.[55] Emphasis is placed on restoring societal life and '*returning these victims to their normal daily situation as quickly as possible*'.[56]

3.1.7 *Areas of improvement*

The Aruban CMP incorporates a HRBA to crisis management to a certain degree. The CMP prioritises among others the provision of public health care, medical assistance, provision of basic needs, the dissemination of public information and ensuring international assistance and co-operation where this is necessary. It also reveals a well-defined organisational structure with clear division of responsibilities and tasks and instructs involved agencies to conduct assessments, collect data and archive data during and after the crisis. These steps contribute to ensuring accountability and transparency of crisis responses during and post a crisis.

There are also areas for improvement. The diversification of agencies and services involved within the crisis team ensured that human rights standards were considered throughout the COVID-19 crisis. Although the manner and extent to which this is realised cannot be deduced from the CMP. A clear integration of human rights standards and principles within the CMP is recommended and would ensure a comprehensive and holistic HRBA to crisis responses in the future.

Additionally, conducted assessments and collected data of crisis responses is not always easily accessible to the public. Several agencies have in the aftermath published reports and studies on COVID-19 responses,[57] though this cannot be stated for all involved agencies. Similarly, the flow of information related to decision making processes during the crisis has, post the COVID-19 pandemic, proven to be limited.[58]

Furthermore, while the CMP also takes into consideration the vulnerabilities of certain groups such as disabled persons, homeless persons and tourists, the identified group is at times unclear as is the case with 'persons to be sheltered' and 'foreigners present on the area'. Does the latter also include undocumented migrants, refugees and asylum seekers in the area? In addition, it is also unclear how vulnerabilities are identified. The vulnerabilities of for example the elderly, women and persons who are lawfully deprived of their liberty are not considered within the CMP.

Finally, other areas that have limited attention within the CMP processes concerns the strengthening of economic and social security during a crisis and the recovery phase.

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55. Crisis communication, grief processing, psychosocial assistance, immaterial assistance (somatic), material assistance, cleaning of the affected area and other tasks (including evaluation).
56. Bureau Rampenbestrijding, *Crisisbeheersingsplan – Deel 1 – Basisplan 2018,* 2017, p. 30.
57. Such as the Ministry of General Affairs.
58. This sentiment was echoed by various stakeholders during the COVIDCAS Dissemination seminar on 21 November 2023, organised by the author.

3.2 Emergency legislation and measures

On 13 March 2020, Aruba declared a state of emergency under the Calamity Ordinance, allowing lawful derogations from the fundamental rights contained in article V.29 of the Constitution. To the author's knowledge, the Kingdom of the Netherlands did not notify the Secretary-General of the UN[59] or the Council of Europe.[60] The Aruban emergency laws, prior to the pandemic, were clear and accessible to the public at large and contained legal safeguards that require parliamentary assessment in article V.29 (3) of the Constitution and periodic reviews of crisis response measures in article 16 (1) of the Calamity Ordinance. During the pandemic, the Aruban government enacted ministerial decrees containing COVID-19 measures and reviewed and adjusted such measures within every 72 hours. Other legal safeguards within the relevant legislation include the endeavour to return to ordinary laws as soon as possible in article 10 (3) of the Calamity Ordinance.

3.2.1 *Lawfulness of response measures*

There is broad consensus by countries and human rights monitoring bodies alike that the COVID-19 pandemic brought about acute public health concerns and that the protection of public health and safety was a legitimate aim. As for the question related to the legality, all pandemic measures were rooted in ministerial decrees, based on article 16 of the Calamity Ordinance and article V.29 of the Constitution. These laws were clear, accessible and described the circumstances under which specific human rights may be restricted.

Some rights that were restricted, however, were not included within the aforementioned articles, raising concerns about the legal basis for their restriction. As demonstrated by Zeppenfeldt, measures that interfered with the right to enter the country (the entry bans on all persons, including nationals) and the right to personal autonomy, private and family life (e.g. the closure of elderly homes and mandatory face masks in public spaces) did not have a legal basis in domestic law.[61]

With regards to necessity and proportionality of the measures taken; the effectiveness and appropriateness has, in retrospect, been debated where it concerns measures such as the curfews, the limitation of the press during the initial curfew, the entry ban on citizens, the closure of elderly homes, the forced temporary closure of certain industries and the shelter in place.[62] Aside from not having a legal basis, the limitations placed on the press during the first two days of the curfew was, as argued by Zeppenfeldt, unlawful.[63] The subsequent suitability and proportionality of the rotation based permission for journalists during the curfew is equally questionable, particularly as later curfews did not impose a similar set up. Furthermore, less intrusive measures, such as quick tests (as was done in South

59. Depositary Notifications (CNs) by the Secretary-General, treaties.un.org, (Search on: Treaty reference: IV.4).
60. 'Notification Derogations COVID-19', coe.int.
61. E.R. Zeppenfeldt, 'COVID-19 en grondrechten in Aruba', *NJCM* 2021/46, p. 257-261.
62. *Ibid.*, p. 253-262.
63. *Ibid.,* p. 465.

Korea), to the liberty and movement of citizens have been shown to also be effective. Additionally, measures, such as mandatory quarantine, curfews, and obliging individuals to remain confined in their homes exacerbated domestic violence, also in Aruba, thereby raising questions about their suitability. It should, however, be noted that the curfews and entry ban have been challenged on several occasions with the national court of first instance and have been found to be lawful, suitable and proportional.[64]

3.2.2 *Information on emergency legislation and measures*

Information about the coronavirus, the protective measures and the preventive measures was disseminated through various digital and non-digital media in Papiamento, English, Spanish and Dutch which are the main spoken languages on Aruba. The ministerial decrees that prolonged and/or adjusted COVID-19 measures were similarly publicised in the Official Publication (*Afkondigingsblad*) and the news page of the official website of the Aruban government. All measures, particularly those restricting the freedoms of individuals were also published in layman terms and continuously updated on the Government's official websites.

3.2.3 *Economic and humanitarian measures*

The government of Aruba was also quick to introduce several (temporary) subsidy programmes for employers, medium and small businesses and persons who had lost employment as a consequence of the pandemic.[65] As a result, an economic crisis was negated, many small and medium businesses managed to stay afloat and keep their employers and a (limited) financial safety net was created for those who had lost employment. Additionally, the government together with FPNC coordinated efforts to provide food packages and basic essential needs to those most in need.

3.2.4 *Areas of improvement*

To an extent Aruba's emergency legislation complies with conditions prescribed by human rights standards and follows a HRBA. The government's efforts to provide accessible and adequate actualised information related to the pandemic and the measures taken during the pandemic is commendable and meets the conditions set by human rights law. Economic measures and social security measures were also introduced in order to prevent an economic crisis and ensure the financial security of employers and employees.

The national crisis, as a result of the COVID-19 pandemic, revealed several shortcomings. A major area of concern is the lack of legal basis for the restriction of certain rights that were restricted during the pandemic. This is a matter that warrants the immediate attention from the Aruban legislator.

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64. GEA Aruba 30 June 2020, ECLI:NL:OGEAA:2020:275; GEA Aruba 5 November 2020, ECLI:NL:OGEAA:2020:582; GEA Aruba 22 March 2020 (*M.H. e.a./Land Aruba*) as discussed in E.R. Zeppenfeldt, 'COVID-19 en grondrechten in Aruba', *NJCM* 2021/46, p. 258.
65. *Supra* note 35.

Another area of concern is the degree to which parliamentary reviews were conducted during the pandemic. Officially the national crises lasted more than two years. Within this period, parliamentary review of COVID-19 ministerial decrees, including those restricting fundamental rights, could only be reviewed after said decrees had been put into effect.[66] An inquiry made of the published agenda of the parliamentary assembly revealed sparse reviews of COVID-19 related measures throughout 2020-2022, raising concerns about the degree of protection against interference with fundamental rights through parliamentary reviews. Additionally, the prolonged period of a national crisis between 2020 and 2022, may not have fully complied with the human rights standard for a swift return to ordinary law and rigorous parliamentary review. In the same vein the prolonged period within which Aruba remained in a state of emergency has also been criticised by the Aruban Advisory Council (*Raad van Advies*). Although the national emergency laws have not fixed the presence of a crisis to a specific duration of time, the Advisory Council concluded that the pandemic no longer constituted an 'acute situation' due to the ongoing 'normalisation' of the pandemic within social life. It found the extended period, wherein the State continued to be in a state of emergency, unacceptable and advised for more robust legal protection of fundamental rights during a crisis.[67]

Additionally, improvements can also be made in relation to the accessibility of information related to the scope and application of emergency legislation. The publication hereof occurred in legal terminology and in the Dutch language which is a language used by a minority of the population on Aruba. Consequently such information was to a lesser extent accessible to the public.

Finally, during the pandemic undocumented migrants already found themselves in a precarious situation due to their legal status. To begin with undocumented migrants already have less legal protection and access in the area of employment, medical assistance and health care. The coordinated project to distribute food packages and essential goods by FPNC and the Government were directed at individuals residing legally in Aruba. Consequently undocumented migrants were excluded access to these services and were dependent on aid provided by NGOs. Financial security programmes, such as FASE, were for the same reason inaccessible to undocumented migrants. This outcome raises concerns of indirect discrimination as well as questions pertaining to the necessity of the barriers that inhibited access to these services. After all, the choice by the Government to ensure access COVID-19 vaccines for all, including undocumented migrants, reveals that it is possible to adopt crisis responses that are inclusive and align with the principle of equality.

66. Parliamentary review may occur via the parliament's rights to put questions to the ministers, invite ministers to the parliamentary assembly to account for any decisions taken and to initiate an inquiry, art. III.17-19 Staatsregeling.
67. Raad van advies Aruba, *Jaarverslag 2020 – Rechtswaarborgen in een tijd van pandemie*, 2021, p. 9-11.

4. Final reflections

The crisis management legislation, plans and responses of the Aruban government align to a certain degree with the HRBA and are to an extent compatible with human rights norms and principles. The provision of basic needs, maintenance of medical services, the provision of swift information, the collection of data, the continuous assessment of response and the establishment of international cooperation, are areas that are prioritised within Aruba's emergency legislation and plan.

The country's responses to the COVID-19 pandemic have, however, revealed several shortcomings and areas of improvement. This reflection will limit itself to the three major areas of concern that have been identified. Firstly, the prolonged period in which emergency legislation was applied was not fully in compliance with the human rights conditions that require for restrictions to have a legal basis, for a swift return to ordinary law and for rigorous parliamentary review. It is imperative to ensure robust legal protection against interferences with fundamental rights especially when a state of emergency is prolonged. Secondly, although the government was swift in adopting measures to protect the economy and guarantee the financial security of persons, little attention is given to this aspect within the crisis management system of Aruba, and specifically within the CMP. Drawing from the lessons learned from the COVID-19 pandemic, amendments should be made to the CMP to also include this aspect. Thirdly, the mapping of vulnerabilities within society is inadequate. Similarly, the identification of vulnerable groups is limited and is not sufficiently attentive to other groups such as the elderly, children, persons in detention centres, undocumented migrants and women. Integrating a comprehensive mapping of vulnerabilities and vulnerable groups would not only enable the government to adopt tailored and effective response to protect vulnerable groups, but would also ensure that adopted responses do not directly or indirectly exclude particular groups.