Comment

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The right to health must guide responses to COVID-19

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Human rights scrutiny in the COVID-19 pandemic has largely focused on limitations of individual freedoms to protect public health, yet it is essential to look at the broader relevance of realising human rights to promote public health in the COVID-19 response.

The human right to the enjoyment of the highest attainable standard of physical and mental health provides binding normative guidance for health-care systems, broader social responses, and global solidarity. As recognised in the International Covenant on Economic, Social and Cultural Rights, the right to health requires that states take steps for the "prevention, treatment and control of epidemic, endemic, occupational and other diseases" and to assure "medical service and medical attention in the event of sickness".[1] The right to health requires that health goods, services, and facilities are available in adequate numbers; accessible on a financial, geographical, and non-discriminatory basis; acceptable, including culturally appropriate and respectful of gender and medical ethics; and of good quality.[2]

However, many states have faced difficulties in ensuring the availability and accessibility of COVID-19-related health coverage, leading to shortages in essential medical care, including diagnostic tests, ventilators, and oxygen, and in personal protective equipment for health-care workers and other front-line staff.[3] In some countries, austerity measures, structural adjustment programmes, and user fees have rendered essential services inaccessible for some vulnerable populations.[4] Implementation of the right to health through health systems requires that treatment is based on medical evidence; that testing and care are not withheld on the basis of disability, age, or inability to pay; and that states devote maximum resources to health care and recovery.[5] In providing this care in the context of COVID-19, these emergency responses must guard against interruptions to other essential health-care services, including sexual and reproductive health care, antiretrovirals for people living with HIV, immunisation campaigns, and community-based care and support, including mental health care.[6-8]

Undertaking immediate and progressive steps to prevent the rising public health threat of COVID-19, states must additionally "take measures to prevent, or at least to mitigate" the impact of the disease, drawing these measures from "the best available scientific evidence to protect public health", as reflected in the guidance from WHO.[9] Even as states limit individual freedoms to address this public health emergency—assuring that such limitations are reasonable, proportionate, non-discriminatory, and grounded in law[10]—it is crucial to consider the population-level impacts of the disease and give special attention to the disproportionate risks faced by marginalised and disadvantaged populations.[3] Lessons learned from the HIV response highlight the importance of engaging and prioritising—and not further marginalising—these populations in disease prevention responses.[11]

Beyond the health system, social determinants of health, including adequate housing, safe drinking water and sanitation, food, social security, and protection from violence, are central elements of the right to health and protected under international law as interconnected rights. Physical distancing measures impact these fundamental rights, with inequalities in social determinants translating into differentiated risks of infection and death.[3] As seen in the HIV response, marginalised and disadvantaged populations are among those most at risk, including women, children, racial and ethnic minorities, lesbian, gay, bisexual, transgender, and queer (LGBTQ) people, refugees, migrants, displaced persons, people with disabilities, older persons, incarcerated populations, and those living in poverty, working in the informal economy, or lacking stable housing.[3] In the absence of rights-based

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protections, government orders to "stay at home" (or other restrictions as lockdown measures are adjusted) are impoverishing vulnerable communities, keeping children from school, preventing individuals from purchasing basic necessities, closing off necessary support services, increasing gender-based violence, and widening health inequities across populations.

These public health risks underscore the imperative for a coordinated human rights-based response to COVID-19 that protects health by realising rights. Human rights provide the necessary principles for effective COVID-19 responses.[3] Equality and non-discrimination require disaggregated data and attention to the rights of vulnerable groups. The participation of all affected communities supports equitable responses, facilitating community-led action and targeted interventions that respect rights.[12] Participation of civil society in the COVID-19 response supports the contextualisation of responses to national and local circumstances.[13] Further, responses must be transparent, clearly communicated, and subject to accountability, including monitoring, independent review, and appropriate remedies. Independent review allows for the assessment of responses and improvement of health systems, with courts, national human rights institutions, parliamentary procedures, and regional and international human rights bodies providing a web of accountability to assure the realisation of health throughout the pandemic response.[14]

Aligned with the UN Secretary-General's call for global solidarity,[15] the right to health recognises international assistance and cooperation as central to the COVID-19 response. This international obligation requires that all states in a position to assist: share research, medical equipment, supplies, and best practices; coordinate to reduce the economic and social impacts of the pandemic; limit economic sanctions, debt obligations, and intellectual property regimes that impede access to needed resources; and, in all this, focus on vulnerable and disadvantaged groups, fragile countries, and conflict and post-conflict situations.[9] However, despite repeated pleas from WHO for global solidarity in the COVID-19 response, many states have failed to provide sufficient international assistance and cooperation, threatening the health and human rights of the most marginalised populations.

WHO governance provides a path for shared responsibility to realise global solidarity. With WHO holding a vital role in coordinating the international response, states must not take deliberately divisive actions that seek to undermine global health governance. State support for WHO remains essential through contributions to the WHO budget and adherence to WHO guidelines.[16] Beyond WHO, these international obligations require support for global governance through the UN's COVID-19 Global Humanitarian Response Plan[17] and the UN Framework for the Immediate Socio-Economic Response to COVID-19;[18] coordination in the development and, if successful, distribution of a "people's vaccine" that is accessible throughout the world;[19] and engagement with the UN human rights system to facilitate accountability for human rights in global health.

The COVID-19 pandemic has been exacerbated by human rights failures, yet the right to health can provide a framework for assuring that the COVID-19 response serves to realise the right to the highest attainable standard of physical and mental health for all.

DP is the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. We declare no other competing interests. The views expressed herein are personal and do not necessarily reflect the views of the UN.

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