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The right to clothing and personal protective equipment in the context of COVID-19

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ABSTRACT
The human right to clothing has been labelled a forgotten right. Consequently, the content of this right is unclear. This may explain why, despite the prominence of issues relating to Personal Protective Equipment (PPE) in the discourse surrounding COVID-19, the right to clothing has not been addressed or engaged. Instead, the issue of PPE has been addressed through other rights such as rights to life, health, and work. This is despite the readiness by which PPE aligns within the right to clothing. PPE is, irrefutably, a form of clothing. Thus, the negative consequences of inadequate PPE within the COVID-19 crisis, although engaging with other rights, are caused by a failure to adequately realise the right to clothing. Consequently, the aims of this article are two-fold. Firstly, to ensure that the right to clothing implications of COVID-19 are engaged with and, secondly, to promote – and demonstrate the importance of – the right to clothing as an independent and valid right which can be utilised to tackle human rights crises. In this second regard, the COVID-19 crisis may act as a catalyst for the reassertion of the right to clothing.

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Introduction

This article argues that the right to clothing should be at the heart of any rights discourse surrounding Personal Protective Equipment (PPE) in the context of the COVID-19 crisis. This is because, ultimately, PPE is a type of clothing. As such, although failures concerning the provision of PPE may result in the non-realisation – or violation – of other human rights: the root cause of this is a failure to adequately realise the right to clothing. Thus, the added value of utilising the right to clothing is that it brings to the forefront the underlying and causal rights issues in analysing failures concerning the provision of PPE in the context of COVID-19. Furthermore, the focus on a right to clothing highlights the specific and precise obligations arising from the right which in turn enhance the accountability of states and the ability to hold such states to account for ensuing violations. As such, this focus on causal failure is theoretically and practically advantageous.

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However, the right to clothing has received a lack of attention from both the United Nations Committee on Economic, Social, and Cultural Rights (CESCR), and the scholarly human rights community. This lack of attention contributes to the 'forgotten' status of the right to clothing. In turn, as a result, the normative content of the right to clothing and the correlative obligations emanating from this right have not been delineated or clarified. Additionally, this lack of attention may explain the distinct lack of engagement with the right to clothing in the response of the human rights community to COVID-19. The effect of the lack of attention given to the right to clothing is circular. The content of the right is unclear and as such right to clothing claims are not made. Right to clothing claims are not made and as such, there is no perceived need to clarify the content of the right. However, in this article, I argue that COVID-19 may act as a catalyst for this circle to be squared. This is because the issue of PPE has been prominent in the discourse surrounding this crisis around the world. As such a sudden and urgent need has arisen to remedy the neglect from which the right to clothing has suffered. More so, the COVID-19 crisis demonstrates that the peripheral status of the right to clothing is misguided whilst at the same time vindicating the inclusion of a right to clothing as a human right.

Although the findings presented in this research may be more widely applicable, it is important to be clear from the outset that my focus in this article is the right to clothing situation faced by healthcare workers in the UK's National Health Service (NHS) and social care sector concerning PPE in the context of COVID-19.

In this article, I clarify the content of the human right to clothing in relation to PPE in the context of COVID-19. Firstly, I will examine the 'forgotten' status of this right and highlight that COVID-19 has resulted in a sudden need to reassert the right to clothing. Following this I will establish PPE in the context of COVID-19 as a right to clothing issue. I then outline the normative content of the right to clothing before the content of the right is explored in the context of the United Kingdom (UK). Finally, I consider the right to clothing obligations arising with respect to PPE in the context of COVID-19 in the UK. I conclude that the UK has failed to realise its obligations under the right to clothing concerning PPE within the context of COVID-19 and in doing so urge the CESCR to reassert the right to clothing.

The forgotten status of the right to clothing

During the formative debates, influencing the drafting of the International Covenant on Economic, Social, and Cultural Rights (ICESCR), 'clothing was considered imperative.'[1] The imperative nature of clothing – being tangible or material objects which are obtained and attached to, or worn, on the human body[2] may rest on the fact that clothing is one of life's fundamentals.[3] Through focusing on the needs fulfilled by clothing, clothing has been identified by some psychologists 'as a basic human need, along with food and shelter.'[4] Most prominently in international human rights law, the right to clothing is enshrined in Article 25 of the UDHR and Article 11 of the ICESCR.[5] These provisions relate to an adequate standard of living and this link is echoed in the Convention on the Rights of the Child (CRC) which, in relation to 'the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development',[6] requires States Parties to providing assistance to parents towards the realisation

of this right giving particular 'regard to nutrition, clothing and housing.'[7] The Committee on Economic, Social, and Cultural Rights (CESCR) has also drawn a link between the assessment of social security provision – specifically family and child benefits – and clothing.[8]

However, the CESCR has rarely referred to the right to clothing as free-standing.[9] That is the right to clothing is seldom considered upon its own merits and its own potential. Instead, the right to clothing 'has largely failed to maintain an independent status, being either overlooked or effectively subsumed within the right to shelter generally and the right to housing specifically.'[10] It is little wonder, therefore, that despite its codification in international human rights law, the right to clothing has been labelled a 'forgotten right.'[11] Craven contends that 'the impression given is that clothing is not a matter in which the state may exercise a great deal of control, nor one which the committee feels is of great importance.'[12] This may explain the lack of attention given to the right to clothing in the past. However, the cruciality of PPE in the response to COVID-19 has evidenced that states can exercise a great deal of control over the fulfilment of the right to clothing and that the realisation of the right is of great importance.

In 1995, Craven observed that the right to clothing 'has had little attention from either the Committee or commentators.'[13] 15 years later, James highlighted that the right to clothing has been largely neglected by the Committee on Economic, Social, and Cultural Rights (CESCR).[14] Saul et al. further echoed these sentiments in 2014 and, to my knowledge, now in 2020 – a quarter of a century since Craven's observation – the right to clothing has had little attention from either the CESCR or commentators other than to recognise the lack of attention it has received.[15]

Even the exceptions to the lack of attention do little to delineate the content of the right to clothing. For example, James concedes that his brief assessment of the right to clothing is made as a layperson.[16] More so, Saul et al's survey of the CESCR's concluding observations found that clothing was only brought up in the early sessions of the CESCR: 'as if the committee was itself trying to work out what the content and meaning of the right might be in practice.'[17] As such, the supposedly equal place of the right to clothing 'within the context of securing an adequate standard of living under Article 11 is somewhat belied by the practice towards the right to clothing.'[18] This is exemplified by the fact that unlike the rights to food, water and housing, the right to clothing does not have its own UN agency, nor has it benefited from the work of a specific Special Rapporteur or a specific General Comment. Consequently, the core obligations pertaining to the right to clothing have not been expressly determined by the CESCR, nor has its normative content. Therefore, there is a need to delineate the right to clothing in order to clarify the content of the right and subsequently the correlative obligations of states concerning the right to clothing. This need is even more imperative given the importance of PPE in the response to COVID-19.

Personal protective equipment and the right to clothing

Even despite the failure to engage with the right to clothing, PPE in the context of COVID-19 has been engaged from a rights-based perspective. One reason for this is justiciability. Specifically the justiciability of civil and political rights. For example, a High Court judgement in Lesotho 'found the government's failure to provide PPE to

doctors to be unconstitutional and in violation of the right life and ordered that it remedy this dereliction by provided the necessary safety equipment.'[19] Another reason for this, from the perspective of ESCRs, is that the issue of PPE has been dealt with from the perspective of other ESCRs. For example, the International Commission of Jurists encapsulates PPE as a matter of the right to health and observes that 'failure to provide PPE is a clear violation of the rights to health and conditions of work of health workers themselves and also may constitute a broader threat to the rights to health of all people.'[20] Similarly to the International Commission of Jurists, Amnesty International conceptualises PPE as part of the right to health.[21] This is understandable given that the right to health has developed and existing legal frameworks whereas the right to clothing does not. Additionally, this recognises the nature of the pandemic as a crisis of public health.

In that a failure to provide adequate clothing has implications for the right to health, this evidences the interdependence of human rights. The interdependence between the right to clothing and the right to health is supported by my observation that there are three purposes of clothing. Although all of these relate to protection, these purposes can be split between clothing as general protection; clothing as protection from social exclusion; and, clothing as specialist protection. The achievement of each of these purposes contributes to the protection of the physical, mental, and social well-being of individuals. Given that the World Health Organization (WHO) defines health as 'a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity,'[22] it follows that the purposes of clothing are intimately connected to all facets of human health. Although I will outline all three of these purposes in this section, PPE falls within the latter purpose: clothing as specialist protection. As such, this section is weighted towards this latter purpose whilst giving a brief overview of the two former purposes.[23]Despite this interdependence, this paper focuses on *the right to clothing implications* for PPE and in doing so goes beyond the analysis of PPE which has already been undertaken from the perspective of other rights. The importance of PPE has been made clear in the context of COVID-19 and this has, I argue in turn, laid bare the importance of the right to clothing. In arguing that the right to clothing should be operationalised with respect to PPE in the context of COVID-19, it is not my intention to criticise, to undermine, or to attempt to render nugatory this important work. These are not mutually exclusive options and the right to clothing can be reasserted in this context whilst at the same time supplementing existing rights-based approaches to PPE. This is a narrowly focused exploration of the right to clothing and as such future research must address the purposes of clothing more generally – and the interrelationship between the right to clothing and other rights – in greater detail.

In the general sense protection offered by clothing pertains to 'basic protections against nature's elements.'[24] This general notion of protection is, therefore, contextually relativist as an analysis of the extent to which clothing sufficiently protects against nature's elements may differ by context.[25] A more specific example of the general protection offered by clothing is highlighted by Shahvisi et al. as shoe-wearing linking to the elimination of a disease called podoconiosis.[26] Whilst offering general protection, clothing must also not harm the wearer. Such harm may be a consequence of, *inter alia*, lack of ventilation, lack of breathability, or poor fit.[27]

The literature also highlights the contextually relativist purpose of clothing that is to meet standards of decency and clothing as conveying identity.[28] I link these two purposes

of clothing together under the umbrella purpose of clothing for social participation. In this regard, clothing for social participation may also be regarded as a form of protection. This is because clothing has been regarded as protecting 'individuals from various kinds of fears, including fear of ridicule; fear of being judged as inefficient, stupid, modest, poor, lacking good-taste or self-respect; fear of being unattractive.'[29] Existing literature supports the view that such fears are well-founded.[30] Consequently, clothing for social participation has implications for other human rights. The right to work, the right to education, the right to privacy, and the right to freedom of expression may all be undermined if an individual is unable to attire themselves in appropriate clothing.

Based on the analysis within this section so far, the importance of clothing to human health is clear. This is even more so concerning clothing as specialist protection and, in particular, work-place protective clothing. The examples of such clothing are innumerable, and, for the purposes of this paper, I focus on PPE in the context of COVID-19 in the UK. PPE acts as a protective layer between the risk and 'the worker's body.'[31] For healthcare workers, PPE is necessary 'to protect both health workers and their patients from the risk of COVID-19 transmission.'[32] It is therefore little wonder that the WHO has been observed to acknowledge that 'the chronic global shortage of personal protective equipment is now one of the most urgent threats to our collective ability to save lives.'[33] In the context of PPE shortages, in the response to COVID-19, this focus is especially pertinent given that health-care workers 'are being infected due to inadequacies or shortages of personal protective equipment and clothing.'[34]

Although the standard uniforms worn by health care professionals 'are often used as barriers to help eliminate or reduce the risk of infection'[35] for both patients and staff, in the context of COVID-19, these standard uniforms are not enough and must be supplemented with PPE. Although it is conceded in the literature that 'no chemical protective clothing can protect against all levels of chemical risk,'[36] the choice of protective clothing must take account of the scenarios in which the protective clothing will be worn. Such factors to be taken into account include, inter alia, 'the work situation (time duration, space constraints), the chemical(s), source of exposure, length of exposure time, barrier penetration and permeation properties, garment seam and closure types, and work environmental conditions (temperature and humidity).'[37] Other factors to be considered in relation to PPE and the right to clothing include comfort and compatibility (of the equipment with other equipment in the ensemble) as this contributes to 'use compliance by wearers.'[38] Training in the appropriate use of PPE is also important to ensure its effectiveness.[39]

Given that the response to COVID-19 'should be coordinated with actors in the private sector and civil society' the WHO has developed interim guidance with the aim to 'help governments with their efforts to engage the private sector as part of a whole of society response to the pandemic'.[40] This WHO action plan aims to get public and private healthcare sector representatives to work together, to 'secure private sector assets to increase surge capacity', to 'mobilise and rationalise public and private health staff assignments according to need', to 'ensure all health facilities and staff have the supplies they need to respond to the crisis', to 'establish systems to integrate the public and private sector response effort', and to 'supply side-financing'.[41]

This highlights that the right to clothing in the context of PPE goes beyond merely the provision of PPE. The nature of obligations stemming from the right to clothing in this

context will be explored further below and although the factors explored in this section are indicative of some of the considerations to be made in assessing the right to clothing implications for PPE, the content of this right must be established.

Establishing the content of the right to clothing with respect to personal protective equipment in the context of COVID-19

In the General Comments addressing other Economic, Social, and Cultural Rights (ESCRs), the CESCR has clarified States Parties' obligations under the ICESCR. Although the CESCR's interpretation of these obligations has developed throughout its life course, it is evident from the CESCR's most recent General Comments addressing obligations stemming from Article 11[42] and also Article 12[43] that ESCRs have a normative content which includes a core content and a wider scope of the right.[44] It, therefore, follows from this that the human right to clothing must also have normative content which includes a core content. As such, this section offers my interpretation of each of these with respect to the right to clothing.

The core content with respect to personal protective equipment in the context of COVID-19

The core obligation is an obligation of every state party to realise, 'as a matter of priority,'[45] the 'minimum essential levels of each of the rights'[46] enshrined in the ICESCR. It aims to provide a minimum level of social protection for all.[47] A 'non-derogable foundation,'[48] which must be guaranteed for all,[49] the core content it is a baseline below which the realisation of ICESCR rights should not fall.[50] Failure to comply with the core obligation constitutes a prima facie breach of the State's obligations[51] in that it is a violation of the 'corresponding core rights.'[52] That is unless the State demonstrates that it has made every effort to prioritise its resources in order to fulfil this obligation.[53]

I contend that the core obligation of the right to clothing is intimately linked to health (physical, mental, and social well-being). From the analysis in the previous section, the interrelationship between clothing adequacy and health is evident. This can be supported with James's contention that 'immediately one can see the link between the human right to adequate clothing and to health.'[54] Inadequate clothing has negative implications for physical, mental, and social wellbeing. In a general sense, at a minimum clothing must: provide general protection against an individual's environment and must not harm the wearer's physical wellbeing; must be of such a standard that it does not impinge the wearer's social participation and as such does not harm an individual's mental and/or social wellbeing; and, must provide specialist protection when it is so required by meeting the safety/quality standards set in response to specific – non-general – risks. In sum, I will argue that the core obligation of the right to clothing requires clothing to protect, and to not harm, the wearer's physical, mental, and/or social wellbeing (health).

In the context of COVID-19, existing standards may be used in assessing the extent to which PPE satisfies this minimum. Clothing standards, aimed at ensuring products comply with specific requirements, exist at both the supranational and the national level.[55] Regarding the current COVID-19 crisis and the provision of PPE, such standards can aid to determine the extent to which PPE is adequate and the World Health Organisation has issued

interim guidance which includes PPE recommendations 'according to the setting, personnel, and type of activity setting.'[56] In the context of COVID-19, I argue that a state is failing in its obligations to realise the core of the right to clothing if it does not provide its health care professionals with PPE which meets these WHO standards. That is unless the state can demonstrate that it has been unable to fulfil this obligation despite prioritising its resources. This is the core content of the right to clothing with respect to PPE to protect from COVID-19. Linking this core to the framework which will be outlined in the following sub-section, it can be contended that the UK has an obligation to provide PPE of both sufficient quantity and sufficient quality to protect individuals from harm. This obligation to fulfil will be explored in greater detail below.

The normative content with respect to personal protective equipment in the context of COVID-19

The core content of the right to clothing – as has been the case with other ESCRs – can be supplemented by the use of the normative framework. This framework can clarify what constitutes adequate clothing. On the wording of the ICESCR, the right to clothing is, in fact, a right to adequate clothing. Drawing upon the frameworks adopted by the CESCR in determining the normative content in its 14th and 15th General Comments, is indicative of several factors to be considered concerning the normative content of the right to clothing.[57] In determining adequacy, the CESCR has referred to such factors as availability, quality, accessibility (both physical and economic)[58] and cultural acceptability (AAAQ-framework).[59] By determining what constitutes the AAAQ framework, with regard to clothing, we can cast further light upon the content of the right. These factors will be considered in the following section in an assessment of PPE provision in the UK within the context of COVID-19.

The realisation of the right to clothing with respect to personal protective equipment in the context of COVID-19 in the United Kingdom

Availability

In terms of the normative content, availability means that the substance of the right is available for use and/or consumption. This, therefore, reduces down to the ability to source the resource. In many contexts, in regard to the right to clothing, this means that clothing is available for purchase or that the relevant materials are available from which to make clothing. Regarding clothing as specialist protection, issues of availability have arisen concerning PPE in the context of COVID-19 and it has been recognised that 'shortages of basic PPE are commonplace and widespread in countries, regardless of their status or level of economic development, resulting in a higher risk of COVID-19 infection for healthcare workers.'[60] Initial reports are troubling in this regard. In the UK, of 500 respondents across 193 hospital trusts and GP practices, 72% of doctors could not access an FFP3 mask when needed, 77% reported shortages of long-sleeved gowns, and 43% did not always have access to a visor or goggles when they needed them.[61] A different survey of 1,978 surgeons and trainees found that 32.5% 'do not have access to enough masks, gowns and other clothing to keep them safe.'[62] Initially, the British

government insisted that there was no shortage of PPE but rather there were distribution problems. This would indicate that PPE was available but was not accessible. This initial insistence has, however, been retracted and the government has accepted PPE supply shortages.[63] Thus, the government has accepted that issues of PPE availability have arisen.

This lack of availability of PPE can be traced to the Government's failure to 'include key items of personal protective equipment (PPE), such as gowns and visors' within the pandemic stockpile.[64] This failure occurred despite the Government's advisory committee on new and emerging respiratory virus threats recommending that gowns be purchased as recently as June 2019.[65] More so, it has been claimed that offers to help by UK based businesses with access to PPE have been 'ignored'.[66] These examples demonstrate how a failure to realise the normative content of the right to clothing may be traced to government inaction with respect to the procurement of PPE.

Accessibility

Beyond availability, accessibility relates to physical access to PPE. For my purposes, issues of accessibility are engaged when, despite the availability of PPE, health care professionals are not able to access these resources. Within the COVID-19 crisis, issues of accessibility may arise when – despite sufficient amounts being available within a national supply chain – PPE cannot be accessed due to failures of distribution. For example, in the preceding sub-section, I have highlighted that the British government originally attributed a lack of PPE for healthcare professionals to failures of distribution (accessibility) as opposed to availability. More specifically, questions have been raised concerning the private company responsible for storing and distributing the pandemic PPE stockpile.[67]

It must also be recognised that a hierarchy exists concerning the distribution of PPE. This is because the government manages the supply chain and as such prioritises the public healthcare service. This has been to the detriment of private health care providers. The issue of private providers is particularly important for care homes and it has been recognised by the International Commission of Jurists, Amnesty International, and the World Health Organisation that those living in nursing homes experience higher rates of mortality due to COVID-19.[68] In the response to COVID-19 care homes in the UK required government support to meet demand for PPE, despite 'repeated and urgent calls' for such support, this support has not adequately provided PPE.[69] The World Health Organisation has stated that States need to consider ensuring that 'personal protective equipment (PPE) is procured quickly for both care homes and home care services.'[70] However, concerns have been raised that the NHS is being prioritised forcing care home providers (which are often privately as opposed to publicly managed in the UK) to procure PPE through the open market.

Consequently,

> most care home staff and managers interviewed by Amnesty International said they had faced difficulties in obtaining PPE through their usual suppliers. Some reported being told supplies were on reserve for the NHS and could not be provided to them. Care England has also reported incidents of supplies ordered by care homes being requisitioned for the NHS.[71]

This is 'despite the apparent recognition that care homes are now the front line'[72] and that that 'ONS data shows that just over half of all health workers deaths in the UK

are social care workers – including care home workers.'[73] This is partially attributable to an inability of the delivery system promised by the government to distribute, to care homes, the volumes of PPE required.[74] Such a system was required to be developed given that previously, care homes had not required large amounts of PPE and as such the appropriate supply chains were not already established.[75]

In addition to hierarchy between sectors, this notion of hierarchy may also apply within the public healthcare system. This is because some workers within the NHS may be PPE disadvantaged. That is, their need for PPE is not equally recognised. Hypothetically speaking, such PPE disadvantaged individuals may be those with 'background' roles whose roles are less visible or seen as less requiring of PPE. This is even though such individuals are working in environments in which the COVID-19 virus is spatially close. For example, Public Health England recommends proscribing varying levels of PPE where those in the primary care setting 'working in reception/communal area with possible or confirmed case(s) and unable to maintain 2 metres social distance' only require one of the seven types of PPE (a single-use disposable mask).[76] Consequently, in the allocation of PPE, the Public Health England recommendations contain a hierarchy of protection which favours the doctor or the nurse (engaged in direct patient care) over the receptionist. Such prioritisation is clinically justified. However, if PPE were sufficiently available and equally accessible, I contend that it would be better to 'over' protect all workers in the environment in which the virus is present.

Accessibility also has another dimension, namely the extent to which PPE matches particular needs. This second dimension may be supported using the example of persons with disabilities. Saul *et al.* identify the CESCR's General Comment Number 5 as holding that the right to clothing has 'special significance'[77] in relation to persons with disabilities. This special significance relates to the 'particular clothing needs'[78] of such persons which must be met in order 'to enable them to function fully and effectively in society.'[79] For example, those suffering from arthritis in their hands may require alternative 'fastener choice' to allow them to clothe themselves.[80] Without adjustments such as these, although clothing itself may not be inaccessible to individuals, the ability to utilise clothing may well be inaccessible.

Applying this to PPE in the context of COVID-19, an example which may engage the theme of this second dimension is an alleged gender bias in PPE design over which concerns have been raised. This alleged gender bias has led to warnings that 'female healthcare workers' lives are being put at risk.'[81] These concerns have not arisen only now in the context of COVID-19 and a 2016 survey 'found that just 29% of female respondents were using PPE designed for women, and 57% said their PPE hampered their work.'[82] Although the Government has downplayed these concerns,[83] the British Medical Association has suggested that PPE 'tends to be designed for the "size and shape of male bodies", despite the fact that 75% of NHS workers are women.'[84] A one-one-size-fits-all approach which favours the male body is compounded by the lack of availability of smaller sizes which are often required by women in order to fit adequately.[85] This results in female healthcare workers having to tighten equipment for it to fit which is discomforting.[86] Inadequate fit may also undermine the effectiveness of PPE and as such female healthcare workers may be at greater risk of infection.

Another dimension of accessibility is economic inaccessibility, or affordability, must be understood plainly. The availability of, and physical accessibility to, clothing is

superfluous if an individual is unable to acquire adequate clothing due to cost. In the context of COVID-19, even in states in which affordability should not act as a barrier to the state itself securing PPE, affordability of PPE has arisen as an issue due to profiteering and price-gouging.[87] This places a greater burden on already stretched resources and has impacted on the availability and accessibility of PPE. In states with more limited resources, affordability may act as a barrier to the state acquiring appropriate PPE. However, on this latter point, it is important to be mindful of the final sentence of Article 11 (1) of the ICESCR: 'The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.'[88] In a statement on COVID-19, the CESCR has stressed the importance of international assistance and cooperation which includes 'the sharing of research, medical equipment and supplies.'[89] With respect to PPE, it can therefore be argued that states have an obligation to cooperate with and assist other states in the procurement of PPE. This may include steps to address issues of affordability.

Acceptability

Even when PPE provided to public healthcare workers is both available and accessible, issues of acceptability may also arise. Acceptability strongly links to both my concept of clothing as allowing for social participation and also the second dimension of accessibility. Concerning PPE, the concept of acceptability pertains to the particular needs of specific groups. Beyond the example of the gender bias in the design of PPE, acceptability may require variants of protective equipment which account for the specific needs of certain groups.

For example, previously in the UK Sikhs have been barred from joining police firearms units as ballistics helmets were not compatible to be worn with the Sikh turban.[90] This example serves to demonstrate that PPE which is generally considered acceptable may not be acceptable for specific groups. When this is the case, reasonable adjustments must be made although the extent of such adjustments cannot be generalised and must be made on a case by case basis. In the context of COVID-19, in order to be effective face masks have required the shaving – or shortening – of male facial hair. The British Medical Association Website observes that FFP3 face masks (which 'are recommended to protect staff who may be exposed to COVID-19 from aerolised pathogens') 'require the removal of beards to fit effectively.'[91] This raises issues of acceptability concerning individuals who maintain facial hair for religious or cultural reasons. The BMA advises that alternative (but more difficult to source) protection is available.[92] In this example, the provision of such alternatives would nullify concerns pertaining to acceptability. However, other issues of acceptability may exist which are not so easily addressed.

Quality

The issues of availability, accessibility, acceptability, and affordability may manifest as an issue of PPE quality. Issues of PPE quality have indeed arisen in the context of COVID-19. For example, large amounts of PPE have been distributed despite being 'out of date.'[93]

This is despite guidance provided by manufacturers that some equipment should not be used once it has expired as it is 'less likely it is to perform at its full potential.'[94] Given that coroners have received guidance that PPE policy failures need not be investigated in the deaths of NHS staff,[95] reports that expiration dates have been altered through relabelling are therefore especially troubling.[96] This engages the concepts of transparency and information accessibility and as such a human rights-based approach may be useful in addressing this. Additionally, of the sixty-seven-thousand gowns sourced – to much media fanfare – from Turkey only four-thousand-five-hundred (6.7%) 'were passed as fit for use in the health service.'[97] This example raises questions of cost inefficiency. These examples demonstrate that issues of quality have arisen with respect to PPE sources through the governmental supply chain.

However, issues of quality also arise given that almost half of the 16,000 doctors in England who participated in a British Medical Association Survey 'have sourced their own personal protective equipment or relied on a donation when none was available through normal NHS channels.'[98] An example of alternative routes to acquiring PPE is that, in the UK, a shortage of visors has resulted in disposable equipment being reused and has resulted in a 'cottage industry of 3D visor printing' whereby private citizens are using their own resources to provide visors.[99] It has also been reported that health care professionals are making their own makeshift and improvised PPE, such as masks.[100] An example of the negative implications of this is that three nurses who wore makeshift PPE (bin-bags) due to a shortage in PPE 'have reportedly tested positive for coronavirus.'[101] Although some level of protection may be regarded as better than no protection at all, the extent to which such provision aligns with the established standards must be – rightly – questioned. If – as I suspect – these home-made and makeshift articles of PPE are not of the same quality as professionally sourced PPE this would constitute a failure with respect to PPE quality and as such a failure to realise the right to clothing in this context. Consequently, any government acquiescence to, and/or failure to rectify the use of, such makeshift equipment constitutes a violation of the right to clothing.

This is because in order to be of sufficient quality PPE must meet the specific industry standards regarding providing specialist protection to specific risks. Concerning specialist protection, Koo et al highlight skin cut and puncture protection, dirt and insect protection, UV ray protection, water-resistant/waterproof, dexterity, comfort in movement, breathability, ease of donning and doffing, durability, and ease of care as factors to be considered when exploring the design of protective gardening gloves.[102] As has been addressed above, in the context of COVID-19, the quality of PPE can be determined by reference to industry-specific standards. For healthcare workers in the context of COVID-19, clothing quality can be adjudged by reference to the standards outlined by the World Health Organisation. EveryDoctor, which campaigns for the working rights of doctors has launched a campaign 'demanding goggles, masks, gowns and gloves in line with World Health Organization recommendations for all healthcare staff. More than 35,000 staff have signed our petition.'[103] The need for such a campaign is indicative that some of the PPE currently being provided in the UK does not meet the WHO standards. I contend that this constitutes a violation of both the core content and normative content of the right to clothing with respect to PPE in the context of COVID-19 in the UK.

Personal protective equipment and right to clothing obligations in the United Kingdom

It has been recognised that failures with respect to PPE will be the focus of inquiries and judicial proceedings in the UK. For example, Chris Hopson, the chief executive of NHS Providers, 'believes that any future public inquiry into the coronavirus pandemic will have to look into PPE shortages, which have triggered huge anxiety, alarm and fear among doctors and nurses.'[104] Additionally, 'doctors are taking legal action to force the UK government to launch an independent inquiry into its failure to provide adequate personal protective equipment for NHS staff and other frontline care workers.'[105]

However, to my knowledge, neither of these two examples address failures in the provision of PPE from the perspective of the right to clothing. This is because, the right to clothing is not directly enforceable in the UK. Rights-based judicial proceedings will likely focus on justiciable issues namely the provisions of the Human Rights Act which incorporates the provisions of the European Convention of Human Rights (ECHR) into UK law. The right to clothing is not expressly contained as a provision within the ECHR and as such the focus will be on other rights such as the right to life. The difficulties faced with respect to justiciability of the right to clothing does not however undermine the analysis in this paper. This is because a comprehensive understanding of the right to clothing implications of PPE may contribute to analysis framed through the lens of other rights which are justiciable.

Justiciability aside, the UK still has obligations as a state party to the ICESCR. Through its General Comments the CESCR has affirmed,[106] and repeatedly reaffirmed,[107] that all human rights impose three types of obligations upon States parties: the obligations to respect, to protect, and to fulfil. It therefore follows that the UK has an obligation to respect, to protect, and to fulfil the right to clothing. Each element of the tri-partite typology of obligations has a generally applicable nucleus. The obligation to respect can be generally summarised as an obligation to refrain from interfering with the enjoyment of a right.[108]

In the UK and within the context of COVID-19 the obligation to respect may be engaged when, for example, resources are diverted from care homes to the NHS.[109] Given the role that the private health sector often plays in controlling and managing critical resources including PPE,[110] the cruciality of the private sector in the response to COVID-19 must not be overlooked and as such the obligation to protect may well be engaged. The obligation to protect can be summarised generally as an obligation to take measures which prevent individuals or enterprises from interfering with the enjoyment of a right.[111] For example, with respect to the provision of PPE to healthcare workers in the context of COVID-19 in the UK, the obligation to protect may be engaged with respect to economic accessibility as an obligation to protect against price-gouging acting as a barrier to accessibility. Thus, the obligations stemming from the right to clothing may be used to justify state actions to address profiteering in this crisis and such regulatory measures have been recommended by the CESCR with respect to 'foodstuffs, hygiene products and essential medicines and supplies.'[112]

Beyond this, the responsibility to protect the right to clothing with respect to PPE especially concerns to private health care providers. This is because the argument that 'states obligations to ensure private participants in the healthcare sector do not fall

short of the standards set by the right to health fall predominantly under the duty to protect the right to health'[113] can be extended analogously to the right to clothing. The International Commission of Jurists has clarified the very least required of states require by the obligation to protect the right to health in the response to COVID-19. This includes 'the adoption of "legislation" and other measures to:' 'ensure equal access'; 'control effects of privatization'; control marketing'; and 'ensure health professional standards.'[114] Further to this, an Amnesty International report has held that

> The government's failure to ensure care homes hosting some of the people most at risk of COVID-19 had fair access – at parity with the NHS – to regular testing for residents and staff and *PPE in sufficient quantities and of adequate quality* during the pandemic violated its obligation to protect the right to life and the right to health of staff and residents without discrimination.[115]

Although these requirements and obligations relate to the right to health, I contend that these same requirements and observations are equally suitable to an examination of the obligation to protect the right to clothing with respect to PPE in the context of COVID-19.

Lastly, the obligation to fulfil the right to clothing through the provision of adequate PPE for healthcare workers is clear. The obligation to fulfil can be generally summarised as an obligation to proactively engage in activities intended to further the enjoyment of a right.[116] From the analysis in this paper, it is clear that this obligation relates to sufficient provision of adequate PPE through, *inter alia*, stockpiling, distribution, and quality assurance. As well as ensuring the provision of adequate PPE – and all that this entails – the obligation to fulfil also includes an obligation to ensure that PPE is appropriately used. For example, through providing training in the appropriate use of PPE in order to ensure effectiveness. Based upon the analysis throughout this paper it is contended that the UK is failing in its obligation to fulfil the right to clothing due to its failure to ensure the provision of sufficient and adequate PPE to healthcare workers.

It is through this failure to meet its obligation to fulfil the right to clothing that the UK is not realising the core content of the right to clothing with respect to PPE in the context of COVID-19. As the research in this paper makes clear, failures in, *inter* alia, procurement, stockpiling, and supply chain management have undermined the UK government's ability to ensure that sufficient quantities of PPE of the standard advised by the WHO are available. Consequently, the failure to fulfil these obligations have undermined the availability, accessibility, acceptability, and quality of PPE provision. In failing to provide adequate PPE to healthcare workers, I argue that the UK is failing to realise its core obligations of the right to clothing with respect to PPE in the context of COVID-19. This in turn has implications for the realisation of other rights.

Conclusion

The pre-eminent consequence of the lack of engagement with the right to clothing by the human rights community – that is the right's forgotten status – has been a failure to delineate or clarify the content of this right. This failure means that the rights and obligations conferred under the right to clothing have been at best marginalised and at worst ignored by the human rights community. This neglect more than likely explains why, despite the wide discourse surrounding PPE, the right to clothing has not been

engaged with respect to COVID-19. In the context of COVID-19, and the prominence of issues relating to PPE in the response to this crisis, a need to engage with the human right to clothing is even more pressing.

Towards fulfilling this need, I have offered my own interpretation of the content of the right to clothing. I argue that at a minimum the right to clothing entitles the individual to clothing which protects their physical, mental, and social wellbeing. In the context of PPE and COVID-19 in the UK, this extends to include specialist protection for health care workers against the virus, which conforms to WHO standards. Beyond this minimum, the right to clothing also requires that clothing is available, accessible, affordable, acceptable, and of sufficient quality.

I argue that the UK government is failing with respect to its obligations under the normative content – which includes a core content – of the right to clothing in the context of COVID-19 and PPE. Although not from a right to clothing perspective, the failures of the UK government in this regard have been recognised as failures warranting the government being brought to account. In the face of this, the first aim of this paper is to ensure that the right to clothing forms a part of the discourse. This is especially important given the view contained in a pre-legal-action letter communicated to the government that 'an immediate independent inquiry is essential to ensure sufficient PPE can be made available as soon as possible and to ensure healthcare workers are properly equipped for any second or third wave of Covid-19.'[117] Ensuring that the right to clothing is included in this discourse *at this stage,* therefore, positions the right to clothing as a tool and framework by which to analyses and assess the UK government's approach to the provision of PPE for healthcare workers.

Even despite this research, the right to clothing sorely needs to be authoritatively clarified. Such authoritative clarification will engender the use of – and empower – claims made using the right to clothing not only in respect of PPE and COVID-19 but also beyond. Let this paper, therefore, act as a gauntlet thrown at the feet of the human rights community. COVID-19, and the cruciality of PPE in responding to this crisis, has demonstrated that the right to clothing is in dire need of the attention, expertise, and experience of those researching economic, social and cultural rights. For the last quarter of a century, the forgotten status of the right to clothing has been recognised. However, despite this recognition, this has not been rectified. Let this crisis act as a catalyst for our – the human rights community's – reassertion of this right. Towards this goal, the time has come to establish a mandate for, and begin working towards a General Comment on, the Right to Clothing.

Notes

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41. Ibid., 3–7.
42. Given that the Right to Clothing is contained within Article 11 of the ICESCR, the CESCR's interpretation of the obligations – and content – stemming from other Rights contained within this provision may guide the delineation of the right to clothing. This is because, until the CECSR does otherwise it is reasonable to assume that they would address the right to clothing in a similar fashion as it has other Article 11 rights.
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108. See Sigrun I Skogly, *Beyond National Borders: States' Human Rights Obligations in International Cooperation* (Intersentia, 2006), 68–69; In regard to the obligation to [respect] extraterritorially see Magdalena Sepúlveda Carmona, 'The Obligations of "International Assistance and Cooperation" under the International Covenant on Economic, Social and Cultural Rights. A Possible Entry Point to a Human Rights Based Approach to Millennium Development Goal 8', *The International Journal of Human Rights* 13 (2009): 86–109, 90.
109. See (n 71).
110. International Commission of Jurists (n 19) 34.
111. In regard to the obligation to protect extraterritorially see: Sepúlveda Carmona (n 108): 90.
112. CESCR (n 34): para. 17.
113. International Commission of Jurists (n 19) 31.
114. Ibid., 25.
115. Amnesty International, 'As If Expendable: The UK Government's Failure to Protect Older People in Care Homes During The Covid-19 Pandemic', *Amnesty International* 2020,

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117. Siddique (n 63).

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