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COVID-19 and human rights: conjuring up a defence of the right to science

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The COVID-19 pandemic has brought about one of the worst global crises since the Second World War. As the UN Secretary-General affirmed in April 2020, the virus has brought about not only a public health emergency, but also an economic, social and human crisis that is becoming a human-rights crisis.¹ At this point, it is unclear how long the crisis will last, what the final costs will be and how to recover from it, whether in the form of the development of a safe and effective vaccine and/or a more permanent collective adjustment to a new way of life.

A crisis can be a time of great suffering, of confusion or of disagreement.² The current crisis displays all three elements. The most immediate is that of widespread human suffering. So far, more than one million people have died due to the virus, and many more have become seriously ill, requiring emergency care.³ However, the crisis is also marked by confusion. The latter is partly caused by incomplete scientific knowledge about the virus. For example, it is not entirely clear how far the virus can spread through

the air, why people without any apparent prior health conditions can become critically ill, how best to treat COVID-19 patients, the long-term effects of the disease, or for how long the protection provided by antibodies lasts. The confusion is boosted by the existence of political leaders who exploit this reality, spreading false information about the virus for political power, pride and/or greed. Finally, the current crisis is characterised by the intensification of disagreements in political life. Disagreements are generated by different beliefs about how states and societies should respond to and recover from the crisis, including how to prioritise between the competing values, rights and interests at stake. They also revolve around questions such as who is responsible for what happened and what can reasonably be expected from governments in terms of saving lives, protecting health and defending jobs. They furthermore extend to the question of how responsibilities should be attributed to states and international organisations, such as the

“It is in this difficult context [COVID-19 pandemic] that the question about how the role and influence of human rights in responding to the current crisis must be analysed”.

¹ UN Secretary-General (2020), *Covid-19 and Human Rights. We are all in this Together*, 23/IV/2020, https://www.un.org/sites/un2.un.org/files/un_policy_brief_on_human_rights_and_covid_23_april_2020.pdf.

² For this definition, see the Cambridge Online Dictionary, <https://dictionary.cambridge.org/dictionary/english/crisis>.

³ According to the Johns Hopkins Coronavirus Resource Center, more than one million people have died from COVID-19 (<https://coronavirus.jhu.edu/map.html>).

WHO and the EU, on the one hand, and national political decision-making bodies, on the other.

Each of the elements mentioned –suffering, confusion and disagreement– are known to unleash a range of basic emotions such as anger, fear, grief, despair and greed. When the stakes are high, as they currently are, such emotions affect the human capacity to reason on how to manage the current situation, and to forge a broad consensus on key questions for society as a whole. Even if emotions, such as fear or anger, can be a driving force for collective action at the national, regional and international levels, the same emotions also threaten to misdirect and paralyse those political bodies that are entrusted to take the necessary measures to respond effectively to the evolving situation. Indeed, a range of negative emotions, such as pride or greed, can make political leaders opt for positions and policies that ignore scientific evidence and advice on how to best prevent, control and treat the epidemic disease known as COVID-19. Finally, emotions can aggravate longstanding disagreements and divisions between old and new political enemies, making it more difficult to act collectively, also –and perhaps especially– when the stakes are high. The rise of populism, which features a communicative style that includes heightened emotionality and dramatization, promoting conflict and crises– feeds and contributes to the situation.⁴

It is in this difficult context that the question about how the role and influence of human rights in responding to the current crisis must be analysed. Ideally, human rights are meant to perform at least three basic functions in political contexts. First, human rights *frame* collective action by limiting the range of acceptable measures that may be adopted by states and international organisations to respond to the ongoing crisis. They do so by excluding certain measures *ab initio*, such as the systematic denial of vulnerable groups, such as the elderly, poor or migrants to hospitals and intensive care units, as contrary to human rights. While few rights are absolute and restrictions on the exercise of most rights may be imposed, a commitment to human rights requires that such restrictions are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights of others. Secondly, and of equal significance, however, is that human rights *inform* and *guide* collective action. They do so by staking out a set of human interests upheld as having such fundamental importance that they warrant the active protection by states through the adoption of legislative, administrative and other measures.

One highly significant example of the latter kind of interests that require active protection is **human health**, which is upheld in international human rights law as the right of everyone to ‘a standard of living adequate for the health and well-being of himself and his family’, including medical care (article 25 of the Universal Declaration of Human Rights) and as a ‘right to the enjoyment of the highest attainable standard of physical and mental health’ (article 12 of the International Covenant on Economic, Social and Cultural Rights). The right to health generates several *demanding obligations on states*, including at times of a pandemic as serious as the present instance. Generally speaking,

⁴ Mats Ekström, Marianna Patrona & Joanna Thornborrow (2018), ‘Right-wing populism and the dynamics of style: a discourse-analytic perspective on mediated political performances’, *Palgrave Communications*, vol. 4, nr 83.

states are required to actively prevent, treat and control epidemic diseases.⁵ That these obligations flow from the right to health is affirmed by the UN Committee on Economic, Social and Cultural Rights, which upholds that the right to treatment requires states to create/maintain a system of urgent medical care and to provide disaster relief in emergency situations.⁶ The same right furthermore obliges states to actively control the spread of the disease by ‘improving epidemiological surveillance and data collection on a disaggregated basis’, as well as to implement or enhance immunisation programmes and other similar strategies of infectious disease control, in order to prevent future outbreaks.⁷

Another and related human interest of comparable significance to health is that of ‘**scientific progress**’. This interest is also upheld as a human right in international law. However, in contrast to the right to health, the importance of this right has been ignored for decades in international human rights circles. However, the recent publication of a general comment devoted to this right by the UN Committee on Economic, Social and Cultural Rights indicates a

“In the context of the current crisis, meeting the state’s obligations to respect, protect and realise the right to science is a challenging task”.

shift in this regard.⁸ As the committee makes clear, the right to science is not merely an aspirational right, i.e., something akin to a policy goal that may or may not be pursued depending on political will. As proclaimed in the Universal Declaration of Human Rights, ‘everyone has the right to share in scientific advancement and its benefits’. Moreover, according to article 15 of the International Covenant on Economic, Social and Cultural Rights, ‘everyone has the right to enjoy the benefits of scientific progress and its applications’. State obligations are not limited to merely ensuring a fair distribution of the benefits resulting from scientific progress, whatever they might be. Equally important according to the same provision is that states undertake to ‘respect the freedom indispensable for scientific research’. Freedom of research is ‘both individual and collective, negative and positive’. Individually, this freedom entails the right of everyone, including scientists and patients, to participate in the scientific enterprise. Collectively, it is the right of scientists to govern the scientific enterprise, including the right to self-regulation, but also a right to policies that support science, to research funding and infrastructure.⁹

⁵ Article 12 (c) and (e) of the International Covenant on Social, Economic and Cultural Rights (1966). See also Article 25.1 of the Universal Declaration of Human Rights (1948) and *General Comment No. 14*, ‘The Right to the Highest Attainable Standard of Health (Art. 12)’, adopted at the Twenty-second Session of the Committee on Economic, Social and Cultural Rights, on 11 August 2000, paras. 16 and 44(c)’.

⁶ *General Comment No. 14*, cited above, para. 16.

⁷ *Ibid.*

⁸ *General Comment No. 20* on science and economic, social and cultural rights (article 15 (1) (b), (2), (3) and (4) of the International Covenant on Economic, Social and Cultural Rights, adopted by the UN Committee on Economic, Social and Cultural Rights, 30/IV/2020.

⁹ For a definition of the right to science, see Andrea Boggio, Cesare Romano & Jessica Almqvist (2020), *Human Germline Genome Modification and The Right to Science, A Comparative Study of National Laws and Policies*, Cambridge University Press, New York, p. 73-74.

In the context of the current crisis, meeting the state's obligations to respect, protect and realise the right to science is a challenging task. This time around the challenge is not (as it usually is for scientific communities) to convince public authorities and other relevant actors, such as foundations, about the importance of allocating funds for their scientific research projects. When it comes to research on how to prevent the spread of the COVID-19 virus, different stakeholders are making enormous investments in research to be able to develop a vaccine. Rather, the challenge is due to the difficulties encountered in advancing a vaccine that is not only effective, but also meets the standards of safety of medicines while respecting fully everyone's right 'not to be subjected without his free consent to medical or scientific experimentation' (article 7 of the International Covenant on Civil and Political Rights). The development of a safe and effective vaccine in a way that does not exploit vulnerable populations for clinical trials usually takes several years, even decades. However, this time it is different since teams around the world are pressured to deliver such a vaccine within a timeframe of 12-18 months. The urgency of producing a vaccine places enormous pressure on scientific communities to deliver results, a situation that risks undermining the requirements of quality control (safety and effectiveness) and established standards with respect to the conduct of clinical trials. There is at this point no certainty if and when such a vaccine might be available on the global marketplace.

A further challenge facing states in meeting their obligations to respect, protect and realise the right to science has to do with the actual delivery of a future successful vaccine to all those in need of being vaccinated. International human rights law does not in and by itself generate a full-blown principle of distribution. While insisting on non-discrimination and equal enjoyment of all rights, it does not provide a clear principle to guide such a distribution at a global

level. At the same time, the idea that people and countries that are better off than others may only care about themselves contradicts a basic obligation generated by the right to science. According to article 2 of the International Covenant on Economic, Social and Cultural Rights, states must undertake 'steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights in the present Covenant', including the right to science. The obligation to cooperate and to assist other states and peoples is reinforced by the principle of solidarity, which in the UN Millennium Declaration, adopted in 2000, demands that 'Global challenges must be managed in a way that distributes the costs and burdens fairly in accordance with basic principles of equity and social justice. Those who suffer or benefit least deserve help from those who benefit most'.¹⁰

"(...) the effective implementation of the right to science presupposes certain political attitudes towards science and scientific communities".

¹⁰ See the United Nations Millennium Declaration, adopted by the UN General Assembly resolution 55/2 of 8 September 2000, para. 6.; and 'Shared Responsibility. Global Solidarity. Responding to the socio-economic impacts of covid-19', Report of the UN Secretary-General (March 2020), https://www.un.org/sites/un2.un.org/files/sg_report_socio-economic_impact_of_covid19.pdf.

At this point, in the midst of the multiple crisis caused by the pandemic, it is critical that states recall their international legal obligations that flow from the right to science, and also the right to health. These include adopting 'all appropriate means, measures, including in particular the adoption of legislative measures' (article 2) to secure these rights within their own respective jurisdictions as well as meeting the expectations and requirements of acting in solidarity with other states and peoples. What is more, it is of equal significance to remind states of their obligations to respect the right to science by not exerting undue pressure on scientific communities to deliver results, and to safeguard the rights of people to medicinal products that have undergone quality controls by conducting clinical trials that meet international standards and requirements. Finally, a commitment to the right to science is a reliance on the advice of scientific communities and, in the case of scientific uncertainty, to act with caution. Legislative measures must be adopted and adapted in light of new scientific results as they become available.

However, the effective implementation of the right to science presupposes certain political attitudes towards science and scientific communities. On the one hand, it requires that political actors do not place undue pressure on scientists working on producing a vaccine by coercing or bribing them to present positive results that are premature, or to hide negative results from public scrutiny. On the other hand, it requires political decision-makers to adjust their laws and policies in light of new scientific results on how to best prevent, diagnose and treat the infectious disease as the results become available. The latter requires that political actors must seek to set aside the negative emotions that a crisis tends to provoke, and which brings into question the value of science and scientific progress, i.e., knowledge based on critical inquiry and open to falsifiability and testability.¹¹ Instead, political actors and, indeed, citizens should recall our inherent human capacity to reason, even at the worst of times, and the value of positive emotions, such as empathy, compassion and solidarity when tackling the degree of human suffering, confusion and disagreement that are currently affecting societies around the world.

¹¹ General Comment No 20 on science and economic, social and cultural rights, para. 5.