

Title: COVID-19 and human rights – why should the public health community be concerned?

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Why should public health practitioners be concerned with human rights during the COVID-19 pandemic? Surely this is not the time for legalistic hair-splitting about rights. We are dealing with a deadly, infectious disease.

Quite the contrary, we suggest. COVID-19 is undoubtedly a global health emergency which warrants broad and urgent responses. However, human rights and public health should not be seen simply as competing public policy objectives, with a compromise on one side needed to attain the other. Indeed, this framing of the issues readily leads to human rights abuses in the name of public health. Instead, we propose an approach which focuses on State obligations to protect and promote the right to health, including in the COVID-19 crisis, firmly grounded in international law.

Nobody has the right to shout ‘fire’ in a crowded theatre without good reason. Public health measures, including contact tracing and restrictions on movement, quarantine, and isolation, are needed to protect and promote the right to health for everyone. But where and when do we draw the line? Is it better to challenge government excesses in the middle of a crisis, or should we step back and try to fix later any mistakes that were made? Neither, of course, is ideal - it is far better to build public health law capacity to respond appropriately to public health emergencies *before* crises arise. This is the first lesson from COVID-19. It is of course difficult to plan measures when we are dealing with a new and unknown health threat. Any measure must be based on as much evidence as possible, thus the basic message voiced by the WHO: Stick to the agreed policy, but evaluate regularly and correct if it does not prove appropriate.

Let’s be clear that we often balance our health with other competing economic or social demands or pleasures (think of tobacco, alcohol, salty snacks and sweet pastries). Some of us may risk our health to help others in our line of work. Health care professionals responding to COVID-19 come to mind. We also see this with police, other first responders and emergency personnel in many contexts. People go shopping, take public transport and come to work with respiratory infections and we largely tolerate it – yet we know that influenza can be especially deadly for older people. In democratic societies governments balance health and other social and economic concerns constantly.

At the same time, all States are subject to international legal frameworks which impose both obligations to protect health and limits on actions to restrict rights. Some rights - such

as the rights to life; freedom from torture and other cruel, inhuman or degrading treatment or punishment; and freedom from medical or scientific experimentation without free consent - are absolute and cannot be suspended even in public health crises. Other rights - such as freedom of movement - can be limited to restore public order or protect public health. However, governments must ensure their actions are prescribed by law, and necessary and proportional to the threats involved. The burden is on the State and its regulatory bodies to justify any limitation on rights. Nor can there be any discrimination, for example, on ethnic or religious or even age grounds.

Further, emergency powers to limit rights should be narrowly drafted, limited in duration, subject to judicial review, and should be clearly communicated to the public. Legislative approval should be required for any further, temporary extension of the limitations. Experience from epidemics such as HIV and Ebola demonstrates that community trust and engagement is central to achieving sustained changes in social, sexual and drug-use behaviour. Heavy-handed police action and threats of incarceration for failure observe measures such as social distancing are counterproductive.¹ When communities fail to follow public health guidance, we have to ask 'What was wrong with the message or the way it was delivered?' 'Were communities and their leaders fully involved in designing and communicating the guidance?' 'Are there other factors (such as corruption) which lead to distrust in government action on public health?'

The European Centre for Non-Profit Law (ECNL) and its global counterpart monitor government responses to COVID-19 that affect civic freedoms and human rights. The online 'COVID-19 Civic Freedom Tracker' includes State limitations on expression, assembly and privacy around the globe.² Usefully, positive government practices in responding to COVID-19 are also documented.

Across Europe, as in other regions, States have responded to COVID-19 with lockdowns and other restrictions on movement.³ After the immediate threat from COVID-19 passes, will these measures be promptly rescinded? Public health practitioners familiar with the social and economic determinants of health may well be concerned. The health impacts of climate change and economic recession loom in the near future. As always, governments will need to make hard choices about the allocation of scarce resources. Now is the time to be vigilant - it might be too easy for governments with an authoritarian inclination and little tolerance for dissent to maintain without public health justification bans on street protest marches and other mass gatherings in the name of public health.

The international and European regional human rights frameworks provide robust mechanisms for setting norms and standards for State action, monitoring of laws and their implementation, and accountability for abuses or inaction on rights. Further, the European Convention on Human Rights extends to all 47 Council of Europe Member States and includes sanctions mechanisms for non-compliance with orders of the European Court of Human Rights.⁴ As noted in the European Competencies Framework for Public Health Workforce, public health practitioners should be familiar with the international, regional and national legal frameworks in which they are working.⁵ The responses of States to COVID-19 and other pandemics are regulated both by WHO's *International Health Regulations (2005)* and by international and regional human rights frameworks. This is the

second lesson from COVID-19: civil and political rights must be safeguarded more than ever in times of public health emergencies.

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