

EXECUTIVE SUMMARY

Measures taken in response to a pandemic, even if nationally-focussed, inevitably have implications in other countries. This poses a distinct set of human rights issues for the UK. Our contribution is based on setting out international law which is binding on the UK with a particular focus on the right to health, rather than more debateable ethical or political claims. We clearly state the UK's three main extraterritorial obligations with respect to the right to health and evaluate the UK's performance at the global level with reference to these norms.

The Right to Health

States recognize 'the right of everyone to the highest attainable standard of health' (Article 12, International Covenant on Economic Social and Cultural Rights (ICESCR)). Steps to be taken toward realizing that right include 'the treatment and control of epidemic, endemic, and occupational diseases' and 'the creation of conditions which would assure medical services and medical attention in the event of sickness'. While this right is guaranteed to all individuals within the territory of the State concerned in the first instance, three types of 'extraterritorial' obligations are imposed on States.

The right to health is an inclusive right, concerned not only with packages of medical care, but also with the 'underlying determinants of health', e.g. environmental and sanitary factors, funding and provisioning of the health system, and addressing extreme economic inequality. States need not realize the right in full immediately, but must take steps immediately towards achieving realization, using the maximum of resources available (Article 2(1), ICESCR).

Obligation 1: Assistance

States are entitled to 'international assistance and cooperation, especially economic and technical' in realizing the right to health (Article 2(1), ICESCR).



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Briefing Note:

The UK's International Human Rights Obligations during COVID-19

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Certainly, all States are required (and permitted) to deploy their own resources to meet the needs of their own populations. But where some States are incapable of reaching the minimum core capacities, better situated States are obliged to help them to meet this modest target. This duty of assistance is the extraterritorial form of the requirement on States to fulfil the right to health domestically. It lies on particular States even where others, who are similarly capable, fail to help

After an initial delay, the UK committed £200 million through the Department for International Development on 12 April 2020 to support UN agencies including the WHO and selected NGOs, in the COVID-19 response. Contributions to humanitarian relief, vaccine development and support for an IMF package to stabilize global south economies brings this total to £744 million.

This is welcome progress towards meeting the UK's obligation of assistance, but given that the total aid budget is in excess of £14 billion there is further scope for allocation of support for those countries and regions most likely to suffer the effects of global limits on trade and credit in response to the pandemic.

Obligation 2: Cooperation

The obligation of 'cooperation' requires States to work to ensure that the international legal, economic and political order supports the realization of the right to health (Article 2(1), ICESCR).

It is the extraterritorial form of the requirement on States to respect the right to health. The International Health Regulations (IHR) also place an obligation on States to collaborate with each other in order to respond to global epidemics and recognises that some countries will need to provide technical cooperation in order to enable developing countries to build their core capacities in order to fight epidemics.

To fulfil this obligation, States should ensure that this right is not limited by international agreements to which they are parties, or by the work of multilateral bodies in which they participate and should use their voting powers in international financial institutions to alleviate the financial burden of developing countries in combatting the COVID-19 pandemic. States should also collaborate to exploit flexibilities in international intellectual property treaties which would allow universal access to essential diagnostics, as well as medicines and vaccines in development. Initiatives to extend compulsory licensing of patented products and the creation of patent pools to free up the information necessary for product development should be supported by the UK through the WTO and in future post-Brexit bilateral trade deals.

Obligation 3: Avoiding Harm

States are also subject to a duty to avoid causing harm directly to citizens of other States or allowing private actors under their jurisdiction to do so. The first case would cover the disproportionate use of coercive disease control measures which damages the health of citizens in another country, for example. The second requires States to ensure that companies registered or domiciled in their territory refrain from harming individuals elsewhere. Taken together, these are an extraterritorial form of the requirement on states to respect and protect the right to health.

Examples from the present context include pre-emptive buying of medical equipment, or the enforcement of export controls on local manufactures and essential food stuffs, where this would deny access to the poorest and most vulnerable communities in the world.

It would also include clinical trials of vaccines and treatments for COVID-19 in global south countries, such as Kenya. Safeguarding the rights of trial participants to be free from coercion, and to benefit in the fruits of such trials, as well as the employment rights of local collaborators, are all essential.

Limitations and Strengths

The extraterritorial human rights regime outlined here has a number of limitations. There is no strong enforcement mechanism for any of the obligations in the ICESCR or the IHR. The extent of the duty has not yet been fully defined and there is, as yet, no single international system to operationalize it. In the world of 'microbial realpolitik' the national economic and security concerns will continue to be of great significance.

There are also positive opportunities, however, in framing the UK's global role during the COVID-19 pandemic in human rights terms, and in enabling parliamentarians and citizens to evaluate it in these terms. All of the above are binding obligations, not mere aspirations. Adhering to them strengthens the culture of the rule of law around the world. In ethical terms, they offer a pragmatic middle-way between narrow 'statism' and unlimited 'cosmopolitanism', allowing States to act responsibly at the global level to protect the most vulnerable, without wholly surrendering the priority accorded to the interests of their own citizens.

Piecemeal systems for operationalizing these duties do already exist. The UK's own commitment to spend 0.7% of GDP on development aid, entrenched in domestic statute law, is one example. The WHO's COVID-19 Response Fund, to which the UK has contributed over US \$100 million, is another. Moreover, the duty of cooperation entails a duty to construct and support institutions needed to realize the right to health as well as providing technical assistance.

The terrible course of COVID-19 has shown that acting globally in ways consistent with international human rights law is often the most effective means of securing the national interest of any single state.



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