

**Written evidence submitted by Professor Fiona de Londras and Daniella Lock
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Executive Summary

- Human rights are a critical frame through which to identify, assess, and understand the impact and effectiveness of government actions taken in response to the Coronavirus pandemic;
- Human rights protection enhances preparedness for, and mitigates impacts of, pandemics and similar events;
- The Committees ought to integrate human rights analysis into their inquiry;
- The Committees ought to include experts in human rights protection in the specialist expertise on which they call in identifying lessons that can be learned from the pandemic.

Focus of this Submission

The Coronavirus and responses to it offer opportunities for reflection across multiple domains, including epidemiology, public health management, communication, and law. In this submission we focus on lessons learned from a human rights perspective, and in particular on the importance of ensuring that human rights function as effective design principles in shaping, reviewing, amending, and when appropriate terminating different legal, policy and other responses to the pandemic.

Introduction

We welcome the inquiry from the Health and Social Care Committee and Science and Technology Committee on 'lessons learnt' from Coronavirus. We acknowledge the important role that such inquiries play in ensuring effective public policy, enhancing accountability and the legitimacy of state action, and increasing transparency. This is especially important where, as in the case of Coronavirus, urgency and rapidly-changing epidemiological and social contexts produced a situation of speedy decision-making and reduced opportunities for meaningful parliamentary engagement with primary and secondary legislation governing the pandemic response.

The Coronavirus pandemic and our responses to it pose significant risks to individual, familial and societal well-being. These include risks to physical and mental health, as well as risks to socio-economic well-being, and to the protection and enjoyment of both civil and political and socio-economic rights, some of which have been curtailed through the Coronavirus Act 2020 and relevant secondary legislation.¹ Importantly, government responses to the pandemic also operate to protect rights, including the right to life, by taking steps to reduce transmission including by providing financial assistance in order to reduce risks of persons having to undertake higher-risk activities out of economic necessity.²

Given this, human rights are a critical frame through which to identify, assess, and understand the impact and effectiveness of government actions taken in response to the Coronavirus pandemic.

Human Rights and Pandemic Preparedness

¹ Joint Committee on Human Rights, *The Government's Response to COVID-19: Human Rights Implications*, 7th Report of Session 2019-21. HC 265.

² Written evidence of Fiona de Londras, Alan Greene and Natasa Mavronicola to the Joint Committee on Human Rights (2020) COV0012, para. 2.1. Available at <https://committees.parliament.uk/writtenevidence/920/pdf/>

The Coronavirus and human rights are interconnected.

While the disease itself does not discriminate, it is now well established that its effects are unevenly distributed across society, and that the distribution patterns of the disease and the effects of the pandemic reflect pre-existing inequalities.³ These include inequalities based on age, race, ethnicity, socio-economic status, and dis/ability.⁴ There is a real risk that such inequalities will be exacerbated by the pandemic unless government responses are tailored in a way that recognises and seeks to mitigate both their prior existence and their current exacerbation.

The unequal distribution of the effects of the Coronavirus pandemic illustrates well that reducing inequality and protecting human rights are key to ensuring preparedness for future pandemics or similar events. In other words, the protection of human rights and reduction of inequalities enhance societal resilience to pandemics and similar events.

In the United Kingdom and elsewhere, the pandemic has exposed limitations in health systems,⁵ defined by the WHO as the organisation, people and actions whose primary intent is to promote, restore or maintain health.⁶ A rights-based approach to the design and funding of key institutions including the health system would enhance their resilience and ensure the adequate distribution of health services. The right to the highest attainable standard of health entails an entitlement to a system of health protection that provides equal opportunity for everyone to enjoy the highest attainable level of health,⁷ access to essential drugs,⁸ equal and timely access to basic health services,⁹ and health-related education and information.¹⁰ In order to protect the right to health, states must ensure that services, goods and facilities are available, accessible, acceptable and of good quality.¹¹ While the right to health is progressively realisable, it imposes some immediate obligations on states,¹² namely to ensure non-discrimination in access to health,¹³ and to ensure a minimum level of access to the essential components of the right including to essential drugs.¹⁴

These connections illustrate that human rights protection is critical to ensuring preparedness for pandemics and similar events, and to mitigating the effects of such mass events on individuals, institutions, and society.

³ See Public Health England, *Disparities in the risk and outcomes of COVID-19* (August 2020).

⁴ Equality and Human Rights Commission, *How Coronavirus has Affected Equality and Human Rights* (2020).

⁵ See for example Kate Tulenko and Dominique Vervoort, “Cracks in the System: The Effects of the Coronavirus Pandemic on Public Health Systems” (2020) 50(6-7) *American Review of Public Administration* 455; Lindsay Maizland and Claire Felter, “Comparing Six Health-Care Systems in a Pandemic”, *Council on Foreign Relations*, 15 April 2020.

⁶ World Health Organisation, *The World Health Report 2000—Improving Performance* (2020; WHO).

⁷ CESCR General Comment 14: The Right to the Highest Attainable Standard of Health (Article 12), UN Doc. E/C.12/2000/4, para. 8.

⁸ CESCR General Comment 14: The Right to the Highest Attainable Standard of Health (Article 12), UN Doc. E/C.12/2000/4, para. 12(a).

⁹ CESCR General Comment 14: The Right to the Highest Attainable Standard of Health (Article 12), UN Doc. E/C.12/2000/4, para. 17.

¹⁰ CESCR General Comment 14: The Right to the Highest Attainable Standard of Health (Article 12), UN Doc. E/C.12/2000/4, para. 11.

¹¹ CESCR General Comment 14: The Right to the Highest Attainable Standard of Health (Article 12), UN Doc. E/C.12/2000/4, para. 12.

¹² CESCR General Comment No. 3: The Nature of States Parties’ Obligations (Art. 2, Para. 1, of the Covenant), UN Doc. E/1991/23; CESCR General Comment 14, para. 10: The Right to the Highest Attainable Standard of Health (Article 12), UN Doc. E/C.12/2000/4, para. 43

¹³ CESCR General Comment 14: The Right to the Highest Attainable Standard of Health (Article 12), UN Doc. E/C.12/2000/4, para. 12(b).

¹⁴ CESCR General Comment 14: The Right to the Highest Attainable Standard of Health (Article 12), UN Doc. E/C.12/2000/4, para. 12(a).

Learning Lessons from the Coronavirus: A Human Rights Approach

In respect of the immediate reaction to the Coronavirus, human rights play four important roles.

1. Human rights impose positive obligations on the state. That is, they require the state to take certain actions in order to secure the practical and effective protection of rights. In the context of the pandemic these include, *inter alia*, an obligation to protect life by taking steps to address clear health threats¹⁵ including to health care workers,¹⁶ the obligation to maintain an accessible, adequate, and good quality health system,¹⁷ and the obligation of due diligence in respect of potential negative consequences on rights enjoyment (e.g. exacerbations of domestic violence during lockdown¹⁸).
2. Human rights constitute limitations on the actions that the state may take in response to the virus. Some rights cannot be limited at all; they are absolute rights. Other rights may be limited, but only where and to the extent that such limitations are necessary and proportionate. Human rights compliance requires rigorous engagement with questions of necessity and proportionality in respect of responses to the pandemic.
3. Human rights constitute ‘design principles’ for longer-term responses to the pandemic. A human rights approach requires us to identify and understand the long-term rights-related impacts of the pandemic, and to design responses to those impacts that operate to enhance, and do not unlawfully limit, the enjoyment of rights.
4. Human rights play an accountability role in respect of pandemic responses, ensuring that where rights have been violated in the response to the pandemic one has access to justice and to an effective remedy,¹⁹ and requiring the state to take steps to ensure non-repetition of such violations in this or any future analogous situations.²⁰

Human Rights as Key to Parliamentary Review

Parliament plays a critical role in the constitutional structure of the United Kingdom and, in particular, in ensuring accountability and legitimacy in respect of government action. Where circumstances have required especially swift action with appreciable implications for rights protection, parliamentary review is of particular importance.²¹ It is therefore critical that human

¹⁵ UN Human Rights Committee, General Comment No. 36: Right to Life UN Doc. CCPR/C/GC/36, esp. para 26; *Stoyanovi v Bulgaria* App. 42980/04, Judgment, 9 November 2010, [61].

¹⁶ Elizabeth Stubbins Bates, “Article 2 ECHR’s Positive Obligations—How Can Human Rights Law Inform the Protection of Health Care Personnel and Vulnerable Patients in the COVID-19 Pandemic?” *Opinio Juris*, 1 April 2020 <https://opiniojuris.org/2020/04/01/covid-19-symposium-article-2-echrs-positive-obligations-how-can-human-rights-law-inform-the-protection-of-health-care-personnel-and-vulnerable-patients-in-the-covid-19-pandemic/>

¹⁷ CESCR General Comment 14: The Right to the Highest Attainable Standard of Health (Article 12), UN Doc. E/C.12/2000/4.

¹⁸ CEDAW Committee, General Comment No. 19: Violence against Women UN Doc. A/47/38, para 9; UN General Assembly Declaration on the Elimination of Violence against Women, GA Res. 48/104, Article 4; *Opuz v Turkey* [2009] ECHR 870, [131].

¹⁹ Article 2, International Covenant on Civil and Political Rights; Article 13, European Convention on Human Rights.

²⁰ The right to a remedy is understood in international human rights law as involving a guarantee of non-repetition and, where necessary, changes in relevant laws and practices. UN Human Rights Committee, General Comment No. 31: The Nature of the General Legal Obligations Imposed on States Parties to the Covenant. UN Doc. CCPR/C/21/Rev.1/Add.13

²¹ See further Written evidence of Fiona de Londras, Alan Greene and Natasa Mavronicola to the Joint Committee on Human Rights (2020) COV0012, part 3. Available at <https://committees.parliament.uk/writtenevidence/920/pdf/>

rights are integrated into parliamentary review wherever appropriate, including in considering the lessons learnt from responses to extraordinary challenges such as the Coronavirus pandemic.

We urge the Committee to take account of the findings of the Joint Committee on Human Rights in *The Government's Response to COVID-19: Human Rights Obligations*, although we note that this report did not engage with the full range of implications for socio-economic rights.²² We stress that questions of rights-related impacts are not limited to the Joint Committee on Human Rights or other dedicated human rights fora. Rather, they are relevant to the work of all of government and, thus, to all parliamentary entities engaged in ensuring accountability for, effectiveness of, and legitimacy of Government action, including its responses to the COVID-19 pandemic.

Reviews and inquiries that fail to take rights-implications into account risk missing an important part of the analysis of the in/effectiveness of pandemic responses. We thus urge the Committee to integrate human rights analysis into its inquiry and, in particular, to consider

- (i) What the Coronavirus pandemic might teach us about the relationships between rights enjoyment, (in)equality, and the impact of pandemics and similar events;
- (ii) How a rights-based approach to institutional design, funding, and the distribution of services might enhance preparedness for future pandemic or similar events;
- (iii) To what extent human rights have shaped the government's immediate responses to the pandemic;
- (iv) To what extent responses to the pandemic have operated to enhance or limit rights protection for all or for some;
- (v) How longer-term responses to the pandemic might be shaped in a rights-based way.

Noting that the committees will “draw on specialist expertise and call witnesses to consider a range of issues”,²³ we respectfully submit that they ought to include experts in human rights protection in the specialist expertise on which they call in identifying lessons learned from the pandemic.

About Us

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The **COVID-19 Review Observatory** is a UKRI-funded research initiative located at Birmingham Law School, University of Birmingham. It tracks, assesses, and engages with parliamentary reviews of responses to the COVID-19 pandemic with a view to ensuring effective consideration of rights protection, and to enhancing accountability and legitimacy by supporting parliamentary review. A

²² Joint Committee on Human Rights, *The Government's Response to COVID-19: Human Rights Implications*, 7th Report of Session 2019-21. HC 265. The report engages extensively with civil and political rights, the right to health (Chapter 4), and the right to education (Chapter 7), but less so with socio-economic well-being, poverty, and the right to an adequate standard of living.

²³ <https://committees.parliament.uk/work/657/coronavirus-lessons-learnt/>

key part of its work is participating in such reviews by, for example, submitting to committee inquiries.