THE RIGHT TO HEALTH IN COVID-19

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ABSTRACT

The coronavirus disease 2019 resulted in a global pandemic and health crisis, causing severe illness and death. This natural disaster affects economic growth and changes human behavior. Meanwhile, the right to health is the right to the enjoyment of the highest attainable standard of health. The right to health is one of the fundamental rights and internationally agreed human rights standards. The right to health can protect people from diseases or illness. People can have access to health services when they are sick. However, the right to health still needs further interpretation or development. Since COVID-19 affects all people around the world, it should be used to interpret or develop the right to health. This Article will explore the further definition of the right to health based on the COVID-19 pandemic. In particular, this Article will address how the right to health is interpreted or developed by the COVID-19 pandemic.

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INTRODUCTION

Coronavirus disease 2019 (COVID-19) is a disease caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).[1] COVID-19 was first detected in Wuhan, China, in December 2019, and it spread quickly across the world in January 2020.[2] The World Health Organization declared COVID-19 a global pandemic in March 2020.[3] A pandemic occurs when an infectious disease passes from person to person in many parts of the world simultaneously.[4] Currently, COVID-19 has mutated, resulting in different variants of the virus, such as Alpha, Beta, Gamma, Delta, and Omicron.[5]

1. *What Is Coronavirus?*, JOHNS HOPKINS MED., https://www.hopkinsmedicine.org/health/conditions-and-diseases/coronavirus (last updated July 29, 2022).

2. Data & Visual Journalism Team, *Covid Map: Coronavirus Cases, Deaths, Vaccinations by Country*, BBC NEWS, https://www.bbc.com/news/world-51235105 (last updated July 05, 2022).

3. *WHO Director-General's Opening Remarks at the Media Briefing on COVID-19-11 March 2020*, WORLD HEALTH ORG. (Mar. 11, 2020), https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19—-11-march-2020.

4. *See generally Coronavirus Disease (COVID-19): How is it Transmitted?*, WORLD HEALTH ORG. (Dec. 23, 2021), https://www.who.int/news-room/questions-and-answers/item/coronavirus-disease-covid-19-how-is-it-transmitted.

5. Michelle Roberts, *BA. 4 and BA. 5 Omicron: How Worried Should We Be?*, BBC NEWS (July 1, 2022), https://www.bbc.com/news/health-55659820.

These variants transmit more easily from one person to another.[6] This, in turn, may lead to more cases of COVID-19.[7] Thus, COVID-19 continues its spread around the world, resulting in more than 600 million confirmed cases and approximately 6.5 million deaths.[8]

The COVID-19 pandemic is the worst human disaster and global health crisis in recent history. The effects of COVID-19 have caused massive changes to human life and public health—people "have to adjust to a 'new normal,' meaning a new way of living and going about our lives, work, and interactions with other people."[9] For example, most colleges offer online teaching so students can study from home.[10] The COVID-19 pandemic has also severely affected the global economy and financial markets. Specifically, the global economy is experiencing its deepest recession since World War II.[11] The COVID-19 pandemic causes income reduction and an increase in the unemployment rate.[12] It causes disruptions in industry transportation, supply chains, and manufacturing.[13] It disrupts business activities worldwide as well.

The right to the enjoyment of the highest attainable standard of health, or the right to health, is one of the fundamental rights of every human being.[14] It is also "one of a set of internationally agreed human rights standards."[15]

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6. *What You Need to Know About Variants*, CTRS. FOR DISEASE CONTROL & PREVENTION (last updated Aug. 11, 2021), https://www.cdc.gov/coronavirus/2019-ncov/variants/about-variants.html.

7. *Id.*

8. *See COVID Live – Coronavirus Statistics*, WORLDOMETER (last updated Nov. 21, 2022), https://www.worldometers.info/coronavirus/ (showing current coronavirus statistics).

9. DR Y.L.M., *COVID-19: What Does the 'New Normal' Mean?*, THE STAR (May 21, 2020), https://www.thestar.com.my/lifestyle/health/2020/05/21/covid-19-what-does-the-039new-normal039-mean#:~:text=As%20long%20as%20the%20world,and%20interactions%20with%20other%20people.&text=There%20are%20no%20vaccines%20for%20many%20viruses%20either.

10. Muhammad Sohail, *Online Learning: What Next for Higher Education after COVID-19?*, WORLD ECON. F. (June 30, 2022), https://www.weforum.org/agenda/2022/06/online-learning-higher-education-covid-19/.

11. *COVID-19 to Plunge Global Economy into Worst Recession Since World War II*, WORLD BANK (June 8, 2020), https://www.worldbank.org/en/news/press-release/2020/06/08/covid-19-to-plunge-global-economy-into-worst-recession-since-world-war-ii#:~:text=%E2%80%9CThe%20COVID%2D19%20recession%20is,Prospects%20Group%20Director%20Ayhan%20Kose.

12. *Supporting People and Companies to Deal With the COVID-19 Virus: Options for an Immediate Employment and Social-Policy Response*, OECD (last updated Mar. 20, 2020), https://www.oecd.org/coronavirus/policy-responses/supporting-people-and-companies-to-deal-with-the-covid-19-virus-options-for-an-immediate-employment-and-social-policy-response-d33dffe6/.

13. Bryce Engelland, *How the Pandemic Has Prepared Global Supply Chains for the Crises to Come*, THOMSON REUTERS (June 6, 2022), https://www.thomsonreuters.com/en-us/posts/tax-and-accounting/pandemic-preparation-global-supply-chains/.

14. *Human Rights and Health*, WORLD HEALTH ORG. (Dec. 29, 2017), https://www.who.int/news-room/fact-sheets/detail/human-rights-and-health.

15. *Id.*

The right to health has also been recognized as a human right.[16] The World Health Organization has recognized that "[t]he right to health for all people means that everyone should have access to the health services when and where they need them . . . . No one should get sick and die just because they are poor."[17] The right to health has been recognized by many countries—"[o]ver 100 national constitutions contain the right to health, representing over 50% of United Nations Member States from Asia and Africa to Europe and Latin America."[18] They guarantee and protect the right to health in their jurisdictions. However, the United States has not granted the right to health or health care,[19] even though it signed the Universal Declaration of Human Rights containing the right to health care.[20] If people want to gain medical care, they have to pay for it. Moreover, while the right to health has distinctive features, it probably needs further interpretation or development. Since COVID-19 causes serious illness and death worldwide, all countries have established measures for protecting against coronavirus. The COVID-19 pandemic should then be used to interpret and develop the right to health.

This article will explore and further define the right to health based on the COVID-19 pandemic. More particularly, it addresses how the pandemic forces countries to reevaluate the meaning of the right to health. Part I of this article will discuss the general definition of the right to health. It will examine what scholars think about the right to health and how international treaties define the term. It will also examine other aspects of the right to health and conflicts between the right to health and other human rights. Part II will discuss states' obligations under international human rights treaties. It will address the general aspects of states' obligations and examine conflicts between states' obligations and the exercise of the right to health.

Part III will consider the right to health in COVID-19 prevention. It will address why the right to health should include disease prevention. It will examine failures to protect the right to health and the priority of the right to health in COVID-19 prevention. Part IV will consider the right to health in COVID-19 vaccines. It will discuss how the right to health corresponds to COVID-19 vaccines. This section will also analyze what the right to health

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16. *Id.*

17. *Health Is a Fundamental Human Right*, WORLD HEALTH ORG. (Dec. 10, 2017), https://www.who.int/news-room/commentaries/detail/health-is-a-fundamental-human-right#:~:text=The%20right%20to%20health%20for,the%20health%20services%20they%20need.

18. Rebecca Dittrich et al., *The International Right to Health: What Does It Mean in Legal Practice and How Can It Affect Priority Setting for Universal Health Coverage?*, 2 HEALTH SYS. & REFORM 23, 24 (2016).

19. LINDA FARBER POST ET AL., HANDBOOK FOR HEALTHCARE ETHICS COMMITTEES 124 (2007).

20. JONATHAN WOLFF, THE HUMAN RIGHT TO HEALTH 4 (2012).

should mean in the context of COVID-19 vaccines, such as: the right to receive COVID-19 vaccines, the right to choose COVID-19 vaccines, and the right to refuse COVID-19 vaccines. It will also discuss COVID-19 vaccine priority groups, global access to COVID-19 vaccines, and global inequality in COVID-19 vaccines. Part VI will examine the right to health in medical treatment for COVID-19. It will address how the right to health may involve medical treatment for COVID-19.

I. THE DEFINITION OF THE RIGHT TO HEALTH

A. The Literature Review

In the past, the term "right to health" was unclear and unknown. However, theorists and activists insist that there is a right to health in society.[21] Thus, there were attempts to establish and clarify the term "right to health." Many documents or reports were used to identify or clarify the term "right to health."[22] Many scholars or commentators have also tried to establish and clarify the term.

Virginia A. Leary writes that:

> Professor Theo C. Van Boven, then Director of the United Nations Division of Human Rights . . . uses the term "right to health" to refer to provisions in the founding documents of international human rights law. . . . Van Boven wrote "Three aspects of the right to health have been enshrined in the international instruments on human rights: the declaration of the right to health as a basic human right; the prescription of standards aimed at meeting the health needs of specific groups of persons; and the prescription of ways and means for implementing the right to health."[23]

These concepts are common in human rights, civil rights, and fundamental rights.[24] Professor Eleanor D. Kinney defined the right to health as:

> [A] right to conditions that protect health in the populations. It might also include civil and political rights with respect to access to population-based and personal health care services. . . . It could

21. *Id* at 2.

22. *Id* at 6.

23. Virginia A. Leary, *The Right to Health in International Human Rights Law*, 1 INT'L J. HEALTH & HUMAN RTS. 24, 29 (1994).

24. *Id.* at 30.

> also include provision of medical care for the diagnosis and treatment of disease and injury for those unable to pay.[25]

John Tasioulas and Effy Vayena stated that the right to health:

> [S]erves not only our interest in health, but also various other interests which enjoying good health can enable us to realize, such as making and sustaining friendships, acquiring understanding of the world around us, or accomplishing something with our lives. Indeed, the right to heath may even include entitlements to medical services, such as non-therapeutic abortions or cosmetic surgery, that are not primarily intended to serve the health interests of the right-holder.[26]

Paul Hunt and Gunilla Backman defined the right to health as:

> [A]n effective and integrated health system, encompassing medical care and the underlying determinants of health, which is responsive to national and local priorities and accessible to all.[27]

Many commentators agree that the right to health is not the right to be healthy. Benedict E. Rumbold considered that the moral right to health is understood as "a right to a certain set of health-related programmes," not as a right to be healthy.[28] Annette Rid believed that the moral right to health is "typically viewed as entitling individuals to an adequate level of health services, or—depending on what is considered adequate or required by the demands of justice—a reasonable or basic or decent minimum of services."[29] According to Judith Asher:

> The right to health should not been seen as a right to be *healthy*. The state cannot be expected to provide people with protection against every possible cause of ill health or disability. . . . Nor should the right to health be seen as a limitless right to receive medical care for any and every illness or disability that may be

25. Eleanor D. Kinney, *The International Human Right to Health: What Does This Mean for Our Nation and World?*, 34 IND. L. REV. 1457, 1457 (2001).

26. John Tasioulas & Effy Vayena, *Just Global Health: Integrating Human Rights and Common Goods*, *in* THE OXFORD HANDBOOK OF GLOBAL JUSTICE 139, 144 (Thom Brooks ed., 2020).

27. Paul Hunt & Gunilla Backman, *Health Systems and the Right to the Highest Attainable Standard of Health*, 10 HEALTH & HUM. RTS. 81, 82 (2008).

28. Benedict E. Rumbold, *Review Article: The Moral Right to Health: A Survey of Available Conceptions*, 20 CRITICAL REV. INT'L SOC. & POL. PHIL. 508, 513 (2015).

29. Annette Rid, *Sufficiency, Health, and Health Care Justice: The State of the Debate*, *in* WHAT IS ENOUGH?: SUFFICIENCY, JUSTICE, AND HEALTH 30, 42 (Carina Fourie & Annette Rid eds., 2017).

> contracted. Instead, the right to health should be understood as a right to the enjoyment of a variety of facilities and conditions which the state is responsible for providing as being necessary for the attainment and maintenance of good health.[30]

The right to health care should be included in the right to health. According to Kristen Hessler and Allen Buchanan, the right to health care:

> [R]efer[s] to rights to services rendered by health-care professionals to individuals or to populations. Thus, the right to health care includes curative and preventive services provided to individuals—such as therapy for illness, health screenings, and prenatal care—as well as population-based services like immunizations. The right to health care, on our understanding, does not include rights to clean water, adequate sanitation, or the careful placement of toxic waste.[31]

Professor Ruth Roemer clarified that the phrase "right to health" conveys an absurdity: the guarantee of perfect health.[32] She also provided an extensive definition to the right to health care, considering it to encompass "protective environmental services, prevention and health promotion, [and] therapeutic services . . . [as well as] [r]elated actions in sanitation, environmental engineering, housing . . . and social welfare . . . ."[33] Leary reiterates that "[s]uch an extensive definition seems contrary to common understanding of the phrase 'the right to health care,' normally taken to mean only the provision of medical services."[34] The editorss of a Pan-American Health Organization (PAHO) study also "recognize[d] that the phrase *a right to health* may be incomplete and conceptually misleading. [The editors] suggest that a more correct phraseology would be a *right to health protection*, including two components, a *right to health care* and a *right to healthy conditions*."[35]

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30. JUDITH ASHER, THE RIGHT TO HEALTH: A RESOURCE MANUAL FOR NGOS 27, 27 (Leif Holmström ed., 2010).

31. Kristen Hessler & Allen Buchanan, *Specifying the Content of the Human Right to Health Care*, *in* MEDICINE AND SOCIAL JUSTICE: ESSAYS ON THE DISTRIBUTION OF HEALTH CARE 84, 86 (Rosamond Rhodes et al. eds., 2002).

32. Ruth Roemer, *The Right to Health Care*, *in* THE RIGHT TO HEALTH IN THE AMERICAS 17, 17 (Hernán Fuenzalida-Puelma & Susan Scholle Connor eds., 1989).

33. *Id*.

34. Leary, *supra* note 23, at 31.

35. Hernán Fuenzalida-Puelma & Susan Scholle Connor, *Summary and Analysis*, *in* THE RIGHT TO HEALTH IN THE AMERICAS, *supra*note 32, at 541, 600.

B. International Treaties

Nowadays, the right to health is firmly embedded in international law. In general, the World Health Organization (WHO) defines the term "health" broadly as "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity."[36] The WHO also establishes the idea of "right to health." In particular, the preamble to the Constitution of the WHO declares that "[t]he enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition."[37] The phrase "enjoyment of the highest attainable standard of health" has been recognized as a right to health and a "fundamental right" by the international community.[38] Later, the Universal Declaration of Human Rights (UDHR) affirmed the right to health. Article 25 of the UDHR states that:

> Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.[39]

Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) defines the right to health as "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health."[40] The United Nations Committee on Economic, Social and Cultural Rights (CESCR) adopted the general comment and established the important components of the right to health. In paragraph 9 of the CESCR General Comment 14:

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36. World Health Org., *Constitution of the World Health Organization* 2 (July 22, 1946).

37. *Id*.

38. Henry B. Perry, *Primary Health Care*: *History, Trends, Controversies, and Challenges*, *in* ACHIEVING HEALTH FOR ALL PRIMARY HEALTH CARE IN ACTION 19, 41 (David Bishai & Meike Schleiff eds., 2020).

39. G.A. Res. 217 (III) A, Universal Declaration of Human Rights. U.N. Doc. A/217(III)/RES, art. 25 (Dec. 10, 1948). [hereinafter UDHR].

40. International Covenant on Economic, Social and Cultural Rights., art. 12, Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR].

> [T]he right to health must be understood as a right to the enjoyment of a variety of facilities, goods, services and conditions necessary for the realization of the highest attainable standard of health.[41]

In paragraph 11 of the CESCR General Comment 14:

> [T]he right to health . . . [is] an inclusive right extending to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health.[42]

However, the right to health is not a right to be healthy or a right to perfect health.[43] This is because good or perfect health is influenced by several factors such as an individual's biological makeup and socio-economic conditions. Countries cannot directly control those factors.

Hurst Hannum states "[t]he right to health contains both freedoms and entitlements."[44] According to the WHO, these freedoms are "the right to control one's health and body . . . and to be free from interference."[45] Specifically, "these freedoms include the right to be free from non-consensual medical treatment, such as medical experiments and research or forced sterilization, and to be free from torture and other cruel, inhuman or degrading treatment or punishment."[46] The entitlements, on the other hand, include:

- The right to a system of health protection providing equality of opportunity for everyone to enjoy the highest attainable level of health;

- The right to prevention, treatment and control of diseases;

41. U.N. Comm. on Economic, Social, & Cultural Rights (CESCR), General Comment No. 14 ¶ 9, U.N. Doc. E/C.12/2000/4 (Aug. 11, 2000) [hereinafter GC 14].

42. *Id*. ¶ 11.

43. *Id*. ¶ 8.

44. HURST HANNUM ET AL., INTERNATIONAL HUMAN RIGHTS: PROBLEMS OF LAW, POLICY, AND PRACTICE 532 (6th ed. 2018).

45. *Human Rights and Health*, *supra* note 14.

46. OFF. OF THE U. N. HIGH COMM'R FOR HUMAN RTS., WORLD HEALTH ORG., THE RIGHT TO HEALTH 3–4 (2008) [hereinafter OHCHR].

- Access to essential medicines;
- Maternal, child and reproductive health;
- Equal and timely access to basic health services;
- The provision of health-related education and information;
- Participation of the population in health-related decision-making at the national and community levels.[47]

Furthermore, the right to health relates to other human rights.[48] The UN states "[t]hese include the rights to food, to water, to an adequate standard of living, to adequate housing, to freedom from discrimination, to privacy, to access to information, to participation, and the right to benefit from scientific progress and its applications."[49] Since health status also reflects a wide range of socio-economic factors, the right to health is clearly linked to other basic rights, including civil and political rights as well as economic, social, and cultural rights. The right to health is then considered the exercise of other rights. Violating the right to health infringes upon the enjoyment of other rights.[50] In turn, fully complying with the right to health may strengthen other rights.

The right to health has also emerged from other human rights organizations. Additional treaties containing provisions on the right to health include:

- the Standard Minimum Rules for the Treatment of Prisoners (1955);
- the International Convention on the Elimination of All Forms of Racial Discrimination (1965) (CERD); [. . .]
- the International Convention on the Elimination of All Forms of Discrimination Against Women (1979) (CEDAW);

47. *Id*.
48. *Id*. at 6.
49. *Id*.
50. *Id*.

- the Convention Concerning Indigenous and Tribal Peoples in Independent Countries (1989);
- the Convention on the Rights of the Child (1989) (CRC);
- the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990).[51]

C. Other Aspects of the Right to Health

In addition to being deemed a human right, the right to health should fall within the scope of personal rights. According to the Merriam-Webster Dictionary, personal rights are defined as "rights (as of personal security, personal liberty, and private property) appertaining to the person."[52] This refers to individual autonomy, or a person's control over his own body when his actions are not illegal or do not violate others' rights. The right to health relates to personal rights because a person can still choose to control his health or body in his own way. States cannot prohibit a person from exercising his rights. For example, an adult can heavily drink alcohol and smoke cigarettes in his house every day. Excessive drinking and smoking are considered an acceptable exercise of personal rights. Although excessive drinking and smoking can damage his health, he retains the personal right to drink and smoke excessively.

The right to health also involves civil rights:

> Civil rights may be defined as the rights of citizens to social freedoms and equality. These rights are stipulated to ensure people's physical and mental integrity and the right to privacy; protecting life and safety; and protection against discrimination based on protected characteristics such as race, gender, sexual orientation, national origin, color, age, ethnicity, religion, and disability.[53]

The right to health should be considered a civil right because it includes the right to a system of health protections that providing an equal opportunity

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51. Charles Ngwena & Rebecca Cook, *Right Concerning Health*, *in* SOCIO-ECONOMIC RIGHTS IN SOUTH AFRICA 107, 109 (Danie Brand & Christof Heyns eds. 2005); *see also, e.g.*, Leary, *supra* note 23, at 28–29 (identifying several treaties that contain such provisions on the right to health).

52. *Personal Rights*, MERRIAM-WEBSTER DICTIONARY (Jan. 20, 2022), https://www.merriam-webster.com/dictionary/personal%20rights.

53. MICHAEL C. LEMAY, CIVIL RIGHTS AND CIVIL LIBERTIES IN AMERICA 4 (2021).

for everyone. Countries must not interfere with the enjoyment of the highest attainable standard of health. Instead, countries must prevent violations of the right to health by third parties. Countries must also establish health systems and provide health services for their people without discrimination.

D. Conflicts between the Right to Health and Other Human Rights

The right to health has a broad scope and involves several aspects of human rights. However, the right to health may conflict other human rights. For example, under the right to health, people should gain nutritious food and governments should implement measures to reduce the burden of diseases linked to junk food.[54]Moreover, eating unhealthy food relates to self-determination, which is the interest of ordinary people in making significant decisions about their lives for themselves.[55] This self-determination is the same freedom of thought found in Article 18 of the Universal Declaration of Human Rights.[56]

The question arises: How should the conflict between two rights be resolved? In this circumstance, states should determine the priority of the rights. Unlike national laws, there are no international preemption standards.[57] States can then rely on the UN Human Rights Committee's General Comments.[58] In some cases, the determination of priority can also rely on states' decisions involving state sovereignty.[59] This means that states can determine priority between the right to health and other human rights by themselves.

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54. *Bad for Your Health, Bad for Your Rights: It's Time to Deal With Junk Food–UN Expert*, U.N. OFF. OF THE HIGH COMM'R FOR HUMAN RTS. (June 14, 2014) https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14681&LangID=E.

55. ISOBEL R. CONTENTO, NUTRITION EDUCATION: LINKING RESEARCH, THEORY, AND PRACTICE 82 (2d ed. 2011).

56. WOODROW BARFIELD, CYBER-HUMANS: OUR FUTURE WITH MACHINES 113 (2015).

57. ANTHONY CLARK AREND, *International Law and the Preemptive Use of Military Force*, *in* RESHAPING ROGUE STATES: PREEMPTION, REGIME CHANGE, AND U.S. POLICY TOWARD IRAN, IRAQ, AND NORTH KOREA 19, 31 (Alexander T. J. Lennon & Camille Eiss eds., 2004).

58. MICHAEL O'FLAHERTY, *International Covenant on Civil and Political Rights: Interpreting Freedom of Expression and Information Standards for the Present and the Future*, *in* THE UNITED NATIONS AND FREEDOM OF EXPRESSION AND INFORMATION: CRITICAL PERSPECTIVES 55, 83 (Tarlach McGonagle & Yvonne Donders eds., 2015).

59. JORGE E. NÚÑEZ, SOVEREIGNTY CONFLICTS AND INTERNATIONAL LAW AND POLITICS: A DISTRIBUTIVE JUSTICE ISSUE 85 (2017).

II. STATES' OBLIGATIONS ON THE RIGHT TO HEALTH

A. General Aspects of Obligations

In general, states have obligations to protect and promote human rights.[60] Human rights obligations can be found in international customary law and human rights treaties.[61] Human rights obligations also include the right to health,[62] and can be classified into three categories: (i) progressive realization; (ii) minimum core obligations; and (iii) three types of obligations.

1. Progressive Realization

Based on "human rights treaties, States parties are required to give effect to these rights within their jurisdiction. [however,] States have resource constraints and . . . it necessarily takes time to implement the treaty provisions."[63] The doctrine of progressive realization has been established in Article 2(1) of the ICESCR to resolve the issue.[64] It requires states to "take steps, individually and through international assistance and co-operation . . . with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures."[65] Progressive realization allows states to phase in full compliance with the right to health under the ICESCR to the extent that resource constraints (maximum available resources) make this necessary.[66] Thus, some components of the right to health do not have immediate effect, but are subject to progressive realization.[67] Further, Article 2(1) of the ICESCR is not considered a limitation on or exception to the obligation.[68] Paragraph 31 of the CESCR General Comment 14 states that:

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60. RHONDA K. M. SMITH, INTERNATIONAL HUMAN RIGHTS 422 (9th ed. 2020). States are required to take appropriate measures to respect all human rights within their jurisdiction, actively protect human rights and freedoms (in laws, strategies, and policies), and promote human rights in fulfillment of their treaty obligations and indeed general obligations as Member States of the United Nations. Non-UN Member States also regularly respect, protect, and promote core human rights.

61. Christine Chinkin, *Sources*, *in* INTERNATIONAL HUMAN RIGHTS LAW 75, 77–83 (Daniel Moeckli et al. eds., 2d ed 2014).

62. *Human Rights and Health*, *supra* note 14.

63. OHCHR, *supra* note 47, at 23.

64. ICESCR, *supra* note 41, art. 2(1).

65. *Id.*

66. Paul Hunt & Gunilla Backman, *supra* note 27, at 84..

67. John Tasioulas & Effy Vayena, *supra* note 26, at 151.

68. Diane A. Desierto, *Austerity Measures and International Economic, Social, and Cultural Rights*, *in* HUMAN RIGHTS IN EMERGENCIES 241, 273 (Evan J. Criddle ed., 2016) ("[T]he ICESCR clearly

> The progressive realization of the right to health over a period of time should not be interpreted as depriving State parties' obligations of all meaningful content. Rather, progressive realization means that States parties have a specific and continuing obligation to move as expeditiously and effectively as possible toward the full realization of [the right to health].[69]

Eventually, states will need to "mak[e] every possible effort, within available resources, to better protect and promote [the right to health]."[70]

2. Minimum Core Obligation

The minimum core obligations "require immediate compliance in every country, regardless of development" or resource constraints.[71] States have to acknowledge human rights and meet specific and legally binding obligations.[72] Unlike progressive realization:

> [M]inimum core obligations do[] not explicitly figure in the binding treaties. . . . Instead, the primary international sources for the minimum core obligation are the General Comments issued by various treaty bodies. . . . These the General Comments do not, in their own right, possess binding legal force . . . [T]he minimum core doctrine (MCD) [may] represent[] a correct interpretation of the relevant treaty . . . .[73]

Paragraph 10 of the CESCR General Comment 3 states that every state has a "minimum core obligation" to satisfy the "minimum essential levels of each of the rights."[74] For example, a state fails "to discharge its obligations under the Covenant" when any "significant number of individuals is deprived of essential foodstuffs, of essential primary healthcare, of basic shelter and housing, or of the most basic forms of education."[75] Thus, states cannot benefit from the doctrine of progressive realization in order to avoid immediate compliance with the obligations.

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contemplates dynamic economic decision making by states, and, for this reason, the fundamental duty of states in Article 2(1) of the ICESCR is the immediately effective obligation to take steps toward progressive realization of ICESCR rights.").

69. GC 14, *supra* note 42, ¶ 31.

70. OHCHR, *supra* note 47, at 23.

71. ASHER, *supra* note 31, at 54.

72. *See* Benjamin Mason Meier et al., *The World Health Organization in Global Health Law*, 48 J. L., MED. ETHICS 796, 796–97 (2021).

73. JOHN TASIOULAS, THE MINIMUM CORE OF THE HUMAN RIGHT TO HEALTH 4 (2017).

74. CESCR, General Comment 3, para.10 UN Doc. E/1991/23, Annex III ¶ 10 (1990).

75. *Id.*

The minimum core obligations under the ICESCR also include the right to health.[76] In paragraph 30 of the CESCR General Comment 4, the immediate obligations guarantee that the right to health "will be exercised without discrimination of any kind" by states taking steps; "[s]uch steps must be deliberate, concrete and targeted towards the full realization of the right to health."[77] Moreover, the CESCR General Comment establishes the schedule of minimum core obligations under the right to health:

> (a) To ensure the right of access to health facilities, goods and services on non-discriminatory basis, especially for vulnerable or marginalized groups;
>
> (b) To ensure access to the minimum essential food which is nutritionally adequate and safe, to ensure freedom from hunger to everyone;
>
> (c) To ensure access to basic shelter, housing and sanitation, and an adequate supply of safe and potable water;
>
> (d) To provide essential drugs, as from time to time defined under the WHO Action Programme on Essential Drugs;
>
> (e) to ensure equitable distribution of all health facilities, goods, and services;
>
> (f) to adopt and implement a national public health strategy and plan of action, on the basis of epidemiological evidence. . . .[78]

3. Three Types of Obligations

Typically, state obligations fall into three categories: to respect, to protect, and to fulfill the right to health.[79] In the obligation to respect, states are required to:

> [R]efrain from undertaking actions that inhibit or interfere (directly or indirectly) with people's ability to enjoy the right to health, such as by introducing actions, programs, policies or laws that are likely to result in bodily harm, unnecessary morbidity, and

76. ASHER, *supra* note 31, at 38.
77. GC 14, *supra* note 42, ¶ 30.
78. *Id*. ¶ 43.
79. SANDRA FREDMAN, COMPARATIVE HUMAN RIGHTS LAW 66 (2018).

> preventable mortality. It also requires states to refrain from taking retrogressive measures (take-backs) as part of its health-related laws and policies.[80]

In the obligation to protect, states are required to:

> [T]ake all necessary measures to safeguard the population from infringements of the right to health by third parties. . . . [S]tates *are responsible for regulating the conduct* of individuals and groups who are working in the non-governmental sector . . . and for protecting people's right to health through legislative and other measures.[81]

In the obligation to fulfill, states are required to:

> [P]rovid[e] relevant services, to enable individuals and communities to enjoy the right to health in practice. It requires that all necessary steps be taken to ensure that the benefits covered by the right to health are provided and that appropriate legislative, administrative, budgetary, judicial, promotional and other relevant measures are adopted to ensure its full realization.[82]

In addition, the ICESCR establishes four standards for evaluating the implementation of state obligations including availability, accessibility, acceptability, and quality.[83] Regarding availability:

> Functioning public health and health-care facilities, goods and services . . . have to be available in sufficient quantity . . . [including] safe and potable drinking water and adequate sanitation facilities, hospitals, clinics and other health-related buildings, trained medical and professional personnel receiving domestically competitive salaries, and essential drugs. . . .[84]

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80. ASHER, *supra* note 31, at 57.

81. *Id*. at 57–58.

82. *Id* at 58.

83. Aline Albuquerque, *The Brazilian Human Rights Indicators System: The Case of the Right to Health*, *in* THE RIGHT TO HEALTH: A MULTI-COUNTRY STUDY OF LAW, POLICY, AND PRACTICE 259, 263 n.16 (Brigit Toebes et al. eds., 2014).

84. GC 14, *supra* note 42, ¶ 12.

Accessibility is achieved when all people in a state have equitable access to health facilities, goods, and services without discrimination.[85] Accessibility also has four dimensions: (i) non-discrimination; (ii) physical accessibility: "health facilities, goods and services must be within safe physical reach for all sections of the population . . . [including] underlying determinants of health, such as safe and potable water and adequate sanitation"; (iii) economic accessibility; and (iv) information accessibility.[86] In acceptability, "health facilities, goods and services must be respectful of medical ethics . . . [and be] designed to respect confidentiality and improve the health status of those concerned."[87] They should also be designed to ensure that people receive treatment appropriate for their culture, gender, and stage of life.[88] Plus, "health facilities, goods and services must also be scientifically and medically appropriate and of good quality. This requires, *inter alia*, skilled medical personnel, scientifically approved and unexpired drugs and hospital equipment, safe and potable water, and adequate sanitation."[89]

B. Conflicts Between States' Obligations and the Exercise of the Right to Health

States' obligations may be in conflict with the exercise of the right to health. In this circumstance, states establish measures to protect peoples' right to health, but these may infringe upon other aspects of the right to health generally. For instance, states impose protective measures which restrict peoples' bodily autonomy. In this way, the government may be infringing on the right to health. Although a universal approach to determine priority and resolve the conflict does not exist, there have been attempts to create one.[90]

> The main alternative options seem to be: (a) to affirm a priority of the State's obligation to respect over its obligation to protect, so that the scope of the obligation to protect would be limited by the State's obligation not to impose disproportionate interferences with other human rights; (b) to recognize a broad margin of appreciation to executive and legislative authorities in addressing situations of conflicting rights, leading to a 'hands-off' attitude of

85. *Id*.
86. *Id*.
87. *Id*.
88. *Id*.
89. *Id*.
90. John Tobin, *A State's General Obligation of Implementation*, *in* THE UN CONVENTION ON THE RIGHTS OF THE CHILD: A COMMENTARY 108, 138 (2019).

> the courts in such situations, particularly if they are international courts; and (c) to develop judicial techniques that can solve conflicts between rights, beyond the vague, and largely empty, reference to the need to 'balance' the rights against one another.[91]

Instead, states themselves should establish approaches to determine this priority. This is because states' obligations are considered the exercise of authority and mainly involve state sovereignty.[92] States can freely determine their health policy and establish public health measures within their territory.[93] Approaches to determine this priority should then be based on states' decisions and health policies. Moreover, a universal approach may not help states resolve problems or determine their priorities in every case. Each state has a different background, culture, policy, economy, welfare, health system, and political regime. Many states have diverse ethnic, national, and linguistic groups. States can analyze and evaluate which health measures are the most effective and appropriate for them. A universal approach may not provide full benefits or fit their health policies. This would eventually have a negative impact on the right to health. Thus, states should establish their own approaches to determine this priority.

III. THE RIGHT TO HEALTH IN COVID-19 PREVENTION

A. Disease Prevention as the Right to Health

A preventive measure is an important step taken to prevent diseases or illness.[94] A preventive measure differs from disease treatment.[95] It "encompass[es] a variety of interventions that can be undertaken to prevent or delay the occurrence of disease or reduce further transmission or exposure to diseases."[96] It "can be applied at all stages across the lifespan."[97] A preventive measure, moreover, can "prevent the onset of a diseases or other

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91. OLIVIER DE SCHUTTER, INTERNATIONAL HUMAN RIGHTS LAW: CASES, MATERIALS, COMMENTARY 517 (3d ed. 2019).

92. PATRICK MACKLEM, THE SOVEREIGNTY OF HUMAN RIGHTS 34 (2015).

93. *State Quarantine and Isolation Statutes*, NAT'L CONF. OF STATE LEGIS., (Apr. 24, 2021) https://www.ncsl.org/research/health/state-quarantine-and-isolation-statutes.aspx.

94. *Preventative Measure*, J. PREVENTIVE MED., https://www.imedpub.com/scholarly/preventative-measure-journals-articles-ppts-list.php (last visited Sept. 26, 2022).

95. *Id.*

96. *Id.*

97. *What is Preventive Health Care?*, COLLEAGA, https://www.colleaga.org/article/what-preventive-healthcare (last visited Oct. 13, 2022).

health problem before the occurrence of the undesirable health event."[98] Consequently, a preventive measure should be included in the right to health. This is because the right to health can include the preservation of normal health as the absence of diseases or illness, so it should cover the right to disease or illness prevention. Under the right to health, people can protect themselves from diseases or afflictions.

According to the WHO, SARS-CoV-2 is a virus which spreads between people mainly when an infected individual is in close contact with another person;[t]he virus can spread from an infected person's mouth or nose in small liquid particles when they cough, sneeze, speak, sing or breathe."[99] These aerosolized liquid particles are different sizes, ranging "from larger respiratory droplets to smaller aerosols."[100] People can be infected with SARS-CoV-2 by droplet or aerosol transmission.[101] Short-range aerosol transmission happens when people are in close contact with an infected individual and inhale particles.[102] SARS-CoV-2 can be transmitted by respiratory droplets among people who are in close contact, when droplets "come into direct contact with the eyes, nose, or mouth."[103] Long-range aerosol transmission occurs in specific settings, particularly in indoor, crowded, and inadequately ventilated spaces where infected people spend long period of time with others, such as restaurants, choir practices, fitness classes, nightclubs, offices, or places of worship.[104] The virus can spread after infected people sneeze, cough on, or touch surfaces or objects, such as tables, doorknobs, and handrails.[105] Other people may be infected by touching these contaminated surfaces, then touching their eyes, noses, or mouths.[106]

The WHO has provided measures to prevent SARS-CoV-2 transmission. This is a call to the public to

98. *Three Levels of Health Promotion/Disease Prevention*, COURSE HERO, https://www.coursehero.com/study-guides/diseaseprevention/three-levels-of-health-promotiondisease-prevention/ (last visited Oct. 13, 2022).

99. *Coronavirus Disease (COVID-19): How Is It Transmitted?*, WORLD HEALTH ORG. (Dec. 23, 2021), https://www.who.int/news-room/q-a-detail/coronavirus-disease-covid-19-how-is-it-transmitted#:~:text=COVID%2D19%20is%20caused%20by,speak%2C%20sing%20or%20breathe%20heavily.

100. *Covid-19 Transmission and Protective Measures*, WORLD HEALTH ORG. (last updated June 1, 2022), https://www.who.int/westernpacific/emergencies/covid-19/information/transmission-protective-measures.

101. *Coronavirus Disease (COVID-19): How Is It Transmitted?*, *supra* note 101.

102. *Id*.

103. *Id*.

104. *Id*.

105. *Id*.

106. *Id*.

- Get all the recommended doses of COVID-19 vaccine
- Keep a safe distance from others, especially in closed spaces
- When indoors, open windows if possible
- Wear a mask if you or those around you are at high risk of severe illness
- Keep hands clean
- Cover coughs and sneezes
- Stay home when feeling unwell.[107]

Other organizations such as the Centers for Disease Control and Prevention (CDC) have adopted similar measures.[108] The right to health should then embrace those measures because they can prevent the transmission or outbreak of COVID-19. Those measures can also be used as important guidelines for people who want to protect themselves from COVID-19. This should mean that people can personally exercise the right to health by wearing masks, staying away from others, or washing their hands. Additionally, countries have obligations to protect the right to health of their citizens. Countries may implement the right to health by adopting measures to prevent the spread of COVID-19. In this context, the implementation of the right to health may include: (i) social distancing (including lockdowns); (ii) widespread use of masks; (iii) extensive testing; (iv) COVID-19 case investigation and contact tracing; (v) restrictions on travel or use of transport; and (vi) isolation or quarantining of those infected or exposed to someone infected.

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107. *Covid-19 Transmission and Protective Measures*, WORLD HEALTH ORG. (last updated Sept. 21, 2022),https://www.who.int/westernpacific/emergencies/covid-19/information/transmission-protective-measures.

108. *How to Protect Yourself and Others*, CTRS. FOR DISEASE CONTROL & PREVENTION (last updated Oct. 19, 2022), https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html (explaining that measures to prevent COVID-19 transmission include: staying up to date on vaccines, improving ventilation indoors and congregating outdoors more, and getting tested for COVID-19).

B. Failures to Fulfill and Protect the Right to Health

Even though countries have tried to establish their preventive measures, the COVID-19 pandemic still spreads throughout the world.[109] In fact, most countries fail to take those measures and implement the right to health.[110] Many countries fail to take action against the COVID-19 outbreak and prevent illness from COVID-19 infection.[111] Countries have not provided adequate measures for protecting their people and preventing the spread of COVID-19, leaving their citizens are risk.[112]COVID-19 is then growing out of control in many countries.[113] When countries do not uphold preventative measures, they fail to protect their citizens and fulfill the right to health. Perhaps, countries have been concerned that the preventive measures can affect economic growth and human rights.

Furthermore, countries impose a different standard of the right to health when they respond to the COVID-19 outbreak. Some countries have responded effectively, and others have failed to do so. For example, New Zealand has been successful in fighting against the COVID-19 pandemic.[114] New Zealand "eliminated COVID-19 in the community by shutting its border in mid-March 2020, introducing compulsory quarantine for all returnees, and instituting a series of lockdowns to stamp out existing clusters."[115] *The Guardian* predicted that New Zealand would come out of 2021 "with some of the best health outcomes in the world."[116] *The Guardian* stated that "[a]s

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109. *See COVID Map: Coronavirus Cases, Deaths, Vaccinations by Country*, BBC NEWS (July 5, 2022), https://www.bbc.com/news/world-51235105.

110. Selam Gebrekidan, *The World Has a Plan to Fight Coronavirus. Most Countries Are Not Using It*, N.Y. TIMES (last updated Apr. 16, 2020), https://www.nytimes.com/2020/03/12/world/coronavirus-world-health-organization.html.

111. *See, e.g.*, Dyani Lewis, *Why Many Countries Failed at COVID Contact-Tracing – But Some Got It Right*, NATURE (Dec. 17, 2020), https://www.nature.com/articles/d41586-020-03518-4 (stating that English contact tracers reach less than half of the close contacts of people with positive COVID-19 tests and that more than half of Americans with COVID-19 do not provide details of close contacts when asked).

112. *See, e.g.*, *id*.

113. Tom Frieden, *We Know How to Beat COVID-19. We Just Don't Do It.*, THE ATLANTIC (Nov. 13, 2020), https://www.theatlantic.com/ideas/archive/2020/11/covid-19-is-out-of-control-what-can-we-do/617097/.

114. Praveen Menon, *New Cases End New Zealand's 'COVID-Free' Status; Auckland Back in Lockdown*, REUTERS (Aug. 11, 2020), https://www.reuters.com/article/us-health-coronavirus-newzealand-idUSKCN257197.

115. Tess McClure, *How New Zealand's COVID Success Made It a Laboratory for the World*, GUARDIAN (Apr. 3, 2021), https://www.theguardian.com/global/2021/apr/04/how-new-zealands-covid-success-made-it-a-laboratory-for-the-world.

116. Eva Corlett, *New Zealand Ends 2021 with One of World's Best COVID Outcomes – But It Wasn't All Good News*, GUARDIAN (Dec. 23, 2021), https://www.theguardian.com/world/2021/dec/23/new-zealand-ends-2021-with-one-of-worlds-best-covid-outcomes-but-it-wasnt-all-good-news.

other countries reimpose restrictions alongside the Omicron variant's emergence, New Zealanders can look forward to celebrating their Christmas and the new year."[117] The article continued, "[w]ith no community cases of Omicron yet detected, restaurants, cafes, cinemas, sports venues and night clubs remain open with minimal constraints aimed mostly at the unvaccinated."[118] On the other hand, the United Kingdom did not impose a lockdown early on in the pandemic.. Failing to impose a lockdown "was one of the country's worst public health failures."[119] The deadly delay led to thousands of unnecessary deaths.[120] Over 137,000 people in the United Kingdom have died from the coronavirus—the most deaths in Europe after Russia.[121]

C. The Priority of the Right to Health

The right to health or preventive measures may be challenged by other human rights. Specifically, preventive measures may conflict with other human rights. A question may arise whether the right to health is given priority.

1. Wearing Masks

UNICEF states that:

> COVID-19 is transmitted from person to person through respiratory droplets produced when an infected person coughs, sneezes, or talks. These droplets can land in the mouths or noses of people who are nearby or possibly be inhaled into the lungs. Masks provide a simple barrier to help prevent these respiratory droplets from spreading in the air.[122]

Wearing masks should then be an effective method for limiting transmission and preventing infections. UNICEF states that "[s]cience also shows that the more people that wear masks in public, the more we can slow

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117. *Id.*

118. *Id.*

119. Nick Triggle, *Covid: UK's Early Response Worst Public Health Failure Ever, MPs Say*, BBC NEWS (Oct. 12, 2021), https://www.bbc.com/news/health-58876089.

120. *Id.*

121. Danica Kirka, *Reports Says UK's Slow Virus Lockdown Cost 1000s of Lives*, AP NEWS (Oct. 12, 2021), https://apnews.com/article/coronavirus-pandemic-science-europe-covid-19-pandemic-pandemics-0268552edbae21b55cc1ce2d6d72836d.

122. Aaliyah Madyun, *Everything You Need to Know About Face Masks*, UNICEF, https://www.unicef.org/sudan/everything-you-need-know-about-face-masks (last visited Oct. 13, 2022).

the spread of COVID-19."[123] More importantly, wearing marks is considered an exercise of the right to health. However:

> Wearing a mask sometimes causes a sensation of uncomfortable breathing or shortness of breath. [People may notice] a small increase in the effort that it takes to breathe. . . . Masks can trap oils, irritants, and allergens against the skin and block hair follicles and glands, causing pimples . . . A mask's ear loops can make your ears sore Elastic straps pull on your ears and put pressure on your skin, which can become irritated.[124]

In accordance with Article 3 of the Universal Declaration of Human Rights, "[e]veryone has the right to life, liberty, and security of person."[125] Article 6(1) of the International Covenant on Civil and Political Rights (ICCPR) states that "[e]very human being has the inherent right to life" which is to be "protected by law," and "[n]o one shall be arbitrarily deprived of his life."[126] Paragraph 3 of the CCPR General Comment No. 36 states that "the right to life [under the ICCPR] should not be interpreted narrowly."[127] This does not mean that people are free to do whatever they want. Instead, it means that individuals are free from acts and omissions that are intended or may be expected to cause their unnatural or premature death, as well as to enjoy a life with dignity. The right to life may also include the right to be free from physical harm. However, wearing masks does not cause unnatural or premature death or physical harm. Wearing masks is a sign of protection and respect for other people[128] because masks decrease the likelihood of spreading the virus.[129] Wearing masks can help people survive and save their

123. *Id*.

124. *Coping with Face Mask Discomfort*, HARVARD HEALTH PUBL'N (Dec. 1, 2020), https://www.health.harvard.edu/staying-healthy/coping-with-face-mask-discomfort.

125. UDHR, *supra* note 40, art. 3.

126. International Covenant on Civil and Political Rights, art. 6 ¶ 1, Dec. 19, 1966, 999 U.N.T.S. 171, 174 [hereinafter ICCPR].

127. U.N. Human Rights Comm., General Comment No. 36 ¶ 3, U.N. Doc. CCPR/C/GC/36 (Sept. 3, 2019) [hereinafter GC 36].

128. Lauren Mascarenhas, *Amid Coronavirus Surge, Health Officials Urge People to Wear Masks as a Symbol of Respect*, CNN HEALTH (last updated July 13, 2020), https://edition.cnn.com/2020/07/13/health/masks-respect-coronavirus-wellness/index.html.

129. Nancy Schimelpfening, *Wearing a Mask May Reduce How Sick You Get from COVID-19*, HEALTHLINE (Sept. 10, 2020), https://www.healthline.com/health-news/wearing-a-mask-may-reduce-how-sick-you-get-from-covid-19.

lives.[130] Masks can protect wearers against infections.[131] Mask-wearing can reduce COVID-19 cases and prevent deaths from COVID-19.[132] Refusing to wear masks may result in the spread of COVID-19, leading to illnesses and deaths.[133] Therefore, wearing masks does not affect or infringe the right to life.

The Human Rights Committee also confirms that states have the duty to protect life. Paragraph 26 of the CCPR General Comment No. 36 states that "parties should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity."[134] These general conditions may include "the prevalence of life-threatening diseases such as AIDS, tuberculosis, and malaria."[135] Hence, states have obligations to protect the lives of their people by taking measures to address life-threatening diseases, especially COVID-19. A mask-wearing requirement prevents the outbreak and spread of COVID-19, and it helps countries to perform the duty or comply with the obligation to protect people's lives. This could mean that a mask-wearing requirement is an exercise of the right to life. While a mask-wearing requirement is an implementation of the right to health, it does not infringe the right to life.

A question may arise as to whether a mask-wearing requirement affects or infringes the freedom of expression. Generally, the freedom of expression is defined as "freedom to seek, receive and impart information and ideals of all kinds."[136] Wearing masks may then involve the freedom of expression. Some people refused to wear a mask because it was "shameful, not cool and a sign of weakness."[137] A mask-wearing requirement can also limit an individual's freedom of expression.[138] Article 19 of the UDHR states that "[e]veryone has the right to freedom of opinion and expression."[139] Article 19(2) of the ICCPR states that "[e]veryone shall have the right to

130. *Wear a Mask to Save Lives from COVID-19*, ALL. FOR AGING RSCH., https://www.agingresearch.org/wear-a-mask-to-save-lives-from-covid-19/ (last visited Oct. 13, 2022).

131. *Scientific Brief: Community Use of Masks to Control the Spread of SARS-CoV-2*, CTRS. FOR DISEASE CONTROL & PREVENTION (Dec. 6, 2021), https://www.cdc.gov/coronavirus/2019-ncov/more/masking-science-sars-cov2.html.

132. *Id*.

133. *Id*.

134. GC 36, *supra* note 134, ¶ 26.

135. *Id*.

136. ICCPR, *supra* note 133, art. 19(2).

137. Fernando Duarte, *Coronavirus Face Masks: Why Men Are Less Likely to Wear Masks*, BBC NEWS (July 19, 2020), https://www.bbc.com/news/world-53446827.

138. Brady Frederick, *Are Mask Mandates Unconstitutional? University of Idaho Law Professor Weights In*, KLEW (July 9, 2020), https://klewtv.com/news/local/are-mask-mandates-unconstitutional-university-of-idaho-law-professor-weighs-in.

139. UDHR, *supra* note 40, art. 19.

freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."[140] Moreover, the Human Rights Committee suggests that this right "includes the expression and receipt of communication of every form of idea and opinion capable of transmission to others."[141] Article 19(2) "protects all forms of expression and the means of their dissemination."[142] Means of expression include sign language, non-verbal expression, images and objects of art, and dress.[143] Therefore, some people believe that not wearing masks could be considered an exercise of the right to freedom of expression.[144]

In fact, the right to freedom of expression has exceptions. Article 19(3) of the ICCPR states that:

> The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order, or of public health or morals.[145]

Countries can then impose restrictions to protect public health. Nevertheless, the Human Rights Committee requires that:

> When a State party invokes a legitimate ground for restriction of freedom of expression, it must demonstrate in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat.[146]

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140. ICCPR, *supra* note 133, art. 19(2).

141. SARAH JOSEPH & MELISSA CASTAN, THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS 593 (3d ed. 2013).

142. Lorna Woods, *Article 11 Freedom of Expression and Information*, *in* THE EU CHARTER OF FUNDAMENTAL RTS.: A COMMENT 311, 316 (Steve Peers et al. eds., 2014).

143. *Id.*

144. John E. Finn, *The Constitution Doesn't Have a Problem with Mask Mandates*, THE CONVERSATION (last updated July 28, 2020), https://theconversation.com/the-constitution-doesnt-have-a-problem-with-mask-mandates-142335.

145. ICCPR, *supra* note 133, art. 19(3).

146. DE SCHUTTER, *supra* note 93, at 378.

In this circumstance, it is certain that COVID-19 has posed serious risks to life and health. A scientific study has found that not wearing a face mask dramatically increases an individual's chance of being infected by the COVID-19 virus.[147] In contrast, wearing masks can prevent the transmission of COVID-19.[148] A mask-wearing requirement can save lives and protect public health. Since COVID-19 cases remain very high in many parts of the world, laws requiring people to wear a mask are necessary and justifiable. Accordingly, countries can establish a requirement or mandate for wearing masks. Such a requirement or mandate should not infringe the freedom of expression.

2. Limitations or Restrictions on Physical Activities

The WHO defines a "physical activity" as "any bodily movement produced by skeletal muscles that requires energy expenditure. Physical activity refers to all movement including during leisure time, for transport to get to and from places, or as part of a person's work."[149] Since the transmission of COVID-19 occurs primarily through direct, indirect, or close contact with infected people, physical activities must be limited or restricted in order to halt transmission. Limitations or restrictions on physical activities should be considered an exercise of the right to health because they prevent COVID-19 transmission and allows people to protect themselves from infections. This could eventually help people stay safe and healthy.

Such limitations or restrictions on physical activities may include: (i) social distancing; (ii) self-isolation; (iii) quarantine; (iv) the cordoning off of areas; and (v) confinement or lockdown. However, these limitations or restrictions may infringe other human rights, especially the freedom of movement. Article 13(1) of the UDHR states that "[e]veryone has the right to freedom of movement and residence within the borders of each state."[150] Article 12(1) of the ICCPR states that "[e]veryone lawfully within the territory of a state shall, within that territory, have the right to liberty of movement and freedom to choose his residence."[151] In paragraph 4 of the CCPR General Comment No. 27, the Human Rights Committee confirms that "[e]veryone lawfully within the territory of a state enjoys, within that territory, the right to move freely and to choose his or her place of

147. Jeremy Howard et al., *An Evidence Review of Face Masks Against COVID-19*, 118 PROC. NAT'L ACAD. SCIS. U.S. AM. 1, 4 (2021).

148. *Id.*

149. *Physical Activity*, WORLD HEALTH ORG. (Nov. 26, 2020), https://www.who.int/news-room/fact-sheets/detail/physical-activity.

150. UDHR, *supra* note 40, art. 13(1).

151. ICCPR, *supra* note 133, art. 12(1).

residence."[152] People are "entitled to move from one place to another and to establish themselves in a place of their choice"[153] and "[t]he enjoyment of this right must not be made dependent on any particular purpose or reason for the person wanting to move or to stay in a place."[154] Thus, during the COVID-19 pandemic, limitations or restrictions on physical activities may affect the freedom of movement.

Like other human rights, the freedom of movement retains some exceptions. Article 12(3) of the ICCPR states that the freedom of movement "shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant."[155] The Human Rights Committee emphasizes that "restrictions must be provided by law, must be necessary in a democratic society for the protection of these purposes and must be consistent with all other rights recognized in the Covenant."[156] The application of restrictions must also be based on clear legal grounds and must meet the test of necessity and the requirements of proportionality.[157] Since limitations or restrictions on the freedom of movement can prevent the spread of COVID-19, countries should be able to establish laws controlling or restricting physical activities. In this case, the right to health should prevail over the freedom of movement. Recently, "[n]ew emergency laws have come into force in many countries requiring that almost all people stay within given geographical areas or remain confined to their homes."[158] For example, cases of COVID-19 were rising in many parts of the European Union. Germany established a national lockdown because the country struggled to quell a rise in COVID-19 cases.[159] Non-essential shops, restaurants, bars, and leisure centers were closed across the country.[160] A lockdown measure can prevent the spread of COVID-19[161] and

152. U.N. Human Rights Comm., General Comment No. 27 ¶ 4, U.N. Doc. CCPR/C/21/Rev.1/Add.9 (Nov. 1, 1999) [hereinafter GC 27].

153. *Id*. ¶ 5.

154. *Id*.

155. ICCPR, *supra* note 133, art. 12(3).

156. DE SCHUTTER, *supra* note 93, at 348.

157. *Id*. at 344.

158. M S Siddiqui, *Human Rights During Pandemic*, THE DAILY STAR (last updated Dec. 18, 2020), https://www.thedailystar.net/law-our-rights/news/human-rights-during-pandemic-2009221.

159. *Coronavirus: Germany to Go into Lockdown over Christmas*, BBC NEWS (Dec. 13, 2020), https://www.bbc.com/news/world-europe-55292614.

160. *Id*.

161. *See generally Advice for the Public: Coronavirus Disease (COVID-19)*, WORLD HEALTH ORG. (last updated May 10, 2022), https://www.who.int/emergencies/diseases/novel-coronavirus-2019/advice-for-public.

reduce cases to a manageable level.[162] By accepting restrictions, Germany prioritized the right to health.

3. Contact Tracing

As the WHO states, "[c]ontact tracing is the process of identifying all people that a COVID-19 patient has come in contact with in the last two weeks."[163] Contact tracing can prevent or reduce the spread of COVID-19.[164] The CDC states that contact tracing can also protect people and their community by:

> - Informing people when they may have been exposed to COVID-19 and suggesting they monitor their health for signs of COVID-19.
> - Helping those who may have been exposed to get tested.
> - Asking people to adhere by public health recommendations, such as wearing a mask, getting tested, and quarantining.[165]

Contact tracing should be part of the right to health. Contact tracing helps control COVID-19 and maintain health standards in a society. Nevertheless, contact tracing requires the collection of personal information. Contact tracers may ask people with COVID-19 to isolate and ask their contacts to quarantine at home voluntarily.

A question may arise whether contact tracing affects the right to privacy or interferes in people's lives. Article 12 of the UDHR states that "[n]o one shall be subject to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks."[166] Article 17(1) of the ICCPR states that "[n]o one shall be subjected to arbitrary

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162. *Id.*

163. *Tracking COVID-19: Contact Tracing in the Digital Age*, WORLD HEALTH ORG. (Sept. 9, 2020), https://www.who.int/news-room/feature-stories/detail/tracking-covid-19-contact-tracing-in-the-digital-age.

164. *Case Investigation and Contact Tracing: Part of a Multipronged Approach to Fight the COVID-19 Pandemic*, CTRS. FOR DISEASE CONTROL & PREVENTION (last updated Feb. 28, 2022), https://www.cdc.gov/coronavirus/2019-ncov/php/principles-contact-tracing.html.

165. *COVID-19 Contact Tracing Communication Toolkit for Health Departments*, CTRS. FOR DISEASE CONTROL & PREVENTION (last updated Nov. 5, 2021), https://www.cdc.gov/coronavirus/2019-ncov/php/contact-tracing-comms.html.

166. UDHR, *supra* note 40, art. 12.

or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation."[167] Article 17 (2) also states that "[e]veryone has the right to the protection of the law against such interference or attacks."[168] In paragraph 1 of the CCPR General Comment No. 16, this right is required to be "guaranteed against all such interferences and attacks whether they emanate from State authorities or from natural or legal persons."[169] Countries are obligated "to prohibit such interferences and attacks through the establishment of regulations or measures."[170] As a result, it is likely that contact tracing is an interference and affects other human rights, especially the right to privacy.

Contact tracing is an example of lawful interference. In the view of the Human Rights Committee, "interference authorized by states can only take place on the basis of law, which itself must comply with the provisions, aims, and objectives of the Covenant."[171] Interference established by law should also be reasonable under the particular circumstances. Thus, contact tracing can be conducted without human rights violations if it is legal and is based on valid reasons. When contact tracing may limit COVID-19 transmission, it is essential that countries establish measures for conducting contact tracing. Thus, contact tracing does not infringe upon the right to privacy.

4. COVID-19 Testing

According to the Centers for Disease Control and Prevention (CDC), COVID-19 tests can detect either the SARS-CoV-2 or antibodies that the body makes after SARS-CoV-2 infection.[172] Viral tests determine whether people have an infection.[173] Antigen or nucleic acid amplification tests (NAATs) are also viral tests.[174] Tests for antibodies will determine whether people have had a previous SARS-CoV-2 infection. The body creates antibodies after getting infected with or vaccinated against COVID-19.[175] Like wearing masks or social distancing, COVID-19 tests can be used as a

167. ICCPR, *supra* note 133, art. 17(1).

168. *Id*. art. 17(2).

169. U.N. Human Rights Comm., General Comment No. 16 ¶ 1, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I) (April 8, 1988) [hereinafter GC 16].

170. *Id*.

171. *Id*. ¶ 3.

172. *COVID-19 Testing: What You Need to Know*, CTRS. FOR DISEASE CONTROL & PREVENTION (Aug. 11, 2022), https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/testing.html.

173. *Id.*

174. *Id.*

175. *Id.*

preventive measure.[176]. More importantly, COVID-19 tests involve the right to health, especially the right to a system of health protection and the right to prevention of diseases. Testing can help people determine whether they are infected with COVID-19. Testing can also provide people with information about the risk of spreading the virus.[177] COVID-19 tests can then reduce or prevent the spread of the virus, which protects the community.[178] Moreover, under the right to health, people should be able to receive COVID-19 tests and states should have an obligation to provide them. However, these tests are expensive. Many states cannot provide free testing kits[179] or test services for their people.[180] Without testing, exercising the right to health is more difficult.

Recently, people have been screened to identify risk before participating in activities or entering countries.[181] Some places go so far as to require negative COVID-19 test results. For example, all travelers entering or transiting through Singapore, including Singapore citizens and permanent residents, must take either pre-departure COVID-19 polymerase chain reaction (PCR) tests or antigen tests.[182] The test must be conducted within two days before the scheduled departure date of their flight.[183] However, testing requirements may conflict with the expression of personal health or the right to privacy. Since the right to privacy can be defined as "the right not to have one's personal matters disclosed or publicized,"[184] these testing requirements may violate the right to privacy. But COVID-19 tests can identify those infected by the virus, and these individuals must then isolate from others.[185] With COVID-19 testing requirements, infected people cannot

176. *Why COVID-19 Testing Is the Key to Getting Back to Normal*, NAT'L INST. ON AGING (Sept. 4, 2020), https://www.nia.nih.gov/news/why-covid-19-testing-key-getting-back-normal.

177. *Id.*

178. *Id.*

179. *In Africa At-Home COVID Tests Are Scarce and Expensive, Help May Not Come Until Next Year*, PBS (Feb. 3, 2022), https://www.pbs.org/newshour/world/in-africa-at-home-covid-tests-are-scarce-and-expensive-help-may-not-come-until-next-year.

180. *Id.*

181. *See generally Interim Guidance for SARS-CoV-2 Testing in Non-Healthcare Workplaces*, CTRS. FOR DISEASE CONTROL & PREVENTION (last updated Oct. 5, 2021), https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/testing-non-healthcare-workplaces.html (recommending methods for employers to use to screen people who are entering the workplace).

182. *Travel Advisories*, SINGAPORE AIRLINES, https://www.singaporeair.com/en_UK/us/travel-info/covid-19/ (last visited Oct. 19, 2022) (providing an interactive webpage that allows travelers to check the COVID-19 testing requirements needed to travel to Singapore).

183. *Id.*

184. *Right to Privacy*, NOLO'S PLAIN-ENGLISH LAW DICTIONARY (1st ed. 2009).

185. *Coronavirus Disease (COVID-19): Home Care for Families and Caregivers*, WORLD HEALTH ORG. (Apr. 12, 2022), https://www.who.int/news-room/questions-and-answers/item/coronavirus-disease-covid-19-home-care-for-families-and-caregivers.

hide themselves and transmit the virus. Thus, COVID-19 testing requirements may not violate the right to privacy because they protect public health systems and society.

IV. THE RIGHT TO HEALTH IN COVID-19 VACCINES

The right to health is defined as the enjoyment of "the highest attainable standard of health."[186] In this context, the highest attainable standard of health should mean that people live in the state of complete physical, mental, and social well-being without diseases or infirmity. To help people live with these conditions, health protection should be used as an essential element. Health protection may be defined as "the protection of individuals, groups, and populations through the effective measures to identify, prevent, and mitigate the impacts of infectious diseases."[187] Thus, the "enjoyment of the highest attainable standard of health" should be interpreted as the right of people to gain health protection in order to prevent diseases, prolong life, or promote health. Such health protection can help people live normally without physical or mental suffering. Health protection should also be included in the scope of the right to health.

According to the WHO, access to essential medicines is part of the right to health.[188] However, the WHO does not state that the right to health includes access to essential vaccines.[189] Since the right to health encompasses the right to protection against diseases, access to vaccines should be included in the right to health. This is because:

> Vaccines are products that protect people against many diseases. . . . Different than medicines that treat or cure diseases, vaccines prevent [people] from getting sick with the disease in the first place. . . . Vaccines produce immunity to a specific disease. When [people] are immune to a disease, it means [they] are protected against that disease ([people] can be exposed to the disease without becoming sick).[190]

Thus, access to vaccines should be part of the right to health because it helps people achieve their health or live normally without diseases.

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186. *Human Rights and Health*, *supra* note 14.

187. SAM GHEBREHEWET ET AL., HEALTH PROTECTION PRINCIPLES AND PRACTICE 3 (2016).

188. Off. of the United Nations High Comm'r for Hum. Rights, *Fact Sheet No. 31: The Right to Health* 3 (2008).

189. *Human Rights and Health*, *supra* note 14.

190. *What Are Vaccines?*, IMMUNIZEBC, https://immunizebc.ca/what-are-vaccines (last reviewed Mar. 19, 2020).

Like other infectious diseases, the COVID-19 pandemic cannot end on its own.[191] Vaccines to prevent COVID-19 are the best hope for ending the pandemic.[192] They are also the crucial tool for controlling the pandemic.[193] Recently, the world has been pinning its hopes on COVID-19 vaccines produced by pharmaceutical companies, including Pfizer, Moderna, Johnson & Johnson, AstraZeneca, and Sinovac. Like other vaccines, these vaccines work by preparing an immune system to recognize and defend itself against infection.[194] When people receive the vaccine, it will trigger an immune response without the recipient having to experience sickness.[195] If people encounter the coronavirus later, the immune system will recognize the virus.[196] The system will be prepared to attack the virus.

In conclusion, COVID-19 vaccines involve the issue of the right to health.

A. The Right to Receive COVID-19 Vaccines

Since COVID-19 vaccines can protect people from becoming ill, the right to health should include the right to receive or have access to such vaccines. Effective vaccines can protect people who receive them by lowering their chances of contracting the virus.[197] Therefore, countries should allocate and distribute COVID-19 vaccines to their people.[198] Additionally, countries should have to ensure that these vaccines are safe,

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191. *See generally* Robert Hart, *WHO Chief Warns Vaccine Won't End COVID-19 Pandemic as Moderna, Pfizer Announce Early Successes*, FORBES (last updated Nov. 16, 2020), https://www.forbes.com/sites/roberthart/2020/11/16/who-chief-warns-vaccine-wont-end-covid-19-pandemic-as-moderna-pfizer-announce-early-successes/ (explaining that while vaccines help relieve pressure on the healthcare system and reduce deaths, they alone cannot end the pandemic).

192. *See COVID-19 Vaccines: Get the Facts*, MAYO CLINIC (Aug. 24, 2022), https://www.mayoclinic.org/diseases-conditions/coronavirus/in-depth/coronavirus-vaccine/art-20484859 (stating the benefits of COVID vaccines).

193. *What You Need to Know About COVID-19 Vaccines*, UNICEF (last updated June 6, 2022), https://www.unicef.org/coronavirus/what-you-need-to-know-covid-vaccine.

194. *Understanding How COVID-19 Vaccines Work*, CTRS. FOR DISEASE CONTROL & PREVENTION (last updated July 20, 2022), https://www.cdc.gov/coronavirus/2019-ncov/vaccines/different-vaccines/how-they-work.html.

195. *Id*.

196. *Id*.

197. Gabor Kelen & Lisa Maragakis, *COVID-19 Vaccine: What You Need to Know*, JOHNS HOPKINS MED. (last updated July 28, 2022), https://www.hopkinsmedicine.org/health/conditions-and-diseases/coronavirus/covid-19-vaccine-what-you-need-to-know.

198. *Access to COVID-19 Vaccines: Global Approaches in a Global Crisis*, ORG. FOR ECON. COOP. AND DEV. (Mar. 18, 2021), https://www.oecd.org/coronavirus/policy-responses/access-to-covid-19-vaccines-global-approaches-in-a-global-crisis-c6a18370/.

available, accessible, and affordable to all who need them.[199] This would result in widespread vaccination for COVID-19, reducing infection rates

Under human rights obligations, the right to receive COVID-19 vaccines should be exercised without discrimination.[200] In other words, vaccines must be available to everyone in a territory. If a country has sufficient vaccines to cover its population against the virus, the right to receive COVID-19 vaccines should not be limited to its citizens. The right to receive the vaccine should cover foreigners, refugees, and documented and undocumented immigrants. All should be able to receive COVID-19 vaccines, regardless of citizenship status. This right should extend to the vaccine booster. Thus, the idea of nationalism should not affect the right to receive COVID-19 vaccines. Otherwise, a country cannot control or stop the spread of COVID-19 in its territory. For example, in Canada, COVID-19 vaccines are available to everyone eligible to get the vaccine from federal, provincial, and territorial public health authorities.[201] The right to receive COVID-19 vaccines applies to all people in Canada, whether or not they are citizens. The Country also offers support for undocumented and migrant workers to receive COVID-19 vaccines.[202] The Canadian government provides "vaccine information in 16 languages as well as a hotline on WhatsApp to get one-to-one support through the process."[203]

COVID-19 vaccines should be available for free to everyone, including all citizens and foreigners because a country must protect against diseases or prevent the spread of viruses. A country has to find and allocate COVID-19 vaccines to all people in its territory.[204] Requiring people to pay for the vaccines may hinder vaccination rates. COVID-19 would then spread all over

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199. *Statement by UN Human Rights Experts Universal Access to Vaccines is Essential for Prevention and Containment of COVID-19 Around the World*, UNITED NATIONS (Nov. 9, 2020), https://www.ohchr.org/en/statements/2020/11/statement-un-human-rights-experts-universal-access-vaccines-essential-prevention.

200. *Id.*

201. *Vaccines for COVID-19: How to Get Vaccinated*, GOV'T OF CANADA (last updated Sept. 1, 2022), https://www.canada.ca/en/public-health/services/diseases/coronavirus-disease-covid-19/vaccines/how-vaccinated.html.

202. *COVID-19: Vaccination for Undocumented and Migrant Workers in Ontario*, NAT'L NEWCOMER NAVIGATION NETWORK (June 7, 2021), https://www.newcomernavigation.ca/en/news/covid-19-vaccination-for-ontario-undocumented-and-migrant-workers.aspx.

203. *Id.*

204. *Coronavirus Disease (COVID-19): Vaccine Access and Allocation*, WORLD HEALTH ORG. (last updated Aug. 6, 2021), https://www.who.int/news-room/questions-and-answers/item/coronavirus-disease-(covid-19)-vaccine-access-and-allocation.

the country.[205] Consequently, the country wouldfail to protect or fulfill the right to health.

B. The Right to Choose Effective and Adequate COVID-19 Vaccines

The right to health "includes the right to control one's health and body . . . and to be free from . . . non-consensual medication treatment."[206] This should mean that people are free to keep themselves safe or manage their health in an appropriate way. People can make decisions about health products or services provided by governments or private entities. More importantly, people can determine whether health products or services are safe, effective, and adequate for them. After consideration, people can choose to receive or refuse such health products or services. In other words, people can choose only high-quality health products or services. This decision is an exercise of the right to health. Accordingly, the right to health should include the right to choose effective and adequate products or services.[207] Since people have a right to receive high-quality treatment, countries have obligations to provide safe, effective, and adequate products or services for their people.[208] Countries must ensure that "health facilities, goods and services [are] scientifically and medically appropriate and of good quality"[209] Thus, countries must provide safe and effective vaccines for their citizens.

All COVID-19 vaccines approved for use by the WHO are safe and effective.[210] Each vaccine must have a high efficacy rate of 50% or above.[211] COVID-19 vaccines must be approved for use in each country as well. However, these vaccines are produced by many pharmaceutical companies. Thus, there are differences among the vaccines. For example, the Pfizer-BioNTech vaccine was 95% effective at preventing laboratory-confirmed

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205. Craig Spencer, *No, Vaccinated People Are Not 'Just as Likely' to Spread the Coronavirus as Unvaccinated People*, ATLANTIC (Sept. 23, 2021) https://www.theatlantic.com/ideas/archive/2021/09/the-vaccinated-arent-just-as-likely-to-spread-covid/620161/.

206. *Human Rights and Health*, *supra* note 14.

207. *Id.*

208. *Id.* According to Article 25 (1) of the Universal Declaration of Human Rights (UDHR):

> Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

209. GC 14, *supra* note 42.

210. *Vaccine Efficacy, Effectiveness and Protection*, WORLD HEALTH ORG. (July 14, 2021), https://www.who.int/news-room/feature-stories/detail/vaccine-efficacy-effectiveness-and-protection.

211. *Id.*

COVID-19 illness in people without evidence of previous infection.[212] The Pfizer-BioNTech vaccine is recommended for people aged 16 years and older.[213] The Moderna vaccine was 94.1% effective at preventing laboratory-confirmed COVID-19 illness in people who received two doses who had no evidence of being previously infected.[214] The Moderna vaccine is recommended for people aged 18 years and older.[215] Further, "[t]he vaccines from BioNTech-Pfizer and Moderna are so-called mRNA vaccines. They replicate individual proteins in human cells that are typical for the virus, and the body reacts to this by building up an immune defense."[216] They are strongly recommended because they are "safe and effective at preventing serious illness or death due to COVID-19."[217] The Moderna vaccine:

> [C]an be stored for up to 30 days in a normal household refrigerator. It does not need to be refrigerated to -70 degrees Celsius (-94 Fahrenheit) during transport like the vaccine from BioNTech-Pfizer vaccine. However, the latter can also be stored in the refrigerator for up to five days just before using it.[218]

According to interim data, "[t]he AstraZeneca/Oxford vaccine's efficacy in preventing symptomatic infections was 70.4%."[219] The AstraZeneca/Oxford vaccine "is not an mRNA vaccine like Moderna's and BioNTech-Pfizer's, but a vector virus vaccine. It uses a harmless cold virus common to chimpanzees as a transport mechanism. The vaccine transports the surface protein of SARS-CoV-2 to human cells, where it triggers an

212. Mark W. Tenforde et al., *Effectiveness of Pfizer-BioNTech and Moderna Vaccines Against COVID-19 Among Hospitalized Adults Aged ≥65 Years — United States, January–March 2021*, 70 CTRS. FOR DISEASE CONTROL & PREVENTION, MORBIDITY AND MORTALITY WEEKLY REP. 674, 674 (May 2021) https://www.cdc.gov/mmwr/volumes/70/wr/mm7018e1.htm.

213. *ACIP Evidence to Recommendations for Use of Pfizer-BioNTech COVID-19 Vaccine under an Emergency Use Authorization*, CTRS. FOR DISEASE CONTROL & PREVENTION (last updated Sept. 21, 2021), https://www.cdc.gov/vaccines/acip/recs/grade/covid-19-pfizer-biontech-etr.html.

214. Mark W. Tenforde et al., *supra* note 219.

215. *Overview of COVID-19 Vaccines,* CTRS. FOR DISEASE CONTROL & PREVENTION (last updated Oct. 24, 2022), https://www.cdc.gov/coronavirus/2019-ncov/vaccines/different-vaccines/Pfizer-BioNTech.html.

216. *FAQ: COVID-19 Vaccinations: What You Need to Know*, DEUTSCHE WELLE (last updated Jan. 13, 2021), https://www.dw.com/en/faq-covid-19-vaccinations-what-you-need-to-know/a-56042434.

217. Kelen & Maragakis, *supra* note 204.

218. *FAQ: COVID-19 Vaccinations: What You Need to Know*, *supra* note 261.

219. John Miller, *Explainer-How Does AstraZeneca's Vaccine Compare with Pfizer-BioNTech?*, REUTERS (last updated Dec. 30, 2020), https://www.reuters.com/article/us-health-coronavirus-vaccines-astrazene-idUSKBN2941P9.

immune response against the coronavirus."[220] Thus, the AstraZeneca/Oxford vaccine is cheaper than the Pfizer-BioNTech and Moderna vaccines.[221] Also, 149 countries have approved the AstraZeneca/Oxford vaccine.[222] As another example:

> The Johnson & Johnson vaccine is administered in a single dose and can be stored at normal fridge temperatures. . . . Johnson & Johnson said [recently] that the vaccine was 66% effective in preventing COVID-19 in a large late-stage global trial against multiple variants of the coronavirus. The level of protection of the vaccine varied from 72% in the United States, to 66% in Latin America and 57% in South Africa.[223]

Recently, 100 countries have approved the Johnson & Johnson vaccine.[224] Further, Chinese vaccines makers, Sinopharm and Sinovac, have produced COVID-19 vaccines. Sinopharm said that "its vaccine is 79% effective in preventing COVID-19 infections."[225] Ninety-three countries have approved the Sinopharm vaccine.[226] However, it is unclear whether and how effective the vaccine is. Recently, "[i]n the new Brazilian results, the [Sinovac COVID-19] vaccine [has been] found to be . . . 50.4% effective at

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220. *What You Need to Know About AstraZeneca's COVID-19 Vaccine*, DEUTSCHE WELL (Sept. 29, 2022), https://www.dw.com/en/faq-covid-19-vaccinations-what-you-need-to-know/a-56042434.

221. *Oxford-AstraZeneca Vaccine Is Cheaper Than Pfizer's and Moderna's and Doesn't Require Supercold Temperature*, THE CONVERSATION (last updated Nov. 24, 2020), https://theconversation.com/oxford-astrazeneca-vaccine-is-cheaper-than-pfizers-and-modernas-and-doesnt-require-supercold-temperature-150697.

222. *12 Vaccines Granted Emergency Use Listing (EUL) by WHO,* WORLD HEALTH ORG. (last updated Oct. 2, 2022), https://covid19.trackvaccines.org/agency/who/.

223. *Johnson & Johnson Applies to WHO for Emergency Use Listing of COVID-19 Vaccine*, REUTERS (last updated Feb. 19, 2021), https://www.reuters.com/article/us-health-coronavirus-johnson-johnson-wh-idUSKBN2AJ1DE.

224. *Johnson and Johnson Vaccine Approved Countries: Where Has The Janssen Vaccine Been Approved?*, WEGO TRAVEL BLOG (last updated Aug. 23, 2021), https://blog.wego.com/johnson-and-johnson-approved-countries/.

225. Gardy McGregor, *Why I Took China's Shinopharm Vaccine, Despite Its Lack of Data*, FORTUNE (last updated Feb. 5, 2021), https://fortune.com/2021/02/05/sinopharm-covid-vaccine-china-data-should-i-get-vaccinated/

226. *12 Vaccines Granted Emergency Use Listing (EUL) by WHO*, *supra* note 229.

preventing symptomatic COVID-19 infections."[227] Fifty-six countries have approved the Sinovac COVID-19 vaccine.[228]

When governments offer different COVID-19 vaccines, a question may arise as to whether people can choose the most effective and adequate vaccine for themselves. In this case, the right to health should be interpreted as the right to choose effective and adequate vaccines. Effective and adequate vaccines can help people build immunity and lower their chances of contracting the virus.[229] People can stay safe and reach "the highest attainable standard of health." Before receiving COVID-19 vaccines, people should be able to determine which are effective and appropriate for them.[230] If the vaccine is not appropriate for them, they can refuse to be vaccinated.[231] In some cases, people can refuse COVID-19 vaccines that cause serious side effects.[232] In addition, countries have obligations to provide effective health products and to help their people have normal health. Countries must ensure that people receive age-appropriate treatment. Thus, countries must allow their people to choose effective and adequate COVID-19 vaccines. Countries must provide sufficient information for their people to make an informed decision. Prohibiting people from choosing effective and adequate COVID-19 vaccines affects the right to health or "the enjoyment of the highest attainable standard of health."

Countries should terminate or suspend the use of COVID-19 vaccines if the vaccines are not safe and effective for their citizens. When COVID-19 vaccines cannot build immunity to coronavirus or when they offer ineffective protection, they are unsafe and ineffective. For example, South Africa received "one million doses" of AstraZeneca-Oxford COVID-19 vaccines and prepared to vaccinate their people.[233] However, South Africa halted AstraZeneca-Oxford vaccine use after evidence showed that "the vaccine did not protect clinical trial [participants] from mild or moderate illness caused

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227. *Sinovac's COVID-19 Vaccine Demonstrates 50.4% Efficacy in Brazilian Trial Data*, PMLIVE, http://www.pmlive.com/pharma_news/sinovacs_covid-19_demonstrates_50.4_efficacy_in_brazilian_trial_data_1361184#:~:text=Updated%20data%20is%20lower%20than%20previously%20reported%20efficacy%20rate&text=In%20the%20new%20Brazilian%20results,of%20at%20least%2050%25%20efficacy (last visited Sept. 26, 2022).

228. *12 Vaccines Granted Emergency Use Listing (EUL) by WHO*, *supra* note 229.

229. Kelen & Maragakis, *supra* note 204.

230. *What You Need to Know About COVID-19 Vaccines*, UNICEF (last updated June 6, 2022), https://www.unicef.org/coronavirus/what-you-need-to-know-covid-vaccine.

231. *Who Should NOT Get Vaccinated with these Vaccines?*, CTRS. FOR DISEASE CONTROL & PREVENTION (last updated Apr. 2, 2020), https://www.cdc.gov/vaccines/vpd/should-not-vacc.html.

232. *Id.*

233. *See generally COVID: South Africa Halts AstraZeneca Vaccine Rollout over New Variant*, BBC NEWS (Feb. 8, 2021), https://www.bbc.com/news/world-africa-55975052.

by the more contagious virus variant that was first seen."[234] The South African trial of AstraZeneca-Oxford vaccines, "conducted in about 2000 people, found such a low efficacy against mild and moderate disease, under 25%, that it would not meet minimal international standards for emergency use."[235] If the country still offers unsafe, inefficient, and inadequate vaccines, people should be able to refuse those vaccines. Unsafe, inefficient, and inadequate vaccines may violate the right to health of people.

C. The Right to Refuse COVID-19 Vaccines

The right to health is fundamentally based on human freedom, the dignity of people, and the absence of coercive constraint.[236] This right refers to "the right to control one's health and body" and "to be free from interference [such as] non-consensual medical treatment and experimentation."[237] The right to health also relates to the right to privacy and the right to personal autonomy.[238] This means that people are free to do anything regarding their health and body. People can refuse medical treatment or health interventions that governments offer. Meanwhile, governments cannot force people to receive medical treatment or health interventions. For example, chemotherapy can destroy cancer cells and may cause side effects.[239] Refusing chemotherapy is an exercise of the right to health. Cancer patients still have the right to control their health and body. Doctors cannot force cancer patients to receive chemotherapy. Therefore, the right to health should include the right to refuse medical treatment or health interventions.

Vaccines are one of the effective health interventions for COVID-19. They can reduce the burden of COVID-19 cases worldwide.[240] However,

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234. Benjamin Mueller et al., *AstraZeneca's Vaccine Does Not Work Well Against Virus Variant in South Africa*, N.Y. TIMES (last updated Mar. 16, 2021), https://www.nytimes.com/2021/02/07/world/africa/covid-vaccine-astrazeneca-south-africa.html.

235. Jon Cohen, *South Africa Suspends Use of AstraZeneca's COVID-19 Vaccine After It Fails to Clearly Stop Virus Variant*, SCIENCE (last updated Feb. 8, 2021), https://www.science.org/content/article/south-africa-suspends-use-astrazenecas-covid-19-vaccine-after-it-fails-clearly-stop.

236. *Human Rights and Health*, *supra* note 14.

237. *Id.*

238. *See generally* Babette J. Neuberger & Eric S. Swirsky, *Public Health and Informatics*, *in* ETHICAL HEALTH INFORMATICS: CHALLENGES AND OPPORTUNITIES 233, 247 (Laurinda Beebe Harman & Frances H. Cornelius eds., 3d ed. 2017) (discussing individual autonomy).

239. *A Medical Oncologist Explains the Benefits and Risks of Chemotherapy*, CANCER TREATMENT CTRS. OF AM. (Mar. 3, 2021), https://www.cancercenter.com/community/blog/2021/03/benefits-and-risks-of-chemotherapy.

240. *Statement on the Tenth Meeting of the International Health Regulations (2005) Emergency Committee Regarding the Coronavirus Disease (COVID-19) Pandemic*, WORLD HEALTH ORG. (Jan. 19,

during the COVID-19 pandemic, many people around the world are hesitant to receive COVID-19 vaccines.[241]

Liz Hamel writes that:

> [T]he main reasons are worries about possible side effects . . . , lack of trust in the government to ensure the vaccines' safety and effectiveness . . . , concerns that the vaccine is too new . . . , and concerns over the role of politics in the development process . . . .[242]

Many people believe that COVID-19 vaccines are unsafe and infringe on their human rights. Some people refuse to receive COVID-19 vaccines because of religious beliefs.[243] Anti-vaxxers[244] exist in many countries. A question arises whether the right to health should include the right to refuse COVID-19 vaccines. In fact, the right to health has been established as one of the human rights.[245] The right to health is also part of the right to privacy and the personal rights. The elements of the right include legal freedom and entitlement to act in a certain way.[246] Within the scope of the right, people can choose what to do or not to do. This means that people can still control their health and body. People can refuse non-consensual medication treatment or public health interventions. Therefore, people can refuse COVID-19 vaccines. Under this condition, governments may not force people to receive COVID-19 vaccines; they may merely convince their

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2022), https://www.who.int/news/item/19-01-2022-statement-on-the-tenth-meeting-of-the-international-health-regulations-(2005)-emergency-committee-regarding-the-coronavirus-disease-(covid-19)-pandemic.

241. *See* Karen Nikos-Rose, *A Third of Americans Say They Are Unlikely or Hesitant to Get COVID-19 Vaccine*, UC DAVIS (Jan. 29, 2021), https://www.ucdavis.edu/news/third-americans-say-they-are-unlikely-or-hesitant-get-covid-19-vaccine/ (highlighting a study from the University of California, Davis, which found that more than a third of people nationwide are either unlikely or hesitant to get a COVID-19 vaccine); *see also* Lauren Chadwick, *Why Do So Few People in France Want to Take the COVID-19 Vaccine?*, EURONEWS (last updated Jan. 19, 2021), https://www.euronews.com/2021/01/18/why-do-so-few-people-in-france-want-to-take-the-covid-19-vaccine (reporting that only 40% of people in France would get a COVID-19 vaccine if it were available).

242. Liz Hamel et al., *KFF COVID-19 Vaccine Monitor: December 2020*, KAISER FAM. FOUND. (Dec. 15, 2020), https://www.kff.org/coronavirus-covid-19/report/kff-covid-19-vaccine-monitor-december-2020/.

243. *See* Sean Dempsey, *Vaccination for COVID-19 – Can Employers Require Employees to be Vaccinated?*, LEXOLOGY (Dec. 9, 2020), https://www.lexology.com/commentary/employment-immigration/united-kingdom/lewis-silkin/vaccination-for-covid-19-can-employers-require-employees-to-be-vaccinated.

244. "Anti-vaxxer" refers to people who disagree with the use of vaccines for a variety of reasons. They typically deny the existence or validity of the science supporting their use in the general population.

245. *Human Rights and Health*, *supra* note 14.

246. *Id.*

people to get vaccinated. Governments should build confidence in COVID-19 vaccines by providing all information to their citizens.

D. Mandatory COVID-19 Vaccinations

According to the WHO, if every country vaccinates at least 70% of its population, the acute phase of the COVID-19 pandemic could end by mid-2022.[247] Though vaccines are important tools in in reducing COVID-19 rates, many people around the world refuse to be vaccinated against COVID-19. The total number of COVID-19 cases continues to climb. This could have an impact on economic growth, business, education, social life, and health systems. Some countries have imposed mandatory COVID-19 vaccines on their people.[248] These countries believe mandatory COVID-19 vaccines would resolve all the problems and help people return to normal life.

A question arises whether COVID-19 vaccinations can be mandatory. This question involves civil rights and countries' obligations. Although there is no particular rule to determine the priority, the obligation to respect the right to health should have priority over the obligation to protect the right to health.[249] Since countries have an obligation to protect the right to health of people, countries must prevent or control diseases in their territory. COVID-19 vaccines are used as health measures and interventions to prevent the spread of the virus and protect people."[250] On the other hand, countries still have obligations to respect the right to health of the people.[251] Countries must respect people's rights.[252] Under the obligation to respect, countries cannot force their citizens to do anything regarding their health and body.[253] Since

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247. *Achieving 70% COVID-19 Immunization Coverage by Mid-2022*, WORLD HEALTH ORG. (Dec. 23, 2021), https://www.who.int/news/item/23-12-2021-achieving-70-covid-19-immunization-coverage-by-mid-2022.

248. Austria introduced a COVID-19 vaccine mandate for adults beginning February 1, "the first of its kind in Europe, with maximum potential fines of up to 3,600 euros ($4,000) for people who do not comply after a series of reminders." Emily Schultheis & Geir Moulson, *Austrian Parliament Approves Vaccine Mandate for Adults*, ASSOCIATED PRESS (Jan. 20, 2022), https://apnews.com/article/austrian-parliament-covid-vaccine-mandate-8539164285f87443a8b80a213d2dacc0; Katharina Buchholz, *The Countries Where Covid-19 Vaccination Is Mandatory*, STATISTICA (Feb. 8, 2022), https://www.statista.com/chart/25326/obligatory-vaccination-against-covid-19/.

249. *Id.*

250. Oona Hathaway et al., *COVID-19 and International Law Series: Human Rights Law – Right to Health*, JUST SECURITY (Nov. 20, 2020), https://www.justsecurity.org/73447/covid-19-and-international-law-series-human-rights-law-right-to-health/.

251. *About the Right to Health and Human Rights*, OFF. OF THE U.N. HIGH COMM'R FOR HUM. RTS., https://www.ohchr.org/en/special-procedures/sr-health/about-right-health-and-human-rights (last visited Nov. 21, 2022).

252. *Id.*

253. *See International Human Rights Law*, OFF. OF THE U.N. HIGH COMM'R FOR HUM. RTS., https://www.ohchr.org/en/instruments-and-mechanisms/international-human-rights-

the right to health includes the right to refuse COVID-19 vaccines, people should not be forced to receive such vaccines.[254]

COVID-19 vaccinations may be mandatory for certain workers such as doctors, nurses, health workers, and health care facilities.[255] These professionals usually deal with COVID-19 directly. They are in direct contact with COVID-19 patients, which puts them at a higher risk of infection than the general population.[256] They are also more likely to transmit COVID-19 to others .[257] People still refuse COVID-19 vaccines while not complying with preventive measures such as wearing masks or maintaining social distancing.[258] There are no other ways to prevent or control the COVID-19 pandemic. Countries should be able to impose vaccine mandates because countries have an obligation to protect people's lives. Even so, countries must ensure that vaccines are safe and effective.

Recently, countries have used vaccine passports to prevent the transmission of COVID-19 and control human activities.[259] For example, when the COVID-19 pandemic erupted in the European Union (EU), travel in the bloc was not allowed. The EU eventually created the European COVID-19 travel certificate, or vaccine passports, to remove travel restrictions such as entry bans, quarantine obligation, and testing.[260] More importantly, vaccine passports are issued to all travelers who are vaccinated.[261] Vaccine passports can restore free movement.[262] However,

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law#:~:text=The%20obligation%20to%20respect%20means,groups%20against%20human%20rights%20abuses (last visited Nov. 21, 2022) ("The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights.").

254. *See* Daniel Rodger & Bruce P. Blackshaw, *COVID-19 Vaccination Should Not Be Mandatory for Health and Social Care Workers*, 28 NEW BIOETHICS 27, 27 (2022), https://www.tandfonline.com/doi/full/10.1080/20502877.2022.2025651.

255. Jill Rosenthal et al., *Mandatory COVID-19 Vaccination for Health Care Workers as a Condition for Medicare and Medicaid Participation*, CAP (Aug. 6, 2021), https://www.americanprogress.org/article/mandatory-covid-19-vaccination-health-care-workers-condition-medicare-medicaid-participation/.

256. *Healthcare Workers 7 Times as Likely to Have Severe COVID-19 as Other Workers*, BMJ (Aug. 12, 2020), https://www.bmj.com/company/newsroom/healthcare-workers-7-times-as-likely-to-have-severe-covid-19-as-other-workers/.

257. *Clinical Questions About COVID-19: Questions and Answers*, CTRS. FOR DISEASE CONTROL & PREVENTION (June 25, 2020), https://stacks.cdc.gov/view/cdc/89817.

258. Robert Hart, *By the Numbers: Who's Refusing Covid Vaccinations—And Why*, FORBES (Sept. 5, 2021), https://www.forbes.com/sites/roberthart/2021/09/05/by-the-numbers-whos-refusing-covid-vaccinations-and-why/?sh=281d7a4e52ea.

259. *Clarity Still Needed on Effectiveness of COVID-19 Vaccine Passports, Says UN Health Agency*, U.N. NEWS (Apr. 6, 2021), https://news.un.org/en/story/2021/04/1089082.

260. *All Details on EU COVID-19 Vaccine Passport Revealed: Here's What You Need to Know*, SCHENGENVISA NEWS (Sept. 21, 2021), https://www.schengenvisainfo.com/news/all-details-on-eu-covid-19-passport-revealed-heres-what-you-need-to-know/.

261. *Id.*

262. *Id.*

vaccine passports can restrict people who refuse COVID-19 vaccines. A question arises whether requiring vaccine passports infringes on the right to health. In fact, "a vaccine passport is some sort of documentation that proves an individual has received the required vaccination to engage in an activity, whether it be travelling or attending an event."[263] A vaccine passport is considered a health intervention which protects population health. Since countries are obligated to protect people's health and prevent diseases, requiring a vaccine passport is legally acceptable and can reduce the risk of transmission. People can also control their body and health. Thus, the requirement of a vaccine passport should not infringe on the right to health.

E. Priority

The right to health includes "the right to a system of health protection that gives everyone an equal opportunity to enjoy the highest attainable level of health."[264] Countries are also required to provide accessibility for their people.[265] The right to health is then based on the general principle of "equality" or "non-discrimination" which is considered a minimum core obligation.[266] This means that people can have equitable access to health facilities, products, and services without discrimination. Since medicines or vaccines can involve health facilities, products, and services, people should have the right to receive COVID-19 vaccines. Countries may have to prepare and ensure equitable access to COVID-19 vaccines for their citizens. Therefore, the right to receive such vaccines must be based on equality or non-discrimination. This should mean that the right to health or the right to receive the vaccine is exercised "without discrimination of any kind based on race, [color], sex, language, religion, political or other opinion, national or social origin, property, birth or other status such as disability, age, marital and family status, sexual orientation and gender identity, health status, place of residence, economic and social situation."[267] However, the COVID-19 vaccine supply is limited.[268] Not all people may receive COVID-19 vaccines equally, and, it may take time for everyone to receive the vaccine.[269] The

263. Raymond G. Lahoud, *A New Normal: The Reality of Vaccine Passports*, 11 NAT'L L. REV., 1–2 (2021).

264. *Human Rights and Health*, *supra* note 14.

265. *Id.*

266. *Id.*

267. *Id.*

268. *Key Things to Know About COVID-19 Vaccines*, CTRS. FOR DISEASE CONTROL & PREVENTION (last updated Feb. 9, 2021), https://stacks.cdc.gov/view/cdc/103760.

269. *See generally* Kelen & Maragakis, *supra* note 204 (discussing the number of COVID-19 vaccine doses a person receives in one year).

international community cannot wait until there are enough COVID-19 vaccines for everyone. Due to the urgency and wide-ranging effects of COVID-19, countries must use the current vaccine supply to halt the current pandemic.[270]

A question arises regarding how countries allocate and distribute COVID-19 vaccines to their people. Recently, the Strategic Advisory Group of Experts (SAGE) on Immunization of the WHO has created the Values Framework for the Allocation and Prioritization of COVID-19 Vaccination.[271] According to the document's executive summary:

> This Values Framework offers guidance globally on [the values and ethical considerations regarding] the allocation of COVID-19 vaccines between countries, and [offers] guidance nationally on the prioritization of groups for vaccination within countries while supply is limited. . . . The Framework also complements the principles on equitable access and fair allocation of COVID-19 health products . . . .[272]

The SAGE has also established the "Roadmap for Prioritizing Uses of COVID-19 Vaccines."[273] According to its Introduction, "the Roadmap suggests public health strategies and target priority groups for different levels of vaccine availability and epidemiologic settings."[274]

The Johns Hopkins Center for Health Security has published the Interim Framework for COVID-19 Vaccine Allocation and Distribution in the United States.[275] The Framework recommends "how to allocate and distribute the limited supply. . . which groups should be prioritized to receive the vaccine first and which groups can wait until later."[276] The report offers "an ethics

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270. *Benefits of Getting a COVID-19 Vaccine*, CTRS. FOR DISEASE CONTROL & PREVENTION (last updated Nov. 24, 2020), https://stacks.cdc.view/cdc/97780.

271. WORLD HEALTH ORG., WHO SAGE ROADMAP FOR PRIORITIZING USES OF COVID-19 VACCINES IN THE CONTEXT OF LIMITED SUPPLY 3 (Nov. 13, 2020), https://apps.who.int/iris/bitstream/handle/10665/341448/WHO-2019-nCoV-Vaccines-SAGE-Prioritization-2020.2-eng.pdf?sequence=1&isAllowed=y.

272. WORLD HEALTH ORG., WHO SAGE VALUES FRAMEWORK FOR THE ALLOCATION AND PRIORITIZATION OF COVID-19 VACCINATION 1 (Sept. 14, 2020), https://apps.who.int/iris/bitstream/handle/10665/334299/WHO-2019-nCoV-SAGE_Framework-Allocation_and_prioritization-2020.1-eng.pdf?ua=1.

273. WORLD HEALTH ORG., *supra* note 289, at 3.

274. *Id*.

275. *Publications: Interim Framework for COVID-19 Vaccine Allocation and Distribution in the United States*, JOHNS HOPKINS CTR. FOR HEALTH SEC. (Aug. 19, 2020), https://www.centerforhealthsecurity.org/our-work/publications/interim-framework-for-covid-19-vaccine-allocation-and-distribution-in-the-us.

276. Eric Toner et al., *Interim Framework for COVID-19 Vaccine Allocation and Distribution in the United States*, JOHNS HOPKINS CTR. FOR HEALTH SEC. (Aug. 2020),

framework that can be used to identify priority groups for SARS-CoV-2 vaccine allocation."[277] The National Academies of Sciences, Engineering, and Medicine has also established the Framework for Equitable Allocation of COVID-19 Vaccine. The report recommends that COVID-19 vaccine allocation be priority-based.[278] While resources remain scarce, a key strategy that has been used to allocate and distribute COVID-19 vaccines is prioritization.[279] Priority-based distribution is fair treatment because it serves people based on their needs. People will be treated differently than others based on their different needs. Still, each country may have to determine which groups of people to prioritize in allocating COVID-19 vaccines and what principles should apply.

In the prioritization process, countries should "treat the interests of all individuals and groups with equal consideration as allocation and priority-setting decisions are being made and implemented."[280] More particularly, countries need to give priority to worse-off individuals. The principle of equity should "ensure that vaccine prioritization within countries takes into account the vulnerabilities, risks, and needs of groups who, because of underlying societal, geographic or biomedical factors, are at risk of experiencing greater burdens from the COVID-19 pandemic."[281] Countries may also adopt the principle of reciprocity.[282] This principle means countries need to "[p]rotect those who bear significant additional risks and burdens of COVID-19 to safeguard the welfare of others, including health and other essential workers" or advance the development of COVID-19 vaccines and therapeutics.[283] This includes healthcare workers. As a result, priority groups should be: "frontline workers in health and social care settings; people over the age of 65; and people under the age of 65 who have underlying health conditions that put them at a higher risk of death."[284] In addition, countries should rely on the principle of equity.[285] This means that countries should "[d]evelop the immunization delivery systems and infrastructure required to

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https://www.centerforhealthsecurity.org/our-work/pubs_archive/pubs-pdfs/2020/200819-vaccine-allocation.pdf.

277. *Id.*

278. NAT'L ACADS. OF SCI, ENG'G & MED., FRAMEWORK FOR EQUITABLE ALLOCATION OF COVID-19 VACCINE 49 (Helene Gayle et al. eds., 2020).

279. *Access Allocation: How Will There be Fair and Equitable Allocation of Limited Supplies?*, WORLD HEALTH ORG. (Jan. 12, 2021), https://www.who.int/news-room/feature-stories/detail/access-and-allocation-how-will-there-be-fair-and-equitable-allocation-of-limited-supplies.

280. WORLD HEALTH ORG., *supra* note 289, at 19.

281. *Id.*

282. *Id.*

283. *Id.*

284. *Access and Allocation, supra* note 297.

285. WORLD HEALTH ORG., *supra* note 289, at 19.

ensure . . . access to COVID-19 vaccines, and which ensures equal access to everyone who qualifies under a priority group."[286] This can reduce higher rates of severe COVID-19 illness and protect those at higher risk of severe illness and death.

The right to receive or have access to COVID-19 vaccines should be based on priority while "its supply is usually limited due to finite manufacturing capacity, the slower speed of some technologies, and the logistical challenges of distribution and administration of the vaccine[s]."[287] The right to receive or have access to these vaccines should also refer to the process of prioritizing some groups over others to receive vaccines first.[288] This could mean that the right to receive or have access to vaccines should be based on considerations of medical risk, public health, societal and economic impact, and logistics. Moreover, ethics principles can be used in the right to receive or have access to COVID-19 vaccines. Ethics principles could also help to effectively allocate or distribute COVID-19 vaccines.[289] More particularly, the principle of "equality" or "non-discrimination" still applies to the right to receive or have access to COVID-19 vaccines. In this context, it should mean that the prioritization is based on equality. All people should receive equal consideration for vaccine allocation. Those who qualify for vaccines under a priority criterion are offered the equal opportunity to receive COVID-19 vaccines.

F. Global Access to COVID-19 Vaccines

To end this pandemic, "a large share of the world needs" to receive COVID-19 vaccines.[290] However, "it could take years for most of the world's population to be immunized" against the coronavirus.[291] Available COVID-19 vaccines should be allocated to all people around the world. More importantly, COVID-19 vaccines should not be limited to countries that help produce the vaccines or to countries who have potential to purchase the

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286. *Id.*

287. Toner et al., *supra* note 294, at 1.

288. *See* Jon Cohen, *The Line Is Forming for a COVID-19 Vaccine. Who Should Be at the Front?*, SCIENCE (June 29, 2020), https://www.science.org/content/article/line-forming-covid-19-vaccine-who-should-be-front.

289. Nancy McClung et al., *The Advisory Committee on Immunization Practices' Ethical Principles for Allocating Initial Supplies of COVID-19 Vaccine – United States, 2020*, 69 MORBIDITY & MORTALITY WKLY. REP. 1782, 1782 (2020).

290. *Coronavirus (COVID-19) Vaccinations*, OUR WORLD DATA, https://ourworldindata.org/covid-vaccinations (last visited Oct. 20, 2022).

291. Claire Klobucista, *What to Know About the Global COVID-19 Vaccine Rollout So Far*, COUNCIL ON FOREIGN RELS. (Jan. 22, 2021), https://www.cfr.org/in-brief/what-know-about-global-covid-19-vaccine-rollout-so-far.

vaccines. In fact, all countries—regardless of their development or economic status—should have access to a share of vaccines once they are available. This means that less developed countries can receive COVID-19 vaccines during a serious global health threat.

Since the right to "the highest attainable standard of health" is one of the fundamental rights, the right to health is considered the global right which affects and applies to all people around the world.[292] The right to health should include global access to health products or services.[293] Such global access should be in the form of the global assistance or cooperation of developed countries or international organizations.[294] This is because less developed countries have insufficient capabilities and limited resources. Even though the equitable distribution of health products or services is a minimum core obligation, less developed countries may not be able to comply with their obligation. Less developed countries cannot fully protect and fulfill the right to health of their people.[295] Less developed countries have difficulties providing effective healthcare systems for their people.[296] Less developed countries may not provide access to health products or services for their people. In fact, they still need global cooperation and assistance from developed countries or international organizations to fulfill and protect the right to health.[297] The right to health should include the global assistance or cooperation of developed countries or international organizations.

In this context, the right to health should include global access to COVID-19 vaccines.[298] This means that the vaccines should be allocated or distributed to less developed countries even though they are unable to afford the vaccines. Global access to COVID-19 vaccines, in the form of global assistance or cooperation on vaccine production, allocation, or supplies, can result in timely access to vaccines for people in less developed countries.

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292. *Human Rights and Health*, *supra* note 204.

293. *Id.*

294. David P. Fidler, *International Law and Equitable Access to Vaccines and Antivirals in the Context of 2009-H1 N1 Influenza*, *in* THE DOMESTIC AND INTERNATIONAL IMPACTS OF 2009-H1N1 INFLUENZA A PANDEMIC: GLOBAL CHALLENGES, GLOBAL SOLUTIONSN(143 (2010).

295. Remigius N. Nwabueze, *The Legal Protection and Enforcement of Health Rights in Nigeria*, *in* THE RIGHT TO HEALTH AT THE PUBLIC/PRIVATE DIVIDE: A GLOBAL COMPARATIVE STUDY 371, 377 (Colleen M. Flood & Aeyal Gross eds., 2014).

296. UNITED NATIONS, DEPT. OF INT'L ECON. AND SOCIAL AFFAIRS, OVERCOMING OBSTACLES TO INSTITUTIONAL DEVELOPMENT IN THE LEAST DEVELOPED COUNTRIES 22 (1991).

297. *See generally* GEORGE MCGUIRE, HANDBOOK OF HUMANITARIAN HEALTH CARE LOGISTICS: DESIGNING THE SUPPLY NETWORK AND MANAGING THE FLOWS OF INFORMATION AND HEALTH CARE GOODS IN HUMANITARIAN ASSISTANCE DURING COMPLEX POLITICAL EMERGENCIES IN LOW-RESOURCE SETTINGS 31 (3d ed. 2015).

298. *See* Ingrid Nifosi-Sutton, *Realizing the Right to Health During the COVID-19 Pandemic*: *An Antidote to the Pandemic and the Catalyst for Fulfilling a Long-Neglected Social Right?*, 3 Y.B. INT'L DISASTER L. ONLINE 126, 147 (2022).

More importantly, international organizations or developed countries should have an important role in global assistance or cooperation.[299] This would aid less developed countries and promptly end the COVID-19 pandemic. Recently, COVID-19 Vaccine Global Access Facility, or COVAX, has been formed to allocate or distribute COVID-19 vaccines to all countries.[300] COVAX works with governments, manufactures, and partners to help people quickly receive vaccines.[301] It also ensures that countries have "access to COVID-19 vaccines once they are available, regardless of their wealth."[302] So far, COVAX has delivered a billion doses of the COVID-19 vaccine to 144 countries and territories across the world.[303] Because of COVAX, many of the world's poorer countries promptly receive COVID-19 vaccines. COVAX has advocated for the right to health of people around the world as well.[304]

G. Global Inequality in COVID-19 Vaccines

"Equality" is an essential part of the right to health. In fact, the right to health includes "the right to a system of health protection that gives everyone equal opportunity to enjoy the highest attainable level of health."[305] It also includes equal and timely access to health products or services. However, the right to health is not the same for all people.[306] The right to health cannot provide the same outcomes and quality for all people. Rather, the highest attainable standard of health varies from country to country.[307] This is

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299. *Id.* at 153.

300. *COVAX Announces New Agreement, Plans for First Deliveries*, WORLD HEALTH ORG. (Jan. 22, 2021), https://www.who.int/news/item/22-01-2021-covax-announces-new-agreement-plans-for-first-deliveries.

301. For example, COVAX has managed to secure two billion doses from five producers, with options to receive more than a billion more doses. COVAX also announced the signing of an advance purchase agreement for up to 40 million doses of Pfizer-BioNTech vaccine. *COVAX Announces New Agreement, Plans for First Deliveries*, WORLD HEALTH ORG. (Jan. 22, 2021), https://www.who.int/news/item/22-01-2021-covax-announces-new-agreement-plans-for-first-deliveries.

302. Seth Berkley, *COVAX Explained*, GAVI (Sept. 3, 2020), https://www.gavi.org/vaccineswork/covax-explained.

303. *COVAX Delivers Its 1 Billionth COVID-19 Vaccine Dose*, WORLD HEALTH ORG. (Jan. 16, 2022), https://www.who.int/news/item/16-01-2022-covax-delivers-its-1-billionth-covid-19-vaccine-dose.

304. *See* Shoji Matsumoto, *A Role for International Law in Containing COVID-19: The Right to Health*, POL'Y CTR. OF THE NEW S., 5 (Sept. 2022), https://www.policycenter.ma/sites/default/files/2022-09/PP_15-22_Matsumoto.pdf.

305. *Human Rights and Health*, *supra* note 204.

306. ALLAN R. BREWER-CARIAS, CONSTITUTIONAL PROTECTION OF HUMAN RIGHTS IN LATIN AMERICA: A COMPARATIVE STUDY OF AMPARO PROCEEDINGS 242 (2009).

307. Priscilla Alderson, *Health and Children's Rights in* HANDBOOK OF CHILDREN'S RIGHTS: GLOBAL AND MULTIDISCIPLINARY PERSPECTIVES (first page) 204 (Martin D. Ruck et al., eds. 2017).

because the attainable standard of health incorporates several factors such as environment, technology, health facilities, medical infrastructure, medical care, and healthcare systems in each country. Thus, when countries have different capabilities, the attainable standard of health is different. Moreover, the capabilities of countries should be used to determine whether the right to health is implemented effectively and successfully.[308] Since developed countries have capabilities to offer effective healthcare for their people, they can reach the highest attainable standard of health. On the other hand, less developed countries may not be able to do so—they have fewer effective resources.[309] Their healthcare systems are less prepared to respond or deal with health issues. People in less developed countries may have less access to health services or healthcare than those in more developed countries.[310] In some cases, people in less developed countries do not have access to treatment for some diseases.[311]

COVID-19 vaccine distribution is based on fair and equitable access or allocation.[312] Nevertheless, the COVID-19 pandemic has caused global inequality[313] which affects the right to health. In particular, the allocation and distribution of COVID-19 vaccines escalate global inequality.[314] Developed countries stockpiled vaccine doses to protect their citizens first.[315] Developed

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308. Michael Da Silva, *The International Right to Health Care: A Legal and Moral Defense*, 39 MICH. J. INT'L L. 343, 347 (2018).

309. David H. Peters et al., *Poverty and Access to Health Care in Developing Countries*, 1136 ANNALS N.Y. ACAD. SCI. 161, 161 (2008) ("People in poor countries tend to have less access to health services than those in better-off countries, and within countries, the poor have less access to health services.").

310. *Id.*

311. Christophe Paquet, *The Big Challenge Is To Improve Poor Countries' Health Care Systems*, AGENCE FRANÇAISE DE DÉVELOPPEMENT (AFD) (Oct. 1, 2019), https://www.afd.fr/en/actualites/big-challenge-improve-poor-countries-health-care-systems-christophe-paquet.

312. *Access and Allocation, supra* note 297.

313. *See, e.g.*, Joseph Stiglitz, *Conquering the Great Divide*, 47 INT'L MONETARY FUND, FIN. & DEV. 3, 17 (Sept. 2020) (explaining how rich countries may have deprived poorer countries of access to the global supply of vaccines).

314. Emre Aytekin, *Vaccine Inequalities May Expose World to Immunity Gap*, ANADOLU AGENCY (Jan. 1, 2021), https://www.aa.com.tr/en/latest-on-coronavirus-outbreak/vaccine-inequalities-may-expose-world-to-immunity-gap-/2118821; *WHO Chief Warns Against 'Catastrophic Moral Failure' in COVID-19 Vaccine Access*, U.N. NEWS (Jan. 18, 2021), https://news.un.org/en/story/2021/01/1082362. Dr. Tedros Adhanom Ghebreyesus, the head of the WHO, recently warned that a "me-first approach" to COVID-19 vaccines on the part of some countries and manufacturers is putting equitable access to these lifesaving treatments at risk. He expressed his fear that "even as vaccines bring hope to some, they become another brick in the wall of inequality between the world's haves and have-nots."

315. Kate Kelland, *Rich Nations Stockpiling a Billion More COVID-19 Shots Than Needed: Report*, REUTERS (Feb. 18, 2021), https://www.reuters.com/article/us-health-coronavirus-vaccines-stockpili-idUSKBN2AJ00F.

countries purchased enough doses to vaccinate their entire populations "three times over" by the end of 2021.[316] Developed countries can provide the booster doses of COVID-19 vaccines for their people.[317] Developed countries can also encourage their people to receive vaccines even if some people those people refuse to be vaccinated.[318] On the other hand, less developed countries have limited access to COVID-19 vaccines.[319] These nations mainly have access to the vaccines through COVAX. While approximately 54.2% of the global population received at least one COVID-19 vaccine dose,[320] "over 40% of the world's population has not yet received the first dose" of a COVID-19 vaccine.[321] More particularly, the vaccination rate in less developed countries is less than 10%.[322] People in less developed countries may have to wait two years before they are vaccinated against COVID-19.[323] People in less developed countries are still at a high risk of contracting the virus. COVID-19 infections may still exist in less developed countries.[324] A failure to allocate or distribute COVID-19 vaccines in less developed countries may worsen the situation worldwide, making it nearly impossible to completely control the pandemic.[325] It may also affect the global economy.[326] Then, the right to health cannot create fair and equitable access to COVID-19 vaccines.

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316. *Amnesty: Rich Countries Have Bought Too Many COVID-19 Vaccines*, REUTERS (last updated Dec. 9, 2020), https://www.reuters.com/article/health-coronavirus-vaccines-idUSKBN28J1BE.

317. Abi Millar, *The Ethics of Vaccine Boosters*, PHARM. TECH. (June 29, 2022), https://www.pharmaceutical-technology.com/analysis/booster-vaccine-ethics/.

318. *Id.*

319. *See* Michael Shields & Stephanie Nebehay, *Just Give Us the Vaccines, WHO Pleads, As Poor Countries Go Wanting*, REUTERS (June 25, 2021), https://www.reuters.com/world/just-give-us-vaccines-who-pleads-poor-countries-go-wanting-2021-06-25/.

320. Deborah Gleeson, *Wealthy Nations Starved the Developing World of Vaccines Omicron Shows the Cost of This Greed*, THE CONVERSATION (Nov. 29, 2021), https://theconversation.com/wealthy-nations-starved-the-developing-world-of-vaccines-omicron-shows-the-cost-of-this-greed-172763.

321. Francesco Guarascio, *Global Vaccine-Sharing Program Reaches Milestone of 1 Billion Doses*, REUTERS (last updated Jan. 15, 2022), https://www.reuters.com/world/global-vaccine-sharing-programme-reaches-milestone-1-billion-doses-2022-01-15/ .

322. Umair Irfan, *Why Are Rich Countries Still Monopolizing COVID-19 Vaccines?*, VOX (Nov. 9, 2021), https://www.vox.com/22759707/covid-19-vaccine-gap-covax-rich-poor-countries-boosters.

323. T.V. Padma, *COVID Vaccines to Reach Poorest Countries in 2023-Despite Recent Pledges*, 595 NATURE 342, 342 (2021).

324. Giorgia Guglielmi, *COVID Was Twice as Deadly in Poorer Countries*, NATURE (June 28, 2022), https://www.nature.com/articles/d41586-022-01767-z.

325. *UN Analysis Shows Link Between Lack of Vaccine Equity and Widening Poverty Gap*, UNITED NATIONS (Mar. 28, 2022), https://news.un.org/en/story/2022/03/1114762.

326. *Vaccine Inequity Undermining Global Economic Recovery*, WORLD HEALTH ORG. (July 22, 2021), https://www.who.int/news/item/22-07-2021-vaccine-inequity-undermining-global-economic-recovery.

V. THE RIGHT TO HEALTH IN MEDICAL TREATMENT FOR COVID-19

According to the University of Wisconsin:

> Medical treatment means the management and care of a patient to combat diseases or disorder. Medical treatment includes:
>
> - All treatment not otherwise excluded (below).
> - Using prescription medications, or use of a non-prescription drug at prescription strength.
> - Using wound closing devices such as surgical glue, sutures, and staples.
> - Using any devices with rigid stays or other systems designed to immobilize parts of the body. Administration of oxygen to treat injury or illness.[327]

Furthermore, medical treatment should be included in the right to health.[328] When people have diseases or illness, they do not have a good state of health.[329] Medical treatment can cure people of diseases or relieve pain. When people recover from diseases and have no suffering, they will have a good state of health again. Medical treatment helps people return to a normal state of complete physical, mental, and social well-being. People should also have access to medical treatment when they need it. Medical treatment for COVID-19 also involves the right to health in several issues.

A. Access to COVID-19 Medicines

The right to health includes access to essential medicines.[330] More importantly, access to essential medicines is also a minimum core obligation.[331] According to the WHO, "[e]ssential medicines are those that satisfy the priority health care needs of the population. . . . They are selected

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327. *Medical Treatment Beyond First Aid*, UNIV. WIS. SYS., https://www.wisconsin.edu/workers-compensation/coordinators/osha-record/medical-treatment/ (last visited Sept. 26, 2022).

328. *Human Rights and Health*, *supra* note 14.

329. *Standing Up for the Right to Health*, WORLD HEALTH ORG. (Dec. 7, 2018), https://www.who.int/news-room/feature-stories/detail/standing-up-for-the-right-to-health.

330. *Access to Medicines and the Right to Health*, OFF. OF THE UNITED NATIONS HIGH COMM'R FOR HUM. RTS., https://www.ohchr.org/en/special-procedures/sr-health/access-medicines-and-right-health (last visited Oct. 18, 2022).

331. *Id.*

based on public health relevance, evidence of clinical efficacy and safety, and comparative costs and cost-effectiveness."[332] Further, "[e]ssential medicines are intended to be available within the context of functioning health systems at all times in adequate amounts, in the appropriate dosage forms, with assured quality and adequate information, and at a price the individual and the community can afford."[333] Based on the right to health, people are able to receive essential medicines for survival or palliative care. In addition, "access to medicines in health systems encompasses five dimensions of access: (1) availability; (2) affordability; (3) accessibility (geographical availability); (4) acceptability (rational selection and use); and (5) quality."[334] Under the right to health, people can then have the "right medicines of the right quality at the right price and at the right place."[335] People also have access to essential medicines "without risking financial hardship."[336]

Essential medicines that can be used to treat or cure COVID-19 include favipiravir, remdesivir, baricitinib, bamlanivimab, Paxlovid, molnupiravir, sotrovimab, and casirivimab/imdevimab.[337] Other drugs, such as Baricitinib, are "strongly recommended for patients with severe or critical COVID-19."[338] Some drugs, such as Sotrovimab, can lower the risk of hospitalization and for people who are at increased risk of severe COVID-19 illness.[339] Based on the right to health, people should be able to have access to those essential medicines to treat or cure COVID-19. People should also choose appropriate medicines for their health or condition. Meanwhile, countries should have to provide those COVID-19 medicines for people at a low price.[340] Countries should also provide equal access to COVID-19 medicines for all people.[341]

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332. *Essential Medicines in the Western Pacific*, WORLD HEALTH ORG., https://www.who.int/westernpacific/health-topics/essential-medicines (last visited Nov. 23, 2022).

333. *Id*.

334. Sachiko Ozawa et al., *Access to Medicines Through Health Systems in Low-and Middle-Income Countries*, 34 HEALTH POL'Y PLAN. 1, 2 (2019).

335. *Id*.

336. *Id*.

337. Towhidul Islam et al., *Comparative Evaluation of Authorized Drugs for Treating COVID-19 Patients*, 5 HEALTH SCI. REPS. 2 (June 13, 2022).

338. *WHO Recommends Two New Drugs to Treat COVID-19*, WORLD HEALTH ORG. (Jan. 14, 2022), https://www.who.int/news/item/14-01-2022-who-recommends-two-new-drugs-to-treat-covid-19.

339. *Id.*

340. *Pfizer to Offer Low Cost Meds and Vaccines to 45 Developing Countries*, CBC NEWS (May 25, 2022), https://www.cbc.ca/news/health/pfizer-low-cost-vaccines-poorer-countries-1.6465139.

341. *Helping Countries Ensure Equitable Access to Affordable Medicines*, WORLD HEALTH ORG., https://www.who.int/europe/activities/helping-countries-ensure-equitable-access-to-affordable-medicines (last visited Nov. 23, 2022).

A question may arise how specific COVID-19 medicines are allocated or distributed if its supply is limited. Like COVID-19 vaccines, its allocation or distribution should not be based on the general principle of equality or non-discrimination.[342] Instead, its allocation or distribution should be fair and equitable.[343] More particularly, its allocation or distribution should be based on the severity of the COVID-19 symptoms.[344] This is because "the severity of COVID-19 symptoms can range from very mild to severe. Some people may have only a few symptoms, and some people may have no symptoms at all . . . . Some people may experience worsened symptoms such as worsened shortness of breath and pneumonia."[345] Severe COVID-19 patients should then be given priority to receive the specific medicines. Moreover, elderly patients may have a higher risk of serious illness, and the risk increases with age.[346] COVID-19 patients "who have existing chronic medical conditions may also have a higher risk of serious illness."[347] Those patients should have priority to receive the specific medicines.

B. Health Services

Health services provide medical treatment or care to the public or a particular group of people. Access to health services is part of the right to health. This means that people should receive medical treatment or care to be free from diseases or illness. People can also have access to health services when the need arises. Countries have obligations to provide essential public health service for their citizens.[348] For example, if people have COVID-19 symptoms or participate in activities that increase the risk of COVID-19, governments should provide COVID-19 diagnostic testing for those people.[349]

Additionally, access to health services or treatment must be fair and equitable. This should mean that all people can receive same health services

342. *WHO Recommends Two New Drugs to Treat COVID-19*, *supra* note 356.

343. *Equitable Distribution of Vaccines, Equipment Only Way Out of Pandemic: WHO Chief*, U.N. NEWS (July 6, 2021), https://news.un.org/en/story/2021/07/1095332.

344. *WHO Recommends Two New Drugs to Treat COVID-19*, *supra* note 356.

345. *Coronavirus Disease 2019 (COVID-19)*, MAYO CLINIC (Aug. 27, 2022), https://www.mayoclinic.org/diseases-conditions/coronavirus/symptoms-causes/syc-20479963#:~:text=The%20severity%20of%20COVID%2D19,a%20week%20after%20symptoms%20start

346. *Id*.

347. *Id*.

348. BERNARD J. TURNOCK, ESSENTIALS OF PUBLIC HEALTH 82 (3d ed. 2016).

349. *Boosting the Availability of Affordable, Quality-Assured COVID-19 Tests*, UNICEF (Mar. 31, 2022), https://www.unicef.org/supply/stories/boosting-availability-affordable-quality-assured-covid-19-tests.

or treatment.[350] However, there have been a large number of COVID-19 patients. In some countries, many COVID-19 patients have severe illness and require hospitalization, but health services or hospitals are not enough for all patients.[351] Governments may not be able to offer fair and equitable access to health services or treatment for all COVID-19 patients.[352] Thus, access to health services or treatment should be based on the presentation and severity of the COVID-19 symptoms. Experts at Johns Hopkins have stated that "[f]or milder illness, resting at home and taking medicine to reduce fever should be sufficient."[353] The more severe cases require hospitalization, with treatment that might include supplemental oxygen, assisted ventilation and other supportive measures.[354] For example, according to the CDC:

> [N]ot all patients with COVID-19 require hospital admission. Patients whose clinical presentation warrants in-patient clinical management for supportive medical care should be admitted to the hospital under appropriate Transmission-Based Precautions. Some patients with an initial mild clinical presentation may worsen in the second week of illness. The decision to monitor these patients in the inpatient or outpatient setting should be made on a case-by-case basis. This decision will depend not only on the clinical presentation, but also on the patient's ability to engage in self-monitoring, the feasibility of safe isolation at home, and the risk of transmission in the patient's home environment.[355]

CONCLUSION

The COVID-19 pandemic can result in the further interpretation or development of the right to health. In this circumstance, the right to health should include COVID-19 preventive measures such as handwashing with soap and water, wearing of face masks, social distancing, covering of the mouth and nose when coughing, and avoiding touching of the face. People

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350. BETH PERRY BLACK, PROFESSIONAL NURSING: CONCEPTS & CHALLENGES 98 (7th ed. 2014).

351. Hummy Song et al., *How Hospitals Can Meet the Needs of Non-Covid Patients During the Pandemic*, HARV. BUS. REV. (July 14, 2020), https://hbr.org/2020/07/how-hospitals-can-meet-the-needs-of-non-covid-patients-during-the-pandemic.

352. *Id.*

353. Paul G. Auwaerter & Arturo Casadevall, *Treatment for COVID*, JOHNS HOPKINS MED. (June 15, 2022), https://www.hopkinsmedicine.org/health/conditions-and-diseases/coronavirus/coronavirus-treatment-whats-in-development.

354. *Id.*

355. *Clinical Questions about COVID-19: Questions and Answers*, CTRS. FOR DISEASE CONTROL & PREVENTION (lasted updated Sept. 26, 2022), https://www.cdc.gov/coronavirus/2019-ncov/hcp/faq.html.

may exercise their right to health to some degree by taking these measures individually, and countries should fulfill their obligation to provide for the right to health by adopting and enforcing these measures on a national scale or similar.[356] However, countries do not take or implement those preventive measures seriously.[357] They are concerned that those preventive measures such as social distancing would halt economic growth.[358] In addition, although the right to health on the preventive measures may conflict with other human rights, it should be given priority. This is because the preventive measures can significantly protect people from contracting COVID-19, and it can prevent the spread of the virus.

COVID-19 vaccines are important tools for ending the pandemic and may be used to interpret or develop the right to health. In fact, the right to health should include the right to receive or have access to COVID-19 vaccines because such vaccines can prevent infection and save lives. People should have the right to choose effective and adequate vaccines. They should also have the right to refuse COVID-19 vaccines. Such vaccinations may be mandatory for some groups, so countries may force their citizens to receive COVID-19 vaccines.[359] Moreover, the supply of these vaccines is limited. The right to health or the right to receive COVID-19 vaccines must be exercised with the general principle of non-discrimination.[360] Although the allocation of vaccines is based on prioritization, its process still requires equality or non-discrimination. There are also differences among COVID-19 vaccines.[361] People should be able to choose and receive safe, efficient, and adequate vaccines.

COVID-19 vaccines increase global inequality.[362] Developed countries can receive the vaccines whereas less developed countries cannot receive

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356. *See* Thamir M. Alshammari et al., *Are Countries' Precautionary Action Against COVID-19 Effective? An Assessment Study of 175 Countries Worldwide*, 29 SAUDI PHARM. J. 391, 408 (2021).

357. *WHO Chief Warns That Countries Are Not Taking Coronavirus Seriously: 'This Is Not a Drill,'* NEWS WIRE (June 3, 2020), https://www.france24.com/en/20200306-coronavirus-world-health-organisation-who-tedros-adhanom-ghebreyesus.

358. Badar Nadeem Ashraf & John W. Goodell, *COVID-19 Social Distancing Measures and Economic Growth: Distinguishing Short- and Long-Term Effects*, 47 FIN. RSCH. LETTERS 1 (June 2022) https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9167991/.

359. *See, e.g.*, John Letzing, *Are COVID-19 Vaccine Mandates Human Rights Violations?*, WORLD ECON. F. (Jan. 31, 2022), https://www.weforum.org/agenda/2022/01/are-covid-19-vaccine-mandates-a-human-rights-violation/.

360. *Human Rights and Health*, *supra* note 14.

361. Siegfredo R. Paloyo et al., *Prioritizing the Vulnerable over the Susceptible for COVID-19 Vaccination*, DEVELOPING WORLD BIOETHICS (2021), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8444782/.

362. Ravi Kanbur et al., *The Global Inequality Boomerang*, VOXEU (May 2, 2022), https://cepr.org/voxeu/columns/global-inequality-boomerang.

them.[363] This is because less developed countries may not be able to purchase COVID-19 vaccines without assistance or cooperation from developed countries or international organizations.[364] This could lead to the unequal allocation of COVID-19 vaccines. Since the right to health is considered the global right, it should refer to global assistance or access to COVID-19 vaccines.[365] The right to health should also ensure that these vaccines are based on fair and equitable access. All countries should receive vaccines equally. The right to health should then create equitable allocation and prohibit COVID-19 vaccine nationalism.

The right to health should include access to essential medicines that can treat or cure COVID-19. If the supply of COVID-19 medicines is limited, the allocation of the medicines should be based on the severity of COVID-19 symptoms. The right to health should also include access to health services or treatment for infected patients. This means that governments must provide fair and equitable access to health services and treatment. However, there have been a large number of COVID-19 patients in some countries. Those governments may be unable to provide fair and equitable access to health services and treatment for all COVID-19 patients. Access to health services or treatment should be based on the presentation and severity of the COVID-19 symptoms.

363. Amy Maxmen, *The Fight to Manufacture COVID Vaccines in Lower-Income Countries*, 597 NATURE 455, 455 (2021), https://www.nature.com/articles/d41586-021-02383-z.

364. *Lower-Income Countries and Indigenous Populations Receive WHO Assistance Amid the Ongoing Threat of COVID-19*, WORLD HEALTH ORG., (Aug. 20, 2021), https://www.who.int/news-room/feature-stories/detail/lower-income-countries-and-indigenous-populations-receive-who-assistance-amid-the-ongoing-threat-of-covid-19.

365. Ingrid Nifosi-Sutton, *Realizing the Right to Health During the COVID-19 Pandemic*, 3 YEARBOOK OF INT'L DISASTER L. 126, 145 (2020).