



The Right to Life and COVID-19

Stuart Casey-Maslen*

Abstract: The way in which authorities have dealt with the COVID-19 pandemic raises fundamental issues under the right to life. At the least, wilful failure to take reasonable steps to prevent deaths will violate the duty to protect life.

The way in which authorities have dealt with the COVID-19 pandemic raises fundamental issues under the right to life. At the least, wilful failure to take reasonable steps to prevent deaths will violate the duty to protect life.

That COVID-19 has direct relevance to the right to life is obvious to all given the global nature of the pandemic and the appalling loss of life it has engendered. But it is important to stress from the outset that it is not just those who have died as a direct result of coronavirus whose right to life may have been violated. Some of those who are severely affected may also have an arguable case as may those who did not receive life-saving treatment for other diseases as a knock-on effect of the response to COVID-19.

The right to life has three main components: two are substantive while the third is procedural. Each of these is relevant to COVID-19. The core rule pertaining to the right to life is the prohibition on arbitrary deprivation of life. A peremptory norm of international law, it is codified in Article 6(1) of the International Covenant on Civil and Political Rights ([ICCPR](#)) and numerous regional human rights instruments (e.g. Article 4(1) of the American Convention on Human Rights, Article 2(1) of the European Convention on Human Rights, and Article 4 of the African Charter on Human and Peoples' Rights). Arbitrary deprivation includes omissions and not

* Stuart Casey-Maslen is Honorary Professor at the University of Pretoria in South Africa where he teaches international human rights law and the law of armed conflict. His book, *The Right to Life under International Law: An Interpretive Manual*, was published by Cambridge University Press in September 2021. He teaches in the [EMA](#) programme at the Global Campus of Human Rights.

only acts; thus, a negligent failure to equip medical or emergency service staff with sufficient personal protective equipment (PPE), who then contracted COVID-19 and died, could fall under this rule. The provision of false information by national leaders—[Donald Trump](#) and [Jair Bolsonaro](#) come readily to mind—would also be relevant if their misadvice led foreseeably to deaths.

The second substantive component of the right to life is the duty to protect life. A state may be found to have violated that duty if they fail to exercise due diligence in the fight against COVID-19 and someone is affected even if he or she survives. That the right to life of a survivor may be violated was confirmed by the European Court of Human Rights in its [judgment](#) in the *Ilhan* case in 2000. In 2019, the Court's Grand Chamber confirmed in the [Nicolae Virgiliu Tanase case](#) that where the victim survived and does not allege any intent to kill, a complaint may be examined under Article 2 of the [European Convention](#). This is so,

firstly, whether the person was the victim of an activity, whether public or private, which by its very nature put his or her life at real and imminent risk and, secondly, whether he or she has suffered injuries that appear life-threatening as they occur.

Negligent action by the state when confronted with the current pandemic could certainly be considered under this principle. This goes beyond a minimal duty to [not knowingly contribute](#) to the spread of the virus.

This principle would also extend to those who were not treated for other diseases or morbidity as a result of misallocation of resources. Decisions by health authorities and health ministries will assuredly be subjected to review by domestic courts, regional human rights courts and other human rights bodies, such as the UN Human Rights Committee, in years to come. In its 2012 [Concluding Observations on Kenya](#), for instance, the Human Rights Committee made plain its concern regarding 'the continued reports of high rates of deaths resulting from AIDS and the unequal access to appropriate treatment for those infected with HIV'. The Committee also criticised the fact that HIV/AIDS prevalence among homosexuals was said to be 'partly attributable to the laws that criminalize consensual same-sex relationships and the societal stigmatization of this group that hampers access to treatment and medical care by this group'.

The duty to protect life leads to the third component of the right to life, that of accountability. The procedural component of the right to life, which derives from the duty to protect life 'by law', demands that there must be an appropriate investigation where a loss of life was suspicious or seemingly preventable. This is so, whether or not the state's direct involvement in the death is suspected or not. Thus, in its 2002 judgment in the [Mastromatteo case](#), the European Court of Human Rights' Grand Chamber reiterated that:

the positive obligations laid down in the first sentence of Article 2 of the Convention ... also require by implication that an efficient and independent judicial system should be set in place by which the cause of a murder can be established and the guilty parties punished (para. 89).

Inquests (official inquiries) into deaths related to COVID-19 will need to consider the core aspects of the right to life, including through the lens of public policy and health care, whether they like it or not. A wilful failure to do so will leave the state open to a human rights challenge. Expect caselaw on the right to life and COVID-19 to be significant in years to come. Given that globally, more than [5.5 million people](#) have already died directly from COVID-19 or COVID-related complications and that terrible mistakes were seemingly made in some circumstances, this is only right and proper. Learning the public health lessons of the COVID-19 response in each country, and holding accountable those who have acted recklessly or negligently, is the essence of good governance. Formal and [academic reviews](#) into lessons from the HIV/AIDS epidemic have shown that learning is possible as well as absolutely necessary.

In the United Kingdom, for instance, where the death toll from COVID-19 is the highest in Western Europe as of the time of writing, a public inquiry into the government's handling of the pandemic is soon to start. In October 2021, however, [a joint report](#) by the UK House of Commons' Science and Technology Select Committee and the Health and Social Care Select Committee, concluded that the initial response to the COVID-19 pandemic was 'one of the United Kingdom's worst ever public health failures'. As of writing, however, the formal, multiyear public inquiry had still to start.