

Political Rights in Times Of Pandemic – A Code of Conduct for City Governance

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Abstract. This paper discusses the implementation of a COVID-19 related Code of Conduct for local urban governments and argues that the code should consider a line-up of complementary political rights: Right to Political Participation and the related Access to information, as well as the Right to Health as the cornerstone of the Right to Life. The disconnect between day-to-day local policymaking and consideration for human rights appears inconsequential in the event of COVID-19 pandemic. Urban governments bear the in-depth understanding of the intricacies of their communities, which make them uniquely positioned to manage such a fast-moving and ever-changing emergency. Despite their vast and onerous responsibilities, they do so without the benefit of a human rights framework, which leaves local governments vulnerable to not only potential violations of political rights of the urban population but may also negatively impact the ability of public officials to effectively protect citizens in their response to the pandemic.

Keywords: *Local Urban Government, Code of Conduct, Right to Political Participation, Access to Information, Right to Life*

1. Introduction

The following article discusses the implementation of a COVID-19 related Code of Conduct for local urban governments. A Code of Conduct should consider a line-up of complementary political rights: Right to Political Participation and the related Access to information, as well as the Right to Health as the cornerstone of the Right to Life.

While local governments are widely considered to be the most accessible form of government, as opposed to centralized and national governments, they are widely ignored from conversations regarding the protection and promotion of human rights. City, municipal and local governments in several countries around the world have traditionally acknowledged their responsibility to protect human rights during policymaking processes and the delivery of services. However, the day-to-day work of local governments is rarely done using a human rights lens. Consideration for human rights in policymaking and the

understanding and awareness of international human rights laws sit at the national level of most governments¹. This traditional approach is challenged nowadays by the rise of what is known as “human rights cities” (mostly in the United States), with several cities adopting resolutions that they are “human rights cities”. Nevertheless, there is little follow-up to these resolutions and little understanding of how a human rights framework could be useful in developing and implementing local policies². Therefore, there is a persistent disconnect between local policymaking and human rights. The disconnect may be somewhat inconsequential in the day-to-day running of cities and local governments. However, it presents substantial and somewhat alarming consequences in the event of a global pandemic.

Local governments are uniquely positioned to managing pandemic response, being the closest level of government to citizens and bearing the in-depth understanding of the intricacies of their communities. Cities, towns, villages, and even rural

¹ Martha F. Davis, 'Cities, Human Rights and Accountability' in Barbara Oomen, Martha F. Davis And Michele Grigolo (eds.) *Global Urban Justice: The Rise of Human Rights Cities* (Cambridge University Press, June 2016).

² Michele Grigolo, *The Human Rights City: New York, San Francisco, Barcelona* (Abingdon, Oxon; Routledge, Routledge Advances in Sociology, 2019).

areas are heterogenous communities with vast differences in demographics, socio-economic challenges and infrastructure resources. Uniform policymaking at the level of centralized governments often does little to address this diversity, which is at best inefficient, at worse limits the effectiveness of policies aimed at the prevention and management of the COVID-19 pandemic.

2. Political Rights Responsibilities at Local Level – A Need for Consistency

While much discussion has focused on national issues, the reality of responding to a pandemic is very much an issue of multi-level governance, that involves a coordinated action of authorities at the international, national, regional and local level. Local governments are predominately, at least in Western democratic countries, at the heart of COVID-19 response, bearing responsibilities for public health promotion, the delivery of healthcare services, including vaccine rollouts, and for the enforcement of public health measures aimed at preventing the spread of disease. Covid-19 is a fast-moving and ever-changing emergency that requires urgent and immediate public response from governments. Therefore, it presents a unique challenge for multi-level governance systems where decisions are being made at the global level through the UN and World Health Organization (WHO) as well as at the national and local levels.

In many countries, as for example in Italy, local governments are at the forefront of pandemic response managing hospitals, public health education, and vaccine rollouts. An examination of Italy's pandemic response by Malandrino and Demichelis illustrates the uncertainty and confusion that can arise because of the multi-level governance, and how this confusion directly impacts citizens. The study noted a lack of alignment between the central government and regional and mayoral measures, which created uncertainty for officials, administrative bodies, and subsequently citizens³. Malandrino and Demichelis note that local-level governments are favourable for managing many aspects of the pandemic response as they have greater and more direct knowledge of the communities and the needs of their jurisdictions.

While not a criticism of multi-level governance structures, it is important to recognize the need for consistency across all levels of government, particularly when it comes to guaranteeing the fundamental human rights of citizens. Despite the vast and onerous responsibilities local governments have when it comes to implementing the policies set by centralized governments, they have limited input in the broader policymaking processes of COVID-19 response. Furthermore, when given the freedom to set and manage their responses, local authorities may be doing so without the benefit of a human rights framework.

The Council of Europe released a second edition of their Human Rights Handbook for Local and Regional Authorities with the aim to provide additional guidance to member communities in light of the COVID-19 pandemic⁴. The document acknowledges that local authorities are best positioned to understand citizens' needs. The Council also recognizes the challenges of multi-level governance when it comes to protecting the civil, political, and social rights of citizens. That said, the document is specific to members of the Council of Europe and similar guidance documents do not appear to exist for other liberal, western democratic countries. The lack of a framework leaves local governments vulnerable to not only potential violations of human rights but may also negatively impact the ability of public officials to effectively protect citizens in their response to the pandemic. Two main questions arise. Firstly, do local representatives receive the same education on human rights as decision makers? Secondly, in times of emergency, how is this multilevel enforcement of human rights manifested in the formulation of human rights obligations?

The Council of Europe's Human Rights Handbook for Local and Regional Authorities issued by the Congress of Local and Regional Authorities (Volume II) discusses the protection of social rights, with a consideration of the effects of the coronavirus pandemic.⁵ Despite its status as European soft law, the Handbook can be considered a source of inspiration for the future interaction between local authorities, their local residents and the central government. Similarly, in a more detailed manner, the United Nations' 'Policy Brief on Covid-19 in an Urban World' lists those issues

³ Anna Malandrino and Elena Demichelis, 'Conflict in Decision Making and Variation in Public Administration Outcomes in Italy during the COVID-19 Crisis' (2020) 6, 2, *European Policy Analysis* 138–46.

⁴ Council of Europe, *Human Rights Handbook for Local and Regional Authorities* (February 2019), <<https://rm.coe.int/human-rights-handbook-for-local-and-regional-authorities-vol1/168093aaf2>> accessed 8 February 2021.

⁵ Council of Europe, News 2020, *Social Rights: The Monitoring Committee adopts a Human Rights Handbook for Local Elected Official* (Strasbourg, 17 September 2020) <<https://www.coe.int/en/web/congress//social-rights-the-monitoring-committee-adopts-a-humanrights-handbook-for-local-elected-officials>> accessed 8 February 2021.

that require action at a time when “cities are bearing the brunt of the crisis”.⁶ The Policy Brief tackles politically delicate issues, such as: adequate housing to ensure social distancing, the need to protect public transport, as well as ensure the tackling of the increasingly evident inequalities.⁷

Crucially, the ‘Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis’ toolkit⁸ stipulates that curbing the spread of COVID-19 in order to ultimately protect life, allows bypassing ‘normal’ processes necessary for distinguishing the functions of local and central governments. Derogations in ensuring the protection of life in the current global public emergency can cause interferences with civil and political rights. It can also blur the lines between the obligations of local authorities and the state obligations in ensuring protection of the right to life.

A final relevant aspect relates to the interactions between political and socio-economic human rights. A recent enquiry about the protection, interpretation and enforcement of socio-economic rights on the level of national constitutions has rightly observed that these rights

are not interpreted or implemented in an institutional, ideological, or political vacuum. Specifically, the prospects for advancing economic and social rights in a given polity cannot be reduced to the constitutional domain alone, and may not be effectively analyzed in isolation from the concrete fiscal realities, legacies of welfare provision, historical influence of leftist political forces, public opinion on core matters of health care and education, or patterns of judicial behavior and executive-judiciary relations in that polity.⁹

While adhering to that view, this article claims that we also need to investigate the trajectories of intersections of political and socio-economic human rights on the level of local city governments.

3. Right to Political Participation and Access to Information

Participation rights are inextricably linked to other rights, such as the rights to education, information,

peaceful assembly, association, freedom of expression, opinion and vote. Among these rights, the COVID-19 related health risk is directly endangering the actual access to the rights to peaceful assembly (intended as non-digital, face-to-face gathering) and vote (except for the very limited number of countries which allow e-voting) because of the need of social distancing.

Furthermore, the prevalent view in the relevant literature is that participation in the democratic life of a polity is not just a matter of formal adherence to procedural aspects but of the quality of the democratic process. Citizen’s access to information and capability to evaluate the governmental action are crucial to it. A timely, relevant, and accurate information is critical to maintaining citizen’s trust in public officials. It ensures compliance with rules and regulations designed to prevent the spread of disease and guarantees the right of citizens to participate in governance processes while also holding governments accountable. Moreover, the access to information is indirectly endangered due to high level of scientific uncertainty about COVID 19. Citizen’s capability to evaluate the governmental action is hampered by 3 factors: gradual improvement of scientific knowledge about the virus; the related communicative complexity of scientific dissemination, and last but not least the intentional or unintentional misinformation.

Local city governments in several countries have successfully applied digital technology, using top-down strategies of population control and health measures enforcement. However, a balance of such strategies with a bottom-up approach is needed to allow the citizens to take their democratic rights back, realizing the provisions of art. 25 of the International Covenant on Civil and Political Rights¹⁰. Concretely, a bottom-up approach means that smart cities can become places where digital technology will allow citizens to take part in the conduct of local public affairs, to vote and be elected at genuine periodic elections and have access, on general terms of equality, to public service.

On the European level, the European Charter of Local Self-Governance acknowledges the

⁶ António Guterres, ‘Launch of Policy Brief on COVID-19 and Cities, COVID-19 in an Urban World’ <<https://www.un.org/en/coronavirus/covid-19-urban-world>> accessed 20 July 2021.

⁷ *Ibidem*.

⁸ Council of Europe, *Respecting Democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis* (SG/INF(2020)11, 7 April 2020) <<https://rm.coe.int/sg-inf-2020-11-respecting-democra>

[cy-rule-of-law-and-human-rights-in-th/16809e1f40](https://rm.coe.int/sg-inf-2020-11-respecting-democra-cy-rule-of-law-and-human-rights-in-th/16809e1f40)> accessed 15 February 2021.

⁹ Courtney Jung, Ran Hirschl & Evan Rosevear, ‘Economic and Social Rights in National Constitutions’ (2014) 62, 4, *The American Journal of Comparative Law*, 1089.

¹⁰ International Covenant on Civil and Political Rights, <<https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>> accessed 20 July 2021.

democratic role of communities.¹¹ The reliance on the Charter during the pandemic raised multiple questions that were discussed during the ‘Covid-19: local and regional authorities on the frontline’ event, in relation to four key points.¹² These include: 1) the maintenance of ‘the legitimacy of elected councils and elected representatives’; 2) striking ‘the right balance between centralised and decentralised action’; 3) ensuring proportionality between taking restrictive measures and maintaining democratic control; and 4) ensuring communication with citizens.¹³ This list can be summarised in one key point: the need to ensure the continuation of democratic processes in an increasingly restricted environment for the purposes of safeguarding life. The political tensions observed during the latest United States presidential election over the need for alternative voting systems to ensure protection of the population, together with a consistent misinformation campaign on the effects of the virus or the transparency of postal vote, was evidence of the potential political manipulation of the effects of this global emergency for the fulfilment of political aspirations.

Evidence from Israel shows an until now successful vaccination roll out, combined with a well-organized voting system. The overall outcome could be the precursor of the safeguarding of democratic processes in the next few months and years.¹⁴ Preparing for a national election in a pandemic, Israel has placed 38 polling stations in COVID-19 wards. According to the “Times of Israel”, Israeli government has set up 409 polling stations for sick people and 342 for the quarantined. They stipulated that people should vote at stations for the quarantined if they are feeling unwell — even if they aren’t officially in isolation. Some of the special stations are drive-through venues, where people won’t need to leave their cars [...] The number of people registered at each ballot box has been lowered from the regular

800 to 600 in order to reduce crowding. [...] Mask wearing will be compulsory, though officials may ask people to remove masks briefly, in order to check that their face matches the picture on their identity card¹⁵.

The procedures adopted by the Israeli government match the requirements of the UN Committee on the Rights of Persons with Disabilities. As it states in its Comment No. 1, para. 49, the states have positive obligations to create and promote accessible and non-discriminatory voting and electoral procedures, as well as support for the choices of people with disabilities in voting by secret ballot. Thanks to polling stations in COVID-19 wards, Israeli government has extended to the infected persons the guarantees that allow to the persons with disabilities “to stand for elections, to hold office effectively and to perform all public functions at all levels of government”.¹⁶ Similar practices should be adopted by other governments around the world that have to hold elections during pandemic. The local governments have a particularly important role in it, because of their direct knowledge of the communities and the needs of their jurisdictions.

In general terms, in the absence of legally binding instruments that specifically address the pandemic, case law and legally binding provisions that relate to other transboundary disasters (e.g. climate change, environmental degradation) and soft law instruments¹⁷ informs local governments over their responsibilities amidst such global life-threatening perils. In addition, the list of local governments’ duties includes ensuring the protection of the Right to Information and the Right to Participation amongst other procedural rights, are aligned with ‘the right to the city’ which includes the safeguarding of the quality of life.

There is an increase of legal action on the basis of human rights protection related to regulation and deregulation on curbing the pandemic, that inevitably will touch on the responses by local

¹¹ European Charter of Local Self-Governance <<https://www.congressmonitoring.eu/#:~:text=The%20European%20Charter%20of%20Local,with%20a%20number%20of%20principles>> accessed 15 February 2021.

¹² Council of Europe, Congress of Local and Regional Authorities, *Covid-19: local and regional authorities on the frontline* (7 December 2021) <[https://www.coe.int/en/web/congress/covid-19-local-and-regional-authorities-at-the-frontline#{"77302803":2}](https://www.coe.int/en/web/congress/covid-19-local-and-regional-authorities-at-the-frontline#{)> accessed 15 February 2021.

¹³ *Ibidem*.

¹⁴ Felicia Schwartz, ‘Israel’s Netanyahu Pins Election Hopes on Covid-19 Vaccine Drive’ <<https://www.wsj.com/articles/israels-netanyahu-pins-election-hopes-on-covid-19-vaccine-drive-11616410842>> accessed 31 March 2021.

¹⁵ Nathan Jeffay, ‘Socially distanced democracy: Israel votes in a pandemic’ (22 March 2021) *The Times of Israel* <<https://www.timesofisrael.com/socially-distanced-democracy-israel-prepares-for-pandemic-poll/>> accessed 26 August 2021.

¹⁶ For the Convention on the Rights of Persons with Disabilities see <<https://www.ohchr.org/en/hrbodies/crpd/pages/conventionrightspersonswithdisabilities.aspx>> accessed 26 August 2021.

¹⁷ UCLG Committee on Social Inclusion, Participatory Democracy and Human Rights, *European Charter for the Safeguarding of Human Rights in the City* (October 2012) <https://www.uclgcisdp.org/sites/default/files/CISDP%20Carta%20Europea%20Sencera_baixa_3.pdf> accessed 9 February 2021.

authorities. For example, in multiple jurisdictions, the requirement to vaccinate if one is a worker in social care and medical facilities, has become compulsory.¹⁸ Such rules, could inevitably affect local authorities, which in certain states are tasked with managing the social care and health care facilities within their authority. For example, the onus of such decision making at the local authority level is reflected by the fact that several Italian families are bringing action against local elected representatives for the handling of the pandemic in three severely affected Italian regions.¹⁹ They attribute the blame for the lives lost to the handling of the crisis.

In the absence of specific guidance, the case law serves as an example of the responsibilities of the local government in protecting the right to life as an emanation of the state. For example, the European Court of Human Rights has previously decided that the failure to inform community residents adequately over potential risks to their lives, ultimately led to a violation of the right to life. For example, in *Özel and Others v Turkey* the lack of information over the risk to life amidst environmental destruction led to a violation of the right to life (Article 2 of the European Convention on Human Rights).²⁰ Similar successful claims were raised in the case of *Öneryıldız v Turkey*, where the lack of measures at local level led to the fatal consequences of a methane explosion.²¹ The Court decided that these failings of the local authority ultimately led to a violation of the Right to Life by Turkey. Beyond the issue of taking measures to protect one's life including informing those under threat over the risks to their rights, the local authorities should also ensure that they take responsibility for their failures when these lead to an interference with one's rights.²²

Access to information is also a major hurdle in guaranteeing the right to health. The United Nations has called on countries to address the spread of misinformation, calling it an "infodemic". The critical knowledge of local governments in responding to pandemics can be key to guaranteeing the right to life. Further to the lack of

guidance regarding human rights at a local level, even less information or guidance related to the right to Access to Information exists. With the focus often on key rights such as right to life or right to privacy, the role access to information can play in the management of COVID-19 has been widely ignored.

Access to information is a qualified right, which may very much be to the detriment of the preservation of other rights. A clear interrelationship between the right to life and the right to access information can be drawn: if citizens cannot access information to inform potentially life-saving decisions, how much are governments really acting in a way that protects that right to life? If citizens are unable to access information due to their socio-economic position or lack of internet access, how can they access healthcare, housing, and education information and, thus, preserve those absolute rights? While Covid-19 might be the first global pandemic of our time, it is unlikely to be the last²³, which is why it is so important to address the ways in which access to information, or lack thereof, have led to deaths and, as such, are intimately tied to the right to life.²⁴ If governments seek to protect the lives of individuals, that response requires more than medical care and vaccines, it requires a coordinated approach to ensuring all peoples have unencumbered access to the information that can save lives. Given the rise of misinformation and populist ideologies, access to timely, relevant, and accurate information is even more critical to combat the deadly consequences of current and future "infodemics". The fact that the UN currently allows for the suspension of access to information in emergencies poses challenges for both the protection of life and the protection of democracy, as access to information is key to holding governments accountable for their actions. Therefore, it is fair to ask the question of whether Covid-19 should be a prompt for reconsidering the importance of access to information as a human right and for asking how local governments can contribute to the protection and promotion of this right.

¹⁸ 'Germany introduces mandatory vaccination for healthcare workers' (10 December 2021) Euronews <<https://www.euronews.com/2021/12/10/germany-introduces-mandatory-vaccination-for-healthcare-workers>> accessed 9 February 2021.

¹⁹ 'Relatives of Italian Covid victims to file lawsuit against leading politicians' (22 December 2020) The Guardian <<https://www.theguardian.com/world/2020/dec/22/relatives-of-italian-covid-victims-to-file-lawsuit-against-leading-politicians>> accessed 20 June 2021.

²⁰ *Özel and Others v Turkey*, App nos 14350 and 2 others, ECHR 17 November 2015.

²¹ *Öneryıldız v. Turkey* [GC], no. 48939/99, ECHR 2004-XII, 30 November 2004.

²² *Ciechońska v. Poland*, no. 19776/04, 14 June 2011 and *Öneryıldız v. Turkey* [GC], no. 48939/99, ECHR 2004-XII, 30 November 2004.

²³ Jennifer Edge, 'Issue Brief: Strengthening National Health Systems' Capacity to Respond to Future Global Pandemics' *Issue Brief* (Hamilton, Ontario: McMaster Health Forum, 2013).

²⁴ Kelly C. Vranas and Meeta Prasad Kerlin, 'Looking to the Past, Learning From the Present, and Preparing for the Future: Toward Understanding Critical Care Strain During a Global Pandemic' (2021) 159, 2, *Chest*, 469–70 <<https://doi.org/10.1016/j.chest.2020.10.035>> accessed 20 June 2021.

Local governments are uniquely positioned to address the digital divides that impact access to information, particularly during a pandemic. Local services, particularly public libraries, have spent the last decade or more seeking to bridge the digital divide for citizens by offering public internet access and a range of e-government services. As noted by Bertot, Jaeger, Langa & McClure, public libraries are increasingly serving as agents of e-government and increasingly play significant roles in emergency response by connecting to citizens to family and critical resources via the internet²⁵. This role of public libraries in providing access to information is particularly impactful in rural communities where broadband internet access may be limited. Petri argues that internet access through public libraries and other government-provided means should not be a privilege, but a human right that local governments can not ignore²⁶.

We have an additional challenge in that there are multiple sources of information related to the pandemic. This can also feed into misinformation and lack of trust in information coming from government sources or global bodies, such as the World Health Information. Before many governments were distributing information, universities were. Johns Hopkins University was really the first organization to begin collecting and sharing real-time cases of Covid around the globe. It does, however, beg the question of – is more information better? When there are multiple sources of information between the government, academia, private sector and the media, there are bound to be inconsistencies. Data is defined in different ways, and this can lead to distrust in information if sources are not consistent with each other.

Local governments are able to offer increased transparency in how data is collected and can reduce delays in the sharing of key data that may impact not only policy measures but the individual behaviours of citizens. Throughout the pandemic, local governments have been the primary collectors of data, particularly when it comes to hospitalization rates and death rates. As data moves upstream to centralized governments, there are inherently delays in reporting. Additionally, data collection and reporting methods differ from healthcare system to healthcare system added to

discrepancies as data from multiple sources is combined at the higher levels of government.

In 2021, the Organization of Economic Co-operation and Development (OECD) urged governments to focus on three key areas in order to increase preparedness for future pandemic: tackling misinformation, enhancing representation and improving governance²⁷. Access to information plays a critical role in addressing all three of these challenges, although it has largely been ignored, it warrants much consideration as either an absolute human right or an effective tool for pandemic management. Given the increased trust in local government over centralized governments, the immediacy of data availability and the specialized knowledge of citizens and the unique challenges communities face at a granular level, local governments are uniquely positioned to ensure the right to access to information and to use information as a measure in ensuring the right to life of its citizens.

4. Impact of Social-Economic Rights on the Right to Life

Focusing on the protection of the 'life of the nation' element of human rights law, this article aims at identifying the obligations of local governments in ensuring and examining human rights protection. The social determinants of health, namely food security, housing, safe potable water and sanitation issues have been highlighted and exacerbated by the pandemic in urban environments in a unique and peculiar way. A question seems mandatory: should supra-national and national governments pay extra-attention to the right to life of the city population, given that normal shortcomings usually result in even worse outcomes in large urban settlements?

The UN Office for the High Commissioner for Human Rights has previously given guidelines on the role of the local governance authorities in implementing and enforcing human rights obligations.²⁸ By recognising that the protection of human rights is primarily the responsibility of the central government, local governments bear the responsibility to promote human rights within their services rights within their services and the respect for human rights in society as a whole.²⁹ This role

²⁵ John Carlo Bertot, Paul T. Jaeger, Lesley A. Langa and Charles R. McClure, 'Public Access Computing and Internet Access in Public Libraries: The Role of Public Libraries in e-Government and Emergency Situations' (2006) 11, 9, First Monday <<https://ictlogy.net/bibliography/reports/projects.php?idp=1437>>.

²⁶ Claire Petri, 'Rural Libraries and the Human Right to Internet Access', in Brian Real (ed.) *Rural and Small Public Libraries: Challenges and Opportunities*, vol. 43,

Advances in Librarianship (Emerald Publishing Limited, 2017), 13–35.

²⁷ OECD, *Government at a Glance 2021* <<https://www.oecd.org/gov/government-at-a-glance-22214399.htm>> accessed 28 July 2021.

²⁸A/HRC/RES/24/2; A/HRC/RES/27/4; A/HRC/RES/33/8; A/HRC/RES/39/7.

²⁹ United Nations, Office for the High Commissioner for Human Rights, Local Government and Human Rights

includes awareness raising, education and training of public officials in the promotion and protection of human rights at a local level.

In a more detailed manner, the United Nations' Policy Brief on Covid-19 in an Urban World, lists those issues that require action at a time when 'cities are bearing the brunt of the crisis'.³⁰ The Policy Brief tackles specific issues as adequate housing to ensure social distancing, the need to protect public transport, as well as ensure the tackling of the increasingly evident inequalities.³¹ Major cities with millions of inhabitants are partially vulnerable: not infrastructurally, linguistically, or legally, but in its social practises, in its redistributive policies, in the everyday commute, in its nightlife, in its public transportation, in its use of the public spaces, in its organisation of space, in its norms of cohabitation. The codes of conducts of the cities decree a general inconsistency in terms of how rights, freedom, and social practises are perceived and implemented. Furthermore, health and the right to health do not coincide with having the best possible hospitals, possessing the brand-new technological equipment. Of course, that helps, but having a good system of health protection is something more than the health care in and of itself. A person, in order to enjoy the highest attainable standard of health, needs efficient social dynamics, running organisational networks, existing and effective goods, services, and facilities. This last understanding is not altogether that different from Amartya Sen's theorisation of capabilities: "The capability of a person reflects the alternative combinations of functioning the person can achieve, and from which he or she can choose one collection."³²

However, during a pandemic outbreak, the focus becomes the protection of the right to life and the interest in protecting life. Measures designed to curb the spread of the virus, are placed within the objective of protecting the life of the population and the life of the nation. The two are not synonymous. The former is adequately defined in international, regional and constitutional formulations. The latter is a more contested term. According to Fitzpatrick, a threat to the life of the nation is one that threatens "some fundamental element of statehood or

survival of the population".³³ Lord Hoffman clarifies that the use of 'the life of the nation' should be understood in a metaphorical sense, to mean the protection of the nation as a whole but not necessarily the protection of individual lives.³⁴ The distinction between the two and the discussion around the right to life through the eyes of critics and supporters of human rights are particularly relevant in light of derogations and exceptions whether under the international covenant or regional human rights systems.

Nyamutata suggests that the 'apocalyptic' language used to describe the pandemic by various state leaders, led to an assumption that life of the nation could be synonymous to life of the population.³⁵ He adds that the interpretation of the 'threat to the life of the nation' is significant in determining whether derogations should be allowed or not. In essence, the apocalyptic language, as Nyamutata describes it, leads to an assumption that the life of the nation is under threat of eclipse and therefore derogations should be allowed. But, what is the position on derogations when the 'life of the nation' is interpreted as the lives of the individual members of the population?

Nevertheless, at an international level we are able to identify the threshold set in relation to allowing derogations of human rights. More specifically, the Siracusa principles that set out the conditions under which rights can be limited, clarify that

public health may be invoked as a ground for limiting certain rights in order to allow a State to take measures dealing with a serious threat to the health of the population or individual members of the population. These measures must be specifically aimed at preventing disease or injury or providing care for the sick and injured.³⁶

If we choose to interpret the threat to 'life of the nation' as a threat to the lives of the members of the population by following the Siracusa Principles, then the Right to Life in the time of COVID-19 is discussed as a potentially absolute right, not dissimilar to how

<<https://www.ohchr.org/EN/Issues/LocalGovernment/Pages/Index.aspx>> accessed 8 February 2021.

³⁰ António Guterres, 'Launch of Policy Brief on COVID-19 and Cities, COVID-19 in an Urban World' <<https://www.un.org/en/coronavirus/covid-19-urban-world>> accessed 20 July 2021.

³¹ *Ibidem*.

³² Amartya Sen, *Capability and Well-Being: In the Quality of Life* (Oxford University Press, 1993) 31.

³³ Joan M Fitzpatrick, *Human Rights in Crisis: The International System for Protecting Rights during States of Emergency* (Philadelphia, University of Pennsylvania Press, 1994) 8.

³⁴ *A v. Secretary of State for the Home Department* [2004] UKHL 56, para 91.

³⁵ Conrad Nyamutata, 'Do Civil Liberties Really Matter During Pandemics? Approaches to Coronavirus Disease (covid-19)' (2020) *International Human Rights Law Review* 9, 62-98, 8.

³⁶ *Siracusa Principles on the Limitation and Derogation Principles in the International Covenant on Civil and Political Rights* (April 1985) American Association for the International Commission of Jurists, para. 25 <<https://documentsddsny.un.org/doc/UNDOC/GEN/G84/182/73/PDF/G8418273.pdf?OpenElement>>.

we address freedom from torture. The measures taken to protect life followed the rhetoric of war aligning the protection of the life of the population with the life of the nation. The decision to derogate from other human rights obligations in order to protect one's right to life fulfils some of the long standing criticisms of human rights. The right to life is treated as a natural right to which all individuals are entitled to, but other rights lose their 'entitlement' status in times of emergency and potentially their significance as human rights, if they fulfil long standing desires by the respective state such as curbing the right to freedom of expression. In addition, social and economic rights, which are highly relevant amidst the pandemic, are particularly hard to define as 'natural rights'. The goal of safeguarding life is the key goal here.

The burden is ultimately left on local city governments, which in the case of Covid-19 is executing the will of the central government. However, it has been demonstrated³⁷ that higher mortality rates due to Covid 19 in urban areas usually depend on socio-economic factors and not upon urban density: "COVID-19 is hitting hardest not in dense Manhattan but in the less-dense outer boroughs, like the Bronx, Queens, and even far less dense Staten Island"³⁸. This is an illuminating example of what exactly are the inequalities in the city and how Covid-19 has revealed them. The city can be dangerous in terms of health, not because of how many people live in it but for its unequal distribution of wealth, benefits, and costs:

the structural economic and social conditions of cities making them more or less able to implement effective policy responses. For instance, cities marked with inequalities, inadequate housing conditions and a high concentration of urban poor are potentially

more vulnerable than those that are better resourced, less crowded and more equal.³⁹

Covid-19 is, firstly, a revelatory agent and, secondly, an exacerbator of the inequalities within the city (and beyond). The virus reveals the existing deficiencies of contemporary social order: it accelerates them, magnifies them, and exacerbates them.⁴⁰

For example, to fight the spread of the virus it is necessary to wash your hands for at least 20 seconds. However, "2.5 billion people lack access to safe drinking water; equally distressing, 4.5 billion people, or more than half of humanity, have no access to adequate sanitation facilities"⁴¹. In terms of sanitary conditions of the city, the role of the pandemic is again that of revealing the existing inequalities. For instance, it has been clarified that Covid-19 virus can be transmitted through faecal sludge. To prevent contagion, the presence of an optimal management of water is fundamental (i.e., the usage freshwaters or the disposal of wastewaters). However, that does not seem to be the case for many highly dense urban areas, especially in developing countries and in poorer sectors of developed countries, with persistent and pre-existent issues of disposal facilities. Covid-19 is revealing the importance of the issue of wastewaters disposal:

It was estimated that about 829,000 deaths can be attributed to inadequate drinking water, sanitation and hygiene behaviours. Overly crowded, closely packed, decrepit housing units, devoid of basic needs such as clean water, toilets, sewers, drainage and waste collection, urban slums and informal settlements foster ideal environments for eruption and propagation of infections.⁴²

³⁷ See Shima Hamidi, Sadegh Sabouri and Reid Ewing, 'Does Density Aggravate the COVID-19 Pandemic?', (2020) *Journal of the American Planning Association*, 86, 4, 495-509; 506: "In this early and preliminary study, we find that density is not linked to rates of COVID-19 infection, after controlling for metropolitan area population, socioeconomic, and health care infrastructure in U.S. counties. Surprisingly, we find that COVID-19 death rates are lower in denser counties and higher in less dense counties, at a high level of statistical significance. This is likely due to better access to health care facilities and easier management of social distancing interventions such as sheltering in place."

³⁸ OECD, *City Policy Responses* (2020) 16 <https://read.oecdilibrary.org/view/?ref=126_126769yen45847kf&title=Coronavirus-COVID19-Cities-Policy-Responses>.

³⁹ *Ibidem*.

⁴⁰ See Lisa Forman, 'The Evolution of the Right to Health in the Shadow of Covid-19' (HHR Journal, 1 April

2020) <https://www.hhrjournal.org/2020/04/the-evolution-of-the-right-to-health-in-the-shadow-of-covid-19/#_edn11> "In many respects, this pandemic is deepening crises of social, economic, and health inequities created by decades of neoliberal economic supremacy. The neoliberalism which was only nascent 25 years ago now dominates global decision-making, manifesting in reduced health spending for all countries (including under austerity) and the growing deregulation, privatization, and commodification of health care like other social sectors" (quotations omitted)

⁴¹ Lyla Mehta and Claudia Ringler 'Covid-19 reveals and further increases inequalities in water and sanitation' Institute of Development Studies, 20 April 2020 <<https://www.ifpri.org/publication/covid-19-reveals-and-further-increases-inequalities-water-and-sanitation>>.

⁴² Deepshikha Pandey, Shelly Verma, Priyanka Verma, Biswanath Mahanty, Kasturi Dutta, Achlesh Daverey and Kusum Arunachalamc 'SARS-CoV-2 in wastewater: Challenges for developing countries' (2021)

This is a patent litmus test of how people in different socio-economic situations are affected differently by the pandemic. The pandemic is intensifying its effects to the vulnerable for “[g]ood nutrition is an essential part of an individual’s defence against Covid-19”⁴³. The issue is not only focused on shortages of food but even on how to organise the emergency:

In many countries, food prices are rising in cities, where the highest concentration of consumers can be found, even while food prices are declining in rural areas, where food is produced, aggregated, sorted, distributed and transported to urban and semi-urban markets. This disparity results because rural food supply is unable to connect with demand in cities and food-importing countries.⁴⁴

Furthermore, “the urban poor, whose dietary quality and conditions of living are seriously degraded”⁴⁵. Urban areas “with populations between 500 000 and 5 million inhabitants and [...] of more than 5 million inhabitants”⁴⁶, for their intrinsic complex system of food distribution, are more akin to be unable to respond efficiently and efficaciously to the challenges proposed by the virus:⁴⁷ In Dhaka, Bangladesh, one of the impacts of the COVID-19 crisis was a food crisis suffered by the urban poor due to large-scale economic losses that resulted from the closure of businesses and restrictions on movement across the city. Without opportunities to earn income, the poor faced unprecedented challenges to find enough food and became dependent on government assistance.⁴⁸

5. Conclusion

This article has tried to highlight the difficulties that city clusters experience when conveying their necessities, their own particular and unique difficulties and problematics with the national or

supra-national community. Their line of communication is mostly inconsistent with political dynamics of national parliaments or deliberative forums of international organizations.

On the other side, local urban governments lack a proper legislative power to promote policies consistent with their specific problems. Usually, the power (or burden) of city administrators relies exclusively upon administrative and budgetary control over various forms of economic and social allocation and distribution.

Yet, recent experiences have shown the benefits of relying on local authorities to address the crisis. Data from Asia suggests that local authorities are better placed to respond to the individual needs of their constituencies that could go beyond the pandemic itself.⁴⁹ This is manifested in developed large cities as well, where tier systems have been employed to respond to the varied threat to life faced in different geographic regions within each country. According to Dutta and Fischer, obvious link between the local authority and its constituents, as well as the desire to succeed in elections or re-elections, fear of public judgment as well as threat of loss of reputation, creates a heightened sense of accountability.⁵⁰ On the other hand, limiting the enjoyment of political rights by local authorities could lead to equal threats to the personal and political reputation of local authorities.

The significant role that local authorities play in strengthening the protection of human rights should be recognised. According to Durmuş, the local government is better placed to ‘localise human rights and bridge the gap between the universality and cultural relativism poles’.⁵¹ This ability becomes even more relevant during the pandemic, when information over the spread and address of the virus differed amongst communities, enhancing the differences (i.e. sources of information, cultural characteristics, language barriers) between different communities and the economic inequalities that can exist within the same locality.

International journal of hygiene and environmental health, 231, 113634, 3.

⁴³ Global Nutrition Report, *The 2020 Global Nutrition Report in the context of Covid-19* (2020) <<https://globalnutritionreport.org/reports/2020-global-nutrition-report-context-covid-19/>>.

⁴⁴ UN, *The Impact of COVID-19 on Food Security and Nutrition* (2020) p. 6-7 <https://www.un.org/sites/un2.un.org/files/sg_policy_brief_on_covid_impact_on_food_security.pdf>.

⁴⁵ *Ibidem*.

⁴⁶ FAO, *Cities and Local Governments at the Forefront in building Inclusive and Resilient Food Systems: Key results from the FAO survey “Urban Food Systems and COVID-19”* (2020), 4-5 <<http://www.fao.org/3/cb0407en/CB0407EN.pdf>>.

⁴⁷ *Ibidem*.

⁴⁸ *Ibidem*, 9 and 10: “Davao city government is purchasing food from local producers, repackaging and distributing it to the most vulnerable. This strategy, named “Buyback, Repack and Distribute” was designed to assist both small farmers and households living in urban areas, whose incomes have been affected by restrictions posed by COVID-19.”

⁴⁹ Anwasha Dutta and Harry W. Fischer, ‘The local governance of COVID-19: Disease prevention and social security in rural India’, *World Development* 138 (2021) 2.

⁵⁰ *Ibidem*.

⁵¹ Elif Durmuş, ‘A typology of local governments’ engagement with human rights: legal pluralist contributions to international law and human rights’ (2020) *Netherlands Quarterly of Human Rights* 38(1) 37.

