

初探健康人權視角下之防疫政策

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COVID-19與健康人權

- COVID-19 疫情中之人權審查大部分集中在限制個人自由以保護公共健康是否具有正當性，但疫情中國家應如何落實保障民眾最高程度可得健康水準（**highest attainable standard of health**）之權利、如何平衡自由權與健康人權之衝突或健康人權內部不同內涵之衝突，也應該加以重視
- 健康人權作為整合性權利（**an inclusive right**）之架構，可以提供疫情下衛生保健系統因應、廣泛公共衛生反應與社會連結之規範性基礎，並在人權框架下檢視公共健康與其他權利之衝突




具體化之健康人權內涵

- CESCR General Comment No. 14 para. 12 : The right to health in all its forms and at all levels contains the following interrelated and essential elements, the precise application of which will depend on the conditions prevailing in a particular State party:
 - a) **Availability**. Functioning public health and health-care facilities, goods and services, as well as programmes, have to be available in sufficient quantity within the State party...
 - b) **Accessibility**. Health facilities, goods and services have to be accessible to everyone without discrimination, within the jurisdiction of the State party. Accessibility has four overlapping dimensions:
 - Non-discrimination
 - Physical accessibility
 - Economic accessibility (affordability)
 - Information accessibility
 - c) **Acceptability**. All health facilities, goods and services must be respectful of medical ethics and culturally appropriate...
 - d) **Quality**. As well as being culturally acceptable, health facilities, goods and services must also be scientifically and medically appropriate and of good quality...



具體化之健康人權內涵

- General Comment No.14 para. 43 : [In] the Committee's view, **core obligations** include at least the following obligations:
 - a) To ensure the right of access to health facilities, goods and services on a 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, addressing the health concerns of the whole population...
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具體化之健康人權內涵

- General Comment No.14 para. 44 : The Committee also confirms that the following are **obligations of comparable priority**:
 - a) To ensure reproductive, maternal (pre-natal as well as post-natal) and child health care;
 - b) To provide immunization against the major infectious diseases occurring in the community;
 - c) To take measures to prevent, treat and control epidemic and endemic diseases;
 - d) To provide education and access to information concerning the main health problems in the community, including methods of preventing and controlling them;
 - e) To provide appropriate training for health personnel, including education on health and human rights.



COVID-19下之健康人權應用

- Ensure the right of access to health facilities, goods and services
 - 一般健康照護因COVID-19預防或治療措施而受到排擠時，政府是否有適當方案評估並因應嚴重疾病患者之健康照護需要？
- Take measures to prevent, treat and control epidemic/endemic diseases
 - 國家有義務提供適當且充份之疫苗以因應疫病發展
 - Progressive realization, accompanied with the burden to prove effective steps towards the full right to health realization has be taken within a reasonably short time (CESCR General Comment No. 3)
- To provide appropriate training for health personnel
 - 國家除有義務在疫情期間強化醫療體系能量，亦有義務提供健康照護專業人員適當之訓練與防疫設備



COVID-19下之健康人權應用

- 國際人權法上要求各國在最大程度上採取必要的預防和預防措施來對抗傳染病和流行病的傳播，因此對於限制自由之疫病防治措施可視為國家實踐健康人權保障之一環
- General Comment No.14 para. 28 : Issues of public health are sometimes used by States as grounds for limiting the exercise of other fundamental rights. The Committee wishes to emphasize that **the Covenant's limitation clause, article 4, is primarily intended to protect the rights of individuals rather than to permit the imposition of limitations by States.** Such restrictions must be in accordance with the law, including international human rights standards, compatible with the nature of the rights protected by the Covenant, in the interest of legitimate aims pursued, and **strictly necessary for the promotion of the general welfare in a democratic society.**



COVID-19下之健康人權省思

- 除健康照護面向，應同時檢視程序面向
 - CESCR General Comment No. 14 para. 8
 - **The right to health contains both freedoms and entitlements.**
 - The freedoms include the right to control one's health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation.
 - The entitlements include the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health.



COVID-19下之健康人權省思

- 除健康照護面向，應同時檢視程序面向（續）
 - Equality and discrimination（公平與不歧視）
 - Accountability（可論責性）
 - Participation（社會參與）
- 藉由健康人權保障建立社會信任
 - 促進公民參與擬定具有健康平等（health equity）措施之全球或國家防疫行動計劃，將有助於加強社會信任
 - 問責制有助於確立國家在契約訂定、預算規劃和醫療資源分配標準制定上之公開透明義務



COVID-19下之健康人權省思

- 1) 公平和不歧視
 - 藉由對弱勢群體權利之關注，避免防疫措施可能產生之偏見
- 2) 參與性
 - 納入受防疫措施影響之社區參與防疫政策制定過程，發展社區主導、尊重健康人權發展之公平之應對措施
- 3) 可論責性
 - 防疫措施之決策過程必須透明、明確溝通並接受問責，包括監督、獨立審查與適當補救措施
 - 由法院或國家人權機構獨立評估正當程序之落實、防疫措施之正當性與衛生系統之改進



COVID-19下之健康人權省思

- 納入客觀科學以外之主觀價值
 - 司法院釋字第690號解釋主張「傳染病相關防治措施，自以主管機關較為專業，由專業之主管機關衡酌傳染病疫情之嚴重性及其他各種情況，決定施行必要之強制隔離處置，自較由法院決定能收迅速防治之功」，似同意藉由傳染病防治法所授予政府之廣泛權力與監管彈性，以執行防治傳染病散播之必要措施
 - 但將防疫政策制定視為單純科學決策，可能忽略決策所附加之主觀價值判斷——如社會對不同決策結果所可能產生之期待價值（**expected values**）判斷可能與科技官僚不同——並導致政策規劃與執行之落差



COVID-19下之健康人權省思

- 納入社會連結（solidarity）之價值
 - 健康人權在防疫政策或行動上之落實，不應僅視為國家對民眾最高可達到健康水準之尊重、保障、與實踐義務，而應將其視為國家與民眾需共同承擔之目標；換言之，在疫病防治之複雜關係中，健康人權應注意到個體與他人、社會團體、政府、社會環境間之互動與連結為穩定防疫政策所不可或缺之要素
 - 但仍需注意社會連結或許能作為公共衛生危機下緩和健康人權不同衝突內涵之理論依據，並使「互助」成為可能；但社會連結也可能在社會中形成次團體、並形塑「我們作為合作者」與「他們作為不合作者」之區隔，甚至藉由身份、社區價值、特殊關係等潛在因素造成社會弱勢進一步受到傷害，並製造出新的弱勢群體



COVID-19下之健康人權省思

- 納入社會連結（solidarity）之價值（續）
 - UN與WHO均強調國際援助與合作（international assistance and cooperation）本即為健康人權之重要內涵，故在面對 COVID-19疫情時，健康人權之國際義務便要求國家必須能夠共享研究、醫藥品與醫療設備，並限制可能阻礙低度發展國家獲得防疫所需資源之經濟制裁、債務義務與智慧財產權制度，以建立全球框架下社會連結與信任



THANK YOU