**Mandate of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Killings**

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**#COVI19 HUMAN RIGHTS DISPATCH – NUMBER 3**

**CALL FOR A HUMAN RIGHTS ASSESSMENT OF**

**THE INTERNATIONAL COMMUNITY’S RESPONSE TO THE CORONAVIRUS PANDEMIC:**

***MULTI-DISCIPLINARY, MULTI-STAKEHOLDER, COMPARATIVE***

**Corona virus disease (Covid-19)** has taken the lives of hundreds of thousands of persons globally, the vast majority in the space of a mere three months or so. And its threat is far from over - in both spatial and temporal terms. Latin America is now experiencing the full brunt of it with others still to come, while the virus may flare again in countries that have already experienced its severity.

Covid-19 is no equalizer. It has fed on inequality and deepened it. It has ravaged people at their most vulnerable – in places of detention; in institutions for the elderly. It has wreaked havoc on victims of structural discrimination: on the homeless, the poor, those subjected to discrimination, people with least access to services, with the fewest resources: on those for whom lockdown meant knockdown.

Covid-19 has wrought collateral damage too. In its wake, patients have been left untreated as medical resources are diverted to fight the pandemic, leaving other conditions and contagions just as murderous as Covid-19 without the attention needed to continue the fight for their eradication. And, away from the spotlight, in war-ravaged countries and so many refugee camps, thousands are dying.

The economic cost of the pandemic is enormous, and it too will be paid in human lives. Around the world countries are seeing huge drops in their economic growth; unemployment is skyrocketing particularly among the most vulnerable of workers, including migrant and temporary workers; while hunger and food deprivation is resurfacing in places where it had been thought eradicated.

Civil and political rights are also under duress. States of emergencies have been declared along with international derogations from human rights treaty obligations. While temporary curtailment of some rights and freedoms in response to health emergencies are permitted, there is increasing evidence of Governments failing to limit their measures to those that are strictly necessary and proportionate, and there are proven risks that in the longer term these newly acquired “pandemic powers” will simply become hardwired into legal and political systems.

The pandemic has also tested governance and institutions at the international level. A coordinated global response to Covid-19 is the latest victim of a crisis that infected the multilateral system too, pitching one would-be superpower against another. The World Health Organization (WHO) – as it worked frantically to prepare and promote the best advice that medical science could offer – fell prey to a politization waged by major powers seeking to shield themselves from scrutiny for their own response failures. Meanwhile, the Security Council is missing in action. Other parts of the multi-lateral system may have fared better, rising to the challenge perhaps, but their voices have been drowned out by destructive rhetorical disputes between member States, acted out for both domestic and international audiences.

In response to aspects of the politics dogging the Covid-19 response, WHO Member States adopted by consensus, a resolution establishing an “*independent and comprehensive evaluation of the global response, including, but not limited to, WHO’s performance*”. A step in the right direction, that evaluation on its own is not enough. It should be joined immediately by a comprehensive, human rights-based examination of the key events leading up to, occurring during and resulting from the pandemic.

The challenges emerging from this exceptional time, and the damage it has wrought, will only deepen unless concerted efforts are made to learn its lessons more comprehensively, inclusive of but far beyond the bio-medical and public health domains alone. Indeed, over these last three months, as Special Procedures we have warned that the pandemic and aspects of Governments’ responses to the Covid-19 pandemic have both revealed, and resulted in, serious violations of international law, including of international human rights law; some of which may have been avoidable and preventable.

The extent and complex nature of the causes and consequences of the pandemic must be captured more completely. For the purpose of non-recurrence too, there must also be comprehensive accountability for the Covid-19 response, including for violations committed in its name. From a human rights standpoint, learning from experiences and taking subsequently needed steps for prevention of repetition are not alternatives or only ancillary to accountability but are core to it. We need and deserve that robust, public review, evaluation and learning in order to shape far more effective and more just and inclusive responses in the future.

We must also work to equip the world with the insights, tools and policies to address successfully the structural issues that have enabled the spread and pace of the pandemic and its deadly impacts. And we must put in place measures that can help avoid and prevent the governance and institutional failings that the pandemic has revealed.

National evaluations are essential. The international evaluation established by the WHO will also play its role. But the human rights and humanitarian questions and the many complex public policy choices underpinning these questions must be addressed systematically and globally.

Which is why I am calling for a **multi-disciplinary, multi-sectoral, comparative human rights-based assessment** of the international community response to pandemic. This review process should be established as soon as possible for the purpose of improving international policy and practice, enhancing public accountability and advising on reforms needed for the future.

Borrowing from the best of the methodologies now well established for human rights Commissions of Inquiry and those deployed when undertaking large scale multi-national programme evaluations, implementation of the Covid-19 response assessment could have the following characteristics:

1. In keeping with established principles, the assessment should be **independent,** **impartial** and **objective**. It must be rooted in the human rights and/or humanitarian principles of **non-discrimination**, **universality**, **indivisibility,** **interdependence and do no Harm**.
2. It should be **established** by one of either the UN Security Council, Human Rights Council, or Secretary General or another multi-lateral agency, such as the OECD. It could alternatively, be established as an independent entity, by a single State or group of States, operating on its own but with the full strategic support of others States, international organisations and non-State actors.
3. The **scope** of the assessment must focus on the multiplicity of human rights - including economic, social and cultural, but also civil and political - and humanitarian issues that sit at the heart of the response to the pandemic. It should incorporate an examination of complex public policy questions including those associated with: design, planning and implementation of responses to Covid19, the provision of medical and other assistance; creation and/or strengthening of services; mitigation measures to protect specific individuals and communities; and imposition of state of emergency and restrictions, such as restrictions on freedom of movement.
4. Its **mandate** should be to report publicly on its approach, process, findings and recommendations.
5. Its **membership** must be multi-disciplinary, being drawn from among diverse experts in such as public policy, evaluation, law, public health, humanitarian response and human rights and including those working in civil society, government sectors, academia etc.

However, a single strand approach to this assessment will not suffice, given the scope, complexity and global importance of the issues. There are precedents that can point the way.

I recommend that the overall approach for this assessment be along the lines of *the Joint Evaluation of Emergency Assistance to Rwanda*, to which, incidentally, I had the privilege of contributing.

To elaborate: Seven months after the Rwanda genocide began, in November 1994 the Danish Ministry of Foreign Affairs launched an unprecedented multinational, multi-donor evaluation. Its overarching objective was to “*draw lessons from the Rwanda experience, relevant for future complex emergencies as well as for current operations in Rwanda and the region, such as early warning and conflict management, the preparation for and provision of emergency assistance, and the transition from relief to rehabilitation and development”.*

The Rwanda evaluation, led by a Steering Committee composed of Member States, regional organisations, multilateral agencies, UN entities and international NGOs, commissioned four separate studies which were contracted to different institutions and experts. Their resulting reports addressed critical themes but the performance also of the international system as a whole and its recommendations led to significant developments in a range of areas, including for greater accountability of humanitarian actors.

The **Covid-19 response assessment** could be established under a similar approach, steered overall by a multi-disciplinary, multi-stakeholder international group and borrowing methodological discipline from both evaluations and investigations. The assessment’s steering group would then commission a number of specific studies to review the range of institutional, legal and policy implications. For example,

1. **Study one** could **assess** ***the Covid-19 response from an historical perspective*** *–* given the unique understanding that such comparative analysis offers. Humanity has experienced epidemics long before now and mustered responds to those crises. What lessons might have been learned? Which of the problematic consequences might have been avoided had lessons of the past been taken more seriously? These questions are essential if we are to more fully appreciate the significance too of the role played by stigma, discrimination and exclusions that more often have “plagued” epidemic responses. The purpose would be to identify more clearly history’s implications for the twenty first century, including key antecedents to effective and ineffective responses. The study would identify crucial longer-term dynamics - structural and historical forces - drivers not only of the virus itself, but of its spread, reach and our response to the same.
2. **Study two** **could center** on the ***legal and policy issues*** that the pandemic has raised for State responsibility to protect and respect the right to life in all its dimensions, including socio-economic. It should examine the applicable international legal frameworks, considering the legal implications of State action and inaction. While much has been said over the last three months about the various models of responses, the applicable international legal framework for those responses is an area of great complexity raising many as yet unanswered questions. This study’s purpose would be to elaborate on the meaning of State obligation to respect and protect rights, including the right to life, in the context of an epidemic. Such a study should not shy away from, but consider closely balancing exercises between various human rights and seek to advise on the best paths forward to address those.
3. **Study three** could be centered squarely on ***consequences of and for discrimination, inequality* and protection** in the context of the pandemic and response to it.This study would examine whether and how systemic discrimination, inequality and inequity may have constituted a terrain particularly favorable to the spread and impact of the pandemic. It could assess the ways in which inequalities and discrimination were, and were not, factored into pandemic responses. It should do so by identifying the specific experiences of and implications for populations subjected to discrimination and exclusion in the context of the various elements of the response – including access to essential services; lockdown/confinement; implications for standards of living and personal safety i.e. in the context of gender based violence and police use of force. This study’s purpose would be to consider the ways in which future crises responses could better anticipate and incorporate attention to these specificities so as to “leave no one behind.”
4. **Study four** could focus specificallyon ***response at the international level***, examining the international system of response to the pandemic, including specifically the roles played by the international community and its institutions. How prepared were international agencies including the United Nations? Extending beyond the evaluation commissioned by the World Health Assembly, this study would bring into view the question of the performance, including from a human rights perspective, of the wider multilateral system – at the regional and global levels. It could consider the contributions of its individual parts but also of the system as a whole, identifying and recommending on actions needed to enable better performance, bridge gaps and avoid duplication of effort.
5. **Study Five** would look ahead. Focusing on ***pathways to recovery***, this assessment would be derived from an in-depth analysis of the social and economic policies that allowed for the devastating and differentiated impact of the pandemic and advise on a framework of priorities for a human rights-based recovery from the pandemic’s immediate and medium-term effects, including its socio-economic consequences.

The **Covid-19 response assessment** would complement the evaluation commissioned by the World Health Assembly (more details below). It should be established promptly, adequately resourced and move quickly to preserve the evidence needed for learnings that support immediate action as well as assist efforts for prevention in the longer term.

**The evaluation of the response to the Rwanda Genocide**

The main objective of the Evaluation was to “*draw lessons from the Rwanda experience, relevant for future complex emergencies as well as for current operations in Rwanda and the region, such as early warning and conflict management, the preparation for and provision of emergency assistance, and the transition from relief to rehabilitation and development”*.

Four separate studies were contracted:

* Study I: Historical Perspective: Some Explanatory Factors (Nordic Africa Institute, Uppsala, Sweden)
* Study II: Early Warning and Conflict Management Chr. Michelsen Institute (Bergen, Norway and York University, Toronto, Canada)
* Study III: Humanitarian Aid and Effects (ODI, London, UK)
* Study IV: Rebuilding Post Genocide Rwanda (USAID, Development Alternatives Inc, Refugee Policy Group, Washington DC.

The studies concluded that the international community had failed to provide an effective political and military response to the genocide. In that context, humanitarian action was found to have became effectively a substitute for political action, with humanitarian agencies forced to work in extremely challenging, almost impossible, situations. The evaluation identified specific shortcomings and on this basis, helped focus attention on how best to address those, issuing strong recommendations, many of which were subsequently implemented with lasting results.

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**WHA review of the WHO-coordinated international health response to COVID-19**

In May 2020, the **World Health Assembly** commissioned, by resolution WHA73.1, an evaluation as follows:

*“….(10) to initiate, at the earliest appropriate moment, and in consultation with Member States, A stepwise process of impartial, independent and comprehensive evaluation, including using existing mechanisms, as appropriate, to review experience gained and lessons learned from the WHO-coordinated international health response to COVID-19 – including (i) the effectiveness of the mechanisms at WHO’s disposal; (ii) the functioning of the International Health Regulations (2005) and the status of implementation of the relevant recommendations of previous IHR Review Committees; (iii) WHO’s contribution to United Nations-wide efforts; and (iv) the actions of WHO and their timelines pertaining to the COVID-19 pandemic – and to make recommendations to improve capacity for global pandemic prevention, preparedness, and response, including through strengthening, as appropriate, the WHO Health Emergencies Programme;..”*