

Between Medical Precaution and Religious/Cultural Rights for Performing the Postmortem in the Time of COVID-19 Pandemic

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The coronavirus (COVID-19 pandemic) has brought disruption to the everyday life of human beings around the globe. The virus spread indiscriminately regardless of color, race, age, religion, gender, region, or any other social status. The situation of postmortem has posed questions for how to deal with the bodies of COVID-19 victims; how to balance between medical precaution of health risks and performing religious/cultural rights for the deceased and the family; whether government authorities, supposedly having duties to promote and protect human rights, restricting the right to decent postmortem cultural rights practice constitute human rights violations? The paper aims to address all questions brought forward. The paper concludes that where the division between private and public matters is no longer clear, where the government intervenes with this tradition using health and safety as reasons, human rights violations cannot be avoided. In all cases, right principles should prevail.

1. Introduction

As of 29 January 2021, the WHO reported 101,053,721 confirmed cases of COVID-19, including 2,182,867 deaths.¹ The pandemic which started in early 2020 in one place has been spreading indiscriminately throughout the globe. It was predicted that, despite the development of a COVID-19 vaccine and practice of vaccination in some countries, the number of deaths will rise on a daily basis, at least for the next few months. The coronavirus pandemic has brought disruption and uncertainty to everyday human life. It is a new infection that is not sparing anyone on the basis of color, race, age, region, gender, social status, religion, or any other discriminatory factor.² This situation has posed a number of questions: how to deal with the dead bodies of the victims who die due to this

infection?; will it spread to living people through the affected ones' dead bodies?; how to balance between medical precaution and religious/cultural rights in performing the postmortem during the COVID-19 pandemic for the deceased and the family?; whether government authorities, supposedly having duties to promote and protect human rights, have authority to restrict the right to decent postmortem cultural rights and if such a practice constitutes human rights violations? This paper aims to address all questions brought forward. Concepts of human rights will be clarified through cases from different countries, examined as part of the discussions.

2. Human Rights in the Time of COVID-19

The UN human rights bodies are among the first to remind States that human rights are to be respected and protected even during a pandemic.³ The Council of Europe may be the most vocal to reiterate to governments that human rights must be respected and democracy and the rule of law, which constitute the three founding pillars of the Council, must be upheld during the COVID-19 crisis. *“The virus is destroying many lives and much else of what is very dear to us. We should not let it destroy our core values and free societies,”* said the Secretary-General of the Council of Europe.⁴ The Council issued a Toolkit, which, among others, emphasizes the protection of fundamental human rights standards including freedom of expression, privacy and data protection, protection of vulnerable groups from discrimination, and the right to education.⁵ In fact, due to various measures introduced by States, including the imposition of emergency law, we witness deterioration of rights, including rights to freedoms, the right to education, the right to health care of some groups of peoples, as well as cultural rights and the right to freedom of cultural beliefs and practices. However, most discussions on rights during the pandemic focus mainly on the rights of living human beings not the deceased and families.

In April 2020, the UN Committee on Economic, Social and Cultural Rights issued a Statement on the coronavirus pandemic and economic, social, and cultural rights stating that *“the COVID-19 crisis poses a structural challenge to human rights that goes beyond the increased risk to certain rights, in this case above all the right to life and health. They are linked to the abuse of power in the name of the fight against the pandemic and to the limited access to justice.”*⁶ Such a Statement, although silent to address cultural rights issues of the deceased and the families, is important as it guards against the ‘abuse of power by the state’. Another document produced by the United Nations also issued in

April 2020 put the spotlight on three rights considered as at **the frontline** in the time of pandemic, including the right to life and duty to protect life, the right to health and access to health care, and the central challenge to freedom of movement.⁷ As protecting the right to life is the priority, everywhere restrictions are imposed including the organization of ceremonies of the deaths for fear that disease could be contacted from the dead bodies.

3. Restrictions and Rights in Performing the Cultural Rights of Postmortem

On 24 March 2020, the World Health Organization (WHO) released its guideline on “Infection Prevention and Control for the safe management of a dead body in the context of COVID-19.”⁸ The guidelines offer recommendations on the ‘safe and dignified burial procedures of deceased persons’ with suspected or confirmed COVID-19. These include, among others: (1) the lack of evidence of human transmission to subjects having become infected from exposure to the bodies of persons who died with/from COVID-19; (2) the option for decedents with confirmed or suspected COVID-19 to be buried or cremated; (3) respect of customs, with family's chance to view the body after it has been prepared for burials, using standard precautions at all times including hand hygiene; (4) body wrapping in cloth and deceased transfer as soon as possible to the mortuary area.⁹ How do some countries deal with the bodies of persons who died or suspected to die with/from COVID-19?

4. Case Studies

Italy

On 9 March 2020, Italy passed the Prime Minister's Decree n. 648, establishing urgent measures to contain the transmission of COVID-19 and prevent biological hazards, including very restrictive interventions on public Holy Masses and funerals. Italy banned burial procedures based (i) on the recent acknowledgment about the virus environmental stability as well as (ii) its national civil contingency plan. Hence, only the cremation process is admitted for COVID-19 deaths. Viewing of the body is permitted only for mourners, which are allowed to perform the prayer at the closing of the coffin and the prayer at the tomb (cf. Rite

of Succession, first part n. 3 and n. 5). The dead cannot be buried in their personal clothes; however, priests have been authorized to put the family clothes on top of the corpse, as if they were dressed. Burying personal items is also illegal.¹⁰

Due to a very high number of deaths in Italy, the government adopted the highest level of precaution. Strict measures that entail restrictions on freedoms, including freedom of movement and association inevitably affect the right to decent burials which can be distressing for families as funeral gatherings were not permitted and family members were either denied to participate at the burial as they themselves were, most of time, under quarantine; visiting to the body was equally forbidden.¹¹ In addition, since burial which is a cultural and religious practice in Italy is banned, only the cremation process was permitted for COVID-19 deaths. In order to minimize delays between time of death and cremation, deceased were taken straight to the cemetery where a brief rite of burial was celebrated. The time frame set by law from the death to the burial was up to 48 h. However, due to the unprecedented number of deaths, certain areas experienced a 30 minutes turnover procedure because of the pressure created by the number of corpses.¹²

Sri Lanka

Sri Lanka is the country with largest population of adherents to Theravada Buddhism, which is the official religion, while Islam is a minority religion in the country. Sri Lanka is now facing the second wave of the virus and the Sri Lankan government has intensified its crackdown on Sri Lankan Muslims by forcing larger numbers of families into the cremation of their dead relatives. In fact, soon after the outbreak of COVID-19, the Sri Lankan government issued, on 31 March 2020, the fourth amendment of the Provisional Clinical Practice Guidelines on COVID-19 suspected and confirmed patients. The decision to make cremation mandatory followed alleged expert advice, including by the chief epidemiologist who claimed that burials could contaminate ground drinking water.¹³ As of 21 January 2021, 274 COVID-19 related deaths have been reported in Sri Lanka, with a significant number of the deaths belonging to Muslim minorities.¹⁴ Information indicates “*that cremation often takes place immediately upon the notification of the test results without granting family members reasonable time or the opportunity to cross check or receive the final test results. There have been several cases of cremations based on erroneous information about COVID-19 test results.*”¹⁵ In Islam, it is important that once a person dies, they are buried as part of their religious obligations. As a matter of fact, not

only Muslims but also Christians, and even a section of the majority Sinhala-Buddhist community bury their dead; however, there is no hard and fast rule among them, as is the case with the other two religious denominations.¹⁶

Indonesia

Indonesia hosts the largest Muslim population in the world with almost 90% of the population adhering to Islam. Among ASEAN Member States and Southeast Asia, Indonesia also has the highest number of COVID-19 infections and death toll in the region. Since the outbreak of the pandemic, there have been clashes between the relatives of the deceased and health personnel over the dead bodies. The country finds itself at odds with protocols put in place by the government to handle the bodies of victims of the pandemic. This has led to increasing incidents of bodies being taken from hospitals, rejection of COVID-19 health and safety procedures. The most publicized case is that of Muhammad Yunus, the 49-year-old Islamic preacher, whose cadaver was taken away less than 30 minutes after his death by force by over 150 people from a hospital in eastern Indonesia who thought it was impossible that he could have died from the coronavirus.¹⁷ He had always washed his hands, worn a mask, and followed health protocols issued by the government. After his death, his followers were determined to retrieve his body for what they considered a proper Muslim burial, saying, *“What we have done is noble in God’s eyes, but despicable in the eyes of the law.”*¹⁸ There have been reports of bodies of coronavirus victims stolen in places across Indonesia.¹⁹

In Islamic rituals which are commonplace in Indonesia, when someone dies, religion dictates that those practicing must usually bury their dead within 24 hours, with the bodies interred without a casket so they can lie on their right side facing the holy city of Mecca. Before the burial, the body is washed by family with soap and scented water, then wrapped in a seamless cloth that is tied at the head and feet. Cremation and embalming are forbidden. A wake is usually not held because prayers for the forgiveness of the dead are said at the gravesite.²⁰ But with corpses of coronavirus victims thought to possibly be contagious, government protocols for handling bodies have meant that rituals typically performed by families have fallen on the shoulders of those handling the country’s dead. While graves are dug, families must keep their distance, preventing them from performing burial rituals.²¹

5. Conclusions: Human Rights Dimensions of Handling the Deaths Victims of COVID-19

On 25 January 2021, a group of the UN experts on human rights issued a joint statement urging the Sri Lankan Government to end its policy of forced cremation of the COVID-19 deceased as it ran contrary to the beliefs of Muslims and other minorities in the country, and could foment existing prejudices, intolerance, and violence.²² The UN experts confirm that *“While we must be alert to the serious public health challenges posed by the pandemic, COVID-19 measures must respect and protect the dignity of the dead, their cultural and religious traditions or beliefs, and their families throughout.”*²³ The statement makes it clear that the imposition of cremation as the only option for handling the bodies confirmed or suspected of COVID-19 amounts to a human rights violation.²⁴ This also infers that the practice as imposed in Italy is also incompatible with human rights principles. In many cases, where issues of religious minorities are there, the practice amounts to violations of the right of religious minorities to carry out “the final rites” according to their own traditions.

Right to freedom of thought, conscience, and religion and beliefs is recognized by Article 18 of the International Covenant on Civil and Political Rights,²⁵ whilst cultural right is enshrined by the International Covenant on Economic, Social and Cultural Rights in its Article 15 which prescribes obligation of the state to recognize the right of everyone to take part in cultural life.²⁶ In addition, the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities²⁷ recognizes in its Article 2 that these peoples have the right to enjoy their own culture, to profess and practice their own religion..., in private and in public, freely and without interference or any form of discrimination. They also have rights to participate effectively in cultural, religious, social, economic, and public life.

Whilst the WHO recognizes that there is no clear evidence of persons having become infected from exposure to the bodies of persons who died from COVID-19, as already mentioned, the interim guidance issued on 24 March 2020 states that the safety and well-being of everyone who tends to bodies should be the first priority. It further emphasizes, though, that *“it is a common myth that persons who have died of a communicable disease should be cremated, but this is not true. Cremation is a matter of cultural choice and available resources.”*²⁸ The guidance further prescribes that the dignity of the dead, their cultural and religious traditions, and their families should be respected and protected throughout; and that authorities should manage each situation on a case-by-case basis,

balancing the rights of the family, the need to investigate the cause of death, and the risks of exposure to infection.²⁹

While rituals regarding death have traditionally been a private matter in most if not all countries around the globe, the pandemic has caused the government to intervene with this tradition using health and safety as reasons. The division between private and public is no longer clear. There is an intrinsic link between the measures and the fight against the pandemic and various intrusive measures in the lives and rights of the population. But the right principles prevail as stated by the WHO, in the sense that the dignity of the dead, their cultural and religious traditions, and their families should be always respected and protected. The three cases in Italy, Sri Lanka, and Indonesia reveal the fragility not only of life but also of rights of human beings under *“enforced isolation and the painful deprivation of families to accompany their loved ones to the last farewell.”*³⁰

Notes

- ¹ WHO, WHO Coronavirus Disease (COVID-19) Dashboard, 29 January 2021, https://covid19.who.int/?gclid=CjwKCAiAgc-ABhA7EiwAjev-jys8R7kSbmXjqUurYc3vP09RYXloILmHmIjiMAszPpNTq8GlpkdJiRoCcssYQAvD_BwE [accessed 30 January 2021].
- ² Shahzadi Zain, Mulazim Hussain Bukhari, and Khalid Mahmood, Medical and Cultural Ethics for Deceased with COVID-19 for Performing the Postmortem or Religious Rituals and Burial in any Graveyard, Biomedica, Vol 36, COVID19-S2,2020, https://www.researchgate.net/publication/342819655_Medical_and_Cultural_Ethics_for_Deceased_with_COVID-19_for_Performing_the_Postmortem_or_Religious_Rituals_and_Burial_in_any_Graveyard, [accessed 26 January 2021].
- ³ See Statement made by the UN ESCRs Committee, n.6.
- ⁴ Council of Europe, Directorate General Human Rights and Rule of Law, Coronavirus: guidance to governments on respecting human rights, democracy and the rule of law, 4 August 2020, <https://www.coe.int/en/web/human-rights-rule-of-law/-/coronavirus-guidance-to-governments-on-respecting-human-rights-democracy-and-the-rule-of-law>, [accessed 26 January 2021]
- ⁵ Ibid.
- ⁶ Global Campus of Human Rights, COVID-19 and Economic, Social and Cultural Rights, posted on 30 June 2020, <https://gchumanrights.org/preparedness/article-on/covid-19-and-economic-social-and-cultural-rights.html>, [accessed 26 January 2021].
- ⁷ United Nations, COVID-19 and Human Rights: We are all in this together, April 2020, https://www.un.org/victimsofterrorism/sites/www.un.org.victimsofterrorism/files/un_-_human_rights_and_covid_april_2020.pdf, [accessed 26 January 2021].
- ⁸ WHO, Infection Prevention and Control for Dead Body Management in the Context of COVID-19: Interim Guidance cited by Silvia Ussai et al, Hazard Prevention, Death and Dignity During COVID-19 Pandemic in Italy, Front. Public Health, 18 September 2020, <https://www.frontiersin.org/articles/10.3389/fpubh.2020.00509/full>, [accessed 28 January 2021].

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- ⁹ Ibid.
- ¹⁰ Silvia Ussai et al, Hazard Prevention, Death and Dignity During COVID-19 Pandemic in Italy, *Front. Public Health*, 18 September 2020, <https://www.frontiersin.org/articles/10.3389/fpubh.2020.00509/full>, [accessed 28 January 2021].
- ¹¹ Ibid.
- ¹² Ibid.
- ¹³ OHCHR, Sri Lanka: Compulsory cremation of COVID-19 bodies cannot continue, say UN experts, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26686&LangID=E.25> January 2021, [accessed 28 January 2021].
- ¹⁴ Ibid.
- ¹⁵ Ibid.
- ¹⁶ N Sathiya Morrthy, Maldives: Discourse over burying Sri Lankan Covid dead turns Islamic, in Observer Research Foundation, 20 December 2020, <https://www.orfonline.org/expert-speak/maldives-discourse-burying-sri-lankan-covid-dead-turns-islamic/>, [accessed 28 January 2021].
- ¹⁷ Niniek Karmini and Victoria Milko, Burial traditions clash with coronavirus safety in Indonesia, AP News, 9 July 2020, <https://apnews.com/article/22764fc02d1974e78c844605a5170df1>, [accessed 29 January 2021].
- ¹⁸ Ibid.
- ¹⁹ Ibid.
- ²⁰ Ibid.
- ²¹ Ibid.
- ²² OHCHR, Op cit.
- ²³ Ibid.
- ²⁴ Ibid.
- ²⁵ OHCHR, International Covenant on Civil and Political Rights, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx> [accessed 29 January 2021].
- ²⁶ OHCHR, International Covenant on Economic, Social and Cultural Rights, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx> [accessed 29 January 2021].
- ²⁷ Refworld, Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities , <https://www.refworld.org/docid/3ae6b38d0.html> [accessed 29 January 2021].
- ²⁸ WHO, Infection Prevention and Control for the safe management of a dead body in the context of COVID-19, 24 March 2020, https://apps.who.int/iris/bitstream/handle/10665/331538/WHO-COVID-19-IPC_DBMgmt-2020.1-eng.pdf, [accessed 29 January 2021].
- ²⁹ Ibid.
- ³⁰ Silvia Ussai et al, Op cit.