

TRANSCRIPTION:

Human Rights and COVID-19: Lessons from the HIV/AIDS Pandemic (Luisa Cabal)

Christy Callaway-Gale (0:11): You're listening to RightsUp, a podcast from the Oxford Human Rights Hub. This episode is part of a special series on human rights and the COVID-19 pandemic. In this episode, we'll be looking at past responses to pandemics to guide our response to this current global crisis.

Mónica Arango Olaya (0:51): Welcome to the Oxford Human Rights Hub RightsUp Podcast. I am Mónica Arango and we are doing a series of podcasts on COVID and human rights. Today we have Luisa Cabal as our guest. Luisa has led the global portfolio on Human Rights and Gender at UNAIDS since 2015 and she is currently the Director of Community Support, Social Justice and Inclusion. UNAIDS recently published a report on the lessons learned from the HIV pandemic and the intersection with human rights. It is so timely to have you here. Thanks for agreeing to be with us today.

Luisa Cabal (1:24): Thank you for inviting me.

Mónica Arango Olaya (1:26): Well, as I said, UNAIDS just published a paper on the lessons learned from the HIV pandemic, as a guide to the response to the current COVID-19 pandemic. I think that for a lot of people listening, it may seem like HIV and COVID-19 are quite different. Why is it helpful to look at the HIV pandemic for lessons in this current global health crisis?

Luisa Cabal (1:47): We put the paper and the guidance out there because it's critical to apply lessons from 40 years of response and just to share some of the key lessons that can be applied to COVID. But there are lessons also from, for example, the Ebola response.

And I would start with one, which is central to a human rights-based approach, which is community participation, civil society engagement. In many occasions, the communities hold the solutions to address the issues that affect them. That became very clear with Ebola and also became very clear with marginalised communities in the HIV response. Key populations, in order to be effective... we needed to put them at the centre and we needed them to lead for the solutions. That's one key aspect of the lessons learned.

But we also learned, we need to combat all forms of stigma and discrimination, that come in many manifestations. In COVID, we've seen xenophobia, racism, so it's also a reminder that in our responses, and in government responses, non-discrimination, non-stigmatising campaigns, attitudes have to be placed at the centre.

And just to mention another one is, of course, how do we make sure that we remove barriers so that people are able to protect their own health and barriers around misinformation? That's one that comes at the front, at centre. But also, and I know we can talk and unpack this a little bit, one of the key areas where UNAIDS and partners and communities have worked is [in] times of crisis, right? The natural impulse is to focus or to resort to extreme measures, and at times are very strict, and at times punitive and coercive measures. And we learned this from the AIDS response by using, or overusing, criminal laws that then ended up further marginalising and stigmatising people.

Mónica Arango Olaya (4:01): You mentioned several interesting points there, and particularly the tension of human rights and the adoption of policies to enforce certain behaviour with a public health objective. Could you delve a little bit in[to] this tension, or if you see a tension to start with, between public health objectives and human rights?

Luisa Cabal (4:22): A human rights-based approach can seem in tension with, or antagonistic to, public health goals. And what I like to engage people in is that human rights allow, you know, for limitations, of rights at times of crisis, or for justified reasons, and we have clear guidance, in international human rights standards, around the boundaries of such limitations. And that's where we need to be clear, that if we allow for limitation or derogation of some rights, they have to be— of course, public health emergency is a legitimate purpose.

But we should be clear around the other requirements. We really need to guide interventions around questioning the proportionality of those measures to the aim, to the necessity in terms of, are they evidence informed? What is the evidence telling them? Very important around "time bound" — many of the measures we adopt at times of emergency then stay in the books; for example, in criminal law, for decades. And are they non-discriminatory? So what we try to do is really ask governments to push themselves not to just act— We understand, in many occasions, it's, you know, driven by that aim of protecting the public health of their people, but without looking at the consequences of some of those measures. So what we demand of governments is really, let's unpack and make sure that those measures follow these requirements.

Mónica Arango Olaya (4:28): This, of course, brings to the centre the right to health and the notion that it is a fundamental human right and that it should be guaranteed for everybody. In terms of context, for some years, European nations have reduced their health system infrastructure, or at least it has not been expanded, or other regions like Africa have difficulty providing even basic healthcare. This raises a lot of important questions about the role of the state in guaranteeing everyone's individual right to health. Resource allocation also is a part of that. Some governments, like Ireland, decided to take over the private healthcare sector to provide public healthcare. But places like the US, their entire health system is based on private healthcare. Do you see in COVID pandemic responses clarity on how the right to health should be protected and guaranteed?

Luisa Cabal (7:14): All of our work in the HIV response, and the work led by governments and by community activists that really pushed through the courts, through legislators, demanding more action... We really advocate to make sure that the right to the highest attainable standard of health is considered, and it's a core priority for every government. And you've rightly pointed out that this pandemic is really revealing the weaknesses of many systems, even in the most developed countries. HIV, like COVID, reveal[s] the fault lines in our societies, reveal who really is left behind. In COVID, we have seen, and unfortunately will continue to see, who are left behind; like the elderly, very affected, sometimes abandoned... What is going to happen in informal settlements when social spacing is not possible? So the pandemic reveals what are those cracks in the systems, in the health system? And it also helps us understand, how this pandemic exacerbates those inequities, and those inequities in access to healthcare services. But what I also like to say is that it's an opportunity to rethink. I think the Secretary General is going to... is pushing for a slogan or an understanding that we should be building better, right? That our rebuilding efforts, as we emerge, hopefully soon, from this crisis, we'll have left a rebuilding effort that builds better. And I do think that this applies to health.

Mónica Arango Olaya (9:19): You mentioned one key aspect of this pandemic is inequality and how poor people are definitely going to bear the brunt of the impact of this pandemic in a differential way, because either they live in informal settlements or, how you put it out, is they cannot have the luxury

of social distancing. And they're particularly vulnerable, unable to comply with some of the public health responses. How can governments be sensitive to these economic inequalities?

Luisa Cabal (9:49): Well, again, it's the weakness of social protection systems. If people are living day-to-day, if in many contexts people don't get sick leave, if people don't go outside to the streets, cannot sell their goods... Absolutely, this is revealing sort of, how are we going to... What are the... First of all the immediate measures— Many countries are providing, whether it's cash transfers, or scaling-up the access of basic food stuff, for the poorest people, mobilising to make sure that people have the basic food nutrition needs met.

But again, and I think in this regard, you know, UN entities such as the World Food Program are playing an important role in making sure that those poorest can have access to those services. But again, going to the "how", how can times of crisis remind us of what we need to build to make sure that we're going to rebuild more equitabl[y] and we're going to remove the inequalities that the sustainable development agenda is also promising. So as we rebuild, what are the social protection systems that can be put in place in the longer term?

Mónica Arango Olaya (11:30): You also mentioned women and the disparate impact of the pandemic on women. There's a clear rise in domestic violence, and care work has been shifted into the home, which is an additional burden on women. Also, another key question is access to reproductive and healthcare services. Do you see any good examples of government responses dealing with these issues right now?

Luisa Cabal (11:57): From where I sit, what we're trying to really promote, at this point, is supporting UN Women's efforts; they've played a critical role in providing guidance to countries around, what are the immediate actions that should be taken, as you mentioned, to, you know... there are issues around domestic violence, violence against women in the home, but also against children, that are rising. So what we're trying to do, we work in over 70 countries around the world, is send messages to our country offices, to be... who have a seat at the table, at a planning table, to make sure that one of the priorities is making sure that those supports, to prevent violence and to respond to it, are adequately put in place in the context of the response, and hopefully can give a basis, where there haven't been much services, a basis for rebuild.

And one of the areas I also want to touch upon is... I'll refer to HIV but I also find the linkages to reproductive health services— which is our staff in the front lines are working with communities who need antiretroviral therapy, and who in the context of quarantines, of shelter-in-place measures, couldn't go out to their health facilities to get their refills of their treatment. The same should apply to services, reproductive health services, that women need, whether it's contraception, or other types of services that they would need in any situation, but that the lack of access can be exacerbated in times of crisis.

What we don't want to see happen is what unfortunately has started to happen, which is using the COVID response as an excuse to put other measures in place. In Poland, for example, COVID responses have also included, I understand, increased penalties for HIV exposure and transmission. In Hungary, there are other measures around curtailing access to some therapies for transgender women. We have also heard about other restrictions around reproductive health services.

Mónica Arango Olaya (14:32): You mentioned there again the response of criminal law. UNAIDS has pushed against the criminalisation of HIV transmission, and there are a lot of lessons that can be learned about the use of criminal law in any health situation. Can you talk a little bit more about that?

Luisa Cabal (14:51): I think that, like other movements, we have learned that the state resorts to criminal law for several reasons; on HIV, it might be with the aim, or one of the aims, supposedly, of protecting public health. And we have learned that that does not work. It— criminalisation, overuse of criminal laws, further marginalises communities; it does not serve a public health purpose, it does not meet the aims it was created for, and it can be discriminatory. So what we have learned is not just areas of criminal law related to HIV, but also to most marginalised communities. For example, what we call in HIV "key populations", you know, people who use drugs, sex workers, transgender women, that in many contexts are criminalised. And what we have learned is that it cannot only be discriminatory, but it actually pushes communities underground, and pushes communities to the sidelines in ways in which they don't even seek access to healthcare because of fear of being punished or discriminated against. So one of our key lessons, again, is criminal law should be the last tool that governments resort to. And in contexts of sexuality, of reproduction, of HIV, we have learned that criminal law becomes a stigmatising tool, a punishing tool, that does not achieve any public health goal.

Mónica Arango Olaya (16:40): You mentioned here, again, a tension between, "how do we learn from this pandemic, to rebuild from a better place with the principle of equality?" and how do, when things get back to normal... we don't maintain situations, also, that could be problematic for human rights, like the ones that you've talked about. What principles should we follow here in order to understand which are the things that we should keep and which are the things that should not be allowed?

Luisa Cabal (17:12): I think that any measure that is limiting rights clearly has to be time-bound, and has to be revisited again and again and again, by a body, whether it's a court... the judiciary has to review this. And I like to also give the example of HIV-related travel restrictions; again, at a time of panic, governments, parliaments very easily passed laws, in many cases, banning or expelling people living with HIV, that still exist in many countries, or banning travel by entry... denying entry to people living with HIV. We still face the consequences of those bans that were put in place decades ago and are still in place. And so this should be a wake-up call to see... what are the measures that we're putting into place, so that... to make sure that if they make sense in a context of an emergency, a court of law is reviewing these measures to see if they're still necessary, if they're still proportionate, or they should be removed. We believe that oversight and accountability are critical as we look at the future.

Mónica Arango Olaya (18:39): Accountability mechanisms and remedies for right violations are, of course, at the centre of the UNAIDS report. How can these be guaranteed during the crisis when most of the people, including those who work in the justice system, are quarantined and there might be restrictions of rights such as freedom of assembly and freedom of expression?

Luisa Cabal (18:58): COVID has turned all kinds of... from businesses to education to the judiciary to services, upside down. But I also think that, and of course, not to underestimate the challenges that many less-resourced governments would have, but as much as possible, I do think that this could be an opportunity to see how we remove red tape that, at times, is there unnecessarily and that this will open the door for new ways of working, and new ways of working even in the judiciary. I just think that everybody, every institution is adjusting and responding, and I do think that we cannot hide [from] the challenges that COVID exposes, to not try to... not be even more creative, more innovative, to make sure that those core functions of civic engagement, of those principles of participation, but also the oversight and the accountability, need to happen, and civil society and communities need to push around how that should happen, but we also need to be responsive and be creative about how to make that happen.

Mónica Arango Olaya (20:26): This brings, again, the point that you started with, which is participation. And it could be very helpful for you to explain a little bit more [about] who should be

participating, because it seems that the decisions on the health policy cannot and should not be only taken by government officials.

Luisa Cabal (20:45): And it cannot be an afterthought. I think that with Ebola, the leading experts on the ground would tell you that the 101 thing that they would push governments to do is engage the communities, engage the faith leaders, engage those closest to them, to find the solutions. But then also, you know, from the AIDS response, we also learned, and communities push to have a seat at the decision-making table. And our Executive Director of UNAIDS, in her high-level engagement at the UN and with government officials, she's saying, we need the communities at the centre, the patients' rights groups, which are the groups that need to be represented in the decision-making table. Let's not forget that — it's always an afterthought, and one of the biggest lessons from the HIV response is, we need to have them at the table.

Mónica Arango Olaya (21:46): One of the challenges of the HIV response, at some points, was access to antiretrovirals; that has changed to a certain extent. Right now, what we're seeing is the lack of resources in intensive care and ventilators, and limited resources. How can public health and hospitals deal with these limitations?

Luisa Cabal (22:10): That's the million dollar question, right? But I think that one of the big challenges is around global solidarity as well; it's not just at national levels... In terms of information sharing, technology sharing, the resources... and it will be even more critical to have the international solidarity for when the pandemic starts hitting the poorest countries in... Let's hope this doesn't get as bad as we know [it] has gotten in other countries. We will still face challenges and I do think that human rights and again, reminds us that ... And it is one of the seven take-aways in our paper, on our guidance that countries must work to support each other so that there's no country or no community really left behind.

Mónica Arango Olaya (23:14): Can you share some examples, maybe, of challenges and success stories in implementing a human rights-based approach to healthcare across different jurisdictions?

Luisa Cabal (23:24): Maybe one of the things that comes to mind is the release of prisoners that are being held for minor offenses. Again, any organisation or institution fighting for criminal or justice system reform would call for looking for alternatives to incarceration. Well, I think that this public health emergency has pushed, in an accelerated way, unfortunately because of a crisis, to release many of the incarcerated populations. So I do think that even if the crisis brought this up, what can we learn from this to build-up in terms of prison reform? And I think that the UN is looking at potentially, as a statement, calling on governments to rethink and use this unfortunate crisis to release prisoners that will be at risk if COVID really wreaks havoc in these settings in many countries.

I also gave the example of HIV. Millions of people are relying on treatment, on access to their medicines every day to remain healthy. So a big effort, in terms of accessibility of services, has [been] really to push governments to change the regulations around how they dispense medication. So our ask is, there are so many areas of health where we will need to make these medications available and accessible to most marginalised communities, so the push is, how do we make this happen?

There are also, in terms of... as we talk about solidarity, groups emerging, creating funds of support because people are losing their livelihoods, but also those most discriminated in society, are being either kicked out from their homes because they are gay or transgender, and left on the street. So I do think that we're seeing many forms of solidarity but also on the states, also stepping up knowing that their own people will be hungry, and so setting some temporary shelters, and giving the foodstuffs people need in this time of crisis.

Mónica Arango Olaya (26:04): Is there anything that you would like to add in terms of the lessons learned and the recent UNAIDS guidance?

Luisa Cabal (26:12): I want to thank you for the invitation. And it's just to say that everyone has a role to play. I think from activists to students, we're walking into uncharted territory, the magnitude of the crisis... As Secretary-General Guterres has said, we have not lived through such a crisis since World War II, so it's really forcing us to think in new ways, to see how, in this very unequal world, how can we all contribute to reimagining and rebuilding a better world? So let's not just live through this crisis and try to think that we'll go to as it was before; for those of us working in human rights, working on women's rights, working to make sure that communities can lead, based on their lived experiences and expertise. Let's all think of how we build better and better for all.

Mónica Arango Olaya (27:22): Thank you so much, Luisa, it's been a pleasure to talk to you.

Christy Callaway-Gale (27:24): RightsUp is brought to you by the Oxford Human Rights Hub. The Executive Producer is Kira Allmann and this episode was produced and edited by me, Christy Callaway-Gale, and hosted by Mónica Arango Olaya. Music for this series is by Rosemary Allmann, show notes for this episode have been written by Sarah Dobbie. Subscribe to this podcast wherever you like to listen to your favourite podcasts.