

ECHO TO TANZANIAN GOVERNMENT FOR FAIRLY OBSERVING INTERNATIONAL COVID 19 RULES

By

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COVID 19 is now a threat to the world security which has attracted the attention of every country. It affects and continues to affect developed and developing states. It affects the rich and the poor in the same way. Specifically, COVID 19 has affected public budgeting and social service delivery; affected education, tourism and hospitality industry (UNDP, 2020). A Report published by the BOT in March 2021 showed that growth of credit to the private sector by commercial banks dropped to 2.3 percent due to the impact of COVID 19. Globally, virus reduced global economic growth in 2020 to an individualized rate of -3.4% to -7.6% (CRS, 2021). Generally, COVID 19 has disrupted the economies of the family, nations and the world at large; hence there is need for global partnership in the prevention and control of the pandemic. The World Health Organization (WHO) invites government institutions, media, beneficiaries, Non-Governmental Organization (NGOs), professional bodies and global stakeholders to collaborate together in combating the spread of COVID 19 and its impacts to the people.

Every state devised its own protocols for prevention and control of the pandemic disease taking into account the prevailing material conditions. Thus, states had autonomy in setting control measures. Even though WHO issued the COVID 19 Regulations, such instruments are regarded as soft law and thus not legally binding on states which are inherently vested with sovereignty and jurisdiction over nationals and events happening within the territory. This signifies that there were reasonably no uniform strategies for control of the pandemic. But, some matters were implemented by almost all the states due to their importance to human kind. Practically, some states opted to partial lockdown while some states imposed total lockdown. There were notable reactions by the people on lock downs due to social and economic implications on the people. A good example is the case of *Roman Catholic Diocese of Brooklyn vs. Cuomo* (US Supreme Court, November 2020) where members of the church petitioned for review of restriction orders which appeared to discriminate churches as compared to schools and factories. This case is evidence that state efforts to control spread of COVID 19 have legal and economic implications.

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Conversely, the government of Tanzania did not implement the WHO Regulations in verbatim. Its approach ranging from partial lockdown to restrictions of unnecessary gatherings and improvement of hygiene proved to be a success. This approach best suited the socio-political and economic conditions prevailing in Africa where financial resources are inadequate to provide special economic support to every person. A lot of critiques were raised against Tanzania on what they called defiance of the international obligation to prevent and stop spread of COVID 19. The pressure was too tense but the bold spirits of our leaders deepened into the spiritual devotion and use of the locally available medicinal plants assisted the nation. Initially the government of Tanzania was a bit skeptical on vaccination. The emphasis of our leaders was to wait until there was certainty on the safety and security of these short time manufactured vaccines before allowing entry of vaccines into the territory of Tanzania. This was a good thing to do for the best interest of the Tanzanians as the world was still in the shadows.

Nevertheless after thoughtful analysis of the technical committee under the leadership of Her Excellence Samia Suluhu Hassan, the President of the United Republic of Tanzania and consulted efforts with stakeholders, it was resolved that people of Tanzania could now be vaccinated subject to their own consent. This paradigm shift by the government also raised diverging critical questions in the minds of the people. While some people positively support vaccination exercise yet some resist it on fear of the unknown. The tension between the two groups has grown so tense that it partly divides the people of Tanzania amidst the sporadic spread of the most contagious viral disease. Being a legal scholar and researcher, I keenly take this forum to educate members of the public on the legitimacy and lawfulness of government approaches under the international law. This choice of approach has been influenced by the global nature of the pandemic and sentiments by some groups of people who think that the government of Tanzania has not done enough to protect citizens of Tanzania. My humble submission is that the government of Tanzania has always fulfilled its obligation with regard to prevention and control of COVID 19 as prescribed by various principles of international law specific to health.

The first category of rules are based on principle of due diligence whereby every state has duty to devise its own mechanisms to best address and mitigate spread of certain transboundary health risk such as COVID 19. Basically, due diligence is a flexible standard which varies from one state to another depending on the available financial, human and technological capabilities. Initially, Tanzania adopted stern protocols to prevent spread of COVID 19 including closure of schools and universities/colleges, suspension of unnecessary gatherings including music concerts, public meetings; wearing of face masks, washing of hands with a soap or hand sanitizer, prohibition of overcrowding in the public transport, and nationwide use of herbal medicine which promote body immunity. Quite interestingly, the government of Tanzania did not implement compulsory lockdowns on economic reasons as doing so would affect the earning ability of the individuals and family at large. These measures proved successful and the government finally opened up the economy after decrease of COVID 19 patients.

The above state efforts were justified since they were imposed under the lawful state authority and were lawful taking into account economic conditions existing in Tanzania at the time. Basically, questioning the legitimacy of government efforts by any other state may lead to violation of the principle of non intervention into domestic affairs of the United Republic of Tanzania, a binding norm of customary international law. On this regard, I submit that the implementation of WHO Regulations by Tanzania subject to conditions prevailing in the country is justified; hence valid both under international and national laws.

Secondly, the no harm principle under international law requires states to prevent, stop and redress transboundary risk such as COVID 19 to the best of their abilities. Ideally, this principle is traced from a longtime established tort principle known as neighbor principle which requires one to take reasonable care to any person within the proximity so as not to cause any harm. This principle is also articulated as precautionary principle under international environmental law where state authority must take steps to ensure that risks are mitigated. The government of Tanzania has quite good experience in handling cross border diseases such as Ebola whereby there is a well established coordinated system of handling health crisis and other risks from the central government level to the local government level under the control of the Office of the Prime Minister of Tanzania. Practically, there are government employees on all borders and ports who are professionally trained to handle health crisis. Similarly, the government of Tanzania made sure that anyone crossing its borders was tested before entry in the territory. Despite some challenges, Tanzania and the neighboring countries have in place a system of negotiation which facilitates resolution of any dispute that may arise in the course of joint operations.

Thirdly, international human rights instruments (such as International Covenant on Civil and Political Rights 1966 and the International Covenant on Economic, Social and Cultural Rights 1966) of which Tanzania is a member state impose an obligation to take positive measures to ensure enjoyment of basic human rights. Basically, states including Tanzania have duty to protect and ensure the right to life in the health care policies and laws, and the right to the highest attainable standard of physical and mental health. The government of Tanzania since the rise of the COVID 19 has established prevention and education programmes for behaviour related health concerns such as social distancing, wearing of masks, washing hands, eating health foods, and so forth. In fact, it could be argued that every Tanzanian now is well informed about COVID 19 preventive mechanisms. The government has done a commendable job of educating Tanzanians through radio, television, social media and other platforms.

Fourth, states are called upon to observe four cardinal ethical principles of medical law during vaccination process. Recently, this is one of the areas that have been controversial among members of the community. Undeniably, the government of Tanzania is administering vaccine to the people of Tanzania within the ambits of the professional rules as shown. The government has encouraged autonomy of the people by giving each interested persona right to decide whether to be vaccinated or not. This has been ensured through disclosure of information on the vaccines available and the effect of each vaccine, and compulsorily requiring interested person to sign a consent form. According to Jay Katz and Alexander Capron (prominent lawyers) informed consent promotes individual autonomy, encourages rational decision making, eludes public interference and reduces risk of civil and criminal liability of doctors and sponsoring institutions.

Recently, some people have been heard accusing the government for inserting a disclaimer clause in the consent form, and saying that the government is either negligent or reckless when it comes to vaccination exercise. These accusations are false and unfounded in law since they disregard the fact that informed consent of a patient is a precondition for any medical treatment including surgeries and other biological tests. Thus, requiring people to sign a consent form containing disclaimer on part of the government seeks to give citizens of Tanzania equal opportunity to make their own choices and any liability arising therefrom falls on them. It is a principle of tort law that anyone who consents to an act which would likely cause harm to his body, cannot later unreasonably withdraw such consent or otherwise institute compensation claim. This is what is technically known as *volenti non fit injuria*. I commend the government of Tanzania for making COVID 19 vaccination as voluntary as possible. Disregarding a call from pressure groups on making vaccination a compulsory exercise is a clear indication of respecting people's right to self determination.

On the other hand, the principle of beneficence has been taken on board since the purpose of COVID 19 vaccine is to improve immunity of the people against viral disease. Basically, the vaccine benefits people by reducing risk of developing illness and its consequences, including death. The argument that COVID 19 vaccine does not permanently protect a person from getting infected, though important, it does not outweigh the importance of a vaccine which has been scientifically proven and tested in other countries. It is a principle of nature that where there are two evils, one ought to elect a lesser evil. In this case COVID 19 vaccine is the best option under the prevailing global condition. Thus, I join hands with the President of United Republic of Tanzania Her Excellence Samia Suluhu Hassan, His Holiness Pope Francis and other prominent religious leaders to allow people make their own choices. Any attempt to convince people to disobey a call for vaccination may amount to gross violation of the right to life.

Notwithstanding, the government and other medical practitioners are called upon to give true information concerning the COVID 19 vaccine. As it stands today, majority of the people in Tanzania are partly informed or misinformed on aspects of COVID 19 due to availability of false information in the online networks. I call upon stakeholders including media and research institutions to give a true account of COVID 19 vaccine by showing genuine approved statistical data on the viability of the vaccines on human population. I submit towards publication of data by the National Bureau of Statistics (NBS) showing the strengths of the COVID 19 vaccine globally and nationally. Information is Power. Tanzanians have a lot of information which may or may not be true, and this affects their choices. They have a right to be informed by those institutions which hold relevant information as required by the provisions of the Constitution of United Republic of Tanzania, 1977 read together with the Access to Information Act No.6 of 2016. Together we build our nation. Echo to Tanzanian government for being a role model to other African countries on dealing with pandemic situations in a way that protects sovereignty of the people and the state.