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FOCUS

PROTECTION OF VULNERABLE GROUPS DURING COVID-19

ON THE RIGHTS PROTECTION OF VULNERABLE GROUPS UNDER THE PREVENTION AND CONTROL OF A PUBLIC HEALTH CRISIS: A LITERATURE REVIEW AND PERSPECTIVE FOR FUTURE DIRECTIONS

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Abstract The legal system for prevention and control of a public health crisis rests on two pillars: human rights protection and good governance. This duality is well illustrated by substantively equal treatment of vulnerable groups in a pandemic from the perspectives of public service, social inclusion, accessible environment, gender equality, and right to health. A review of literature on this topic shows that current research needs to address the gap between "life supremacy" and "equal protection" in the area of human rights protection, and the gap between "putting people first" and "strict control at the grassroots level" in the area of good governance. The research should employ intersectional methodology to highlight the rights logic of the socialist legal system and the key role of the Communist Party of China's leadership in balancing individual versus community rights, enhancing the governance capability for participation by multiple social agents, ensuring equal protection for disadvantaged groups, promoting inclusive and sustainable development, and realizing the common prosperity of all the people.

Keywords rights protection, vulnerable groups, public health crisis, community resilience, good governance

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I. MULTIPLE PERSPECTIVES ON RIGHTS PROTECTION FOR VULNERABLE GROUPS IN A PUBLIC HEALTH CRISIS

In 2020, the public health crisis brought by the COVID-19 pandemic caused universal problems for human rights protection in countries around the globe, especially in regard to the challenges faced by the elderly, persons with disabilities, women, children, and other vulnerable groups. The legal system for prevention and control of public health crises consists not only of the dimensions of power structure, public management, social governance, and public services, but also dimensions of rights protection, equal treatment, judicial remedy, and individual empowerment.

A. The Elements of the Legal System for Prevention and Control of Public Health Crises: Good Governance and Protection of Rights

As researchers have noted, the building of a legal system for prevention and control of public health crises should comply with the basic logic of rule of law. Measures should be taken through the rule of law, adhering to its internal logic, to prevent and/or control the crisis, improve enforcement approaches, and perfect the legislation of public health law.[1]

[1] WANG Chenguang, 疫情防控法律体系优化的逻辑及展开 (*The Logic and Optimization of the Legal System for Epidemic Prevention and Control*), 32(3) 中外法学 (Peking University Law Journal), 612 (2020).

As Yu (2020) has stated, "Each serious crisis in human history has been a test for the state institutions and state capacity … and has also influenced the state governance profoundly and driven further reform of state institutions and governance."[2] The reform of state institutions includes the enactment of public health law (good law) and the reform of state capacity toward good governance.

Moreover, regarding public health law, researchers have noted that protection of the rights of vulnerable groups (such as health care for women, children, and the elderly; prevention of occupational disease; and a healthy environment) should emphasize the principles of proportionality and minimum harm in taking measures that limit citizens.[3] Moreover, the legal system for meeting a public health crisis should consider all levels of the state, society, and public to integrate policy design and daily legal practice. At the public level, the disadvantaged groups must be safeguarded in their basic living standards. To quote Qu (2020), "The measure of the governance capability of a city is not to see how many skyscrapers it has built, but to see how much dignity has been protected and how basic living standards have been secured for disadvantaged groups. This is true in normal times, but also applicable in a pandemic."[4]

B. Public Services and Social Inclusion: The Perspective of Elderly People

The dimension of public services and social inclusion in curbing public health crises is well illustrated by the rights protection needs of the elderly. Research on the protection of the elderly's rights in a public health crisis is still in its primary stage in China. The current literature focuses on services to the elderly and reveals some rights challenges they are confronted with in a pandemic. Compared to younger groups, the elderly are more vulnerable to the COVID-19 virus, more likely to be infected, and more likely to experience serious health damage or death. This situation has raised wide concern in society. However, most research has been from the perspectives of pathology or epidemiology, discussing medical treatments and health care measures for the elderly. Other research has been done mainly from the perspective of social work, focusing on the management measures of nursing homes and their shortages of personnel, funds, and resources.

A few researches have taken the rights approach to examine the situation of the

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[2] YU Keping, 新冠肺炎危机对国家治理的影响 (*The Impact of the COVID-19 Epidemic Crisis on National Governance*), available at WeChat Official Account "北大政治学" (Peking University Political Science), Apr. 28, 2020.

[3] See WANG, fn. 1 at 622.

[4] QU Fang'ai, 新冠肺炎疫情 "依法防控" 内涵解读 (*Basis of the Interpretation of the Connotation of "Prevention and Control according to Law"*), 5 行政与法 (Administration and Law), 21 (2020).

elderly in the pandemic through the lens of "vulnerability–resilience"[5] and to explore the necessity of particular protection mechanisms for them through the reconciliation of right-to-life conflicts among diverse groups.[6] The intersection of elderly rights with disability rights has been noted by some in exploring protection mechanisms for elderly persons with disabilities.[7] Some other studies on the elderly's needs for services,[8] and on the provision of services through the nursing home industry,[9] have helped to understand the background of the rights situation of elderly people.

Foreign research on elderly rights under the pandemic has pointed out the issue of equal access to medical resources and public service. As Gerald Quinn (2020) noted, the key to protecting elderly rights in a pandemic is to respect their autonomy, their choice to live in communities, and their equal access to healthcare services.[10] Ayalon et al. (2020) have also studied the discrimination experienced by the elderly in many countries under the pandemic and have provided primary suggestions toward an inclusive society.[11] In particular, long-term care has been significantly affected by the pandemic and related control measures.[12]

In brief, the most prominent rights challenges that the elderly confront in the dimension of public services and social inclusion in a public health crisis could be listed as follows: i) Weakened immunity and resilience make them more vulnerable to infectious disease, and more susceptible to violation of their right to health and life, due to their marginalized status; ii) their equal access to healthcare services is more frequently

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[5] ZHANG Wanhong & LIU Yuan, 脆弱性视角下的特殊群体权利保障——以老年人在公共卫生危机中的处境为例 (*Protection of the Rights of Special Groups from the Perspective of Vulnerability—Taking the Situation of the Elderly in A Public Health Crisis as an Example*), 23(1) 人权研究 (Journal of Human Rights), 25–33 (2020).

[6] CHANG Jian & WANG Xue, 疫情下生命权保障的冲突及其解决路径 (*The Protection of the Right to Life during a Major Epidemic: Conflicts and Solutions*), 4 南开学报 (哲学社会科学版) (Nankai Journal [Philosophy, Literature and Social Sciences Edition]), 4 (2020).

[7] CHEN Xu, 新冠肺炎疫情视域下的弱势群体保护: 何以可能，何以可为 (*Protection of Vulnerable Groups from the Perspective of the COVID-19 Epidemic: How It Is Possible and How It Can Be Accomplished*), 2 残疾人研究 (Disability Research), 90–91 (2020).

[8] SUO Haoyu & LIU Liang, 疫情影响下老年人服务需求及服务保障 (*Service Demand and Service Guarantee for the Elderly under the Influence of the Epidemic*), 中国人口报 (*China Population News*), Apr. 17, 2020.

[9] PENG Xizhe & WANG Xuehui, 疫情下的中国式养老 (*China's Pension under the COVID-19*), 经济战"疫": 新冠肺炎疫情对经济的影响与对策 (*Economic Measures against the Pandemic: The Impact of COVID-19 on the Economy and Solutions*), Fudan University Press (Shanghai), at 87 (2020).

[10] Gerard Quinn, 新冠肺炎疫情中的老年残疾人 (*Elderly People with Disabilities during the Period of the COVID-19 Epidemic Outbreak*), 2 残疾人研究 (Disability Research), 88 (2020).

[11] Liat Ayalon, Alison Chasteen & Manfred Diehl et al., *Aging in Times of the COVID-19 Pandemic: Avoiding Ageism and Fostering Intergenerational Solidarity*, 76(2) The Journals of Gerontology: Series B, 1–4 (2020).

[12] William Gardner, David States & Nicholas Bagley, *The Coronavirus and the Risks to the Elderly in Long-Term Care*, 32(4–5) Journal of Aging & Social Policy, 1–6 (2020).

denied or neglected on the grounds of age; iii) shutdown of transport and social distancing cause difficulties in getting care to the elderly; iv) many elderly people live in big institutions such as nursing homes where they are segregated from society and at a higher risk of infection; v) the elderly suffer from the "digital gap" when they have to cope with control measures that are exclusively implemented through new technology, such as the use of a smartphone to scan Quick Response (QR) safety codes before getting on a bus or subway.

C. Accessible Environment: The Perspective of Persons with Disabilities

The dimension of accessible environment in addressing a public health crisis refers to physical accessibility (such as barrier-free facilities in residential communities), accessibility of public information, and accessible public services, which are well illustrated by the rights protection of persons with disabilities. A few researches have shed light on the issue of disability rights in the prevention and control of public health crises. The key role of organizations of persons with disabilities (OPD) and related civil society organizations has been recognized and emphasized in the frontline action in Hubei Province to protect persons with disabilities against COVID-19 in the most difficult period of the pandemic (February to April 2020). It is also urged that government should enhance the participation of OPDs in areas of both provision of public services and policymaking to improve good governance.[13] Researchers have highlighted the problems of the existing prevention and control system as it neglected the equal treatment of persons with disabilities, and have seen a need to enhance policies related to social security, minimum living standards, and emergency management, considering particularly the needs and rights of persons with disabilities.[14] A comprehensive international webinar discussed this topic on May 23, 2020, organized by the China Society for Human Rights Studies and the Wuhan University Institute for Human Rights.[15] The lectures at this conference were later published in *Disability Research*, one of the most important disability study journals in China. These included the conference overview on the theme "No one is an island"[16] and articles on the path to protect disabled persons'

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[13] ZHANG Wanhong, 文明的每一道色彩: 与残障人有关的抗疫行动观察 (*Every Color of the Civilization: An Observation of the Anti-Epidemic Actions Related to the Disabled*), available at https://www.thepaper.cn/newsDetail_forward_6667672 (last visited Oct. 7, 2020).

[14] LI Cai-mao, ZHANG Meng-xin & LI Yun et al., 疫情之下对残疾人保护的实践与思考 (*Practice and Thinking on the Protection of Persons with Disabilities against COVID-19*), 1 残疾人研究 (Disability Research), 4–15 (2020).

[15] For more information on the event, see *Rights Protection for Vulnerable Groups Discussed Online in Wuhan*, available at http://news.cgtn.com/news/2020-05-25/Rights-protection-for-vulnerable-groups-discussed-online-in-Wuhan--QMPMiwstuE/index.html (last visited Jan. 7, 2021).

[16] DING Peng, 疫情之下，没有孤岛——"疫情防控中的特定群体权利保障"研讨会综述 (*Under the Epidemic, There Is No Isolated Island——Conference Overview on "Protection of Rights of Special Groups during the COVID-19 Epidemic Prevention and Control"*), 2 残疾人研究 (Disability Research), 82–84 (2020).

rights,[17] joint actions that businesses and OPDs can take,[18] and protection of the disabled elderly.[19] Moreover, special attention has been given to the needs of the deaf in the pandemic and the challenges of training professional sign language interpreters,[20] and the emotional challenges of children with special needs.[21] The online network of volunteers for persons with disabilities has also published their "Manual on Assistance to Persons with Disabilities under the Pandemic" to share their experience in providing accessible information and supportive consultation, linking resources, and empowering members of diverse disability communities. A similar manual to sum up the experience and guidelines of protecting the rights of disabled persons under the pandemic, both domestically and abroad, has been accepted by Wuhan University Press and will be published.

Foreign disability research has also responded to the challenges confronted by persons with disabilities under the pandemic. Some have observed that the control measures taken by many governments disproportionately impacted persons with disabilities and thus may be defined as discriminatory and in violation of international human rights law.[22] Some of these violations were existing problems magnified by the pandemic,[23] and some were novel or were revivals due to ableism-biased policymaking processes. Persons with disabilities living in institutions were concerned that they should be entitled to live in their own communities, but only if those communities provided sufficient support.[24] Foreign disability research has paid much attention to the inequalities and discrimination issues in healthcare service to persons with disabilities. Researchers argue that discriminating and ableism health care policies reveal the long-term devaluation of persons with disabilities.[25] Society usually holds a prejudice that the quality of life for

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[17] ZHANG Wanhong & ZHANG Jiaojie, 新冠肺炎疫情防控中残疾人权利保护之道 (*Ways of Protecting the Rights of Persons with Disabilities during the COVID-19 Epidemic Prevention and Control*), 2 残疾人研究 (Disability Research), 85–86 (2020).

[18] ZHOU Haibin, 企业和残障组织应对疫情的联合行动 (*A Joint Action by Businesses and Disability Organizations*), 2 残疾人研究 (Disability Research), 92–93 (2020).

[19] See CHEN, fn. 7.

[20] ZHENG Xuan, 加快推进中国手语翻译的职业化——基于新型冠状病毒肺炎疫情的思考 (*Promoting the Professionalization of Chinese Sign Language Interpretation—Reflections on the Epidemic Situation of COVID-19*), 1 残疾人研究 (Disability Research), 24–32 (2020).

[21] MA Minjie, AO Yongqian & SHEN Chenglin et al., 新型冠状病毒肺炎疫情下特殊儿童正负性情绪及居家干预调查 (*An Investigation on Special Children's Positive and Negative Emotions and Family Intervention under the COVID-19 Epidemic*), 4 中国特殊教育 (Chinese Journal of Special Education), 3–11 (2020).

[22] River Hustad, 受疫情影响的残疾人及其平等权利 (*Persons with Disabilities Affected by the COVID-19 Epidemic and Their Equal Rights*), 2 残疾人研究 (Disability Research), 86–87 (2020).

[23] Cole Gleason, Stephanie Valencia & Lynn Kirabo et al., *Disability and the COVID-19 Pandemic: Using Twitter to Understand Accessibility during Rapid Societal Transition*, available at https://doi.org/10.1145/ 3373625.3417023 (last visited Jan. 5, 2021).

[24] Gerard Guinn, 新冠肺炎疫情中的老年残疾人 (*Elderly People with Disabilities during the Period of COVID-19 Epidemic Outbreak*), 2 残疾人研究 (Disability Research), 88 (2020).

[25] Emily M. Lund & Kara B. Ayers, *Raising Awareness of Disabled Lives and Health Care Rationing during the COVID-19 Pandemic*, 12(1) Psychological Trauma: Theory, Research, Practice, and Policy, 210–211 (2020).

persons with disabilities is lower than for "normal" people, and thus they are less worthy.[26] Nevertheless, neither policymakers nor healthcare professionals should refer to disability factors to decide how worthy people are of saving in a pandemic.[27]

More and more guidelines and appeals to equal protection of persons with disabilities have been published by international organizations such as the United Nations, the World Health Organization (WHO), the International Labor Organization (ILO), the International Disability Alliance, and the European Disability Forum. On July 18, 2020, the yearly East-Asia Disability Study Forum reached an agreement on equal protection of persons with disabilities in the region.

In brief, the biggest rights challenges confronted by persons with disabilities in curbing a public health crisis could be listed as follows: i) Due to lack of an accessible environment, many disabled persons (and other groups with similar needs, such as the elderly or pregnant women) cannot get timely information about the crisis and protection measures, they have more problems in obtaining basic living and health care materials, and encounter more obstacles to engagement in education, employment, and even online judicial procedures; ii) people with mental disabilities, including those with autism or depression, suffer more negative impacts due to the interruption of necessary treatment or supportive services; iii) intersectional identities such as women, the elderly, and children with disabilities find it more difficult to voice their needs and realize equal protection.

D. Equal Treatment: The Perspective of Women

The equal treatment dimension of prevention and control of a public health crisis could be best illustrated by the feminism campaign during the COVID-19 pandemic. The campaign highlighted such issues as support for female frontline health care workers and the equal protection of female workers during the reopening of schools and business. At the domestic level, there is not yet much research on protection of women's rights in a public health crisis. Some health care science research has noted that women in the hardest-hit areas of China during the COVID-19 outbreak reported significantly higher posttraumatic stress symptoms (PTSS) in the domains of re-experiencing, negative alterations in cognition or mood, and hyperarousal.[28] Several online lectures have also shared direct data and cases showing that female health care workers experienced more risk of infection and emotional depression,[29] and that housekeeping workers (most of

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[26] Coleen A. Boyle, Michael H. Fox & Susan M. Havercamp et al., *The Public Health Response to the COVID-19 Pandemic for People with Disabilities*, 13(3) Disability and Health Journal, 100943 (2020).

[27] Satendra Singh, *Disability Ethics in the Coronavirus Crisis*, 9(5) Journal of Family Medicine and Primary Care, 2167–2170 (2020).

[28] Nianqi Liu, Fan Zhang & Cun Wei et al., *Prevalence and Predictors of PTSS during COVID-19 Outbreak in China Hardest-hit Areas Gender Differences Matter*, 287 Psychiatry Research, 12921 (2020).

[29] Lecture of SONG Yueping, available at https://www.bilibili.com/s/video/BV1Ut4y1C7D5 (last visited Jan. 7, 2021).

whom are female) became underemployed and underpaid without sufficient legal protection of their labor rights.

Foreign research on protection of women's rights in a public health crisis has shown that women working on the front line, particularly female health care workers, were at greater risk of getting infected and were under greater physical and mental pressure.[30] The COVID-19 pandemic increased the burden of unpaid work on women.[31] Mothers had to take more responsibilities of caring for children or the elderly when the schools and day care centers were closed, and their time for paid work was accordingly limited.[32] Due to the pandemic, resources that had been used for sexual and reproductive health services were shifted to emergency management, and thus, less support was available for women's needs.[33] The pandemic also affected employment in service industries such as restaurants and retail stores, which employed more women, and female workers thus suffered more from the economic recession.[34]

Moreover, the United Nations Population Fund (UNFPA) has pointed out that a pandemic exacerbates gender inequalities and increases women's risk of suffering gender-based domestic violence, as happened at a higher rate in the lockdown or quarantine period.[35]

In short, the most serious rights challenges confronted by women in the dimension of equal treatment in the prevention and control of a public health crisis could be listed as follows: i) Gender-based violence rises sharply while protection measures and remedies are not in place; ii) a lack of gender perspective in making emergency management policies exacerbates the disadvantages of women, such as female health care workers who lack sufficient sanitary pads, and pregnant women who cannot schedule necessary examinations; iii) women are impacted disproportionately in employment in that more females lose their jobs and/or have to spend longer hours in unpaid, even unappreciated activities such as caring for family members.

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[30] Tania King, Belinda Hewitt & Bradley Crammond et al., *Reordering Gender Systems: Can COVID-19 Lead to Improved Gender Equality and Health?*, 396(10244) The Lancet, 80–81 (2020).

[31] Helen Jaqueline McLaren, Karen Rosalind Wong & Kieu Nga Nguyen et al., *COVID-19 and Women's Triple Burden: Vignettes from Sri Lanka, Malaysia, Vietnam and Australia*, 9(5) Social Sciences, 87 (2020).

[32] Caitlyn Collins, Liana Christin Landivar & Leah Ruppanner et al., *COVID-19 and the Gender Gap in Work Hours*, Gender, Work & Organization, 1–12, available at https://onlinelibrary.wiley.com/doi.org/full/10.1111/gwao.12506 (last visited Jan. 7, 2021).

[33] Clare Wenham, Julia Smith & Rosemary Morgan, *COVID-19: The Gendered Impacts of the Outbreak*, 395 (10227) The Lancet, 846–848 (2020).

[34] Titan M. Alon, Matthias Doepke & Jane Olmstead-Rumsey et al., *The Impact of COVID-19 on Gender Equality*, NBER Working Paper No. 26947, 87 (2020).

[35] United Nations Population Fund, *Gender Equality and Addressing Gender-Based Violence (GBV) and Coronavirus Disease (COVID-19) Prevention, Protection and Response*, UNFPA Technical Briefs V, 2020.

E. Right to Health: The Perspective of Children

The starting and ending point of the legal system for prevention and control of public health crises in China has always been the people's right to life and right to health. These rights encompass not only medical treatment and health care service for infected patients, suspected cases, and close contacts, but also comprehensive protection of everyone's physical and mental health. The right-to-health dimension is illustrated by the case of children's right to health in the context of a pandemic.

At the domestic level, only a few studies in the literature have paid attention to the rights of children in a public health crisis, and most of those focused on caring challenges, education inequalities, and physical and mental health. Some have observed that younger children, those with disabilities, left-behind children in villages, and migrant children with peasant parents in cities were the most vulnerable in the COVID-19 pandemic, were particularly vulnerable to secondary harm such as parents getting infected or quarantined, and had the least resilience to these challenges.[36] Children in poor areas of some midwestern provinces had very limited access to online learning facilities and devices, which deepened the education gap between developed areas and poor areas.[37] Moreover, long-term quarantines caused health problems to children due to fewer opportunities for sports, long exposure to television and computer screens, diet imbalance, insomnia, and family loss. Children were more likely to experience physical unfitness and mental issues such as sadness, anxiety, and depression. Without enough attention to these risks, children's right to health is at stake.[38]

Some foreign researches have mentioned the rights of children in the context of prevention and control of public health crises. Domestic violence against children has been one of the most disturbing results of social distancing and quarantine.[39] Gender perspective also helps to reveal the situation of children and understand their narratives of being trapped with abusers or in family conflicts where they are isolated, neglected, and

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[36] GU Tian'an, ZHOU Zhenzhong & LI Huijie, 重大突发公共卫生事件下城市儿童的危机与应对——基于脆弱性理论与抗击新型冠状病毒肺炎疫情的实践 (*Crisis and Response of Urban Children under Major Public Health Emergencies—Based on Vulnerability Theory and Practice in Combating the Outbreak of the COVID-19 Pandemic*), 4 社会保障研究 (Social Security Studies), 58–69 (2020).

[37] FU Weidong & ZHOU Hongyu, 新冠肺炎疫情给我国在线教育带来的挑战及应对策略 (*Challenges Brought by the COVID-19 Pandemic to Online Education in China and Coping Strategies*), 22(2) 河北师范大学学报（教育科学版）(Journal of Hebei Normal University [Educational Science Version]), 14–18 (2020).

[38] WANG Guanghai, ZHANG Yunting & ZHAO Jin et al., 降低疫情期间居家限制对儿童健康的影响 (*Mitigate the Effects of Home Confinement on Children during the COVID-19 Outbreak*), 40(3) 上海交通大学学报（医学版）(Journal of Shanghai Jiaotong University [Medical Science Version]), 279–281 (2020).

[39] World Health Organization, *Global Status Report on Preventing Violence against Children 2020*, available at https://www.unicef.org/media/70731/file/Global-status-report-on-preventing-violence-against-children-2020.pdf (last visited Jan. 5, 2021).

cut off from outside supportive resources such as teachers, classmates, and friends.[40]

In brief, the challenges that children confront in the dimension of right to health in the prevention and control of public health crises could be listed as follows: i) Long-term quarantine and isolation can cause many physical and mental health issues for children, but current policies have not paid enough attention; ii) the emergency custody mechanism for children whose caregivers are infected or quarantined (which was newly established in the COVID-19 crisis to ensure minimum social security for children) has not yet been effectively enforced nationwide and needs to be further detailed considering the best interests of children as agents with comprehensive needs for physical and mental health; iii) aside from healthcare departments, imbalanced resources and neglected policies in many other areas, such as education and access to justice, have jointly led to poor protection of and remedies for children's right to health.

II. CRITICAL REFLECTIONS ON THE EXISTING RESEARCH

A. The Rights Logic Connecting the Principles of "Life Supremacy" and "Equal Protection" Needs to Be Clarified

Life supremacy means the equal supremacy of everyone's life. The subject of right to life pertains to individuals, while individuals compose diverse groups such as persons with disabilities, the elderly, women, and children due to their various personal characteristics of body and/or mind and social status. China's President Xi Jinping has asked the nation to "make the life security and personal health of people the first priority." This means people's *right* to life and *right* to health are of the utmost importance and justifies the unprecedent lockdown of big cities and strict control measures at the basic community level.[41] Meanwhile, the subjects of right to life and right to health in this context affect both individual persons and plural groups or societies.

The principle of life supremacy implies limitations on other fundamental human rights. When such limitations impinge on other rights, such as right to accessible information, this may impact societal members disproportionately and make communities (vulnerable groups) suffer from unequal treatment and, finally, unequal fulfillment of the right to health or life. Researchers have argued that in a pandemic, governments could use harsh prevention and control measures that restrict the citizen's personal freedom, religious freedom, and other freedoms to secure the public right to life and health. The

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[40] Sana Malik & Khansa Naeem, *Impact of COVID-19 Pandemic on Women: Health, Livelihoods & Domestic Violence*, Sustainable Development Policy Institute, available at http://hdl.handle.net/11540/11907 (last visited Jan. 5, 2021).

[41] LI Junru, 一场生命权和健康权的保卫战及其提出的人权思想——抗疫人权笔记六则 (*A Defense of the Right to Life and Health and Thoughts on Human Rights—Six Notes on Human Rights to Fight the Pandemic*), 3 人权 (Human Rights), 1–10 (2020).

object of the right to life is surely life itself and equal life of each person. However, individual life in nature contains the value of human community. It is this universal dilemma that China has to cope with. Emergency management policies should respect the fundamental principles in the Constitution and reconcile conflicts between right to life and right to equal treatment. How to protect the equal right to life of all the people against the ruthless pandemic has become a tough test of the state's capacity.[42]

It is widely agreed that equal treatment and protection of everyone is the golden rule of the human rights system. Chinese government has adhered to this principle of equal treatment in the entire process of fighting the COVID-19 pandemic, followed standards to ensure everyone's equal opportunities for health care, and prioritized the protection of vulnerable and disadvantaged groups to realize substantive equality.[43] There may be three possible approaches to solving the conflicts of equal protection for right to life: first, a norm-based approach could be used to discuss diverse rights and interests and prioritize them in specific rules; second, a resources-based approach could be employed to resolve shortages and contradictory requests for resources on the table; third, a mechanism-based approach should help to coordinate the diverse rights claims and capture a comprehensive image of the difficult situation.[44]

Equal protection of everyone's right to life and right to health also constitutes the core of China's human rights cause and provides crucial reference to the nation's implementation of human rights treaties and participation in international human rights mechanisms. For instance, the International Covenant on Economic, Social and Cultural Rights (ICESCR) has shed light on how to protect the right to health in a public health crisis and, implicitly, how to define the scope and meaning of the right to life, interpret its preconditions and limitations, and cope with the relationship of this right to health and emergency management. The committee of the ICESCR has provided suggestions in its No. 14 general comments on the availability, accessibility, acceptability, and quality of public health and healthcare facilities, goods and services, as well as programs. This document can guide domestic authorities in reflecting on and evaluating the public health and healthcare system after the pandemic and taking effective measures accordingly to improve the system.[45]

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[42] HAN Dayuan, 生命权与其他权利的冲突及其平衡 (*Conflict and Balance Between the Right to Life and Other Rights*), 3 人权 (Human Rights), 11–19 (2020).

[43] ZHANG Yonghe, 中国疫情防控彰显人权保障 (*China's Epidemic Prevention and Control Highlight Human Rights Protection*), 学习时报 (*Study Times*), Mar. 20, 2020.

[44] CHANG Jian, 疫情防控中的人权保障 (*Human Rights Protection in Epidemic Prevention and Control*), 2 学术界 (Academics), 35–48 (2020).

[45] WANG Jingshu, 突发公共卫生事件中的健康权保障——围绕《经济社会文化权利国际公约》展开 (*Guaranteeing the Right to Health in a Public Health Emergency—Focusing on the International Covenant on Economic, Social and Cultural Rights*), 22(3) 西南政法大学学报 (Journal of Southwest University of Political Science and Law), 71–81 (2020).

In sum, the current research provides only vague statements about the rights logic that links the principles of "life supremacy" and "equal protection." Solving the theoretical puzzle requires close analysis of the experience in which the socialist rule of law balances the individual claim of right to life versus the community value of the constitutional order. It also requires critiques on the Western rights discourse derived from liberalism and individualism, and manifests the strength of the rights logic of the socialist legal system to balance individual and collective rights and realize substantive equality for vulnerable groups.

B. The Governance System Integrating the Principles of "Putting the People First" and "Strict Control at the Grassroots Level" Needs to Be Enhanced

The most valuable institutional pillars of successful control of the COVID-19 pandemic in China lay in the principles of "putting the people first," "doing everything for the masses, relying on them in every task" (the mass line), and "strict control at the grassroots level." These principles need to be formalized into legislation governing the prevention and control system for public health crises. This legislative process will clarify the legitimate channels for the grassroots level (village/community level) to execute its autonomous power while complying with the constitutional framework and administrative authorization mechanism. Meanwhile, the legislation must address the possible conflicts between the function of the power structure in strict control at the grassroots level and its limitations on people's fundamental rights.

To cope with a public health crisis, the limitation of individual rights should occur through legislative, judicial, and executive processes that obey the principle of proportionality. Strict control measures may infringe on the right to information, privacy right, and other rights that people are used to exercising. For instance, researchers have pointed out the issues of protecting personal information in the pandemic through the principle of proportionality,[46] tried to define the boundary of personal information,[47] and defended the privacy right against multiple crisis regulators.[48] It has been agreed that all the control measures, such as lockdown, isolation, quarantine, and social distancing, should comply with consistent standards of rule of law and due process.[49]

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[46] JIANG Haiyang, 论疫情背景下个人信息保护——以比例原则为视角 (*On the Protection of Personal Information in the Context of Epidemic—From the Perspective of the Proportion Principle*), 4 中国政法大学学报 (Journal of China University of Political Science and Law), 183–194 (2020).

[47] TANG Binbin, 疫情防控中个人信息保护的边界——一种利益相关者理论的视角 (*The Boundary of Personal Information Protection in Epidemic Prevention and Control—A Perspective of Stakeholder Theory*), 4 中国政法大学学报 (Journal of China University of Political Science and Law), 195–205 (2020).

[48] LIU Longfang, TAO Tao & WANG Bangyu, 新冠肺炎疫情中的公民隐私权利保障研究 (*Research on Citizens' Privacy Rights Protection in the COVID-19 Outbreak*), 12(3) 医学与法学 (Medicine and Jurisprudence), 41–47 (2020).

[49] GAO Qinwei, 传染病防控中的隔离措施 (*Isolation and Quarantine Measures in the Control of Communicable Diseases*), 32(3) 中外法学 (Peking University Law Journal), 631–652 (2020).

The tension between "people's participation" (relying on the masses for every task) and "strict control measures" is manifested by arguments on the right to information. The citizen's right to information in modern society encapsulates not only the entitlement to participate in the democratic voting process, but also other social and public discussions and decision-making. The modern risk management system, on the other hand, has further complicated the realization of the right to information because the authority or power to issue the information is more centralized, the procedures used to decide to open the information are more distant from the general public, and the public sphere for promulgating the information is more limited in a context of crisis.[50] The legal protection mechanisms for the citizen's right to information should be specifically enacted to classify different types of information related to different risks, establish mechanisms for open decision-making and multiple stakeholders' communication and participation, and enhance the capability of both government and the general public to process information through the new technology.

Moreover, the governance mechanisms of "strict control at the grassroots level" have led to reflections on the autonomous power and customary laws of villages and residential communities. For instance, many management and control norms of urban residential communities during the extraordinary period of the COVID-19 crisis regulated a wide range of affairs such as transport passes, member recognition, car control, and other prevention and control measures. They involved the power to promulgate information, enforce binding rules, and supervise individual behaviors.[51] Some norms of the villages and communities pertained to non-state temporary laws or customary laws backed up by the autonomous power. These should also follow the principles of rule of law, democratic participation, and reasonable proportion. It should be part of the national plan to recognize the strength of social organizations working with vulnerable groups, improve the public participation of plural agents, and enhance the overall social governance capability.

In brief, the current research needs to resolve issues in the legal system for prevention and control of public health crises, such as: i) how to define law enforcement agents and their legal competence while continuing to implement "strict control at the grassroots level," ii) what are the limitations to this strict control considering the principle of "putting people first," and iii) how to integrate the proportionality and due process

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[50] ZHOU Youyong & ZHU Zheng, 风险治理现代化中的公民知情权保障 (*The Protection of Citizens' Right to Know in the Modernization of Risk Governance*), 3 比较法研究 (Journal of Comparative Law), 101–111 (2020).

[51] GAO Qicai, 自我卫护: 习惯法视野下非常时期的城市社区管控规范——以 2020 年初防控新冠肺炎疫情为对象 (*Self-protection: On Management and Control Norms of Urban Community during Extraordinary Periods under the Perspective of Customary Law—Taking Prevention and Control of COVID-19 at the Beginning of 2020 as an Example*), 41(4) 法学杂志 (Law Science Magazine), 1–11 (2020).

principles into the policy-making process for scientific, detailed, and sustainable control measures by diverse authorities in charge of public health issues.

The current research also needs to address practical problems such as the following: i) How to ensure the accessible environment needed for the right to information and ensure all the societal members can fully participate, express needs, and influence the making of policy; ii) how to include thorough consideration of vulnerable groups and realize their substantively equal treatment[52] so as to completely embody the proportionality principle in the legal system for meeting public health crises; iii) how to make basic mass organizations such as women's groups, disabled persons' federations, youth leagues, and elderly associations play their best roles in carrying out strict control at the grassroots level, building the resilience of community members, and innovating governance strategies at the basic level.

C. The Multiple Gaps between the "Prevention and Control of Public Health Crises" and "Good Governance under the Rule of Law" Need to Be Addressed

The research on the legal system for prevention and control of public health crises consists of how to establish a scientific and effective administrative system and power structure that enable good governance by law, as well as a rights system to ensure the equal protection of all people.

First, the public power structure that is designed must comply with the rule of law and employ an executive branch with governance capability to accommodate the vulnerability of multiple agents and their participation and contributions. Some literature, mentioned above, has discussed the public power arrangement, including its legitimate division and just enforcement for curbing public health crises, from the perspectives of constitutional law and administrative law. However, analysis of the proportionality principle, the leadership of the Communist Party of China (CPC), and the influence of the CPC's regulations has been confined to traditional approaches of public law and power structure. This is necessary, but not enough, to explain China's achievements in controlling the COVID-19 pandemic.

The CPC's leadership has set out a solid basis for creation and perfection of the socialist legal system with Chinese characteristics. There has been much research on this before the pandemic, although not much on how the CPC could lead, promote, and supervise the public health policy making through rule-of-law approaches and balance the power of diverse agents in the system.

Second, equal protection of people's rights in public health crises requires the rule of law to enshrine fundamental rights, guarantee the participation of social organizations,

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[52] For more discussion of substantive equality, see Sandra Fredman, *Substantive Equality Revisited*, 14(3) International Journal of Constitutional Law, 712–738 (2016).

and secure timely and effective judicial remedies. Some literature, mentioned above, has studied the legal system for prevention and control of public health crises from the perspective of equal rights, including the rights of all people, rights of vulnerable groups, and individual rights.

The CPC's leadership is also crucial for the equal protection of people's rights. For instance, to cope with the universal dilemma of equal protection of right to life and right to health for both the general public and particularly disadvantaged groups, the CPC has established central leadership and deployed human rights protection strategies to ensure people's right to life, right to health, right to minimum living standards, right to information, right to work, and equal treatment of vulnerable groups.[53]

Moreover, some research has correctly pointed out the key relation between rights protection and good governance. It has been argued that prevention and control measures under a pandemic must follow the principles of rule of law and human rights protection, comply with the due process and proportionality in limiting fundamental rights, and make best use of the accurate governance strategies.[54]

Good governance under rule of law for prevention and control of public health crises involves major issues such as how to improve the rural health care system to enhance its capability to make quick, effective responses to emergencies,[55] and how to adjust the one-way policy of "enterprises supporting employees, and state supporting enterprises"[56] to best understand the needs of employees and enterprises in a pandemic[57] and foster the resilience of all economic actors through diverse support and accommodations.

In sum, the current research needs to develop the state's administrative system for prevention and control of public health crises to realize good governance under the rule of law, and address the multiple gaps below:

1) The gap between public law studies and human rights law studies in China. Human rights law studies generally pay little attention to organizational dynamics or institutional

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[53] HUANG Aijiao, 中国共产党与疫情防控中的人权保障 (*The Communist Party of China and Human Rights Protection in Epidemic Prevention and Control*), 4 南开学报（哲学社会科学版）(Nankai Journal [Philosophy, Literature and Social Science Edition]), 22–31 (2020).

[54] ZHAO Shukun & WU Kelin, 精准治理视角下的依法防控与人权保障——基于抗击 2019 新型冠状病毒引发的思考 (*Epidemic Prevention and Control by the Rule of Law and the Protection of Human Rights from the Perspective of Targeted Governance—Reflections on the Fight against COVID-19*), 4 南开学报（哲学社会科学版）(Nankai Journal [Philosophy, Literature and Social Science Edition]), 11–21 (2020).

[55] HOU Guilin, GAO Hongxia & HAN Dan, 乡村医生在农村新型冠状病毒肺炎疫情防控中的作用及其存在的问题 (*Functions and Problems of Rural Doctors in the Prevention and Control of COVID-19 in Rural Areas*), 33(5) 医学与社会 (Medicine and Society), 48–53 (2020).

[56] DONG Baohua, 疫情防控中如何平衡两类生存权 (*How to Balance Two Kinds of Survival Rights in Epidemic Prevention and Control*), 4 探索与争鸣 (Exploration and Free Views), 118–128 (2020).

[57] HOU Lingling, 防疫停工期间企业工资危险负担问题及解决方案 (*The Problem of the Dangerous Burden of Enterprise Wages during the Suspension of Epidemic Prevention and the Solution*), 6 法学 (Law Science), 124–140 (2020).

sociology[58] and have not revealed the internal factors that impact particular human rights rules or policies. They have not yet considered the crucial role of the CPC's leadership and the mixture of politics and law in the modern context of China's governance. As for public law studies, they rely too much on the top-down approach, assume a homogeneous objective for governance, and neglect the diverse needs of particular groups and their rights to equal treatment.

2) The gap between the unipolar state administration and governance through multiple agents. Strict control measures at the grassroots level are only sustainable when local mass organizations have been mobilized and the voices and needs of marginalized groups have been addressed for good governance with the participation of multiple social agents.

3) The gap between one-way policy protection and community empowerment. The state has taken exclusive responsibility to design and implement a comprehensive, detailed system for prevention and control of public health crises. However, it must accept its limitations when governmental support policies cannot cover all the needs of employees and enterprises in trouble. The system will deal with the vulnerability of societal members through the basic social security network, but also recognize the subjectivity and strengths of the weak, empower disadvantaged communities in terms of self-help organizations and equalization of public services, and enhance their own resilience to resist risk and recover from the impacts of public health crises.

III. FUTURE DIRECTIONS: KEY ISSUES FOR FURTHER STUDY

A. On Power Structure Theory: Refine the Experience of "Putting People First" and "Upholding the CPC's Leadership"

Future research should focus on understanding and refining the valuable experience of China's prevention and control of the COVID-19 crisis in terms of power structure, state administration and public service, and their performance in institutions. This research may consist of: 1) presenting the crucial role of the CPC's leadership in actions such as supervising the comprehensive policy-making process, clarifying the power division and duties of relevant authorities, coordinating joint efforts to implement those strict control measures, and responding effectively to people's urgent needs; 2) demonstrating the power origins and legitimate grounds of the strict control measures at the grassroots level through the constitutional laws and the CPC's regulations and identifying the action space for mass organizations such as disabled persons' groups and women's federations; and 3) reconciling, through the rights logic of the socialist legal system, the possible conflicts between executive measures to solve the crisis and the equal protection of people's fundamental rights.

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[58] For more discussion of organizational dynamics, see Hans-Otto Sano & Tomas Max Martin, *Inside the Organization. Methods of Researching Human Rights and Organizational Dynamics*, in Bard A. Andreassen ed. *Research Methods in Human Rights: A Handbook*, Edward Elgar (Cheltenham), at 253–282 (2017).

B. On Rights Protection Theory: Interpret the Ideas of "Life Supremacy" and "Equal Protection"

Future studies need also to fully interpret the content of the rights logic according to the principles of "life supremacy" and "equal protection" in the legal system for prevention and control of public health crises.

First, studies should emphasize the measures that have been taken to effectively protect people's right to life and right to health with no one left behind. Meanwhile, the conception of individual right to life should be integrated into the constitutional order of the state community.

Second, studies should document and sum up the measures taken to achieve substantively equal protection for disadvantaged groups such as women, the elderly, children, and persons with disabilities during the COVID-19 pandemic. This provides a basis to criticize Western liberalism and individualism and to highlight the superiority of socialist rights logic in balancing individual and community rights, ensuring equal protection for vulnerable groups, promoting inclusive social development, and realizing common prosperity.

Third, studies should elaborate the human rights discourse and persistently bring it into the post-pandemic era to cope with the rise of state regulationism in countries around the globe and reshape the common sense of fundamental rights according to the Universal Declaration of Human Rights and other core documents. This would set the conceptual and institutional common ground for further international agreement, mutual trust, and collaboration toward a safe and free world.

C. On Prevention and Control Mechanisms: Uphold the Principles of Scientific, Sustainable and Inclusive Development

The legal system for prevention and control of public health crises depends not only on effective public power arrangements, but also on equal rights protection, both of which comply with the principles of scientific, sustainable, and inclusive development.

First, the principle of scientific development means that prevention and control measures derive from the basic laws of medical science and epidemiology; respect the facts of demographics; consider the vulnerability of the elderly, children, women, and persons with disabilities; pay attention to the high risks of situations such as nursing institutions; and correspond to the policy trend of supporting community care and home care in the future.

Second, the principle of sustainable development refers to effective mobilization of grassroots resources rather than exhausting the resources of social charity and trapping vulnerable groups in the social welfare system. It means exploiting the functions of mass organizations (for instance, disabled persons' federations, women's federations, youth leagues) to represent marginalized groups, claim and manage resources, and provide

public services. These championing mass organizations in turn must cultivate more social organizations to use the social charity and public interest resources, empower the disadvantaged communities with resilience to resist risk, and recover from the crisis. Moreover, smoothing the domestic economic cycle and establishing the new development pattern require the rights-based framework to satisfy people's demand and drive supply reform, which begins with the recognition of the strength of social membership among vulnerable groups.

Third, the principle of inclusive development requires considerations to avoid disproportionate impact on societal members such as the elderly, women, children, and persons with disabilities. They should be included in the process of continuing prevention and control measures, and designing and pursuing economic and social recovery. The only way to make this feasible is to provide an accessible environment and an institutional framework of equal participation for all the marginalized groups. Inclusive development is therefore indispensable to the full development and common prosperity of all members of society.

D. On Intersectional Research Methodology: Bridge the Studies of Public Law and Human Rights Law

Future studies must address the gap between studies of public law and human rights law and must bridge the perspectives of rights protection and power arrangements. This new intersectional research methodology will help to capture a comprehensive image of the legal system for prevention and control of public health crises. The human rights discourse emphasizes that human beings as subjects are endowed with diversities, vulnerabilities, and inherent dignity, which require equal protection and social empowerment. On the other hand, the discourse on governance strategies deals with concepts of state-led policies under the CPC's leadership and implementing the mass line ("doing everything for the masses, relying on them in every task"), which invites all the mass organizations and social organizations to become the agents of co-construction, co-governance, and co-ownership.

This innovation of research methodology aims to integrate the valuable experience of grassroots practice into the dynamics of designing the legal system for prevention and control of public health crises, to ensure that "theory and policy innovation are well-founded and reasonable … fully embod[ying] the advanced and scientific nature,"[59] and achieve the equal protection of disadvantaged groups as part of the historical process of building a moderately prosperous society with no one left behind.

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[59] XI Jinping, 在经济社会领域专家座谈会上的讲话 (*Speech at the Symposium of Experts in Economic and Social Fields*), available at http://www.xinhuanet.com/politics/leaders/2020-08/24/c_1126407772.htm (last visited Jan 5, 2021).