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## **Mask mandates for children during the COVID-19 pandemic: an international human rights perspective**

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### **Abstract**

*Epidemiological and physical safety issues form the core of the debate on whether children should be mandated to wear face masks during the COVID-19 pandemic. Largely absent from this debate are the crucial implications of international human rights law. Though the WHO and UNICEF have different mask-wearing recommendations for children aged 0-5 years, 6-11 years, and 12+ years, the UN Convention on the Rights of the Child (CRC) applies to children of all ages. Children's human rights under the CRC and other treaties require decision-makers to tread particularly carefully when deciding whether to mandate mask-wearing for children. Special consideration must be given to the potential for detrimental impact of mask-wearing on children's physical, psychological and psychosocial health and wellbeing. Other non-pharmaceutical interventions for children, such as physical distancing, good hand hygiene and improved indoor ventilation do not engage the legal complexities of mask-wearing and are a safer policy option for reducing SARS-CoV-2 transmission.*

Epidemiological and physical safety issues form the core of the debate on whether children should be mandated to wear face masks during the COVID-19 pandemic.<sup>1</sup> Largely absent from the discussion are the crucial implications of international human rights law. These must feature more prominently in the face mask debate as, even if a strong epidemiological case is made for mandating mask-wearing among children, issues of legality, and the ethics that underpin them, are inescapable. With a recent study testing face masks on infants as young as 4 months old,<sup>2</sup> there is renewed debate on whether children should be required to wear masks.

The World Health Organization (WHO) and United Nations Children's Fund (UNICEF) advise that children aged 5 years and under should not be required to wear masks, based on the safety and overall interest of the child and the capacity to appropriately use a mask with minimal assistance. Decisions for children aged 6-11 years are advised to be made according to risk-based considerations, including local epidemiology, safety, and the potential impact of mask-wearing on learning and psychosocial development. Children aged 12 years and over

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are advised to wear a mask under the same conditions as adults.<sup>3</sup> Nevertheless, national practices vary widely, and some countries' public health advice is not strictly in line with WHO and UNICEF recommendations. For example, the US Centers for Disease Control and Prevention recommend that children aged 2 years and over who are not fully vaccinated should wear a mask in indoor public settings.<sup>4</sup> The Canadian Government advises that children between the ages of 2 and 5 years "may be able to wear a mask if supervised".<sup>5</sup> In Denmark, children under the age of 12 years are exempt from the requirement to wear a face mask.<sup>6</sup>

A child is defined by the UN Convention on the Rights of the Child (CRC) as a person below the age of 18 years or the age of majority, whichever is lower. CRC rights pertain to children of all ages, regardless of the WHO and UNICEF's tripartite categorization with regard to masks. The CRC reflects the special rights considerations that apply to children by reason of their more vulnerable and dependent nature. As put by the UN Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care". Children are protected by these rights in addition to human rights enjoyed by persons regardless of age, such as those contained in the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights. The dignity and rights of children are also recognized by the Universal Declaration on Human Rights, and the WHO Constitution enjoins states to respect the "fundamental rights of every human being", including children. Meanwhile, Article 12(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognises the right to "the highest attainable standard of physical and mental health", which Article 12(2)(a) states to include the healthy development of the child.

Decision-makers must tread more carefully when considering whether to mandate mask-wearing for children than for adults. Not only do special ethical considerations apply in paediatrics, including issues of autonomy and competence, states are under strict legal obligations to protect children from harm. The WHO and UNICEF have jointly advocated the "do no harm" principle with regard to the use of masks for children in the community, with prioritisation of the best interest, health and wellbeing of the child.<sup>7</sup> Article 3(1) CRC also requires that, in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. While this embraces the ethical principle of beneficence, it also carries liability implications for decision-makers. The "do no harm" and "best interest" principles require that mask-wearing decisions and recommendations are supported by durable evidence that mask-wearing does not impair children's physical, psychological and psychosocial wellbeing. Sufficient account should be taken of the potential role of masks in disrupting emotional communication, especially in education settings,<sup>8</sup> or prolonged mask-wearing on physiological, psychological and psychosocial wellbeing.<sup>9</sup><sup>10</sup> Evidence of the potential for impairments due to compelled mask-wearing could, for example, generate state liability under Article 19(1) CRC, which obligates states-parties to protect the child from all forms of physical or mental injury, abuse, negligent treatment or maltreatment.

Moreover, any negative impact on mental or emotional wellbeing experienced by children required to wear masks, which may vary according to age and capacity factors and which

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may yet be established,<sup>11</sup> may be incompatible with the WHO Constitution. This provides that health is a state of complete physical, mental and social wellbeing and not merely the absence of disease or infirmity. It, like Article 12(2)(a) ICESCR, adds that healthy development of the child is of basic importance. This requires that decision-makers take a broadly-defined, whole-person approach to child health during the pandemic, and not merely focus on curtailing COVID-19 data. Decision-makers must consider whether mask-wearing in education settings could interfere with state obligations to encourage regular attendance at schools (Article 28(1)(e) CRC and Article 13 ICESCR), noting that education should be directed to the development of the child's personality, talents and mental and physical abilities to their fullest potential (Article 29(1)(a) CRC). Consultation of children in decisions about mask-wearing (Article 12(1) CRC) must not be made in a legal vacuum, particularly in education settings, as education should strengthen respect for human rights and fundamental freedoms (Article 13(1) ICESCR).

Though mask-wearing may be effective in reducing the spread of SARS-CoV-2,<sup>12</sup> reduction in viral transmission is not a pre-eminent cause that eclipses all other potential harms, including to children's physical, psychological and psychosocial wellbeing. It is legally and ethically wrong to assert that "[e]very precautionary measure against the diffusion of COVID-19 should be implemented".<sup>2</sup> Even where limitation of, or derogation from, human rights is permitted by law on public health grounds, proportionality requirements often apply in international and national law. Public health interventions are liable to be invalidated by courts if they disproportionately impinge on human rights, fundamentally because a balance must be struck between public health benefits and human rights costs, though these are not mutually exclusive considering political and constitutional determinants of health.<sup>13</sup> Noting that children and schools appear to play only a limited role in SARS-CoV-2 transmission,<sup>14</sup> reduction of transmission among children can be pursued through more proportionate non-pharmaceutical interventions, such as physical distancing, good hand hygiene and improved indoor ventilation. These less intrusive measures do not engage the legal complexities of mask-wearing and are a safer policy option for combatting the spread of COVID-19.

As decision-makers contemplate the epidemiological benefits of child mask mandates, they are legally and ethically bound to protect children's human rights, including rights to whole-person wellbeing. The Siracusa Principles on the Limitation and Derogation Provisions in the ICCPR make it clear that the judgment of national authorities cannot be accepted as conclusive when considering the necessity of derogation measures, thus governments are not at liberty to prioritize epidemiological objectives over rights-based considerations. Human rights are inviolable and must form the foundational context in which public health debates are conducted and epidemiological decisions made, both in general and in the particular case of children.

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## CONFLICTS OF INTEREST

The Author declares that there is no conflict of interest.

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