Treatment Action Group

90 Broad St, Suite 2503

New York, NY 10004

USA

Office of the United Nations High Commissioner for Human Rights

United Nations Office at Geneva

c/o Ms. Alexandra Xanthaki, Special Rapporteur in the fields of cultural rights

CH 1211 Geneva 10

Switzerland

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**Re: Contribution on cultural rights and migration**

Introduction:

1. Treatment Action Group (TAG) is an independent, activist, and community-based research and policy think tank committed to racial, gender, and LGBTQ+ equity; social justice; and liberation, fighting to end HIV, tuberculosis (TB), and hepatitis C virus (HCV). We are science-based activists working to expand and accelerate vital research and effective community engagement to the HIV, TB, and HCV pandemics.
2. TAG strongly urges the Special Rapporteur to recognize the right of everyone to enjoy the benefits of scientific progress and its applications (hereafter: right to science) as an essential part of and contributor to the cultural rights obligations that states must to fulfill for persons in migration.
3. This contribution foremost responds to Question 1 of the call for input for a report on cultural rights and migration: “What are the issues relating to cultural rights that you see in your country’s migration processes?” and invites the Special Rapporteur to deepen the analysis of cultural rights in the context or migration by unpacking the role that science and technology play in migration processes.
4. TAG’s research has documented how unscientific health screening methods in the context of visa procedures constitute violations of cultural rights (including the right to science), the right to health, and right to nondiscrimination by determining who is allowed to migrate.[[1]](#footnote-1)
5. Restrictions on movement and migration, visa denials and deportations affect migrants’ lived culture by separating families or other cultural groupings
6. These violations are even more egregious when they are not decided based on the best available science and international health standards for disease screening and diagnosis as set forth by World Health Organization recommendations.
7. In effect, denial of entry or deportation based on unscientific disease screening algorithms are a direct violation of the cultural right of everyone to enjoy the benefits of scientific progress and its applications and an indirect violation of other cultural rights in denying the necessary economic ability for cultural expression based on flawed, unscientific procedures. Cultural expression, as understood by UNESCO, includes “expressions that result from the creativity of individuals, groups and societies, and that have cultural content.”[[2]](#footnote-2)

(a) the right to science and its place among cultural rights:

1. “Science and culture are symbiotic”, writes Farida Shaheed, former Special Rapporteur in the field of cultural rights, tying both science and culture together with the “intentions of the drafters of the Universal Declaration of Human Rights (UDHR)” and including in her analysis of science and culture the idea of them encompassing scientific and cultural knowledge.[[3]](#footnote-3) Milène Bidault describes the formal and substantive connections between science as a distinct part of cultural rights.[[4]](#footnote-4)
2. The Committee on Economic, Social and Cultural Rights in General Comment 21 states: “The right of everyone to take part in cultural life is closely related to the other cultural rights contained in article 15: the right to enjoy the benefits of scientific progress and its applications (art. 15, para. 1 (b)) […];”[[5]](#footnote-5) General Comment 21 further explains in paragraph 13 that culture is an expansive concept that includes access to science and technology, concluding that “[c]ulture shapes and mirrors the values of well-being and the economic, social and political life of individuals, groups of individuals and communities.”[[6]](#footnote-6)
3. The right to science is not only a contributor, in some cases enabler, of cultural rights. It is itself a cultural right. The right to science derives from the International Covenant on Economic, Social, and Cultural Rights (ICESCR) Art. 15 (1) (b), (2), (3) and (4). The right obligates states to ensure that everyone has access to the tangible and intangible products derived from science without discrimination.
4. In 2020, coinciding with the start of the COVID-19 pandemic, CESCR published General Comment 25 on science and economic, social, and cultural rights (hereafter: GC25) providing the first authoritative analysis of the right to science.[[7]](#footnote-7)
5. GC25 elaborates several concepts derived from ICESCR Art. 15, including defining the term “benefits” of science as the importance of science “in forming critical and responsible citizens who are able to participate fully in a democratic society.” “Culture”, GC25 states, “is the larger context in which science takes place, is applied, and to which it contributes.”[[8]](#footnote-8)
6. The right to science also articulates state obligations for purposive development of science and technology for public benefit in ways that ensure the availability, accessibility, affordability, and quality of scientific goods, e.g., diagnostics, vaccines, treatments. This 3AQ standard is also reflected in the right to health.[[9]](#footnote-9)
7. GC25 reiterates the normative framework of availability, accessibility, acceptability, and quality (AAAQ). With regards to availability, GC25 notes “States parties should direct their own resources and coordinate actions of others to ensure that scientific progress happens and that its applications and benefits are distributed and are available, especially to vulnerable and marginalized groups.”[[10]](#footnote-10) As part of the three dimensions of accessibility, GC25 stresses as a first dimension that “States parties should ensure that everyone has equal access to the applications of science, particularly when they are instrumental for the enjoyment of other economic, social and cultural rights.”[[11]](#footnote-11)
8. Importantly for the context of cultural rights, including in the context of migration, the right to science defines ‘access’ as including:
	1. the intangible scientific benefits of science, i.e., knowledge, information.
	2. the material results of scientific progress, i.e., medicines, vaccines, diagnostics.
	3. and the means, methods, and materials of scientific discovery.
9. In a country where the majority of the workforce are migrants, their presence in and contributions to daily life forms the cultural life of the destination country. As such, migration policy is cultural policy.
10. The misapplication of science to enforce restrictions on migration based on health therefore constitute infringement of cultural rights.
11. Indeed, General Comment 21 on the right of everyone to take part in cultural life states in paragraph 41: “Cultures have no fixed borders. The phenomena of migration, integration, assimilation, and globalization have brought cultures, groups and individuals into closer contact than ever before, at a time when each of them is striving to keep their own identity.”[[12]](#footnote-12)
12. Rights in migration, health rights, science and cultural rights all are necessary components to a “life with dignity.”[[13]](#footnote-13)
13. In short, TAG’s analysis indicates that without applying the reinforcing and complementary obligations that the right to science establishes, states will not be able to fully realize the cultural rights within their borders for all without discrimination, including migrants.

(b) the right to science, cultural rights, and migration:

1. Researchers on migration in the context of health and ethics have concluded that “[w]hen creating public health policies to address the complex challenges posed by TB and migration, countries should focus these policies on evidence, ethics, and human rights.”[[14]](#footnote-14)
2. In previous research and subsequent submissions and statements for the UN Universal Periodic Review of the United Arab Emirates (UAE), TAG has documented extensive evidence of the human rights violations enacted through migration and visa policies of the UAE.[[15]](#footnote-15)
3. These violations included in our research and analysis included:
	1. Violations of the right to science by using a “TB screening mechanism relies on a diagnostic algorithm that does not account for the limitations of currently available TB diagnostics.” The UAE use of chest x-ray misconstrues it’s use as a screening tool, because a chest x-ray alone cannot confirm a diagnosis of TB. Lung scarring that appears on chest x-ray could be TB, prior TB, or something else altogether. When chest x-ray identifies such lung scarring or abnormalities it should be taken as an invitation to further diagnosis and clinical care. The WHO operational handbook on TB screening states: "A positive or abnormal result on chest x-ray screen indicates referral for diagnostic evaluation."
	2. Violations of the right to health by the UAE practice to deport migrants with lung scarring without referring them to access medical care.
	3. Violations of the right to privacy and right to information by disclosing migrants health status to their employers without their consent, and not providing full access to the migrants themselves about their own medical status by e.g. not issuing medical documents.
4. This practice contravenes the WHO guidelines on TB screening which state: "Screening population groups at higher risk for TB is ethically sound as long as it is designed and conducted to improve individual and public health and wellbeing; in this way screening contributes to the common good and upholds the ethical principle of accountability. […] screening should always be done with the intent to provide care to those who need it, and never to exclude entry or employment or discriminate against individuals.”
5. It is with grave concern that TAG reports to the SR that these violations are still occurring today. These violations are also not confined to the UAE nor to the context of TB.

1. In fact, health centers tasked with health screening for visas to states included in the Gulf Cooperation Council (GCC) are at the time of writing working in 21 countries per the Gulf Health Council website.[[16]](#footnote-16)
2. The “Regulations of Medical Examination of Expatriates” outline in details items including in the applicant’s medical history that exclude them from receiving work or travel authorization to GCC countries (listed below) as well as the requirements for the medical examination:
	1. “The expatriate shall not have suffered from any of the following diseases:
		1. Any mental or neurological disease, and shall be free from symptoms and clinical signs indicating the presence of these diseases;
		2. Heart diseases;
		3. Lung diseases such as bronchial asthma;
		4. Renal disease, Renal failure, or chronic Renal disease that leads to Renal failure;
		5. Liver disease or failure;
		6. Any hernia or intra-abdominal swelling or inflammation;
		7. Congenital/pathological limb or vertebral anomalies.
		8. Chronic or viral skin diseases;
		9. Rheumatism or Lymphadenoma;
		10. Blood diseases such as anemia, leukemia, etc.; and/or
		11. All allergic diseases, or clinical signs of allergies.“
3. The system of fines levied on accredited medical screening centers in an applicant’s home country should they clear a medical screening that is confirmed to be in violation of the requirements when confirmed upon arrival in the GCC country, appear to exacerbate the discrimination experienced by migrants.
4. On 16 November 2022, TAG documented the cases of two Indian citizens intending to return to their home in Kuwait after a COVID-19 border closures forced them to extend their trip to India, during which their residency visa expired. Both persons were initially withheld their visa because they did not pass the unscientific medical test, one for suspected hypertension and one for lung scarring.[[17]](#footnote-17)
5. Two core obligations identified in GC25 are of note in this context:
	1. “Ensure that health professionals are properly trained in using and applying modern technologies and medicines resulting from scientific progress:”
	2. “Adopt mechanisms to protect people from the harmful consequences of false, misleading and pseudoscience-based practices, especially when other economic, social and cultural rights are at risk:”[[18]](#footnote-18)
6. In this context, TAG asks the SR to take note of the extraterritorial obligations of states under the right to science.[[19]](#footnote-19) Both the GCC via the GHC Regulations, and the migrants’ states of origin are falling short of these core obligations when they not only allow but in fact require health centers to apply diagnostic methods that are not in line with published WHO standards.
7. The argument that persons with these cited conditions are unfit to work and pose a risk to the citizens on the GCC is not supported by science and is in violation of disability rights, which also apply to migrants, and the right to work: “The right to work is a foundation for the realization of other human rights and for life with dignity.”[[20]](#footnote-20)
8. Despite the fundamental role that science and health play in the context of migration, either forced or voluntary, the right to science is rarely invoked and remains largely unknown even among UN bodies. Because of the large role that scientific progress and through it the right to science hold for everyone’s ability to freely partake in cultural life, and because of how non-scientific methods are used to circumvent cultural rights of migrants, it is imperative that the Special Rapporteur, through your oral and written reports to the upcoming HRC sessions, explicitly acknowledge the human rights dimensions of science in the context of cultural rights and reaffirm the right of everyone to participate in and enjoy the benefits of scientific progress and its applications, including migrants.
1. Treatment Action Group, “Submission to the United Nations Universal Periodic Review of United Arab Emirates, 29th Session in January/February 2018”. (2017) <https://www.treatmentactiongroup.org/wp-content/uploads/2017/12/upr\_submission\_for\_UAE\_6\_2017\_submitted\_by\_TAG\_COMBINED.pdf> [↑](#footnote-ref-1)
2. See e.g., <https://en.unesco.org/creativity/glossary/c> [↑](#footnote-ref-2)
3. Shaheed, Farida and Andrew Mazibrada. “On the Right to Science as a Cultural Right”. (2021) In: Porsdam, Helle and Sebastian Porsdam Mann. The Right to Science: Then and Now. 2021. <https://www.cambridge.org/core/books/right-to-science/9FC3AB86632A686C686F0C5FD8EBF766> [↑](#footnote-ref-3)
4. Bidault, Miléne. “Considering the Right to Enjoy the Benefits of Scientific Progress and Its Applications As a Cultural Right. A Change in Perspective” (2021) In: Porsdam, Helle and Sebastian Porsdam Mann. The Right to Science: Then and Now. 2021. <https://www.cambridge.org/core/books/right-to-science/9FC3AB86632A686C686F0C5FD8EBF766> [↑](#footnote-ref-4)
5. E/C.12/GC/21 [↑](#footnote-ref-5)
6. E/C.12/GC/21 para. 13: “The Committee considers that culture, for the purpose of implementing article 15 (1) (a), encompasses, inter alia, ways of life, language, oral and written literature, music and song, non-verbal communication, religion or belief systems, rites and ceremonies, sport and games, methods of production or technology, natural and man-made environments, food, clothing and shelter and the arts, customs and traditions through which individuals, groups of individuals and communities express their humanity and the meaning they give to their existence, and build their world view representing their encounter with the external forces affecting their lives. Culture shapes and mirrors the values of well-being and the economic, social and political life of individuals, groups of individuals and communities.” [↑](#footnote-ref-6)
7. E/C.12/GC/25 [↑](#footnote-ref-7)
8. E/C.12/GC/25 para. 10 [↑](#footnote-ref-8)
9. E/C.12/2000/4 [↑](#footnote-ref-9)
10. E/C.12/GC/25 para. 16 [↑](#footnote-ref-10)
11. E/C.12/GC/25 para. 17 [↑](#footnote-ref-11)
12. E/C.12/GC/21 [↑](#footnote-ref-12)
13. See e.g., Shaheed, Farida “Statement by Ms. Farida Shaheed, Special Rapporteur in the field of cultural rights at the 70th session of the General Assembly

” (2015) <https://www.ohchr.org/en/statements/2015/11/statement-ms-farida-shaheed-special-rapporteur-field-cultural-rights-70th> [↑](#footnote-ref-13)
14. Wild, V. et al. “Tuberculosis, human rights and ethics considerations along the route of a highly vulnerable migrant from sub-Saharan Africa to Europe”. (2017) In: INT J TUBERC LUNG DIS 21(10):1075–1085 <http://dx.doi.org/10.5588/ijtld.17.0324> [↑](#footnote-ref-14)
15. Treatment Action Group. “Submission to the United Nations Universal Periodic Review of United Arab Emirates, 29th Session in January/February 2018“. <https://www.treatmentactiongroup.org/wp-content/uploads/2017/12/upr\_submission\_for\_UAE\_6\_2017\_submitted\_by\_TAG\_COMBINED.pdf> [↑](#footnote-ref-15)
16. See Gulf Health Council FAQ: < <https://v2.gcchmc.org/faq/>> accessed 24. November 2022. Countries with accredited health centers are: Bangladesh, Egypt, India, Ethiopia, Ghana, Indonesia, Jordon, Kenya, Lebanon, Mali, Morocco, Nepal, Niger, Pakistan, Philippines, Sri Lanka, Sudan, Tanzania, Thailand, Turkey, Uganda [↑](#footnote-ref-16)
17. TAG interview with Fizza Hussaini, daughter of the two visa applicants. Interview on file with author. [↑](#footnote-ref-17)
18. E/C.12/GC25 para 52 [↑](#footnote-ref-18)
19. E/C.12/GC/25 para. 83 [↑](#footnote-ref-19)
20. https://www.escr-net.org/rights/work [↑](#footnote-ref-20)