

Forum: Human rights practice in the age of pandemic

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The practice of human rights, like most other spheres of human activity, has been radically affected by the novel coronavirus pandemic. COVID-19 has had an enormous impact on the way that we go about our work, whether we are scholars or practitioners in the field. But equally we would like to believe that our practice is of some relevance to those affected by the virus - which is to say all of us. Without trying to claim that human rights have an answer for every human problem, or for every aspect of this current crisis, it is not too immodest to claim that we have something to offer.

As an academic journal we are not best placed to respond quickly to the demands of this rapidly developing situation. Indeed, like many other enterprises, our own work has been disrupted and delayed. However, in order to offer an initial response to the human rights challenges of COVID-19, we asked a number of practitioners and scholars from several different corners of the world to reflect on these challenges. This is not, obviously, intended as a comprehensive inventory of the questions that need to be addressed - and aspects may already be outdated by the time this issue is published. It is, however, a first take. We hope that, in the coming months, contributors will offer their own experience and research on human rights practice in the conditions of pandemic, including your responses to the articles in this special forum.

It should hardly be necessary to assert the continued relevance of human rights in the present context. As several of our contributors note, governmental responses to COVID-19 tend to be true to their underlying character and to expose 'the existing fault lines in our society' (Supriya Akerkar). As Andras Kadar puts it, the Hungarian right-wing populist government responds to the pandemic as it does because it is 'in its nature.' China initially reacted with censorship and repression, while the United States employed xenophobia and magical thinking. The latter has been uniquely badly affected not only because of the malignancy and ineptitude of its leadership, but also because of the lack of an adequate social safety net, including universal healthcare. There appear to be few redemption stories where governments exceed expectation, although those with prior experience of epidemics and the need for testing and contact-tracing have performed better. These include countries, such as several in Africa, not routinely regarded as models of good governance. This tendency for a 'natural' catastrophe to highlight pre-existing social characteristics explains the popularity of plague literature - Camus, Defoe and others enjoy late sales booms - as well as generating opportunities for human rights practitioners. This is much of the emphasis of Alicia Ely Yamin's piece: the pandemic both exposes existing iniquities and sets a possible agenda to transcend them.

Yamin offers a broad-reaching and radical agenda, founded on the possibility that the present protracted crisis offers opportunities as well as threats. A question that arises, however, is about the capacity of the human rights movement to make its voice heard, never mind taking control of the moment. While human rights organisations and scholars have not been slow to offer analysis and interpretation of the social and political dimensions of the pandemic, there is no evidence that our voices are widely heard or that we are influencing policy where it matters. Eda Sayhan offers one route: narrow the focus of human rights work. Paul Gready offer a different one: working at a local level to influence policy at the grassroots.

Much public discussion in recent months has been about the extent to which restrictions on some rights might be necessary in order to protect others. As Gready discusses, human rights law offers a well-calibrated approach for balancing conflicting interests and rights. The notion that freedom of movement, for example, might be limited in order to protect the right to health is not exotic or unusual to readers of this journal but the bread and butter of many human rights practitioners (even though our experience may be

with other combinations of rights). Of course, there may then be overreach, either deliberate because of the nature of the regime (Kadar) or because of innate tendencies, even of democratic governments (Seyhan). We may then disagree among ourselves about the policy implications. Seyhan argues that human rights organizations, at least in the global North, should be focused on the threat to civil and political rights. Other contributors, notably Gready and Yamin, emphasise the importance of human rights practitioners addressing health rights among other economic and social rights.

One of the challenges to human rights practitioners is understanding the nature of vulnerability in the pandemic. For example, we are used to reflexively labelling children as vulnerable - yet they are clearly less susceptible to the disease than adults. But this itself does not mean that they are no longer vulnerable, especially in situations where poverty is exacerbated by both the pandemic and the response to it. Other fault lines also become relevant in understanding the impact of the virus. Racial disparities in many countries appear to map directly onto susceptibility to infection and mortality. Gender is central: women are often victims of the pandemic, for example through an upsurge in domestic violence, even though they are apparently less susceptible to infection than men. Martha Fineman's claim that vulnerability is a 'universal, inevitable, enduring aspect of the human condition' (2008: 1) is useful here, reminding us that vulnerability is always contextual and that the concept may be a more flexible one than traditional understandings of equality. Supriya Akerkar argues the need for 'radical equality' in our approach to vulnerability of older people and those with disabilities. Lukas Muntingh looks at a uniquely vulnerable section of society that is seldom found on lists of those who should be protected against discrimination: persons deprived of their liberty. The treatment of prisoners is often described as a test of the humaneness of a society, just as the response to a pandemic is seen as exposing society's underlying values. The treatment of prisoners in a pandemic is thus a double test, in which African governments, according to Muntingh, have a mixed record. He points to the complexity of the problem; prisons are a hotbed of infection, yet released prisoners without adequate support will likely find themselves even more vulnerable.

If we are honest, we do not yet understand the implications of any of this. We do not know whether the pandemic has handed dangerous new powers that governments will abuse - or create a new sense of social solidarity that will allow fuller realisation of health rights and better protection of the vulnerable. Or perhaps the outcome will be uneven, possibly returning to something resembling the pre-existing 'normal.' But we will be living with the new normal for a while yet and the challenges for human rights practice are immense.

References

Fineman, M.A. 2008. The Vulnerable Subject: Anchoring Equality in the Human Condition. *Yale Journal of Law and Feminism* 20(1): 1-23.