CROSS-CULTURAL
HUMAN RIGHTS REVIEW

CCHRR EDITORIAL DECEMBER 2020: Long Overdue: COVID-19's Revelation of Systemic Subjugation and the Demand for Structural Approaches to Human Rights Protection

Despite the near universal support of human rights as the moral compass of our international order, the quest to protect them remains a goal far from fulfilled. While the seminal work on human rights and international relations by Sikkink et al (2013) affirm the persistent power of human rights, recent works such as Hopgood's 'End times of Human Rights' (2013) and Moyn's 'The Last Utopia' (2010) as well as 'Not Enough' (2018) have reflected on the precarious future and sustainability of human rights. Though the latter two reach arguably different conclusions, their commonality remains that human rights, in one way or another, are in jeopardy. Part of the challenge is that the practical realisation and enjoyment of human rights is becoming an increasing challenge in an unpredictable, multicultural, and ever-changing world. Most recently, the global crisis of COVID-19 reveals certain *persistent challenges*.

While COVID-19, because of its global reach, has presented new logistical challenges to rights, such as the freedom of movement, the crisis has underscored unmet issues that have arguably existed since their inception. These challenges move beyond contestations around the nature, origins, application, and universality of human rights, and point to a range of deep-seated systemic issues. These limitations pertain to the system within which human rights and its international discourse are embedded, namely a neglect of the systemic impediments to the realisation of human rights.

By exposing the lack of universal protection of human rights across vulnerable and underprivileged communities (particularly those affected by structural racism), the COVID-19 crisis has revealed the extent to which the human rights regime has neglected issues of systemic and structural challenges. An example is the idea that vulnerable groups are necessarily minorities (a discourse often borrowed from the Western experience). Here, cases like the continued marginalisation of the black majority through systemic racism in South Africa prove otherwise and prompt a more

nuanced understanding of the complex dynamics of different systems depending on context.[1]

Equally, on a global level, prior to the crisis violations of human rights were largely relegated to the inadequacies of the developing world, as a result of poor governance, weak rule of law, and the persistence of 'harmful traditional practices'. However, the cracks that the COVID-19 pandemic has revealed in the so-called 'free' world have forced us to rethink or at least engage with many of these assumptions. This has reignited discussion around who the international human rights regime serves and to what ends. Notwithstanding significant challenges, the developing world, for example, has surprisingly managed to deliver, come together, and provide essential services in the face of major barriers of access. Equally striking have been the unexpected tensions and immense struggles of the developed world to ensure compliant and safe behaviour from citizens while balancing fundamental individual freedoms. In a certain sense societal cracks have emerged across the board, forcing governments to take seriously culturally sensitive and context-bound approaches. By no means is this a tally of who has done better but rather an indication of the wide range of considerations, outcomes, and effects this pandemic has had. To this end, the COVID-19 pandemic has 'equalised' all states by showing that challenges to human rights protection are persistent, universal, and diverse.

Importantly, not all challenges are the same across the globe. In some parts, these relate to inadequate supplies, in others, societal cultures have informed lockdown measures, and in others still, the politicisation of the pandemic has presented the biggest hurdle. Between states, as well as within states, varying levels of privilege have underscored the reality that, some groups have enjoyed protection from the worst effects of the crisis while others have been left profoundly negatively affected in terms of basic rights to health, access, and care. This has highlighted asymmetries regarding whose rights are protected and should prompt us to ask how the human rights system has failed to dismantle – or worse - been complicit in reproducing systemic inequalities of this nature. Interestingly however, some marginalized regions such as Africa have seemingly done better than expected, if not better overall at

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[1] The same can be said for the structural marginalization of women as a vulnerable group in society, despite their mostly majority status.

handling the crisis, all things considered.[2] Nevertheless, while some states have fared (marginally) better than others, the crisis has revealed the wide range of 'skeletons' in everyone's closets with the result that no one state, leader, or community has come out 'victorious.'

In particular, the current crisis has brought issues of power, privilege, and exclusion into sharp relief, most notably with the internationalisation of the BLM movement (which has had localised expressions across the globe). At its core this movement, though often framed as a movement pertaining to civil and political rights, fundamentally speaks to the need to address systemic injustices that preclude the enjoyment of rights by all groups of society, equally. This includes the impact of the systemic exclusion of basic socio-economic rights, effectively compounding the range of associated vulnerabilities such as health, access to health, basic goods and services, that COVID-19 has brought to the fore. It goes beyond formalised equality and rights in the form of equal participation in society and speaks to the deep-rooted, systemic and oft-unseen challenges of 'others.' These are all systemic in nature and issues that the human rights movement has to contend with on a theoretical and practical level.

Part of the challenge the current crisis has illuminated is the limitations of the human rights system itself. For long, atomistic, individualised, and 'perpetrator' oriented approach has focused on violative actors. This overly agent-oriented approach, while at times necessary, risks overlooking systems of violation and exclusion that are so evidently and intimately complicit in fostering the inequities we have seen emerge. Similarly, the continued subordination of economic, social, and cultural rights to civil and political rights have revealed the challenges of a hierarchical approach to human rights. This is especially apparent when combined with individualisation, leading to an increasingly narrowed space for addressing systemic and collective social, economic, and cultural exclusions. The challenge then is to find

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[2] See for example: Pilling, David (2020, October 23). 'How Africa fought the pandemic and what coronavirus has taught the world' *The Financial Times*, Accessed on 20 November 2020, <https://www.ft.com/content/c0badd91-a395-4644-a734-316e71d60bf7>; Henley, Jon (2020, August 18). 'Female-led countries handled coronavirus better, study suggests' *The Guardian*, Accessed on 20 November 2020 <https://www.theguardian.com/world/2020/aug/18/female-led-countries-handled-coronavirus-better-study-jacinda-ardern-angela-merkel>.

culturally legitimate and embedded mechanisms through which these neglected, yet equally valid aspects of human rights can be secured.

A glaring challenge that the pandemic has revealed is that while human rights by their nature are arguably focused on 'the agent' as it were i.e. the human, this focus has in many cases glossed over the more collective dimensions of human rights that affect individuals *and* groups. What is more is that overlooking these core components limits individual 'agents' ability to enact change and/or enjoy their rights. Human rights then, are not only about creating legal frameworks to protect and ensure rights, but also need to speak to how these very structures often hinder agents from fully realising and enjoying rights. While the debate between individual and collective rights continues, it is evident that approaches that focus on collectivities are needed to address macro-systemic challenges. Here too drawing on human rights scholarship across philosophical traditions, cultures, and societies with varied experiences can help enrich our approach. The current crisis has therefore spotlighted the persistent negligence of the systemic dimensions of human rights - issues that critical scholarship (such as TWAIL, postcolonial, decolonial, feminist, and queer amongst others) has consistently pointed out.

In essence the crisis has called into question the complicit nature of our 'systems' in maintaining power imbalances and subsequent rights violations while disrupting the veneer of what are deemed 'legitimate', 'authoritative', and untouchable systems. It has also highlighted the limits and pitfalls of de-contextualised, and mono-disciplinary approaches to human rights as well as the need for drawing on diverse experiences to fully protect human rights. If anything, this crisis has shown us that for human rights to maintain their persistent power, persistent challenges need to be addressed.

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