



Human rights in times of Pandemics

15.05.2020: Aids Action Europe on the SARS-CoV-2/COVID-19 Pandemic

Public health measures in times of pandemics must always be human rights-based. We have learnt this well since the beginning of the HIV/AIDS epidemic. We are observing with growing concern that some of the measures introduced during the current SARS-CoV-2/COVID-19 outbreak lack all the principles of human rights-based public health measures, and in certain cases are not even connected to the prevention and the control of the pandemic.

Since September 1982, when the Center for Disease Control and Prevention in the US used the term AIDS (Acquired Immune Deficiency Syndrome), States, policy and decision makers have repeatedly tried to apply different tools in their arsenal to address the issues brought by HIV. One of these attempts include the broad application of existing criminal laws or the creation of HIV-specific laws to cases of HIV transmission, - exposure and non-disclosure in an attempt to prevent further cases. Countries also introduced HIV-specific travel restrictions,¹ some of which are still upheld today. However, there is no evidence that any of these HIV-specific laws or the general criminal code have managed to reach their public health targets, i.e. to slow down or stop the transmission of HIV, on the contrary, they only increased stigma and discrimination against people living with HIV and other key populations.

The criminalization of drug use and sex work as a deterrent from engaging in these activities not only failed their original purpose but also cause public health disasters among these key populations regarding HIV and other communicable diseases.

Today, with 30+ years of experience and evidence, a human rights-based approach is considered to be effective and essential in any response to HIV/AIDS. And we also understand that human rights violations continue to be major obstacles to accessing HIV-prevention, testing, treatment and care-services, thus need to be addressed if we are to reach the target of ending the AIDS epidemic by 2030.²

The international treaties on fundamental human rights, the International Covenant on Civil and Political Rights (ICCPR)³ and the International Covenant on Economic, Social and Cultural Rights (ICESCR),⁴ include not only the rights of every individual that must be respected by the States but also gives guidance on whether these rights can be derogated and if so under what circumstances e.g. in case of a public health emergency. Article 4 of ICESCR states that *"the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society."* The fundamental rights in ICCPR agreed upon by all States can only be limited if the measure meets the criteria listed in the Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights,⁵ i.e. they are necessary. This necessity must always imply that the limitation is justifiable and responds to a public need, that it is legitimate and proportionate. When it comes to

¹ <http://www.hivtravel.org>

² <https://www.opensocietyfoundations.org/publications/human-rights-and-hiv-aids-now-more-ever>

³ <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

⁴ <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

⁵ <https://www.uio.no/studier/emner/jus/humanrights/HUMR5503/h09/undervisningsmateriale/SiracusaPrinciples.pdf>



public health interests: *"These measures must be specifically aimed at preventing disease or injury or providing care for the sick and injured."*⁶

With the appearance of the novel Coronavirus (SARS-CoV-2) and its rapid development into a pandemic, we are observing with growing concern the unjustified introduction of measures that derogate the fundamental rights of individuals. Even more concerning are those examples, where governments use the COVID-19 pandemic to derogate these rights and repress their citizens.⁷

Another joint character of pandemics, whether it is HIV or COVID-19, is that they clearly show inequalities and social injustices. We have seen this in the HIV/AIDS epidemics, those most marginalized of societies became the most vulnerable to HIV/AIDS and we are seeing that in the COVID-19 pandemic: those who are at the margins of society, the homeless, the poor, those without access to health care services, face extra difficulties and have to make difficult choices between their health or feeding their families. At the same time incurring the stigma and discrimination of those who have the privilege of complying with these public health measures.

Although there is a clear public health threat with the presence of the COVID-19 pandemic, we must remain vigilant that measures taken by governments are always justified, proportionate and limited in their time for the period of the threat. We know from experience that public health measures that lack human rights principles will disproportionately affect vulnerable populations and will favour privilege over individual rights of every person.

Moreover, we are concerned that what the HIV/AIDS movement has reached in reforming the public health responses to communicable diseases in the last 30+ years will disappear and we go back to policies and laws that cause harm but have no public health value or might be replaced by high-tech surveillance and tracking systems and draconian unjustified measures that violate our fundamental human rights.

Pandemics such as COVID-19 and HIV/AIDS require tremendous efforts from all stakeholders, but they also provide an opportunity to address the underlying determinants of health, which have always determined and will determine the course of an epidemic. COVID-19 will one day be only a chapter in human history, but the legacy of the response to this epidemic will remain with us and can shape our societies and the basis of our social interactions for a long time.

As we are writing these lines, our knowledge of SARS-CoV-2/COVID-19 is changing rapidly. However, our basic principles in addressing this public health threat must not change but always be human rights based. As Jonathan Cohen wrote in his essay *"Covid-19 and the power of public health"* on the power and limitations of infectious disease control: *"I do not question the fundamentals of infectious disease control, like testing, contact tracing, isolation, and quarantine. But these tools only work if another set of fundamentals are in place. These are the fundamentals of a just society."*⁸

⁶ Article 25 of Siracusa Principles

⁷ https://www.vice.com/en_us/article/dygbxk/these-30-regimes-are-using-coronavirus-to-repress-their-citizens

⁸ <https://blogs.bmj.com/bmj/2020/04/22/jonathan-cohen-covid-19-and-the-power-of-public-health/>