

Pandemics and our human rights

This isn't the time to take them away

By Nalini Singh, NGO Coalition on Human Rights Chair

The COVID-19 pandemic is of grave concern not only to Fiji but globally as well. At a moment of such urgency, it is critical that efforts are directed to support not only public health professionals at the forefront of emergency response work and other frontline workers for COVID-19 pandemic cases those who may be under quarantine, but the nation as a whole.

Therefore, the need for the Government to develop and implement strategies to protect human health and human life, while respecting human rights, is urgent. Especially, during this time, in which the fundamental right to life is at stake, and therefore, the government must be obligated to ensure its protection for all people in Fiji.

Why protect human rights?

The NGOCHR calls for a human rights framework in responding to the COVID-19 pandemic. This framework recognises that national emergencies may require limits to be placed on the exercise of certain human rights so long as the emergency measures — including states of emergency — are legal, proportionate, necessary and non-discriminatory, have a specific focus and duration, and take the least intrusive approach possible to protect public health.

The NGOCHR recognises that a State of Emergency (SoE) has not been declared in response to the COVID-19 Pandemic, but instead the Fijian Government has declared a State of Natural Disaster, for the whole country. This came into effect a few days after an earlier State of Natural Disaster was declared for certain parts of Fiji in the wake of Cat 4 Tropical Cyclone Harold.

Our sentiments are the same. Laws must be proportionate, necessary and non-discriminatory, with focus and time limits and caution on intrusion while protecting public health.

Similar sentiments have also been shared by Michelle Bachelet, the United Nations High Commissioner for Human Rights, who has called on governments to ensure human rights are not violated under the guise of exceptional or emergency measures (see the website of the Office of the High Commissioner for Human Rights at www.ohchr.org).

Furthermore, the UN Secretary-General António Guterres also recently released a policy brief on COVID-19 and human rights calling on governments to be transparent, responsive and accountable and respond proportionately to immediate threats while protecting human rights and the rule of law. The Secretary-General reminded governments that the threat is the virus, not people (this statement can be seen on the same website).

The human rights framework does not seek to tie the hands of states in shaping effective responses. Rather, a rights-based / people-centred approach can shape better responses and achieve better outcomes.

A rights-based approach that minimises harm, employs strong mitigating action, acknowledges vulnerabilities, sets reasonable limitations and builds trust through cooperative open communication is proven effective.

A rights-based approach does not only produce better outcomes overall for people's wellbeing, but it is better at prevention and faster at containment than heavy-handed, repressive approaches. An effective response to COVID-19 requires *both* strong state action *and* mass cooperation and mass behavioural change.

Government responses that are excessively restrictive punitively fail to elicit the critical second part of this equation, and discourage people from honest reporting of movement, contact and symptoms. Similarly, excessive or selective targeting of freedom of expression can undermine the credibility of public health messaging and promote conspiratorial thinking, especially where trust in government is already low.

The key point being that a human rights-based approach places people at the centre of the response and can help to: (1) strengthen the effectiveness of the response to the emergency; (2) mitigate the broader impact of the emergency on people's lives; and (3) avoid creating new or exacerbating existing problems.

Freedom of speech

Despite the pandemic, which we are faced with now, it is crucial that freedom of speech and freedom of press are upheld and not compromised. After all, these fundamental freedoms are the key characteristics of a democratic society. Upholding these is interlinked to the right to access to information.

We must not lose track of the "enemy". In our case it is the infectious disease, which we are faced with, and not the people of Fiji. We must not politicise the virus as advised by the World Health Organisation Director General Dr. Tedros Adhanom Ghebreyesus.

We do not deny that there will be people who would behave in an irresponsible manner. However, that is not a ground for curtailing the freedom of speech, expression and publication, which has been enshrined in the 2013 Constitution, the supreme law of the land.

Additionally, it is essential that the Government provide transparent and timely information about the nature of the threat posed by the coronavirus. Accessible, accurate and readily available information empowers a community on how to protect against and prevent the spread of an infectious disease.

The principles of good governance provide for accountability and as such criticism of the decisions is part and parcel of the principle of accountability. The

prerogative is on the decision makers then to be answerable to the people who are being affected by the decisions made, not to stifle the criticism under the veil of controlling the pandemic response.

Protecting the vulnerable

The rule of law can be a lifeline for society's most vulnerable in times of crisis. Particularly when freedom of movement is restricted and resources are scarce, feelings of stress, anxiety and alienation can exacerbate exclusion, discrimination and social conflict and have a disproportionate impact on people.

This particularly includes people living in extreme poverty, women and girls, the elderly, children, people with disabilities, LGBTIQ people, displaced persons, prisoners, and those living in situations of conflict and insecurity. They are already disproportionately affected by the virus. Therefore, it is absolutely critical that they are not victimised further by the trade-off between security and civil liberties in these unprecedented times.

Whilst it is the responsibility of the leaders to ensure safety of the people, it is also their responsibility to assure the people so that existing vulnerabilities are not exacerbated.

Therefore, the rule of law must provide concrete pathways that provide remedies to address the continuing health and socio-economic consequences of the pandemic. The government must build and strengthen conditions to support the resilience of communities against future crises, without inciting fear or justify harsh inhumane actions by authorities.

For this reason, the rule of law is critical to the capacity of government and law enforcement agents to respond to emergencies in a humane manner, to lay the groundwork for recovery, and to help communities build resilience.

Protecting society matters

All human rights are universal, indivisible, interdependent and interrelated. Whilst law allows for legitimate limitations, derogations and reservations, they must be exercised under strict circumstances. Even in exceptional situations-certain core human rights must apply at all times.

Core rights are protected under the international customary and international human right treaties, including the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (CESCR), both of which Fiji is a party to, since November, 2018.

In the same vein and consistent with the numerous International human rights standards and conventions Fiji is party to, Government should be determined to carry on critical support for the rule of law and justice and obligated to finding innovative ways of working together in overcoming COVID-19 while moving purposefully toward more resilient, peaceful, just and inclusive societies.

Our solutions

Whilst the argument that human rights is fluid and therefore subject to change (with changing circumstances) is valid, it is equally important and valid to say that clear, permanent human rights are inherent, and therefore should not be subject to change, even in the most extenuating circumstances. There is assurance and confidence in knowing that some things never change.

Rights such as rights to life, liberty, free speech, amongst others, are at the very core of any democratic society. And these should never be lost under any circumstance.

The “consistency vs fluidity” argument (based on changing circumstances) does not hold water. In order to apply human rights principles, to either of those scenarios, we would require basic, permanent underlying themes such as our basic fundamental human rights, which are inherent to all.

Therefore, any attempt to devalue basic human rights is misguided and extremely dangerous, and does not in any way lessen the State’s responsibilities in upholding these fundamental human rights.

Yes, the world is changing, but our values should not. After all, can we really say that human rights are inherent, if they can be changed on a whim without due regard for the consequences of doing away with them.

Upholding law in hard times

Whilst we agree that throughout history, we as humans have managed and adapted our laws to suit the needs of the time, it is crucial to understand that there are certain laws, which do not change with time. These laws have been carefully crafted by experts from around the world and are applicable to Fiji as a member state of the United Nations.

As a member State, which currently sits as the Vice Chair of the UN Human Rights Council, it is our utmost duty to uphold human rights above all.

We do understand that the current situation around the pandemic COVID-19 calls for new laws to counter the infectious disease. However we cannot agree to the curtailing of the freedom of speech and freedom of the press.

We understand that there will be people who might not necessarily be easily accepting of this new change. As stakeholders it then becomes our duty to ensure that everyone understands the gravity of the situation without compromising our international and national commitment. The enemy is not the people or their rights, it is the virus!

Nalini Singh is the Chair of the Fiji Non-Government Organisation Coalition on Human Rights (NGOCHR). The Members of the NGOCHR include the Fiji Women's Crisis Centre (FWCC), Fiji Women's Rights Movement, Citizens Constitutional Forum (CCF), femLINK Pacific, Social Empowerment and Education Program (SEEP), and Diverse Voices and Action (DIVA) for Equality Fiji. Pacific Network on Globalization (PANG) and Haus of Khameleon (HoK) are observers. The views

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