

Human rights amid covid-19: from struggle to orchestration of trade-offs

Yariv Mohar, 19 April 2020

Abstract

If pre-covid-19 human rights organizations dealt mainly with violations of rights, amid the novel pandemic's challenges they ought to center on conflicts of rights - i.e. trade-offs and dilemmas - and reorient themselves toward that task

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Human rights work should transcend the struggle framework to include orchestration of trade-offs amid the novel pandemic

As the covid-19 pandemic endures it obliges governments to deal with related trade-offs between health and other aspects of life and with conflicting rights which unfold rapidly. At best governments handle this by using a balancing strategy - i.e. trying to weigh the damage of each path and look for a middle way. But alas governments' balancing strategy is often a flawed one; it is frequently tailored based on the masses' interests and lived experience, which leads to glossing over "special cases" and marginalized groups. Hence in such a context human rights and social justice organizations' activism needs a reorientation toward the task of ameliorate governments' balancing strategy. This task may take new forms or just involve ramping-up already established repertoires. For example amplifying the voices, and mapping the cases, of those who are left behind and find no real relief by the state and its policies is important nowadays not only in and of itself but also as a way to fine tune the balancing strategy. Without such activism governments will keep turning a blind eye to what is really at stake in regard to the moral dilemmas stemming from the novel pandemic and will keep using the average citizen as their point of reference for social trade-offs management.

Before diving into the model for such activism the context should be explicated: Dealing with human rights and social justice was never a black and white task; it has always involved moral dilemmas and conflicting rights. Yet the field of human rights was mainly guided by what can be termed the struggle metaphor - a framework juxtaposing human rights supporters with their adversaries, and which takes human rights violations as the key problem to be addressed. The coronavirus pandemic, and the unprecedented intensity of trade-offs it

introduces, are fundamentally subverting against the struggle metaphor and therefore call for new forms of activism.

Indeed the covid-19 pandemic brings about a set of pressing trade-offs; most notably the right for health (and ultimately for life) clashes with principles like freedom of movement, freedom of assembly, freedom of religion, the right to privacy and with economic, social and cultural rights. Lock-downs and cellular phones monitoring are the most obvious examples of policies embodying such trade-offs.

How should human rights organizations deal with such challenges? Traditionally “proportionality” is the key term to be utilized amid conflicts of rights. Yet even in more settled time human rights organizations struggled to define proportionality; now it becomes totally vague - nothing is proportional about imposing a lock-down on 60 million Italines, still nothing is proportional in the threat posed by coronavirus. Hence the struggle metaphor collapses and may give way to, say, the orchestration metaphor - that is, a framework for balancing and orchestrating conflicting rights (according to well-defined proportionality) and for mitigating the trade-off between rights. Rather than dealing with violations, the focal point here is balancing and mitigation.

But it would be wrong to impose an “either-or” choice between the two frameworks - the struggle and the orchestration - since both are vital for promoting human rights, albeit in different doses depending on circumstances. Indeed struggling against human rights violations is still a critical task even as the coronavirus spreads but orchestration seems much more inline with the challenges introduced by the novel pandemic. Having said that, broadening our framework and moving the focal point to orchestration is not just doing more of the same - dealing with proportionality or balancing as the locus of activity, amid a new and complex situation, requires re-tooling of our NGOs.

On the surface human rights organizations are ill-equipped for orchestration. Furthermore, the current situation mainly emphasizes an enduring flaw in the field of human rights - it's limited capacity for dealing with trade-offs which are nothing but new. Indeed human rights organizations are not political philosophers nor experts in the various fields of knowledge at stake; they can say little about the hierarchy of rights in principle and little about empiric questions pertaining to the anticipated damage of compromising certain rights for the sake of others. In a different vein activism and mobilization is heavily leaning toward the struggle schema to the extent that it is hard to imagine collective action in the absence of a salient villain. In contrast the task of orchestration entails careful judgment rather than gut-level enthusiasm and sense of injustice which are so crucial for mobilization (e.g. Gamson 1992; Benford and Snow 2000). Currently human rights organizations can, therefore, contribute little to ameliorating policies amid conflicting rights. Yet I would like to suggest some initial thoughts on modalities of orchestration - and related activism - that human rights organizations can successfully govern. Most of these modalities are not new, but they should become much more central and developed:

Mediating and amplifying the lived experience of various constituencies

Conflicting rights are somewhat connected to diversity in societal characters - i.e. young and healthy people and older and wealthy people may fear from different aspects of the current situation. Hearing all voices is the first step for intelligible and fair orchestration of trade-offs, especially when it comes to marginalized groups whose voice is habitually disenfranchised. In the course of such grassroots work the enthusiasm and sense of injustice so crucial for mobilization may be maintained even within the framework of orchestration.

Mapping policy lacunae

Gaining familiarity with the lived experience is also pivotal for mapping lacunae in governmental policies and taking them into account - that is, monitoring cases of people or groups who are left behind and find no real relief by the state. If we want to balance rights properly we need to know to weigh the actual damage of certain policies including their “blind spots” - i.e. the people who are damaged more than the average or more than what was intended. Yet even as governments aspire to formulate balanced policies they are often biased toward the macro-level, hence glossing over “extraordinary” cases and the marginalized. Here human rights organizations have a unique utility; they can start off where governments’ capacity ends.

One current example is an ongoing project by the Israeli section of Amnesty International, which aims to monitor and map cases of people or communities whose income and livelihood was hurt by the pandemic situation yet they can find very little, if any, support by the government of Israel. Beside obvious marginalized communities - such as Palestinians and African asylum seekers - some types of individuals whose circumstances rendered them ineligible were found in this framework. The overall picture enables Amnesty to demonstrate the many lacunae in Israel’s social policy amid the pandemic and may facilitate a more nuanced balance between conflicting rights as the hidden impact of policies is brought to light.

Constructing shadow government of experts

While often lacking professional knowledge human rights organizations can construct forums for external experts and experienced ex-seniors in the civil service, relevant to the various issues at stake, that can mirror the forums governments form in order to debate policies toward the crisis. Working like a shadow government or cabinet, such a parallel forum is actually a mechanism for scrutiny, for double checking the validity and merit of balancing and mitigation strategy in the face of conflicting rights. If we suspect a government not to have done the most to mitigate and balance trade-offs, we have to

replicate the kind of debates and reasoning done in the corridors of power. Such forums need not be ad-hoc ones but can be an ongoing oversight mechanism.

Nurturing the wisdom of the crowd for mitigation

Mitigating trade-offs between rights is always better than properly balancing them - it means that we can find a way to outsmart the dilemma by going “out of the box.” Achieving this best case scenario requires not just a good will but creativity which governments often lack. Hence human rights organizations may mobilize masses via digital platforms as a hive mind for thinking trade-offs’ mitigation thoroughly. The shadow government of experts may be involved here too so that the output of the masses is processed by professionals and professionals may also brainstorm among themselves and come up with creative mitigation. Even if the vast majority of suggestions by the hive mind may be considered as “noise,” we need just one brilliant idea for a breakthrough. It may be worth the bother.

The 4 modalities presented above are just a preliminary reflection on what should be done in order to facilitate orchestration and compatible activism. Formulating and refining the orchestration framework is still mostly ahead of us. It requires first and foremost a conceptual expansion of frameworks - human rights work should be thought of not only as a struggle but also as an orchestration - which could impact the field of human rights to the extent that governments of good will may find it to be not only a critic but also a partner with great utility to fine tune the orchestration of ever pressing social trade-offs. To accomplish that a crucial strategic process will have to be launched in the field coupled with massive capacity building. The time to start this is now.

References:

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