

VIEWPOINT

Impunity: Undermining the Health and Human Rights Consensus

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Impunity: exemption from punishment or freedom from the injurious consequences of an action. A noun. (Oxford English Dictionary, 2019).

There has perhaps always been a greater burden of unpunished human rights violations than punished ones. The newest mechanism for accountability for rights abuses, the International Criminal Court, has to date successfully prosecuted only one charge of the most grievous abuse, genocide, that of the case of the Srebrenica massacre of some 8,000 Muslim men and boys in Bosnia in 1995. Yet the post war consensus enshrined in the 1948 Universal Declaration of Human Rights has continued to serve as a basis for health and human rights thinking, advocacy, scholarship, and action. And impunity for rights violations, including those of the right to health, has been a continued challenge for rights-focused actors, and for those seeking justice and redress. It is now transparently clear, however, that this consensus faces grave threats in the current period of widespread rights violations, toleration for abuses against vulnerable minority groups, and the active denial of health rights by governments and regimes from Myanmar to the United States, Russia, China, and far too many others. What are the drivers of rising impunity and what can those concerned with health and human rights, including scientists, health professional organizations, and civil society groups, realistically do to address these threats?

One particularly grave set of abuses may help us consider these issues. The Assad regime in Syria has been accused of an extraordinary array of rights abuses in the ongoing Syrian civil war—torture, extra-judicial executions, the use of banned weapons of war including chemical agents on civilian populations, and of widespread violations of international humanitarian laws, including the bombing of health care facilities and other attacks on providers.¹ Recent reports by the *New York Times* and others have credibly shown that Assad’s allies, notably the Russian military under President Vladimir Putin, have undertaken deliberate bombings of hospitals in civilian areas.² Yet it seems highly likely that the Assad regime will prevail in the Syrian conflict and already has regained control of most of the landmass and population of the country. This outcome would serve as a profound threat to the human rights consensus globally. Imagine Nazi Germany and Japan prevailing in WWII, or the Khmer Rouge being allowed to remain in power after their mass killing of civilians in the 1970s. This is precisely what many would argue is the most likely outcome of the Syrian conflict: impunity for mass atrocities. Impunity for the use of chemical weapons. Impunity for the deliberate bombing of hospitals as a tool of state terror. In such a future, what would restrain govern-

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ments from these kinds of abuses of state power?

The absence of US leadership at this juncture is deeply concerning, but abrogation of US leadership on human rights, on impunity for abuses, did not, it must be noted, begin with Donald Trump. The retreat from human rights norms and treaty obligations in response to the 9-11 terror attacks began in the early years of the presidency of George W. Bush. Most egregiously in the 2002 torture memos signed by administration officials including John C. Yoo, Jay S. Bybee and Steven G. Bradbury.³ The policy laid out in these documents was a clear and direct violation of the Geneva Conventions on the rules of war. It has been argued, and indeed it is virtually impossible to argue against the notion, that these policies enabled the horrors of Abu Ghraib, the widespread torture of alleged enemy combatants at CIA-run black sites, and the outsourcing of suspects for torture to allied countries, including the Assad regime in Syria.⁴ Early in his first term as president, Barack Obama made clear that his administration would not be pursuing prosecutions against Yoo, and others from the Bush administration, who had engaged in the development of these abusive policies.⁵ Whatever the politics of the moment which compelled this decision, it was a major step in the direction of impunity for rights violations. No one would be held accountable for torture done in the name of US citizens. The director of the CIA black site in Thailand, where suspects were subjected to water boarding and other forms of torture, Gina Haspell, is now the Director of the CIA.⁶

Impunity for rights violations does not only allow abuses to go unpunished and the truth to remain hidden or denied. It has an undermining effect on efforts to redress rights violations. What hope can victims have for justice when it is made clear that widespread extrajudicial executions will be tolerated, as those conducted against alleged drug users under the Duterte regime in the Philippines have been? Or when all nine fellow member states of ASEAN, the Association of Southeast Asian Nations, have supported Myanmar in its denial of abuses against the Rohingya minority—despite what the UN High Commissioner for Human Rights called ‘a textbook case of ethnic cleansing’?

In one step against impunity, Gambia, on behalf of the Organization of Islamic Cooperation, has successfully brought charges against Myanmar for the Rohingya genocide, in a case that commenced in December 2019 at the UN’s International Court of Justice in the Hague.⁸ Will it be enough to bring some justice to the Rohingya survivors?

What else can be done to address impunity?

First, it seems essential to strengthen and broaden the evidence base for rights abuses, and for the relationships between rights violations or protections and human health. We have ever more powerful tools, including the explosion of genetic and other forms of biometric data and evidence, to bolster human rights investigations. This is true on the micro-level of forensic DNA evidence, and on the macro-level, such as the use of satellite imagery, which has helped document the burning and razing of Rohingya villages and undermine the regime’s claims that such destruction had not occurred.⁹ Medicine, and science more broadly, has critical roles to play in addressing impunity with more and better methodologic approaches to human rights evidence collection, analysis, and reporting.

Second, it is more critical than ever for professional bodies and organizations to stand against impunity for rights violations, particularly those which involve medical or other health personnel. The denial of basic health rights to detained migrants and asylum seekers in the United States is an example. The advocacy of the American Academy of Pediatrics on behalf of detained children played a key role in reducing the abusive policy of family separations imposed by the Trump Administration in 2018. In December 2019, physicians in Texas were arrested for demonstrating in support of influenza immunizations for those held in US immigration detention, spurred, at least in part, by the death from influenza of 16-year-old Carlos Gregorio Hernandez Vasquez, an unaccompanied minor from Guatemala, who was found dead in detention on May 20, 2019.¹⁰ He had been diagnosed with influenza a day earlier, given a single oral tablet

of Tamiflu, and left without medical supervision overnight.

Third, given that so many of the official bodies charged with protecting rights and addressing impunity, most notably the UN family, have been enormously challenged in this time of nationalism, anti-immigrant sentiment, and rising intolerance, it is all the more critical for civil society to engage in protecting against abuses and demanding accountability. It will take enormous efforts for grassroots organizations to counter the current trend toward impunity. But we have no choice—impunity must be resisted. Imagine a world where it is not.

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