

Children's Rights in the COVID-19 Pandemic

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The SARS-CoV-2 pandemic has affected populations across the globe. While COVID-19, the disease caused by infection with the SARS-CoV-2 virus, has appeared to be less harmful to youth relative to older populations (though still causing significant morbidity and mortality^{1,2}) the psychosocial effects of the pandemic on youth have been extraordinarily widespread, both those shared with adults and those unique to youth.

The psychosocial effects of the pandemic on youth include, but are not limited to, increased symptoms of depression and anxiety,³ increased exposure to bereavement,⁴ and have resulted in mass school closures and extended isolation at home. Data from previous epidemics has shown that extended school closure and home confinement increases risk for exposure to abuse and domestic violence,⁵ exposure to gender-based violence,⁶ as well as having loss of free school meals, loss of access to support services for children with special needs, and loss of access to peers.⁷ Social isolation from peers alone has been shown to have immense negative impact on the mental health and wellbeing of children.^{3,8} So the social isolation coupled with lack of social and mental health support caused by the pandemic has already and will likely continue to have detrimental consequences to children worldwide.

These factors are magnified even further in marginalized and vulnerable populations, including racial minorities, children from low socioeconomic backgrounds, and youth with disabilities.⁸ For example, it is already well established that there is racial disparity in the direct effects of COVID-19. Ethnic minorities, particularly Black and Latinx populations, have been shown to be at higher risk for COVID-19 infection and have more severe outcomes of the illness.⁹ Furthermore, it is well established that children among marginalized populations, particularly those of lower socioeconomic status,

have significantly less access to digital technology like computers and internet, which are currently being relied on to provide crucial developmental and health supports like schooling and mental health treatment.¹⁰

Many of the challenges for youth stem at least in part from public health interventions designed to mitigate the risk of spreading the SARS-CoV-2 virus, not as a direct result of infection. The imposition of public health mandates across the world has been met with impressive, though imperfect, compliance around mask-wearing and social distancing, including school closure, but has also engendered debates, some of which are better informed than others, about the efficacy and legality of these impositions. One important consideration is how public health mandates can conflict with established human rights: human rights are designed to protect autonomy and respect dignity across individuals and populations, largely in the face of collective and governmental impositions, restrictions, and violence. Public Health impositions can conflict with human rights, from privacy and confidentiality rights (as when there is mandatory disclosure of infection and contact tracing) to the freedom to wear, or not wear, what you want (masks, motorcycle helmets, seatbelts), to rights to congregate freely, to walk the streets, or to manage your business as you see fit, free from arbitrary interference.

Identifying the potential conflicts between public health mandates and human rights is not just an abstract exercise. When public health comes into conflict with rights, public health officials (both those designated as such, and also those in government instituting public health rules such as presidents, governors and mayors) must transparently and clearly explain why the rights need to be curbed, how the benefits should be greater than the risk, how these impositions are, to borrow a familiar psychiatric term, 'least restrictive' and how the imposition or restrictions are not discriminatory or arbitrary.

trary. Making this case is by no means a guarantee of the efficacy or ethical validity of the intervention, and a great deal of violence has been enacted under the guise of 'public health' (just look at the term 'ethnic cleansing' to see notions of health and hygiene imported into the concept of genocide). Nevertheless, a rights discourse can ideally compel public health officials to offer justifications, identify structural concerns that can make widespread acts discriminatory, limit the proposed infringements and even consider other options.

Unfortunately, children's rights historically have been poorly written and ill-thought-out, when they are even considered. Hillary Rodham Clinton (then Hillary Rodham) began a 1973 Harvard Educational Review article with, "The phrase 'children's rights' is a slogan in search of a definition."¹¹ Little has changed since then. The most significant effort to establish children's rights, the Convention on the Rights of the Child (CRC, available at: <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>) leaves much to be desired.

In one regard, many written articles of children's rights are designed to respond to 'public health.' As an example, consider Article 15 of the CRC:

Article 15

1. *States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.*
2. *No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.*

Compare this to Article 20 of the Universal Declaration (available at: <https://www.un.org/en/universal-declaration-human-rights/>):

Article 20

1. *Everyone has the right to freedom of peaceful assembly and association.*
2. *No one may be compelled to belong to an association.*

Article 20 (the adult right) is far shorter, more straightforward and is presented as absolute and unconditional as long as it is 'peaceful' (a term that we will admit gives a fair amount of leeway for abusive interpretation). Article 15 initially voices a sentiment to protect freedom but is followed by a lengthy imposition of restrictions, heavily worried that freedom to assembly/association for children may pose a threat to public health and safety, and the list of caveats—national security, public safety, public order, public health, morals, or the rights of others—are so comprehensive that just about any authority figure can determine the right is non-existent.

If rights truly are inalienable and children are supposed to be afforded equitable rights, then why is it that children's rights are written with such ambiguity and conditionality, and can be stripped away by pretty much any adult authority? Why is there no serious consideration of what autonomy and dignity and non-discrimination means for children? And why is it so clearly stated that public health must be considered for children but not for adults?

One answer to these questions is that children's rights are actually not considered inalienable or real. In a case like this, they are quasi-idealistic suggestions, at best.

While this has a tremendous number of consequences for how we think about children, the one we want to point out here is that the existing construct of children's rights severely limits our ability to consider and address the consequences of the pandemic for children.

For example, the rise in child abuse during the pandemic is not conceived of as population-wide human rights violations that need to be assessed and addressed with

absolute urgency, but is instead simply acknowledged as a sad thing happening behind closed doors.

The fact that children's rights are at most, adult rights-“lite”, fails to give us the imagination and structure to address what is happening to children when public health infringes on children's lives. So as another example, the most prominent answer to the collapse of education appears to be re-opening schools—while schools provide education and socialization (along with, in some cases, necessary meals, and other social and developmental benefits to children), given the paucity of media attention on the experience and inherent rights of children in the midst of such frenzy for school reopening, it could be surmised that the true primary agenda is to facilitate the rights of the adults to work (that is, children are going to school so their parents can attend to work responsibilities—a far cry from the happier ideal that parents work so their children can go to school). This not to downplay the importance of schools in any regard, and is written as we watch schools and teachers struggle with immense political pressure to open up while being aware that it is unsafe, that teachers and schools are fundamentally required to engage in practices that are unusual for them, complicated, and expensive, and with the knowledge that this opening will result in the death of some teachers. Rather it is to point out that foregrounding and supporting alternative structures—even ones involving the same teachers—to provide education, rather than forcing people into a school building and calling it done, has been at the bottom of the agenda.

Another prime example of our societal oversight, and a failure to afford children their real autonomy and dignity, is that there is no ‘right to play’ for children, which should surely be a central right if we were to consider rights that specifically belong to children, instead of watered-down versions of adult rights. This neglect of children's right to play is visible everywhere: during the pandemic, streets remain open to car traffic but not closed to give children the space to play safely near their home—drivers, and the adult economy, have rights, while children are not

considered. The closure of playgrounds and schoolyards did not result in a comprehensive public effort to ensure that children can safely enjoy this most of rights.

The arguments at the crossroads of public health and rights of adults is front and center of our sociopolitical stage, while children's rights appear to have no considerable footing. Stripping children of their rights by simply naming ‘public health,’ rather than making an argument as with their adult counterparts, and moreover failing to even articulate meaningful children's rights means that we lack clear a foundation from which to base advocacy efforts for children, especially during a worldwide crisis.

Take Home Summary

The COVID-19 pandemic has highlighted several existing disparities in current declarations of children's rights in comparison to those of adults, and raises question of how children's rights should be re-considered and re-conceptualized.

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