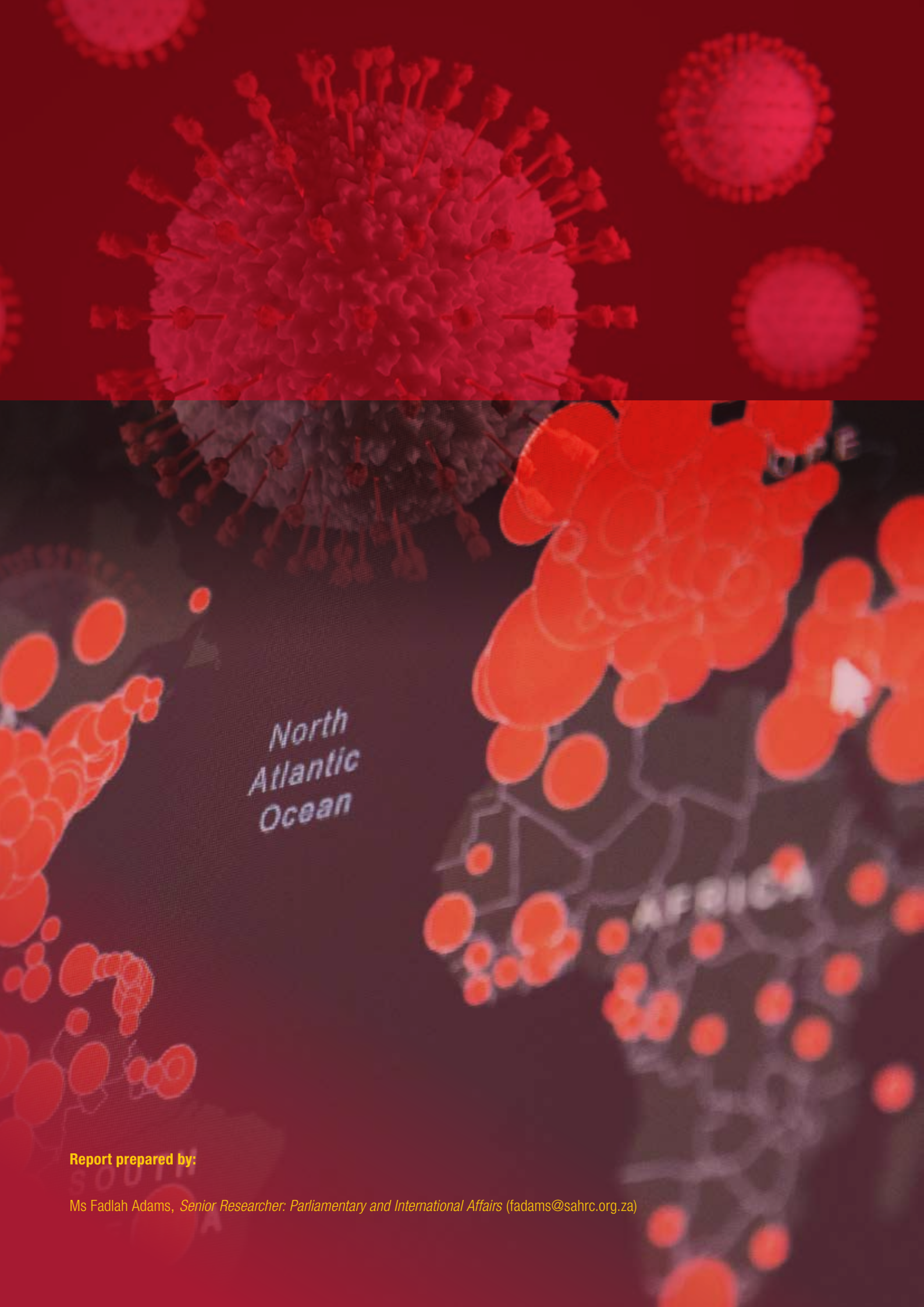


**Uniting Nations:
A Snapshot of the Key International and Regional
Human Rights Mechanisms Response to the
COVID-19 Pandemic during 2020**



North
Atlantic
Ocean

AFRICA

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1. INTRODUCTION

In December 2019, the first outbreak of the novel coronavirus (SARS-CoV-2 or COVID-19), was reported in the city of Wuhan, Peoples Republic of China. It would forever change the course of history as the virus launched into the global spotlight, infecting and affecting people throughout the world.

Through its exponential and rampant spread, the lethal virus claimed thousands of lives (and continues to do so), in a manner which does not discriminate. It has revealed and exacerbated the existing inequalities in global society and has exposed the unpreparedness of States in responding to a viral outbreak of pandemic proportion. Many countries turned to international and regional bodies, such as the United Nations (UN) and its structures, including the World Health Organisation (WHO), for guidance on how best to respond to the pandemic, yet they too were equally navigating the uncharted new terrain brought about by the virus. In addition to the scientific, health and epidemiological advice, States also sought insight from the human rights supranational mechanisms on how best to uphold and balance human rights, whilst implementing measures to combat the spread of the virus. International and regional human rights mechanisms provided support to countries, through the issuance of guidance notes, statements, advice and regular press releases to guide States in complying with their human rights obligations while fighting the pandemic.

Within its constitutional and statutory mandate, the South African Human Rights Commission (SAHRC) has been monitoring developments at the international and regional level and assessing the extent to which the South African government is executing a human-rights based approach to fighting the COVID-19 pandemic. As part of its ongoing work in this area, the SAHRC developed a series of briefs providing a snapshot of the human rights situation in relation to COVID-19 in South Africa. This International and Regional Human Rights Brief is therefore complementary to the briefs developed on socio-economic rights and equality,¹ and provides a synopsis of the key developments within the international and regional human rights mechanisms, with a specific focus on activities related to COVID-19.²

1 Namely, *Poverty in a Pandemic: A Research Brief on the Impact of the COVID-19 Pandemic on Socio-Economic Rights*, ESR Research Brief 2020/2021, SAHRC; and, *Left Behind: The impact of the Covid-19 pandemic on vulnerable groups*, Equality Research Brief 2020/2021, respectively, (soon to be available on the SAHRC website).

2 It should be noted that the research brief will feed into a broader report to be developed during the 2021/2022 financial year. Thus, there are limitations within the brief with the primary reference to developments within the UN Treaty Bodies and the African Commission on Human and Peoples' Rights (which are mechanisms under which the South African government reports). The information is also specific to the COVID-19 pandemic and where matters fall outside the scope of the brief, but are an ancillary or related development, reference hereto is reflected by way of a text box.





2. INTERNATIONAL

2.1 Overview

In March 2020, the United Nations High Commissioner for Human Rights, issued a formal letter for the attention of UN Member States across the world, calling for solidarity and cooperation to tackle the spread of the virus, and assert that respect for human rights, including economic, social and cultural rights and civil and political rights, are fundamental to the success of the public health response.³ Similarly, in April 2020, the UN Secretary-General announced that a human-rights based approach, ‘can and must guide the COVID-19 response and recovery’, emphasising that ‘people, and their rights, must be front and centre’ to ensure and give effect to the Sustainable Development Goals (SDG) principle that ‘no one is left behind’.⁴

Taking note of the disproportionate effect of the virus on certain communities, the rise of hate speech, the targeting of vulnerable groups, and that the risk of heavy-handed security responses were undermining the health response to the pandemic,⁵ several structures within the UN have provided insights and advice in this regard. The section below looks specifically at the developments at the treaty body level.

2.2 Human Rights Committee

2.2.1 Statement on derogations from the Covenant in connection with the COVID-19 pandemic

In April 2020, the Human Rights Committee issued a ‘Statement on derogations from the Covenant in connection with the COVID-19 pandemic’.⁶ The International Covenant on Civil and Political Rights (ICCPR) makes provision for derogation under specific circumstances. Article 4(1) stipulates that,

3 OHCHR Letter from UN High Commissioner for Human Rights, (Ms Michelle Bachelet), addressed to the Permanent Missions, 31 March 2020, available at, https://www.ohchr.org/Documents/Events/COVID-19/HC_OHCHR%E2%80%9393COVID-19_Letter.pdf

4 The announcement by UN Secretary-General, Mr António Guterres is available at, <https://www.un.org/en/un-coronavirus-communications-team/we-are-all-together-human-rights-and-covid-19-response-and>

5 Ibid

6 Human Rights Committee, ‘Statement on derogations from the Covenant in connection with the COVID-19 pandemic’, 30 April 2020, CCPR/C/128/2, available at, <https://www.ohchr.org/Documents/HRBodies/CCPR/COVIDstatementEN.pdf>

*In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.*⁷

Article 4(3) further provides that,

Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Noting that several States had resorted to emergency measures in response to COVID-19 in a manner which seriously affected their obligations under the ICCPR, and without formally submitting a notification of derogation, the Committee issued the Statement to clarify, ‘the specific steps that States must take to derogate from certain rights under international human rights law’.⁸

Through the Statement, the Committee emphasises the non-derogable rights under the ICCPR, which include, the right to life (Article 6); the prohibition of torture or cruel, inhuman or degrading treatment (Article 7); the prohibition of slavery, slave trade and servitude (Article 8); the right to not be imprisoned merely on the ground of inability to fulfil a contractual obligation (Article 11); the right to not be found guilty of a criminal offence that did not constitute a criminal offence when it was committed (Article 15); the right to recognition as a person before the law (Article 16); and, the right to freedom of thought, conscience and religion (Article 18).⁹ The Committee also recognises the importance of upholding this category of non-derogable rights to ensure respect for the rule of law and the principle of legality, despite times of public emergency.¹⁰

The Committee further clarifies that the derogation measures taken by States may deviate from the obligations under the ICCPR, only to the extent that is, ‘strictly required by the exigencies of the public health situation’ and must be limited, as much as possible, ‘in respect of their duration, geographical coverage and material scope and all measures taken, including sanctions imposed in connection with them, must be proportional in nature’.¹¹

Furthermore, the Committee emphasises that States cannot derogate from their obligation to respect human dignity, including persons deprived of their liberty.¹² It also stresses that despite emergency situations, States should ensure that the public discourse in connection with the COVID-19 pandemic does not constitute advocacy and incitement against specific marginalized or vulnerable groups, including minorities and foreign nationals.¹³

7 Under Article 4(2), there may be no derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.

8 <https://ijrcenter.org/2020/04/29/ohchr-human-rights-committee-address-derogations-during-covid-19/>

9 Article 4(2) of the ICCPR

10 Ibid note 6 at para 2(d)

11 Ibid, para 2(b)

12 Ibid, para 2(e)

13 Ibid

RELATED DEVELOPMENTS

- In April 2020, the OHCHR released a paper on ‘Emergency Measures and COVID-19’, which addresses derogations of selected civil and political rights during exceptional circumstances.¹⁴
- In April 2020, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression issued a report entitled, ‘Disease pandemics and the freedom of opinion and expression’¹⁵ which highlights five areas of concern, showing that access to information, independent media and other free expression rights are critical to meeting the challenges of the COVID-19 pandemic.

2.3 Committee on Economic, Social and Cultural Rights

2.3.1 Statement on the coronavirus disease (COVID-19) pandemic and economic, social and cultural rights

In April 2020, the Committee on Economic, Social and Cultural Rights (CESCR), issued a ‘Statement on the coronavirus disease (COVID-19) pandemic and economic, social and cultural rights’.¹⁶ Through the statement, the CESCR recognises that the pandemic has deep, negative impacts on the enjoyment of economic, social and cultural rights, especially the right to the health of the most vulnerable groups, and that States are under an obligation to take measures to prevent or mitigate against these impacts.¹⁷

To ensure that the ICESCR’s rights and obligations are protected and fulfilled during the pandemic, the Committee recommended a range of urgent measures which States should undertake, while stressing that the response to the pandemic should be ‘based on the best available scientific evidence to protect public health.’¹⁸ These measures include, *inter alia*, the provision of water, soap and sanitiser to communities lacking such access; targeted protection of jobs, wages and benefits to workers; protection of workers from the risk of contagion; mitigation of the economic impact of COVID-19, including through wage subsidisation and tax relief; a moratorium on evictions or mortgage bond foreclosures; prohibition on profiteering on essential products; and promotion of income support and other relief to ensure food and income security.¹⁹ As the pandemic and the measures taken to combat it have had a disproportionately negative impact on the most marginalised groups, the Committee stresses that States must take all efforts to mobilise the necessary resources to combat COVID-19 in the most equitable manner, to avoid imposing a further economic burden on these marginalised groups including women, indigenous communities, precarious workers, and elderly individuals.²⁰

The Committee further recognises that where the measures adopted by the State limit the rights espoused under the ICESCR, it ought to be reasonable and proportionate to combat the public health crises posed by the pandemic. It also notes that any emergency measures and powers

14 OHCHR, ‘Emergency Measures and COVID-19: Guidance’, 27 April 2020, available at, https://www.ohchr.org/Documents/Events/EmergencyMeasures_COVID19.pdf

15 Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression: Disease pandemics and the freedom of opinion and expression, UN Doc. A/HRC/44/49, 23 April 2020.

16 Statement on the coronavirus disease (COVID-19) pandemic and economic, social and cultural rights by the Committee on Economic, Social and Cultural Rights, E/C.12/2020/1, 17 April 2020, available at, <https://undocs.org/E/C.12/2020/1>

17 *Ibid*, para 2

18 *Ibid*, para 10

19 <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25821&LangID=E>

20 <https://www.cesr.org/cescr-statement-covid-19-pandemic-and-economic-social-and-cultural-rights>



adopted by States parties to deal with the pandemic should not be abused, and should be lifted as soon as they are no longer necessary for protecting public health.²¹

2.3.2 Statement on universal and equitable access to vaccines for the coronavirus disease

In December 2020, the CESCR released a statement on the 'universal and equitable access to vaccines for the coronavirus disease'.²² Noting the advances in the development of a vaccine against the coronavirus, the CESCR deemed it necessary to remind States of their obligations under the Covenant, 'to avoid unjustified discrimination and inequalities in access to COVID-19 vaccines.'²³

The CESCR reiterated that States have an obligation to take all the measures necessary, to the maximum available resources, to guarantee access to vaccines for COVID-19 to all persons, without discrimination.²⁴ The CESCR however notes that it is 'impossible to guarantee that everyone will have immediate access to a vaccine for COVID-19', and that prioritisation of access to the vaccine by specific groups of people is unavoidable and should be based on medical needs and public health basis.²⁵

The CESCR specifically notes that vaccines developed by private companies may be subject to an intellectual property regime. Further, while these companies expect to receive compensation for their investment and research, the CESCR reminds States that,

*'intellectual property is not a human right but a social product with a social function. States parties consequently have a duty to prevent intellectual property and patent legal regimes from undermining the enjoyment of economic, social and cultural rights by, for example, making critical public goods, such as vaccines or medicines, inaccessible to developing countries or impoverished communities because of unreasonable cost structures.'*²⁶

The CESCR also points out the role of businesses, including pharmaceutical companies, and reiterates their obligation to respect the rights under the ICESCR, particularly in relation to intellectual property rights over a vaccine. It furthermore reminds States that it may be held directly responsible for the action or inaction of business entities under certain circumstances and that they have an extraterritorial obligation to take the measures necessary, to protect economic, social and cultural rights, so as to ensure that corporations domiciled in their territory and / or under their jurisdiction, do not violate these rights abroad.²⁷

The CESCR also cautions against the phenomenon of 'health isolationism', where States race for a COVID-19 vaccine for their own citizens first. In this regard, the CESCR is cognisant that some States compete with others to, 'strike costly and non-transparent deals with private companies', noting that this form of competition may lead to an increase in the price of vaccines and may even create a monopoly of access to the vaccines.²⁸ The latter will ultimately result in a disadvantage for both developing and developed States, for, 'as long as significant parts of the world population have

21 Ibid, para 11

22 CESCR, Statement on universal and equitable access to vaccines for the coronavirus disease (COVID-19), 15 Dec. 2020, UN Doc. E/C.12/2020/2, available at, <https://undocs.org/E/C.12/2020/2>

23 Ibid, para 1

24 Ibid, para 3

25 Ibid, para 5

26 Ibid para 6

27 Ibid para 8

28 Ibid para 10

no access to measures that control, prevent and treat COVID-19, and to its vaccines, the risk of upsurges in the pandemic remain.²⁹

The CESCR clearly states that 'instead of pursuing health isolationism and a race for a vaccine, States should honour their obligations to contribute to the enjoyment of all human rights, including the right to health, globally'.³⁰ It accordingly recommends that the distribution of vaccines and the prioritisation of access to them should be organised and supported by international cooperation and assistance, which includes the sharing of benefits of scientific progress and its applications.³¹ Furthermore, States should develop strategies and mechanisms for a fair distribution of the financial costs associated with research into and the production and distribution of vaccines for COVID-19, including a reduction in the debt burden for countries that need it.

2.4 Committee on the Rights of the Child

2.4.1 Statement warning of the 'grave physical, emotional and psychological effect of the COVID-19 pandemic on children'

In April 2020, the Committee on the Rights of the Child (CRC), released a statement warning of the 'grave physical, emotional and psychological effect of the COVID-19 pandemic on children'.³² Through the statement, the Committee recognises that many children, particularly those in situations of vulnerability, are gravely affected physically, emotionally and psychologically, especially in countries that have declared states of emergencies and mandatory lockdowns.³³ The Committee accordingly urges States to respect the rights of the child through implementing measures to address the public health threat caused by the COVID-19 pandemic.

In its recommendations, the Committee calls on States to undertake measures which include, inter alia, to:

- i) Consider the health, social, educational, economic and recreational impacts of the pandemic on the rights of the child;
- ii) as well as explore alternative and creative solutions for children to enjoy their rights to rest, leisure, recreation and cultural and artistic activities.³⁴ The Committee also recommended that States ensure that online learning does not exacerbate existing inequalities or replace student-teacher interaction;³⁵ and
- iii) that immediate measures are implemented to ensure that children are fed nutritious food during the period of emergency, disaster or lockdown.³⁶ The Committee recognised the need to ensure that the provision of basic services for children including healthcare, water, sanitation and birth registration are maintained and recommended that States define the core child protection services as essential, including providing professional mental health services for children living in lockdown.³⁷

29 Ibid

30 Ibid para 11

31 Ibid

32 https://www.unicef.nl/files/INT_CRC_STA_9095_E.pdf

33 Ibid para 1

34 Ibid para 2

35 Ibid para 3

36 Ibid para 4

37 Ibid paras 5 to 6



The Committee further recommended that the State protect children whose vulnerability is further increased by the exceptional circumstances caused by the pandemic.³⁸ These include children with disabilities; children living in poverty; children in street situations; migrant, asylum-seeking, refugee and internally displaced children; minority and indigenous children; children with underlying health conditions including HIV/AIDS; children deprived of their liberty or confined in police lock-up facilities, prisons, secure care centres, migrant detention centres or camps; and children living in institutions.³⁹ The Committee further called on States to release children in all forms of detention, whenever possible, and provide children who cannot be released with the means to maintain regular contact with their families.⁴⁰ In this regard, the Committee also recommended that the State prevents the arrest or detention of children for violating State guidance and directives relating to COVID-19.⁴¹ In relation to awareness-raising, the Committee recommended that the State disseminate accurate information about COVID-19, (and how to prevent infection), in languages and formats that are child-friendly and accessible to all children as well as provide opportunities for children's views to be heard and taken into account in decision-making processes on the pandemic.⁴²

RELATED DEVELOPMENTS

- In April 2020, the UN issued a Policy Brief entitled, 'The Impact of COVID-19 on Children'.⁴³
- In April 2020, UNICEF, in collaboration with the Alliance for Child Protection in Humanitarian Action, published a 'Technical Note on COVID-19 and Children Deprived of their Liberty'.⁴⁴

2.5 Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW)

2.5.1 Guidance Note on CEDAW and COVID-19

During April 2020, the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW), released a Guidance Note on 'CEDAW and COVID-19'.⁴⁵ The Guidance Note details a range of measures that States should undertake to uphold women's rights in response to the COVID-19 pandemic and that any response and post-crisis recovery plans, should promote women's economic empowerment and address gender inequalities in employment and social protection systems.⁴⁶

38 Ibid para 7

39 Ibid

40 Ibid para 8

41 Ibid para 9

42 Ibid paras 10 to 11

43 As released by the UN Sustainable Development Group, available at, https://unsdg.un.org/sites/default/files/2020-04/160420_Covid_Children_Policy_Brief.pdf

44 Available at, https://alliancecpha.org/en/system/tdf/library/attachments/covid-19_and_children_deprived_of_their_liberty_v1_lowres_0.pdf?file=1&type=node&id=37576 (The Technical Note was several other mechanisms within the United Nations, including the OHCHR, UNHCR and the Office of the Special Representative of the Secretary General on Violence Against Children)

45 Guidance Note on CEDAW and COVID-19, available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT/CEDAW/STA/9156&Lang=en

46 <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25818&LangID=E>



Noting that COVID-19 has affected victims regardless of gender, geography, ethnicity, religion, wealth or any other status, the Guidance Note lists practical guidelines for States to mitigate the devastating impact of the pandemic, with a specific focus on women and girls.⁴⁷ Through the Guidance Note, the Committee calls on States to:

- i) Address the disproportionate impact of the pandemic on women's health and increased health risks as primary caregivers to children and sick family members;
- ii) provide confidential access to sexual and reproductive health services;
- iii) protect women and girls from gender-based violence through facilitating access to protection orders, medical and psycho-social assistance, and safe shelters;
- iv) ensure equal participation of women in decision-making and the formulation of COVID-19 response and recovery strategies, including the provision of socio-economic support to women; and,
- v) continue education, noting that as a result of the closure of educational facilities, children are staying at home and women and girls are relegated to domestic work.⁴⁸

The Committee advises that States should uphold the SDG principle of, 'Leave no one behind', through promoting inclusiveness in the formulation of policies and other measures. In this regard the Committee further recommends targeted strategies for governments to mitigate the devastating impact of the COVID-19 pandemic on older women; women and girls with disabilities; women and girls in poverty; migrant, refugee and internally displaced women; indigenous women and girls and those belonging to minorities; women deprived of their liberty; as well as lesbian, bisexual and transgender women.⁴⁹

The Committee also calls on States to strengthen institutional responses, dissemination of information and data collection in relation to COVID-19 and provide accurate and transparent information on the gendered risks of the pandemic.⁵⁰

47 <https://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Statements.aspx>

48 *Ibid*, note 37, paras 1 to 6

49 *Ibid*, para 7

50 *Ibid* para 9



2.6 Joint Statement by CEDAW and the EDVAW Platform of women's rights mechanisms on COVID-19 and the increase in violence and discrimination against women

In July 2020, the Platform of Independent Expert Mechanisms on Discrimination and Violence against Women (EDVAW),⁵¹ which includes the CEDAW, released a collective call to States and relevant stakeholders, to take urgent steps to combat the global pandemic of gender-based violence against women, particularly, domestic violence, through ensuring 'Peace at home' during lockdown and integrating the elimination of discrimination and gender based violence against women in the COVID 19 recovery phase and beyond.⁵²

The joint statement recognises that the extraordinary measures adopted by national governments around the world in response to the COVID-19 pandemic, has revealed glaring political, social and economic inequalities that continue to pervade many societies, and exacerbates the deep-rooted gender discrimination and violence, with a disproportionate impact on women and girls.⁵³ The statement recognises the dramatic increase in domestic violence cases in many countries, due to the social confinement (lockdown) measures, and that the home has become a place of fear for many women and children, allowing their perpetrators additional power and control. It further notes that as a result of the pandemic, resources available to women are curtailed, such as, *inter alia*, fewer police interventions; closure of the courts and limited access to legal assistance; access to counselling and emergency services; and, the closure of shelters and services for victims of domestic violence (including intimate partner violence and sexual abuse).⁵⁴ These have further exacerbated the risks faced by women and girls and contributed to a rise in femicide.

Through the statement, the EDVAW Platform cites that, 'despite the disproportionate negative effects of the crisis on women, as well as their critical role in keeping communities running, they are largely absent from local, national and global COVID-19 response teams, policy spaces and decision-making. It is further noted that in the absence of gender sensitive intersectional responses, different forms of systemic discrimination already faced by women and girls will be exacerbated.'⁵⁵

51 The EDVAW Platform is made up of the following expert mechanisms: UN Special Rapporteur on violence against women (SRVAW); UN Committee on the Elimination of Discrimination against Women (CEDAW); UN Working Group on the issue of discrimination against women and girls (WGDAW); Committee of Experts of the Follow-up Mechanism to the Belém do Pará Convention (MESECVI); Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO); African Commission on Human and Peoples' Rights Special Rapporteur on the Rights of Women in Africa (A SRWHR); Inter-American Commission on Human Rights Rapporteur on the Rights of Women (IA RWHR). Further information about the EDVAW is available at, <https://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/CooperationGlobalRegionalMechanisms.aspx>

52 <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26083&LangID=E>

53 Ibid

54 Ibid

55 Ibid

As a result, several recommendations were posited to States to take a 'gender-sensitive intersectional approach' in their responses to COVID-19, which includes, *inter alia*:

- i) Ensure the full participation of women and girls in all crisis and response recovery plans, including plans which promote women's economic empowerment and address gender inequalities in employment and social protection system;
- ii) Prevention and redress of violence against women as a key part of national response plans for COVID-19 on the basis of a coordinated response of all actors;
- iii) To ensure continued and safe access to support services and emergency measures, including legal assistance and access to judicial remedies for women and girls at risk, or who are subjected to, domestic and sexual violence, harassment and abuse;
- iv) Facilitate the issuance of protection orders and ensure access to rape crisis centres and safe shelters or hotel accommodation for women and girls who are victims or at risk of gender-based violence; and
- v) Gather disaggregated outbreak-related data, to examine and report on the gender-specific health effects of COVID-19, both direct and indirect as well as on the gender-specific human rights impacts of COVID-19 and utilize this data in the formulation of responses.⁵⁶

RELATED DEVELOPMENTS

- In April 2020, the OHCHR released a paper on 'COVID-19 and Women's Rights: Guidance'.⁵⁷

2.7 Committee on the Elimination of Racial Discrimination

2.7.1 Statement on the coronavirus (COVID-19) pandemic and its implications under the ICERD

In August 2020, the Committee on the Elimination of Racial Discrimination (CERD), issued a 'Statement on the coronavirus (COVID-19) pandemic and its implications under the International Convention on the Elimination of All Forms of Racial Discrimination'.⁵⁸

Through the Statement, the CERD notes that the COVID-19 pandemic is having significant adverse impacts on the enjoyment of human rights, in particular on the right to non-discrimination and to equality as outlined in the International Convention on the Elimination of All Forms of Racial Discrimination. Further, that persons belonging to minorities and marginalised groups are more vulnerable to the pandemic due to greater exposure to the virus, often as a result of inadequate living conditions, and that those faced with racial discrimination are furthermore disproportionately impacted by the negative impact of COVID-19.⁵⁹ According to the Committee, the pandemic exposes and further deepens structural inequalities affecting vulnerable groups protected under the Convention, based on entrenched structures and practices of discrimination and exclusion.⁶⁰ The statement also noted reports which indicate practices and incidents of racially discriminatory enforcement of restrictions on human rights during the pandemic, and that access to justice and national mechanisms combatting racial discrimination, has been further hindered due to the pandemic.

⁵⁶ Ibid

⁵⁷ OHCHR, 'COVID-19 and Women's Rights: Guidance', 15 April 2020, available at, https://www.ohchr.org/Documents/Issues/Women/COVID-19_and_Womens_Human_Rights.pdf

⁵⁸ <https://www.ohchr.org/Documents/HRBodies/TB/COVID19/Statement-CERD-COVID-19.docx>.

⁵⁹ Ibid, section I

⁶⁰ Ibid



The Committee emphasises the obligations of States to respect, protect and fulfil their obligations, including in times of crisis and that States may enact and enforce restrictions of human rights on public health grounds only if they are necessary, reasonable, proportionate and non-discriminatory.⁶¹ In an expansive list setting out the obligations of States under the ICERD, the Committee states that, *inter alia*, States have an obligation to ensure measures are implemented to address the disparate effects of the pandemic on groups and minorities (as reflected in the ICERD), including through:

- i) Equal access to healthcare services, including for migrants and undocumented persons;⁶²
- ii) access to education, taking into account the needs of these groups and advancing ways of alternative learning solutions in order to bridge the digital divide;⁶³
- iii) guaranteeing that all persons and groups have access to financial aid and other economic support measures taken in the context of the COVID-19 pandemic without discrimination, and consider adopting special measures to secure the full enjoyment of human rights and fundamental freedoms of disadvantaged groups.⁶⁴

The Committee also impresses on States the need to ensure access to vaccines against COVID-19 are distributed in a non-discriminatory manner, taking into account the situation and needs of groups which are marginalised and subjected to discrimination, and also adopting an inclusive approach through ensuring participation of these persons⁶⁵ in the pandemic response measures.

It should be noted that through the Statement, the Committee requests States to include in their periodic reporting to the Committee, measures taken in relation to COVID-19 and the impact on groups and minorities.⁶⁶

61 Ibid, Part II

62 Ibid Part II, para 4(a)

63 Ibid, Part II, para 4(d)

64 Ibid, Part II, para 4(e)

65 Ibid Part II, para 5 and 7

66 Part III, para 2 further lists that the following be included in the periodic reports: (b) Measures taken to ensure the participation of all groups and minorities, in particular women, children and persons with disability, in the design and implementation of their response to the COVID-19 pandemic; (c) Measures taken to protect people belonging to groups and minorities protected under the Convention from the impact of the COVID-19 pandemic; (d) Measures taken to protect members of vulnerable groups against discriminatory acts and to counter hate speech and stigmatization in connection with the COVID-19 pandemic; (e) Measures taken to mitigate the socio-economic impact of the COVID-19 pandemic on members of marginalized and vulnerable groups in accordance with their obligation to respect, protect and fulfil economic, social and cultural rights.

2.8 Committee Against Torture

2.8.1 Joint Statement by the UN Anti-Torture Mechanisms

On the occasion of the annual International Day in Support of Victims of Torture on 26 June 2020, the UN Anti-Torture Mechanisms, which includes the Committee Against Torture and other imminent experts,⁶⁷ unanimously cautioned that the COVID-19 pandemic is leading to an escalation of torture and ill-treatment worldwide.⁶⁸

The anti-torture experts reported that as of mid-June 2020, more than 78,000 prisoners had contracted COVID-19 in 79 countries, and at least 1,100 have died as a result of the pandemic in 35 countries.⁶⁹ While noting that the numbers were on the rise, the experts highlighted the particularly vulnerable situation of people in detention or confined in closed spaces, where social distancing is practically impossible.⁷⁰

The experts further highlighted that independent documenting of the material and living conditions of persons deprived of their liberty, as well as the monitoring of the use of force by law enforcement officials, are indispensable tools for the prevention of all forms of ill-treatment, and therefore, must always be part of the overall COVID-19 response.⁷¹ It also noted that in many regions of the world, excessive force had reportedly been used to enforce curfews and social distancing rules and resultantly warned that such action might well amount to torture or to inhuman or degrading treatment.⁷²

The experts further cautioned that the COVID-19 pandemic must not be used to avoid complying with the universally recognised duty of States to eradicate all forms of torture and other cruel, inhuman or degrading treatment or punishment.

2.9 Sub-Committee on the Prevention of Torture

2.9.1 Advice of the Subcommittee on Prevention of Torture to States parties and national preventive mechanisms relating to the coronavirus disease (COVID-19) pandemic

In April 2020, the Sub-Committee on the Prevention of Torture issued an 'Advice' to State parties and National Preventive Mechanisms (NPM) in respect of the COVID-19 pandemic.⁷³ The Advice was issued as several NPMs approached the SPT, requesting guidance on how best to respond to the impact of COVID-19 in places of deprivation of liberty (including detention facilities, immigration detention centres, closed refugee camps, psychiatric hospitals and other medical settings).⁷⁴

67 As well as, the UN Subcommittee on Prevention of Torture, the UN Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment, and the Board of Trustees of the UN Voluntary Fund for Victims of Torture.

68 <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25995&LangID=E>

69 Ibid

70 Ibid

71 Ibid

72 Ibid

73 Advice of the Subcommittee to States parties and national preventive mechanisms relating to the coronavirus disease (COVID-19) pandemic, CAT/OP/10 , (7 April 2020), available at, <https://undocs.org/CAT/OP/10>

74 Ibid, para 6

The detailed measures cited in the Advice include:

- i) Reducing prison populations by implementing schemes of early provisional or temporary release of low-risk offenders;
- ii) reviewing all cases of pre-trial detention; and
- iii) extending the use of bail for all excluding the most serious cases; and, reviewing and reducing the use of immigration detention and closed refugee camps.⁷⁵

The Advice also emphasises that all detainees, people in quarantine and closed medical settings, their families, and all staff, should receive reliable, accurate and the latest information concerning all adopted measures.⁷⁶

The Advice recommends that NPMs should continue exercising their mandate during the pandemic, taking into account the legitimate social contact restrictions, and highlights that despite the pandemic, NPMs cannot be completely denied access to official places of detention, including places of quarantine, even if temporary restrictions are permissible.⁷⁷

It should be noted that in July 2020, the SPT reiterated its position and called for NPMs to be strengthened, hereby underscoring their importance in monitoring the conditions of people deprived of liberty during the pandemic and stressing their critical role in torture prevention. The SPT also expressed its continued commitment to support NPMs, albeit *via* remote assistance.⁷⁸

2.10 Committee on the Protection of the Rights of All Migrant Workers and Members of their Families

2.10.1 Joint Guidance Note on the Impacts of the COVID-19 Pandemic on the Human Rights of Migrants

In May 2020, the UN Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW), together with the UN Special Rapporteur on the Human Rights of Migrants, issued a joint Guidance Note addressing the impact of the COVID-19 pandemic on the human rights of migrants⁷⁹

In its Guidelines, the Guidance Note emphasises, *inter alia*, that States must guarantee access to social services for migrants and their families, who in some countries represent the highest levels of contagions and deaths from COVID-19.⁸⁰ The CMW and Special Rapporteur also noted that migrants who are in an irregular situation or undocumented face even greater vulnerability, indicating that many work in unstable jobs, and in some cases have been excluded from government social assistance measures. They accordingly called on, 'governments to promote the regularisation of migrants in an irregular situation.'⁸¹ Furthermore, that States consider the temporary suspension of deportations and forced returns during the pandemic noting that a significant number of migrants have been deported or returned from different countries carrying the COVID-19 disease.⁸²

75 <https://reliefweb.int/report/world/advice-subcommittee-prevention-torture-states-parties-and-national-preventive>

76 Ibid

77 Ibid, note 65, para 11

78 <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26031&LangID=E>

79 <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25904&LangID=E>

80 Ibid

81 Ibid

82 Ibid

The Guidance Note further advises that States integrate migrant workers into national COVID-19 prevention and response plans and policies, including economic recovery policies.

2.11 Committee on the Rights of Persons with Disabilities

2.11.1 Joint Statement by the Committee on the Rights of Persons with Disabilities and the Special Envoy of the United Nations Secretary-General on Disability and Accessibility

In April 2020, the Committee on the Rights of Persons with Disabilities (CRPD), together with the Special Envoy of the United Nations Secretary-General on Disability and Accessibility, released a joint statement on, 'Persons with Disabilities and COVID-19'. The statement highlights the linkages between the Convention on the Rights of Persons with Disabilities (CRPD), the Sustainable Development Goals (SDGs) and the COVID-19 pandemic.

It further recognises that the 2030 Agenda for Sustainable Development sets targets aimed at responding to epidemics, specifically through achieving universal health coverage; ensuring access to medicine and vaccines; promoting mental health and well-being; and, reinforcing the capacity of all countries in early warning; risk reduction and risk management for national and global health.⁸³ Furthermore, that through implementing their obligations under the CRPD, and fulfilling their commitments under the 2030 Agenda, States will be able to safeguard the rights and well-being of persons with disabilities.⁸⁴

The statement recognises that States should take all appropriate measures to ensure access for persons with disabilities to health services and provide persons with disabilities with the same range, quality and standard of health care as provided to other persons, including mental health services.⁸⁵ Further, that States should continue providing persons with disabilities the necessary health services specific to their disability needs and, moreover during the COVID-19 pandemic, should prevent the discriminatory denial of health care or life-saving services, food or fluids on the basis of disability.

83 Joint Statement: Persons with Disabilities and COVID-19 by the Chair of the United Nations Committee on the Rights of Persons with Disabilities, on behalf of the Committee on the Rights of Persons with Disabilities and the Special Envoy of the United Nations Secretary-General on Disability and Accessibility. Available at, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25765&LangID=E>

84 Ibid, para 4

85 Ibid, para 7



Through the statement, the CRPD and the Special Envoy called on relevant authorities to adopt measures to appropriately respond to the COVID-19 pandemic, ensuring inclusion and effective participation of persons with disabilities,⁸⁶ through the planning, implementation, monitoring and containment measures related to COVID-19.⁸⁷

RELATED DEVELOPMENTS

- In April 2020, the OHCHR released a comprehensive guidance on 'COVID-19 and the Rights of Persons with Disabilities'.⁸⁸
- In May 2020, the UN issued a Policy Brief entitled, 'A Disability-Inclusive Response to COVID-19'.⁸⁹

2.12 Committee on Enforced Disappearances

2.12.1 Key guidelines on COVID-19 and enforced disappearances

In September 2020, the Committee on Enforced Disappearances (CED), together with the Working Group on Enforced or Involuntary Disappearances (WGEID), issued, 'Key Guidelines on COVID-19 and Enforced Disappearances'.⁹⁰ The Key Guidelines reiterate that enforced disappearance is prohibited and calls on all Member States to continue to respect their international obligations under the International Convention for the Protection of All Persons from Enforced Disappearance, despite the COVID-19 pandemic.

The CED and the WGEID note their concern that, 'enforced disappearances are continuing to occur and there is an additional risk of States using the pandemic and associated states of emergency as cover for enforced disappearances'.⁹¹ They accordingly reiterate that States should thus not practise, permit or tolerate enforced disappearances at any time, including during the pandemic.

The Key Guidelines confirm that the search and investigation into enforced disappearances cannot be discontinued during the pandemic and should be carried out without delay.⁹² It also notes that the pandemic has created new contexts where enforced disappearances may occur. This includes during compulsory quarantine in places of deprivation of liberty, (including quarantine centres or medical facilities), where individuals may, intentionally or unintentionally, be deprived of contact with their relatives.⁹³ It was further noted that the suspension of visits to regular places of detention as a result of COVID-19, has in some instances led to, 'a complete absence of contact between detainees and the outside world' creating a conducive environment for incommunicado detention which may lead to enforced disappearances.⁹⁴

⁸⁶ Ibid, para 6

⁸⁷ Ibid, para 8

⁸⁸ Available at, https://www.ohchr.org/Documents/Issues/Disability/COVID-19_and_The_Rights_of_Persons_with_Disabilities.pdf

⁸⁹ As released by the UN Sustainable Development Group, available at, https://www.un.org/sites/un2.un.org/files/sg_policy_brief_on_persons_with_disabilities_final.pdf

⁹⁰ UN Committee on Enforced Disappearances and Working Group on Enforced or Involuntary Disappearances, Key guidelines on COVID-19 and enforced disappearances (18 September 2020), available at, <https://www.ohchr.org/Documents/Issues/Disappearances/Guidelines-COVID19-EnforcedDisappearance.pdf>

⁹¹ Ibid, para 5.

⁹² Ibid, para 7

⁹³ Ibid, para 11

⁹⁴ Ibid, para 12



The Key Guidelines also note that in some contexts, the treatment of the bodies of persons deceased as a result of COVID-19, has led to a risk of disappearance. Furthermore, that the CED and WGEID had received reports that this phenomenon is being used to conceal cases in countries where enforced disappearances are prevalent.⁹⁵ It therefore reiterated that bodies of the deceased should be dealt with in a manner permitting identification by relatives and remains should be treated in line with their tradition, religion and culture.⁹⁶ The CED and WGEID also called for assurances regarding access to information for victims of enforced disappearances and that relatives of disappeared persons, their representatives and surviving victims of enforced disappearances should be supported and empowered, and protected from harassment or reprisals.⁹⁷

The CED and WGEID specifically highlighted the risks COVID-19 has created for migrants who are at risk of enforced disappearance and noted that, despite the pandemic, forced returns have continued in violation of the principle of *non-refoulement*.⁹⁸ It reiterated the States' obligation in this regard, and the entrenched prohibition that a person may not be expelled, returned or extradited to another State where they are potentially at risk of being subjected to an enforced disappearance.

It should be noted that the CED and WGEID reiterated that the enforced disappearance of women is a form of gender-based violence, particularly when they are specifically targeted as a result of their sex or gender, and this vulnerability was exacerbated under the COVID-19 pandemic.⁹⁹

95 Ibid, para 15

96 Ibid, Guideline 4.

97 Ibid, Guideline 5 and 6

98 Ibid, para 23

99 Ibid, para 25



3. REGIONAL

3.1 Overview

In February 2020, South Africa's President, Cyril Ramaphosa, assumed the year-long tenure as Chairperson of the African Union (AU), amid the rapid spread of COVID-19 around the world. The pandemic adversely affected most of the AU plans which necessitated a refocused agenda as many of the planned priorities for the continent were placed on hold.¹⁰⁰

Incidentally, in the same month, the African Commission on Human and Peoples' Rights (ACHPR), expressed concern over the risk of the COVID-19 pandemic spreading throughout Africa and placing in peril, the health and safety of the peoples of Africa.¹⁰¹ A few weeks later, in March 2020, the ACHPR, issued a notice announcing the postponement of their planned 66th Ordinary Session.¹⁰² Notwithstanding, and through electronic and virtual platforms, the ACHPR later resumed sessions and remained vigilant and supportive of the fight against the pandemic by regularly reiterating State obligations under the African Charter on Human and Peoples' Rights. Select activities of the ACHPR, as they relate to the COVID-19 pandemic, are discussed below.

3.2 ACHPR Statement on a human rights-based effective response to the novel COVID-19 virus in Africa

In March 2020, the ACHPR issued a Statement expressing concern about the spread of COVID-19 across the continent and expressed alarm at the threats posed to the rights to life, health and safety.¹⁰³ The ACHPR particularly expressed grave concern about the impact of the virus on older persons, persons with disabilities and persons with co-morbidities who have heightened vulnerability.

The ACHPR also identified with and shared, 'the worries of people across the continent that most States Parties to the African Charter have inadequate health systems and capacities for avoiding the cost to human life'.¹⁰⁴ While commending the measures taken by States to the African Charter, the ACHPR shared its strong apprehension regarding the inadequacies of these measures taken by States, including, the lack of decisive and consistent implementation thereof and the widespread lack

100 <https://www.theafricareport.com/42477/how-the-african-union-is-rallying-to-combat-covid-phumla-williams/>

101 <https://www.achpr.org/pressrelease/detail?id=480>

102 <https://www.achpr.org/pressrelease/detail?id=482>

103 <https://www.achpr.org/pressrelease/detail?id=483>

104 Ibid



of compliance with the measures by the public. It furthermore reminded States that any measures adopted should comply with the principle of legality; should be necessary and proportional to the objective of safeguarding public health; and should be accompanied by contextually tailored policy measures for mitigating the adverse impacts, particularly on the most vulnerable section of society.¹⁰⁵

In the light of challenges that have emerged in responding to the pandemic, and while recognising the need for States to effectively discharge their human rights obligations under the African Charter in responding to COVID-19, the ACHPR lists principles to guide States in the measures which have to be undertaken in response to the pandemic. These include, *inter alia*:

- i) The principle of legality (in enacting laws to manage the pandemic);
- ii) Non-discrimination and equality (in the measures to be taken to fight COVID-19);
- iii) Access to information on the pandemic;
- iv) Primacy of timely preventive and containment measures;
- v) Addressing challenges of non-implementation and compliance;
- vi) Protection of vulnerable groups;
- vii) Prisons and other places of detention;
- viii) The right to health;
- ix) Solidarity and duty of individuals, private sector, community leaders, media and religious institutions.

3.3 ACHPR Letter to the African Union Chairperson

In May 2020, the ACHPR submitted a letter to the African Union Chairperson, President Cyril Ramaphosa, affirming the need for a human rights response to COVID-19 in Africa. Through the letter, the ACHPR expresses its appreciation for President Ramaphosa's leadership in the mobilisation and sustained coordination of the continental response against the pandemic, including the call for global solidarity and action to limit its adverse socio-economic impacts.¹⁰⁶

The ACHPR further underscores the importance of integrating the statement issued in March 2020, (as discussed in para 3.2 above), in the continental strategy against COVID-19 and having the ACHPR provide its expert guidance for the high-level AU response structures so as to ensure that human rights issues are adequately addressed in continental response processes.

¹⁰⁵ Ibid

¹⁰⁶ <https://www.achpr.org/pressrelease/detail?id=497>

3.4 ACHPR Statement on the human rights of mineworkers and mining-affected communities during the COVID-19

In May 2020, the ACHPR issued a Statement regarding the impact of COVID-19 in relation to mining operations, mineworkers and mining-affected communities in South Africa.¹⁰⁷ While recognising the need for the continuation of mine operations at a reduced capacity during COVID-19, the ACHPR emphasised that the South African government, and mining companies, should adopt regulatory and protective measures to safeguard both the health and safety of miners and the host communities, in accordance with the principles in the ACHPR's State Reporting Guidelines and Principles relating to the Extractive Industries.¹⁰⁸

Through the Statement, the ACHPR applauded the decision of the Labour Court of South Africa, as handed down on 4 May 2020,¹⁰⁹ ruling that the State must develop binding regulations on mining during the COVID-19 pandemic, through meaningful engagement with relevant trade unions and mining-affected communities.¹¹⁰ The ACHPR specifically cites from the judgment in recognising the particular vulnerability of mineworkers as they work in confined spaces where social distancing is a challenge.¹¹¹ Furthermore, due to the high prevalence of lung disease and HIV/AIDS among mineworkers, they are at high risk of contracting COVID-19, and could spread the virus to their host communities which generally have weak healthcare systems.

The ACHPR emphasised that the court judgment be implemented speedily, 'as a guarantee for protecting mineworkers and their communities, who, on account of their socio-economic positions, the nature of mine work, the negative impacts of mining and the lack of access to various social amenities, could be at higher risk of suffering from the impacts of the spread of COVID-19.'¹¹²

107 <https://www.achpr.org/pressrelease/detail?id=502>

108 Ibid. The State Reporting Guidelines and Principles on Articles 21 And 24 of the African Charter relating to Extractive Industries, Human Rights and the Environment, is available at, <https://www.achpr.org/presspublic/publication?id=75>

109 Association of Mineworkers and Construction Union v Minister of Mineral Resources and Energy and Others (J427/2020) [2020] ZALCJHB 68, also available at, <https://www.wits.ac.za/media/wits-university/faculties-and-schools/commerce-law-and-management/research-entities/cals/documents/programmes/bhr/in-court/Judgment.pdf>

110 <https://www.achpr.org/pressrelease/detail?id=502>

111 Ibid

112 Ibid



3.5 ACHPR Working Group on Economic, Social and Cultural Rights

In June 2020, the ACHPR's Working Group on Economic, Social and Cultural Rights, issued a press release noting that despite the implementation of social welfare measures put in place by many States in response to COVID-19, several economic, social and cultural rights had been negatively impacted.¹¹³ The ACHPR noted that while the right to health had been 'profoundly challenged', related rights, to work, education, food, water, and the derived right to social security remained equally affected.

The ACHPR also recognised the impact of COVID-19 on the labour market and the related impact on the business sector. It specifically noted that the closure of schools and educational institutions deprived students of education and the situation is exacerbated in instances where technology is not accessible to facilitate remote learning. Furthermore, that several communities do not have access to water which is essential in maintaining hygiene as a preventive COVID-19 measure.¹¹⁴

In addition to the recommendations issued by the ACHPR and its Statement on a human rights-based response to COVID-19, (as discussed in para 3.2 above), the Working Group further called on States to, *inter alia*:

- i) Take steps to ensure the full realization of economic, social and cultural rights in the African Charter on Human & Peoples' Rights, in other regional and international human rights instruments;
- ii) Strengthen health care systems including increased budgetary allocation, provision of ventilators, test kits, personal protective equipment etc;
- iii) Commence bilateral and multilateral negotiations to ensure that any proven medical treatment and vaccine for COVID-19 is affordable and available and will benefit their populations;
- iv) Provide stimulus packages, loans, grants and other incentives to the business sector including the informal sector whilst ensuring that such packages are not abused; and
- v) Take the necessary steps to provide quality education with the aid of online courses, free data for such courses, and the use of other technology in order to ensure that pupils and students do not lose the academic year. Where there is no access to technology, it is recommended that learning materials are manually distributed to learners.¹¹⁵

The ACHPR also called on the collective efforts of all stakeholders, including, communities, local organisations and business etc. to support the State in the fight against the COVID-19 pandemic, especially towards vulnerable and marginalised groups.

113 <https://www.achpr.org/pressrelease/detail?id=510>

114 Ibid

115 Ibid



4. CONCLUSION

This brief takes an overall conspectus of developments at international and regional level in response to the COVID-19 pandemic. Due to the response to COVID-19 being a developing situation, it is encouraging to see the positive trajectory and rich insight emanating from the international and regional human rights mechanisms. It demonstrates the importance of these mechanisms in the entire human rights protection framework and the benefit of the international and regional instruments, which oblige States to comply with a universal set of legally-binding principles.

The SAHRC will continue to monitor developments at international and regional levels, particularly on the issue of equitable access to vaccines in line with the applicable international and regional human rights instruments. In this regard, the SAHRC notes with concern the placement of developed nations who may be in a position to exercise their economic superiority in securing dosages of vaccines, potentially at the expense of developing nations.

In our global village, the pandemic has demonstrated just how connected we all are and the Southern African spirit of *Ubuntu*, which recognises the bonds among humanity and that the health of every individual affects the health of the global community. For this is indeed a pandemic that saw nations uniting in the collective fight against COVID-19. It is hoped that this unity will permeate the next phase of the pandemic.







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