

Response to the call for inputs issued by Office of the High Commissioner for Human Rights in relation to the upcoming needs assessment on the promotion and protection of human rights and fundamental freedoms in responding to pandemics and other health emergencies

March 2021

## **Introduction**

1. The Equal Rights Trust is grateful for this opportunity to inform the High Commissioner's needs assessment on the promotion and protection of human rights and fundamental freedoms in responding to pandemics and other health emergencies.
2. The Equal Rights Trust is an independent international organisation whose mission is to eliminate all forms of discrimination and ensure everyone can participate in life on an equal basis. We work in partnership with equality defenders – civil society organisations (CSOs), lawyers, government representatives and others committed to using law to create an equal world – providing them with the technical, strategic, and practical support they need to secure the adoption and implementation of comprehensive equality laws. In connection with this work, we engage with UN bodies and procedures with the aim of increasing knowledge and understanding of equality law and its role in the realisation of rights and development.
3. The COVID-19 pandemic has transformed our world. In response to the pandemic, states have adopted unprecedented emergency measures with significant and wide-ranging impacts on their societies. As these measures have taken effect, it has become clear that, while the virus is indiscriminate, the impacts of state responses are not. In May 2020, the Equal Rights Trust brought together an unprecedented coalition of leading global equality organisations to issue a joint [Call to Action](#) to express our shared concern that, in implementing these measures, States were failing to meet their binding legal obligations to ensure non-discrimination in the enjoyment of human rights for all in their response to the pandemic. We noted that “there is clear and growing evidence that state responses in delivery of healthcare, in the implementation of lockdown and other emergency measures and in policies designed to mitigate economic impacts are having disproportionate and discriminatory impacts”.<sup>1</sup>
4. Since the launch of this Call to Action, through our [#NoCOVIDDiscrimination Initiative](#) we have trained and supported partner organisations in a number of countries across the world to monitor, document and challenge the discriminatory impacts of state responses to the pandemic. In this submission we provide selected evidence of such impacts documented throughout the year. We should note that the information provided here is neither exhaustive nor comprehensive; rather it is illustrate of the wide range of actual and potential discriminatory impacts of state responses to the pandemic, and the need for a pre-emptive approach. In sharing this information, we seek to demonstrate the need for states to integrate equality impact assessments into their response and recovery measures in order to identify and eliminate

---

<sup>1</sup> Equal Rights Trust and others, “ Call to Action: Addressing discrimination and inequality in the global response to COVID-19 “, May 2020, available at:

<https://www.equalrightstrust.org/sites/default/files/images/COVIDResponse.pdf>.

<http://www.equalrightstrust.org/> | [info@equalrightstrust.org](mailto:info@equalrightstrust.org)

[@equalrightstrust](https://twitter.com/equalrightstrust) | [facebook.com/equalrightstrust](https://facebook.com/equalrightstrust)

Second Home London Fields

125 - 127 Mare Street | London E8 3SJ | United Kingdom

discriminatory impacts, if they are to fulfil their non-discrimination obligations under international law.

### **Selected evidence of discriminatory impacts of state responses to the pandemic: the #NoCOVIDiscrimination Initiative**

5. Between September 2020 and February 2021, the Equal Rights Trust provided financial, technical and strategic support to organisations in nine different countries to document or challenge the discriminatory impacts of state responses to the pandemic. The work done by these organisations demonstrates the range, diversity and scale of these discriminatory impacts, and serves to illustrate the breadth and depth of the problem. A selection of the evidence generated by our partners is provided below.
6. In **the Philippines**, the Philippine Alliance of Human Rights Advocates (PAHRA) and Partido ng Manggagawa (Labour Party) reported to the Equal Rights Trust that when the Mactan Export Processing Zone in Lapu City was downgraded from enhanced to general community quarantine and resumed operation, workers at Sports City International, Inc. (SCI) and First Glory Philippines, Inc., were exposed to discrimination on a number of grounds.<sup>2</sup> They found that workers sharing protected characteristics such as pregnancy and health status were unable to return to work due to their perceived risk of contracting and dying from COVID-19, while at the same time receiving no financial assistance.<sup>3</sup>
7. The Filipino non-governmental organisation, Center for Women's Resources, has identified the exclusion of women in the informal labour market from financial assistance, and the delayed receipt of financial assistance, in the context of the pandemic, based on interviews undertaken with local women's organisations in urban poor communities in Metro Manila.<sup>4</sup> The non-governmental organisation, Concern Inc., who work with the internally displaced Moro community in Marawi City, identified a range of discriminatory impacts in the context of the pandemic in terms of access to healthcare, education, and treatment by law enforcement officials, based on interviews with 151 Internally Displaced Persons (IDPs) residing in transitory shelters.<sup>5</sup>
8. The Human Rights Committee of **Pakistan** (HRCP) – on the basis of its work with several non-governmental organisations in Pakistan – has identified discriminatory impacts of the state response to the pandemic resulting from the *de facto* horizontal segregation of the labour market on the basis of gender, ethnicity and religion. HRCP's partner organisations, Labour Education Foundation (LEF) and Sindh Community Foundation (SCF), have documented the discriminatory impacts of the State response to the pandemic on women workers in the garment and textile industry in Lahore and Faisalabad, and agricultural workers in Sindh.<sup>6</sup>
9. The Pakistani non-governmental organisation, Good Thinkers Organisation, collected evidence from 382 transgender persons in Punjab, Pakistan, which found they have faced discrimination in access to relief measures, healthcare, public transport, and places of religious worship, and that they have suffered discriminatory treatment from the police and other duty-bearers. Specifically, Good Thinkers Organisation found that only 3% of those surveyed were able to access the Ehsaas Emergency Cash Program.<sup>7</sup> Their research identified that the requirement for individuals to

---

<sup>2</sup> Based on interviews with 29 male and 61 female workers undertaken by PAHRA and Labour Party, March 2021 (Provided to the Equal Rights Trust).

<sup>3</sup> PAHRA and Labour Party, March 2021 (Provided to the Equal Rights Trust).

<sup>4</sup> Center for Women's Resources, December 2020 (Provided to the Equal Rights Trust).

<sup>5</sup> Concern Inc., March 2021 (Provided to the Equal Rights Trust).

<sup>6</sup> Human Rights Committee of Pakistan, January 2021 (Provided to the Equal Rights Trust).

<sup>7</sup> Good Thinkers Organisation, Research study COVID-19 impact on Transgender community, March 2021, Page 9 (Provided to the Equal Rights Trust).

possess a Computerized National Identity Card (CNIC) as a prerequisite for eligibility to the Ehsaas Program discriminated indirectly against transgender persons, many of whom were excluded because they did not possess a CNIC.<sup>8</sup>

10. Our partners in **Cabo Verde**, Associação Cabo-verdiana de Luta contra VBG (ACLCVBG), have documented how the absence of protective and preventative measures taken by the State has had a severely discriminatory impact on domestic workers. Research by ACLCVBG found that domestic workers were increasingly exposed to the virus, and disproportionately dismissed from employment due to the economic situation, and – of particular concern – due to the perception of them as vectors of the virus.<sup>9</sup>
11. The **Paraguayan** non-governmental organisations, Kuña Roga and Central Unitaria de Trabajadores (CUT), reported that in the city of Encarnación, Paraguay, women workers have been disproportionately disadvantaged by the state response to the pandemic because of the *de facto* horizontal segregation of the labour market. Research by Kuña Roga and CUT found that job losses in Encarnación have affected women more than men, and that 2 out of 10 women workers have been dismissed or faced a reduction in their working days this year.<sup>10</sup>
12. Our partners in **Kyrgyzstan**, the Institute of Youth Development, have undertaken research which has identified indirectly discriminatory impacts resulting from the State response to the pandemic in education, on the basis of disability, language and socio-economic status. For example, they have reported that the State failed to develop education materials which were accessible to students with visual and hearing impairments, and neglected to monitor the effective realisation of the right to non-discrimination in the context of education.<sup>11</sup>

### **Recommendation: Adoption of Equality Impact Assessment**

13. The discriminatory impacts documented by our partners – together with the many others both documented and undocumented in these and other countries – are occurring despite the fact that almost every State in the world has accepted non-discrimination obligations, through *inter alia* ratification of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>12</sup> While many states have also accepted obligations to guarantee the rights to equality and non-discrimination under instruments to eliminate discrimination against women, discrimination on the basis of race and discrimination against persons with disabilities, we focus on these instruments as they have received almost universal recognition.<sup>13</sup>
14. States' non-discrimination obligations under these instruments apply to all: citizen and non-citizen, irrespective of their identity, status or beliefs. The UN Human Rights Committee has stated that the rights in the ICCPR “apply to everyone, irrespective of reciprocity, and irrespective of his

---

<sup>8</sup> Good Thinkers Organisation, Research study COVID-19 impact on Transgender community, March 2021, Page 10 (Provided to the Equal Rights Trust).

<sup>9</sup> Dionara Anjos, on behalf of ACLCVBG, March 2021 (Provided to the Equal Rights Trust).

<sup>10</sup> Kuña Roga and Central Unitaria de Trabajadores (CUT), March 2021 (Provided to the Equal Rights Trust).

<sup>11</sup> Institute for Youth Development, March 2021 (Provided to the Equal Rights Trust).

<sup>12</sup> Under Article 2(1) of the International Covenant on Civil and Political Rights (ICCPR) and Article 2(2) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), states guarantee the enjoyment of the rights provided in those Covenants without discrimination. In addition, Article 26 of the ICCPR contains an explicit requirement that “the law shall prohibit any discrimination (...) on any ground such as (...) sex”. The UN Human Rights Committee has noted that Article 26 “provides (...) an autonomous right” which “prohibits discrimination in law or in fact in any field regulated and protected by public authorities” (Human Rights Committee, *General Comment 18: Non-discrimination*, 1989, Para 12).

<sup>13</sup> 173 states have ratified the ICCPR and 170 states have ratified the ICESCR. See: OHCHR, *Status of Ratification Interactive Dashboard*, visited 23 June 2020, available at: <https://indicators.ohchr.org>.

or her nationality or statelessness”.<sup>14</sup> The Committee on Economic, Social and Cultural Rights has clarified that the list of grounds of discrimination provided in the ICESCR (and by implication in the ICCPR) is illustrative and that, irrespective of their omission from the original text of the Covenant, States are obligated to ensure non-discrimination on grounds such as age, disability, gender identity, health status and sexual orientation.<sup>15</sup>

15. At a bare minimum, these obligations require that the state does not discriminate in its actions, whether through law, policy or practice. They also create a duty to provide effective protection from all forms of discrimination by private actors and to make reasonable accommodation when required. The CESCR, for example, has noted that states are required to ensure that their “constitution, laws and policy documents do not discriminate”; to refrain from discriminatory actions; and to “take concrete, deliberate and targeted measures” to eliminate discrimination, in particular through the adoption of legislation.<sup>16</sup> The CESCR has noted that non-discrimination obligations are “immediate and cross-cutting”.<sup>17</sup> These obligations apply irrespective of whether the discriminatory impact is intended or foreseen: as the Human Rights Committee has noted, in order to meet their obligations to guarantee the enjoyment of rights without discrimination, states are required to eliminate discrimination in both purpose and effect.<sup>18</sup> Crucially, the Human Rights Committee has also stated that one of the conditions for limiting the enjoyment of human rights in times of emergency is that measures taken do not discriminate.<sup>19</sup>
16. Since May 2020, we have called on all States to incorporate **equality impact assessment** as an integral element of their on-going public health, economic and social policy responses to the crisis. It is only through assessing the equality impacts of their policy responses that States can ensure that their actions comply with their binding non-discrimination obligations under international law and can anticipate and eliminate the discriminatory effects of their policy responses.
17. We urge the High Commissioner to recommend that states incorporate equality impact assessment into their ongoing public health, economic, and social policy responses to the crisis, as a necessary – though not sufficient – means of fulfilling their obligations to guarantee the enjoyment of human rights without discrimination. We call on the High Commissioner to recommend that all COVID response and recovery measures must be subject to equality impact assessment, applying the following principles:
  - a. Equality impact assessments must be aimed at identifying and eliminating the actual or potential discriminatory effects of state policies; ensuring that policies and programmes respond to and accommodate the different needs of diverse groups with due consideration to intersectionality; and that they do not create or exacerbate inequality;
  - b. Equality impact assessments must be pre-emptive, coming before new policy measures are adopted and before any changes are made to policies which are already in force;
  - c. Where measures have already been adopted, equality impact assessments must be undertaken as an urgent priority;
  - d. Where discriminatory impacts are identified, measures to eliminate any discrimination or inequality of impact must be taken with immediate effect;

---

<sup>14</sup> Human Rights Committee, *General Comment No. 15: The Position of Aliens Under the Covenant*, UN Doc. HRI/GEN/1/Rev.6 at p. 140, 1986.

<sup>15</sup> Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)*, UN Doc. E/C.12/GC/20, 2009 (CESCR, General Comment No. 20), Paras 15 and 27-35.

<sup>16</sup> *Ibid.*, Paras 8 and 36-37.

<sup>17</sup> *Ibid.*, Para 7.

<sup>18</sup> Human Rights Committee, *General Comment 18: Non-discrimination*, 1989, Para 12.

<sup>19</sup> Human Rights Committee, *General Comment No. 29: States of emergency (art. 4)*, UN Doc. CCPR/C/21/Rev.1/Add.11, 2001, Para 8.

- e. Groups at risk of discrimination and experiencing inequality must be involved and consulted in conducting equality impact assessment;
- f. Equality impact assessments must be an essential element of the monitoring and review of policy responses to the pandemic, and of their on the ground effects;
- g. Both initial assessments and ongoing monitoring must be informed by the collection of data on the experiences and outcomes of groups exposed to discrimination.