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**Annual report of the United Nations High Commissioner
for Human Rights and reports of the Office of the
High Commissioner and the Secretary-General**

Written statement* submitted by Commonwealth Human Rights Initiative, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[28 May 2020]

* Issued as received, in the language(s) of submission only.

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Excessive use of force in enforcing COVID-19 lockdowns and impediments of access to justice

Overview

At the 44th Session of the United Nations (UN) Human Rights Council (HRC), the Commonwealth Human Rights Initiative (CHRI) wishes to draw the Council's attention to the human rights violations that have arisen and exacerbated due to the manner in which emergency measures, such as lockdowns, have been enforced in different Commonwealth countries to contain the COVID-19 pandemic. The enforcement of lockdowns and emergency restrictions in many States have been punitive and authoritarian and imposed in an arbitrary manner that has undermined the rule of law and international human rights obligations.

Many jurisdictions witnessed violence and excessive use of force by police and enforcement agencies with impunity as well as disruptions in access to justice delivery systems, especially courts, practically impeding all avenues for the protection of human rights. The restrictions imposed by many States have disproportionately impacted the vulnerable groups such as women and migrants. Prisons, immigration detention centres, refugee camps and other such areas where people live in close proximity to one another remain at a particularly acute risks of contracting the infection. Indifference of State authorities towards the most marginalised has furthered their ill-treatment.

The obligation of States is not just to ensure an equitable and non-discriminatory access to health care and essential services, but also to ensure that the persons within their territories and subject to their jurisdiction have access to timely and accurate information regarding the status of COVID-19 pandemic. Thus, while States are also fulfilling their obligation by taking necessary measures to tackle and mitigate the public health threat posed by COVID-19, we urge them to ensure that their response is proportionate, non-discriminatory, responsive to the situation, accountable and deferential to human rights and dignity.

Excessive use of force by police to enforce lockdowns

Many States, with the view of limiting and containing transmission, have restricted freedom of movement domestically through lockdowns and curfews as well as by sealing their international borders. However, the enforcement of these restrictive measures many countries has been taken a violent, punitive form. Excessive use of force by police was witnessed across jurisdictions and restrictions are viewed as much as a law and order issue as a public health necessity.

In India, there have been alarming accounts of police violence and ill-treatment while enforcing the nationwide lockdown on 25 March 2020 onwards.¹ In several states in the country, police imposed corporal punishment and stress positions such as prolonged squatting, sit-ups, *murga* (rooster) position on people who flouted the curfew.² A CHRI study found that beatings by police for alleged violations of restrictions caused the deaths of at least 12 people in various parts of the country in the first five weeks of the national lockdown; three out which were death by suicides because of alleged public humiliation that the victims suffered.³ In Pakistan, doctors and other frontline workers who were protesting against lack

¹ DW, 'India: Police under fire for using violence to enforce coronavirus lockdown', 28 March 2020. See also: (i) <https://www.reuters.com/article/us-health-coronavirus-india-police/coronavirus-spreads-among-indian-police-enforcing-worlds-largest-lockdown-idUSKBN2211YH>; (ii) <https://amnesty.org.in/news-update/coalition-against-torture-government-officials-should-be-accountable-for-excessive-use-of-force-ill-treatment-during-covid-19-lockdown/>.

² The Hindu, 'Sit-ups, squats, murga punishment: Police try news ways to keep people at home', 25 March 2020.

³ Hindustan Times, 'Police brutality led to 12 deaths: NGO', 26 May 2020.

of provision of personal protection equipment were beaten and humiliated by police.⁴ From Bangladesh, there were reports of people being beaten up and harassed by police on patrolling duties to maintain physical distancing guidelines.⁵ Similar allegations have emerged from Sri Lanka with reports of about 26,800 as much as a people being detained.⁶

The Nigerian Human Rights Commission reported that the police, correctional service and security forces were responsible for a total of 18 deaths while enforcing the state-imposed lockdown.⁷ Several other violations such as torture and ill-treatment, unlawful arrests and detentions by authorities were also reported.⁸ The Kenyan police also resorted to using excessive force, beating, kicking, whipping, huddling them together and tear gassing crowds as well as beating journalists on the line of duty while implementing curfew measures.⁹ There are about 20 cases related to deaths linked to police conduct in implementing curfew measures in Kenya, although the President Kenyatta apologised for the police violence.¹⁰ In South Africa, which deployed 70,000 troops to enforce the lockdown,¹¹ the police reportedly used rubber bullets, tear gas, water bombs and whips, to enforce social distancing, especially in poor neighbourhoods.¹²

While such excessive use of force by police is always unlawful under international law, including during states of emergency and derogations must be set in law and only “to the extent strictly required by the exigencies of the situation,¹³ the enforcement of lockdown in many national jurisdictions has violated international standards and norms and State agencies have eluded accountability due to impunity or arguments of necessity.

Impediments of access to justice and violations of the rights of the vulnerable

Physical distancing guidelines and the general lockdown has also impacted the functioning of courts and other justice mechanism bodies in different countries. While some jurisdictions have completely suspended court hearings and appearances,¹⁴ courts in some others countries are working with restricted capacity, through virtual courtrooms and only for urgent matters.¹⁵ While some of the higher courts have found modalities for functioning virtually, access to lower courts has been effectively suspended. These modalities, however, have posed newer challenges with respect to effective access to justice, access to legal aid and vulnerabilities of prisoners. Furthermore, there are structural difficulties such as access to internet, suitable electronic devices and applications, which may not be at everyone’s disposal. This raises questions of equitable access to justice.¹⁶

Persons detained in prisons and detention centres, owing to closed setting and proximity in common living spaces remain at a greater risk of the contagion. Detention facilities in many States are overcrowded, making physical distancing and self-isolation practically impossible.

⁴ The Guardian, ‘Pakistan doctors beaten by police as they despair of ‘untreatable’ pandemic’, 9 April 2020.

⁵ The Business Standard, ‘Police enforce social distancing through humiliation and harassment’, 27 March 2020.

⁶ UN News, ‘Toxic lockdown culture of repressive coronavirus measures hits most vulnerable’, 27 April 2020.

⁷ National Human Rights Commission of Nigeria, ‘Press Release on COVID-19 lockdown enforcement’, 15 April 2020.

⁸ Ibid.

⁹ Human Rights Watch, ‘Kenya Police Abuses Could Undermine Coronavirus Fight’, 31 March 2020.

¹⁰ Reuters, ‘UN raises alarm about police brutality in lockdowns’, 27 April 2020.

¹¹ BBC News, ‘Coronavirus: South Africa deploys 70,000 troops to enforce lockdown’, 22 April 2020.

¹² Reuters, ‘UN raises alarm about police brutality in lockdowns’, 27 April 2020.

¹³ Special Rapporteur on Extrajudicial, Summary or Arbitrary Killings, COVID-19 Human Rights Dispatch Number-1: Police and Military Use of Force In A State of Emergency, 2 April 2020.

¹⁴ For example: Uganda, Malta, Namibia.

¹⁵ For example: The United Kingdom of Great Britain and Northern Ireland (UK), Cyprus, India, Fiji, Bangladesh, Singapore, Nigeria, South Africa, New Zealand and Canada.

¹⁶ Outlook, ‘Do virtual courts reserve access to justice only for the privileged few?’, 11 May 2020.

Although many States have tried to limit the number of people in detention by providing alternative accommodation or temporary release of prisoners,¹⁷ the actual release process has been slow, given the limitations in the functioning of courts and other justice mechanisms.¹⁸ The pandemic has also had adversely affected women's access to justice, which is largely limited even in "normal" circumstances.¹⁹ As suggested by the Special Rapporteur on violence against women,²⁰ the rates of domestic violence globally have increase increased manifold.²¹ Instances of domestic and family violence have also increased against LGBTI persons.²² With lockdown and social isolating measures, greater vulnerability of shelter homes to the contagion and legal and judicial services being limited and even closed in some places, women, girls and other marginalised persons are not able to access outside support and help. Even in cases of violation of rights, there is no mechanism to ensure that rights are upheld and protected with the justice systems having come to a grinding halt.

Recommendations

In the light of the aforementioned, we urge the Council to address these issues and call on States to:

- Ensure that their response to the COVID-19 pandemic with respect to lockdowns and other restrictive measures is in line with international standards of necessity, proportionality, responsiveness and respectful of human dignity.
- Develop strategies for a staggered relaxation of lockdowns, in an inclusive and consultative manner, to resume mobility and fundamental freedoms, while maintaining physical distancing, hygiene and health practices and assuring communities of safety and good health.
- Issue consistent and timely guidelines on enforcement of restrictive measures and sensitise authorities to regarding their duty as helpers and not adversaries during a public health emergency.
- Establish stronger accountability and oversight mechanisms and break the cycle of impunity to bring to justice those who have violated the rights of individuals during the pandemic.
- Guarantee that measures taken to tackle the pandemic are not discriminatory and overly broad in nature and are scientifically and contextually warranted.
- Identify impediments to access justice delivery institutions, revisit the categorisation or "urgent" and "exceptional" cases and take into account the gendered nature and socio-cultural realities and other such marginalisations to ensure equitable access to justice.
- Take steps to address overcrowding in prisons and detention centres by introducing alternatives to pretrial detentions, temporary or alternative accommodations, temporary release on parole etc. as well as by enforcing guidelines on health and hygiene, including access to quality health care, within prisons.

¹⁷ For example: The UK and India.

¹⁸ Human Rights Watch, 'COVID-19 Prisoner Releases Too Few, Too Slow', 27 May 2020.

¹⁹ UNODC, 'The Gendered Face of COVID-19: Women and Access to Justice', May 2020.

²⁰ OHCHR, 'States must combat domestic violence in the context of COVID-19 lockdowns', 27 March 2020.

²¹ For example: India, Pacific Small Island States, Kenya, Malaysia, Cyprus, Singapore, Australia, South Africa.

²² Outright Action International, 'Domestic Violence and COVID-19', 31 March 2020.