

27 April 2020

LAWASIA STATEMENT OF CONCERN ON EMERGENCY MEASURES ADOPTED DURING COVID-19

LAWASIA notes that on 11 March 2020, the World Health Organization declared the global outbreak of COVID-19 a “pandemic.” As of 15 April 2020, there are over 1,982,552 cases and 126,753 deaths worldwide.¹ Many countries have adopted extraordinary measures to contain the highly contagious and deadly illness, including lockdowns, social distancing, and aggressive measures for contact-tracing.²

LAWASIA is a regional association of lawyers, judges, jurists and legal organisations, which advocates for the interests and concerns of Asia and the Pacific legal profession. LAWASIA is deeply concerned that certain measures States are adopting are excessive to counter the pandemic, and violate binding obligations under international human rights law.

LAWASIA calls on States to ensure that all measures adopted are appropriately balanced against the rights being violated, and that States adhere to their binding human rights obligations while tackling the spread of the virus.

LAWASIA notes, in particular, that the legal profession plays a fundamental role in all justice delivery systems, and in this context, to monitor any emergency or extraordinary measures adopted by States. LAWASIA calls on States to ensure that the rights of members of the legal profession, including human rights defenders, are protected, and that they are enabled to perform their professional functions and their work towards protecting and promoting human rights.

LAWASIA echoes and adopts the concerns raised by international human rights organisations and treaty bodies, both in regard to the immediate measures adopted to combat the pandemic, and the long term measures needed for recovery.³

A. INTERNATIONAL LAW ON EMERGENCY MEASURES

LAWASIA draws attention to international human rights law on derogations, which, while permitting derogations in case of a “public emergency threatening the life of a nation,” mandates that each measure adopted be in accordance with the core human rights principles of necessity, strict proportionality, and

¹ ‘COVID-19 Dashboard’ *Center for Systems Science and Engineering (CSSE) at Johns Hopkins University*, (14 April 2020) <<https://coronavirus.jhu.edu/map.html>> accessed 14 April 2020.

² World Health Organisation ‘WHO Director-General’s opening remarks at the media briefing on COVID-19’ (11 March 2020) <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>.

³ Office of the High Commission of Human Rights (OHCHR) ‘COVID-19: States should not abuse emergency measures to suppress human rights – UN experts,’ <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25722&LangID=E>> (16 March 2020); OHCHR ‘COVID is “a colossal test of leadership” requiring coordinated action, High Commissioner tells Human Rights Council’ (9 April 2020) <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx>>.

non-discrimination.⁴ These measures must be narrowly tailored to the purpose, have a basis in law, must be publicly announced, be limited to the time, geographical extent and material scope required to counter the risk, and must be subject to effective internal and external oversight.⁵ Reasonable accommodations must be made to ensure vulnerable persons' right to life is protected. Additionally, all State measures should be returned to the status quo as soon as possible once the impacts of the emergency have subsided. Under the principle of non-retrogression, States are not permitted to roll back, or reduce human rights protections that have already been provided.

LAWASIA also draws States' attention to customary and statutory international law obligations which are non-derogable, notwithstanding a state of emergency. These include the right of non-refoulement, the right to life,⁶ the right against arbitrary cruel or unusual treatment or punishment,⁷ the right against slavery or servitude⁸ and the right to freedom of conscience, and certain core economic and social rights.⁹ This also includes other peremptory norms of international law, for instance, violations of humanitarian law by taking hostages, imposing collective punishments, arbitrary deprivations of liberty or deviating from fundamental principles of fair trial, including the presumption of innocence.¹⁰

LAWASIA calls on States to ensure that each emergency measure adopted, whether de facto or de jure, is necessary, proportionate, non-discriminatory, and timebound, to be wound back once the emergency is over, for example through the incorporation of sunset clauses. To ensure adequate monitoring and access to justice, States must also ensure that lawyers and human rights defenders are permitted to perform their normal functions and carry out their work.

B. PROTECTION OF CIVIL AND POLITICAL RIGHTS

LAWASIA takes serious note of reports of police brutality to enforce the lockdowns, and reminds States that under international human rights law on the use of force, all security forces must abide by the principles of legality, necessity, proportionality, precaution, and non-discrimination.¹¹

LAWASIA calls on States to ensure that decisions to impose total lockdowns and to ban persons from open areas are based on the strongest scientific evidence available, and enforced with a minimum of force. Measures curtailing privacy, for health surveillance and monitoring, should be specifically related to and used for aims specific to public health. They must be limited in both duration and scope to respond to the particular situation. Where limitations on freedom of information are required to counter misinformation and ensure the availability of accurate information relating to COVID-19, States must also ensure that these measures are purpose-limited and are not used to stifle dissent or target human rights defenders, journalists or whistle-blowers. Additionally, with many public services

⁴ Article 4 further states, "On derogating the state party 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".

⁵ United National Human Rights Commission (UNHRC) 'General Comment No. 29: Article 4: Derogations during a State of Emergency' (31 Aug 2001) UN Doc CCPR/C/21/Rev.1/Add.11 (General Comment No. 29) para 4.

⁶ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR), Article 6.

⁷ ICCPR article 7.

⁸ ICCPR article 8 (I and II).

⁹ ICCPR article 18.

¹⁰ General Comment No. 2 para 11.

¹¹ UN, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba 27 August - 7 September 1990 'Basic Principles on the Use of Force and Firearms by Law Enforcement Officials' (1990).

(including education) moving online, access to the internet must be ensured and restored, where curtailed.¹²

C. PROTECTION OF ECONOMIC AND SOCIAL RIGHTS

LAWASIA notes that the pandemic has highlighted the interdependence and indivisibility of all human rights.

LAWASIA draws attention to the Universal Declaration of Human Rights, and ICESCR, under which all persons have a right to a standard of living adequate to ensure the health and wellbeing of themselves and their family, including access to food, medical care and necessary social services, the right to social security in the event of unemployment, sickness, disability, widowhood, old age or other circumstances beyond their control.¹³

LAWASIA notes that States are under a positive obligation to ensure access to the minimum core content of rights.¹⁴ Even during emergencies, any changes in policies or measures must meet the principles of proportionality, limited temporality, necessity, non-discrimination, and genuine participation of affected groups.¹⁵

LAWASIA calls on States to ensure that people have access to, at least, the minimum core content of rights, such as a social protection floor.¹⁶ This includes the protection of all persons from starvation, ensuring access to primary education, emergency healthcare, and basic housing, as well as to clean and safe running water.¹⁷ Adherence to the principle of non-discrimination, while ensuring access to life-saving health care, is particularly crucial during this emergency.

¹² United Nations Human Rights Council 'The Promotion, protection and enjoyment of human rights on the Internet' UN Doc A/HRC/32/L.20 (27 June 2016) (UNHRC).

¹³ Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR) art 5; International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) article 11.

¹⁴ UNHRC 'General Comment No. 36 (of 2018) on Article 6 of the International Committee on Civil and Political Rights, on the Right to Life' UN Doc CCPR/C/GC/36, 2018 (30 Oct, 2018) (General Comment No. 36) para 26.

¹⁵ Ariranga G. Pillay, Chairperson, Committee on Economic, Social and Cultural Rights, Letter to States Parties, 16 May 2012, <http://www2.ohchr.org/english/bodies/cescr/docs/LetterCESCRtoSP16.05.12.pdf>; UNHCR 'Report on Austerity Measures and economic and social rights' (2013) https://www.ohchr.org/Documents/Issues/Development/RightsCrisis/E-2013-82_en.pdf.

¹⁶ "Social Protection Floors" have been defined by the ILO in Recommendation No. 202/2012 as national defined sets of basic social security guarantees. See CESCR 'Social protection floors: an essential element of the right to social security and of the sustainable development goals' Statement by the Committee on Economic, Social and Cultural Rights (15 April 2015) UN Doc E/C.12/2015/1.

¹⁷ UNGA 'Report of the Special Rapporteur on extreme poverty and human rights' (11 Aug 2014); UN Doc A/69/297; UNGA 'Human Right to Water and Sanitation' (2010) UN Doc A/RES/64/292; UNHRC 'Resolution on the human right to safe drinking water and sanitation' (2010) Resolution A/HRC/RES/15/9. CESCR 'Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights: Poverty and the International Covenant on Economic, Social and Cultural Rights' UN Doc E/C.12/2001/10 (May 10, 2001) para 18; UNHRC 'General Comment No. 14: The Right to the Highest Attainable Standard of Health' (Art. 12) UN Doc E/C.12/2004 (11 Aug 2000) para 47.

D. PROTECTION OF VULNERABLE GROUPS AND MINORITIES

LAWASIA draws attention to States' obligation to protect vulnerable groups and minorities, and to ensure that the specific needs of persons experiencing conditions of marginalisation are taken into account. Specific measures should be contemplated for those persons from marginalised groups, including migrant workers, indigenous persons, refugees, women, persons with disabilities, LGBTQI persons, persons living in poverty, and persons in detention. We note, for example, some vulnerable persons may be at a greater risk of contracting COVID-19 because of care roles and limited ability to be socially distant. Due to intersecting conditions of marginalisation, some vulnerable persons may also have a reduced ability to cope with containment measures. For instance, we consider a gender sensitive focus is required, given reports of a "horrifying increase in rates of domestic violence since the containment measures have been adopted."¹⁸ Persons with disabilities, who might rely on external caregivers, must also be provided with reasonable accommodations.

LAWASIA calls on States to ensure that people with vulnerabilities have access to adequate social security, enabling them to counter the impact of COVID-19 and related containment measures, and that these measures follow a human rights-based approach, incorporating the principles of non-discrimination, participation, empowerment and accountability. LAWASIA also calls on States to counter any expressions of COVID-19-related xenophobia, including ensuring that the internationally recognized name of the virus is used rather than geographic references of origin, or to particular communities alleged to have transmitted the virus, as this can isolate and stigmatize individuals and can have serious consequences for people's lives and livelihoods.¹⁹

E. CONCLUSION

LAWASIA recognises that international cooperation is both an obligation and an essential need to counter this crisis, and calls on States to come together in solidarity to ensure that human rights are strengthened rather than weakened, while responding to this challenge.



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¹⁸ UN 'UN chief calls for domestic violence 'ceasefire' amid 'horrifying global surge' (6 April 2020)
<https://news.un.org/en/story/2020/04/1061052>

¹⁹ 'States should take action against COVID-19-related expressions of xenophobia, says UN expert' International Day for the Elimination of Racial Discrimination (21 March 2020)
<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25739&LangID=E>.