



“THERE IS NO HELP FOR OUR COMMUNITY”

THE IMPACT OF STATES' COVID-19
RESPONSES ON GROUPS AFFECTED BY
UNJUST CRIMINALIZATION

AMNESTY
INTERNATIONAL



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First published in 2021 by Amnesty International Ltd
Peter Benenson House, 1 Easton Street, London WC1X 0DW, UK

Cover Photo: Relatives of COVID-19 patients are desperate for oxygen to keep their loved ones alive during a fierce second wave of the pandemic in Peru. © ERNESTO BENAVIDES/AFP via Getty Images

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EXECUTIVE SUMMARY

“We keep hearing on the streets that we [people who use drugs] are the ones who transmit [Covid-19], that we don’t get tested or wear masks and that we all live in a bunch together...But they don’t give us any support...The government imposed a curfew, so people couldn’t be outside [after] 8pm. The government said stay home, but when you do not have a home, where are you supposed to go?”

Outreach worker at a safe injection site in Montreal, Canada

Millions of lives have been lost and devastated by the Covid-19 pandemic over the past two years. Governments around the world have responded by introducing urgent and extraordinary measures to deal with the crisis. The measures have varied, depending on the national context. However, a clear trend has emerged of governments failing to address the human rights consequences of the restrictions and introducing punitive sanctions, particularly for people who were already marginalized. Contrary to the often-voiced claim by governments that “we were all in this together”, the truth is that their responses to Covid-19 have been experienced unequally.

Nowhere is this more evident than in the impact of Covid-19 measures on people who are discriminatorily targeted by criminal sanctions

or punitive laws, policies or regulations – that is, people who face unjust criminalization. The focus of this report is the impact of Covid-19 regulations and their enforcement on people who are unjustly criminalized because of who they are or what they do. This includes those targeted because of their sexual orientation or gender identity and expression or because they engage in sex work, use drugs or experience homelessness. It also includes those impacted by discriminatory laws and policies that criminalize health services needed by specific sectors of the population, such as safe abortion and gender-affirming healthcare. The criminalization, discrimination and stigma faced by people in these groups meant many were already disadvantaged and faced human rights violations, including barriers to their right to health, long before the pandemic.

Amnesty International's research has identified three broad aspects of states' failure to take into account and mitigate the particular impact of their Covid-19 responses on members of these marginalized groups. Firstly, there has been a widespread reliance on punitive enforcement approaches that punish non-compliance rather than supporting people to enable them to comply. The consequence of this is that those facing overwhelming and sometimes insurmountable obstacles in conforming to Covid-19 regulations were put at even greater risk of criminalization and a whole range of human rights abuses. Secondly, these punitive approaches have deepened stigma and discrimination towards these groups. Thirdly, by creating barriers to accessing support for some groups, Covid-19 measures have had a disproportionate impact on people who were already affected by unjust criminalization and undermined their human rights.

Unjust criminalization has also created barriers to the meaningful consultation and participation in governments' decision-making by individuals and organizations whose expertise and experience could otherwise have informed and improved states' pandemic responses. This disregard for the experience of marginalized groups long predates the arrival of Covid-19, but the pandemic has reinforced and accentuated the consequences of the exclusion of these voices from debates on public health and decision-making.

Putting human rights at the heart of government efforts to address public health emergency responses is not an optional consideration, it is an obligation. And, as this report shows, governments' failure to fulfil their human rights obligations can and has undermined the effectiveness of the public health measures adopted.

Under international human rights law, government responses to pandemics must be based on the best available scientific and public health evidence. Any restriction on human rights must be provided in law, and be necessary and proportionate to a legitimate aim, time-bound and non-discriminatory. The measures must be adequate to achieve their

legitimate purpose, be the least intrusive option to achieve the desired result and be proportionate to the legitimate interest being protected.

Longstanding international legal principles that guide states' implementation of their human rights obligations also require governments to avoid criminalization in pursuit of public health objectives. Furthermore, under the right to health, states must maintain consultation with civil society and those affected throughout the design, implementation and monitoring of public health policies.

These obligations – set out in international law and standards and supported by a growing body of evidence from this and previous health emergencies – have been widely flouted by governments during the Covid-19 pandemic. Authorities around the world have used a variety of domestic legal provisions and punitive policies that are in breach of their obligations under international human rights law and standards.

This report is based on information Amnesty International received in response to an online survey, distributed between May and September 2021, among partner organizations working with people affected by unjust criminalization. A total of 54 responses were received from civil society organizations working on issues including sex workers' rights, LGBTI rights, drug policy reform, homelessness, racial justice, Indigenous people's rights, discrimination based on work and descent, and sexual and reproductive rights. When further information was required, Amnesty International conducted interviews with representatives of organizations.

The report incorporates country-specific primary research on the impact of Covid-19 measures previously published by Amnesty International. In addition, an extensive literature review of media reports, academic articles, reports and statements by civil society organizations and international mechanisms was carried out, as well as interviews with several international organizations, public health experts and civil society representatives.

This research would not have been possible without the invaluable participation and collaboration of the many organizations and human rights defenders around the world committed to challenging unjust criminalization.

STIGMA AND DISCRIMINATION

Punitive approaches to public health are known to risk undermining the aim of health protection measures because they often foster stigma and fear, eroding trust in the authorities. The unjust criminalization of certain identities and behaviours is frequently informed and influenced by harmful stereotypes that label individuals as “immoral”, “unreliable” and “irresponsible”. When a person’s identity or behaviour does not conform to society’s dominant social norms and is criminalized, it is easier for the authorities and societies as a whole to assign blame and scapegoat these groups in situations of crisis, as this report shows has been the case during Covid-19.

Stigma and discrimination in turn creates barriers to sharing reliable public health information and limits access to services that are essential for addressing the emergency. This report highlights, how stigma associated with criminalization has served to discourage people who use drugs, people seeking abortions, LGBTI people or sex workers from seeking medical care because they fear judgmental attitudes, arrest, detention or other punitive measures, a long-term challenge that has deepened during the pandemic. Stigma and discrimination are therefore key factors for determining health outcomes.

Such stigma has been amplified by misinformation, a worryingly prevalent aspect of public discourse during the Covid-19 pandemic that has often targeted those who face unjust criminalization. The punitive enforcement of Covid-19 regulations has consistently reflected and entrenched existing stigma and discrimination against people who are marginalized. They have not only experienced increased violence and abuse, but, in many contexts, have been blamed for the spread of Covid-19. For example, civil society organizations have reported increases in stigma, discrimination and violence on the basis of sexual orientation and gender identity during the pandemic in countries including Belize, Kyrgyzstan, Tanzania and Uganda. Sex workers, who were already facing high levels of

violence and lack of protection from authorities, also reported an increased risk of violence from clients, the police and other members of the public who blamed them for spreading Covid-19.

ENFORCING RESTRICTIONS: PUNISHMENT RATHER THAN SUPPORT

The widespread reliance on the security forces to enforce Covid-19 restrictions has created additional risks of human rights violations, including discrimination, arbitrary detentions, excessive use of force and criminalization for groups who were already over-policed or targeted by discriminatory policing. Civil society organizations have reported that marginalized communities, particularly those who are the targets of criminal sanctions or punitive laws, policies or regulations rooted in discrimination, have seen an increase in surveillance and harassment from law enforcement and have been disproportionately affected by arrests, fines and detentions during the pandemic.

Drug policy reform organizations particularly highlighted the increase in arrests, surveillance and harassment of people who use drugs as law enforcement powers were increased in response to Covid-19. Sex worker rights organizations have similarly reported an increase in harassment and persecution by the security forces. There have also been reports of law enforcement misusing Covid-19 measures to attack and target LGBTI organizations.

In Argentina, for example, police violence towards sex workers increased dramatically following the outbreak of Covid-19. A regional organization supporting people who use drugs in Latin America also reported that states’ responses to Covid-19 resulted in an increase in incidents of public humiliation and violence by law enforcement officials towards people who use or possess drugs.

Among other punitive measures, civil society organizations reported the widespread use of fines, arrests, cautions or written warnings, and police orders to “move on” or stay away from a public place. Such measures inevitably had a greater impact on particular groups for whom public spaces were the main or only spaces where they could live or work. Research for this report made alarmingly clear that in the overwhelming majority of cases the authorities made little or no attempt to mitigate the

disproportionate impact on such groups. Indeed, almost two thirds of the organizations surveyed reported an increase in the use of excessive force by law enforcement officials in such situations.

In contexts of poverty and marginalization, the absence of access to state assistance made complying with Covid-19 measures difficult and, in some cases, impossible. In many countries, the decision to rely on punishment rather than support fostered an environment of increased risk of criminalization and additional human rights violations.

For example, the National Ombudsman for Human Rights in El Salvador has highlighted how lack of access to income prevented people living in poverty from complying with Covid-19 regulations. Forced to break the national curfew to meet the most basic and urgent needs for themselves and their families, they were then punished by the authorities. In practice, therefore, the authorities created a situation where day-to-day survival was in conflict with compliance with Covid-19 restrictions, forcing desperate people to risk further criminalization under punitive Covid-19 regulations in order to feed themselves and their families.

BARRIERS TO SOCIAL PROTECTION, HEALTH AND ADEQUATE HOUSING

As countries failed to consider the social and economic realities in which they implemented restrictive Covid-19 measures, parts of the population were left without the support they needed to enable them to comply. Among those particularly impacted were groups excluded from what social protection was available, including people facing unjust criminalization.

Although many governments adopted some form of social protection measures, countries rarely provided comprehensive support for the most marginalized communities and the amount of support frequently failed to meet survival needs, especially for people who were already living in poverty. Among those disproportionately impacted were people working in the informal sector or in insecure employment who were often left without access to income or food. In Nepal, for example, many Dalits who live below the poverty line and rely on daily wages, faced extreme debt and starvation as a result of the increased challenges of the pandemic. Furthermore, critical public health measures, such as regular hand

washing and face masks, were often unavailable to the most marginalized communities who often lack access to adequate water and sanitation.

People affected by unjust criminalization faced particular barriers to accessing social support during the pandemic. Organizations reported that stigma towards LGBTI people, for example, resulted in their exclusion from state and municipal food donations and crisis centres in countries like Indonesia and Zambia. Organizations in many other countries, including Canada, the Dominican Republic and Ireland, reported that access to state support during the pandemic was either impossible or highly challenging for sex workers, particularly where grants or programmes were administered by organizations that undermine sex workers' rights and agency. As one organization representing sex workers in France explained: "Most of the aid is still conditional on a 'pathway out of prostitution', prohibitionist associations have received resources that we do not have".

Covid-19 measures also had a specific negative impact on the provision of essential health services that are restricted by criminal law. In particular, access to community-run services and outreach projects aimed at marginalized individuals became severely restricted or completely unavailable as health systems pivoted their attention to respond to Covid-19.

Many governments around the world abjectly failed to categorize certain types of healthcare as essential, which would have ensured they remained accessible during the pandemic. These included abortion, contraception, gender-affirming healthcare and harm reduction services for people who use drugs.

There were additional barriers to accessing health information, goods and services related to specific activities and decisions, such as sex work, use of drugs or abortion. For example, the criminalization of the use and possession of drugs created a context in which governments saw the closure of harm reduction services as an easy option. Although in some countries the Covid-19 pandemic was seen as an opportunity to allow people to take home larger doses of methadone and carry out telemedicine appointments for opioid substitution therapy, innovations in these services have unfortunately been isolated and temporary.

Similarly, access to sexual and reproductive health

services and information, including contraception, abortion and emergency obstetric care, was severely restricted. In India, for example, the punitive approach to the pandemic affected women by restricting access to abortion and increasing stigma towards people in need of this essential health service. Several countries – including France, Ireland, Nepal and the UK – implemented telemedicine for abortion services, thereby increasing the availability, accessibility and acceptability of safe abortion services. However, several others – including Colombia, Poland, Slovakia and the USA – continued to create unnecessary barriers to abortion services. For example, in the USA, eight states carved out exceptions for abortion in their telemedicine policies and 19 states require in-person administration of abortion medication, thereby prohibiting remote care indirectly. And in South Africa, the government failed to make provision for abortion services via telemedicine.

People at risk of gender-based violence were also acutely affected by the lack of support amid orders to “stay at home” and other restrictions on movement. Many women and LGBTI people were confined with abusers at home and without an alternative safe place to go. While some governments took emergency steps to assist survivors, many shelters were forced to close and counselling services had to scale down or close altogether. Many civil society organizations reported that the closure of shelters and support services for LGBTI people at risk of violence also had a profound effect leading to violence, harassment, intimidation and a negative impact on mental health.

People experiencing or at risk of homelessness have also been particularly affected by the punitive enforcement of Covid-19 regulations and the lack of support during the pandemic. Some countries imposed temporary moratoriums on evictions and introduced temporary emergency accommodation measures, including the use of empty buildings, hotels and schools to house people. However, in many cases, the provision of temporary shelters fell short of adequate standards and sometimes excluded people affected by unjust criminalization. Governments, including in the Philippines, South Africa and the USA, failed to protect people from human rights abuses occurring in state-provided emergency accommodation centres, including due

to unsanitary conditions, sexual and gender-based violence and use of excessive force from security guards. In addition, and with complete disregard for international human rights standards, people experiencing homelessness were fined for breaching curfews even in contexts where they had nowhere else to go.

In countries like Cambodia, Costa Rica, India, Indonesia and Poland, people living in street situations were not provided with information on where to stay and how to keep safe, making their situation even more complicated as shelters and support services were closed. Moreover, barriers posed by unjust criminalization made it more difficult for specific groups to access temporary accommodation and benefit from moratoriums on evictions. Civil society organizations reported a spike in evictions among LGBTI people, people who use drugs and of sex workers, highlighting once again how people facing unjust criminalization were disproportionately impacted by the pandemic and at heightened risk of violations of their human rights, including their right to adequate housing.

STEPPING UP TO FILL THE GAPS

As people affected by unjust criminalization were excluded from many state initiatives, civil society organizations and millions of individuals around the world engaged in innovative efforts to support affected communities. Civil society organizations also helped provide access to information, a crucial element of an effective public health response, relying on new technologies to share information and provide mental health and social support. Sex worker-led organizations mobilized quickly from the outset of the pandemic, creating communication networks and information resources on how to work safely during Covid-19. In countries such as Belgium, Brazil, Chile, India, Peru, Senegal, Thailand and the USA, they provided emergency funds and mutual aid, including the distribution of food and hygiene kits for members.

In India, trans rights activists supported communities by translating information into local languages and sharing WhatsApp voice notes. In Spain, civil society organizations quickly increased their shelter spaces for women and gender non-conforming people who use drugs and were facing violence. International and regional networks of

people who use drugs also mobilized rapidly to develop online peer resources and educational materials, including harm reduction guidelines and other practical resources to protect the rights of people who use drugs during the pandemic.

Governments' failures to ensure opportunities for meaningful participation of civil society organizations has deprived decision makers and communities of the knowledge, experience, energy and creativity of community leaders, which in turn has weakened the pandemic response.

CONCLUSION

Responses to the Covid-19 pandemic have magnified inequalities with a particularly acute impact on those who are marginalized, including those facing unjust criminalization, or otherwise experience exclusion from state support systems. Governments' punitive approaches to public health have frequently created additional obstacles to accessing essential services and support that could have enabled people to better comply with public health restrictions. People affected by unjust criminalization have been at increased risk of penalties and have been driven to take riskier decisions to meet essential needs, resulting in preventable illness, deaths and a wide array of human rights abuses.

Rather than relying on punitive measures that blame individuals, governments should focus on protecting human rights for all and ensure that communities have access to universal medical healthcare and essential services for their protection.

KEY RECOMMENDATIONS TO GOVERNMENTS

- Ensure that a human rights perspective is at the centre of all pandemic responses and that measures introduced fully comply with international human rights laws and standards, including by ensuring that any restrictions are provided by law, necessary, proportionate, time-bound and non-discriminatory.
- Ensure that all responses take into account and mitigate any disproportionate impact measures may have on groups or individuals who are marginalized or face discrimination, including people facing unjust criminalization.
- Put in place mechanisms to enable civil society organizations, human rights defenders and people directly affected by public health policies, especially those affected by unjust criminalization, to participate fully, meaningfully and effectively in the design, decision making, implementation and monitoring of all plans related to pandemic responses at all levels.
- Prioritize policies that enable and support people to comply voluntarily with the required public health measures and refrain from enacting or implementing criminal sanctions to enforce or achieve public health goals.
- Refrain from coercively enforcing public health measures and from bestowing additional powers on law enforcement officials to enforce them.
- Recognize as "essential healthcare" and decriminalize services required for the right to health such as sexual and reproductive health services, goods and information; gender-affirming care; and harm reduction services for people who use drugs. Ensure that these services as well as services for survivors of gender-based violence remain adequately resourced, accessible and available throughout the public health emergency, including through telemedicine, and are not denied due to immigration status, ID requirements or other discriminatory barriers
- Repeal existing laws and policies and refrain from introducing new laws that criminalize or penalize directly or in practice the various identities, actions and decisions of people who are marginalized and that have an adverse impact on their human rights, particularly their right to health.

1. INTRODUCTION

In the two years since the first reported case of Covid-19, the pandemic has swept around the globe devastating the lives of millions. As of 5 April 2022, the World Health Organization (WHO) reported 490,853,129 confirmed cases of Covid-19, including 6,155,344 deaths, globally.¹ The pandemic response has magnified inequalities, and those who are marginalized or otherwise face exclusion from state support systems or intersecting forms of discrimination have been acutely affected.

Spreading at lightning speed, Covid-19 variants have shone a fierce spotlight on humanity's fundamental interdependence. Public health and human rights experts have repeatedly emphasized how none of us are safe until all of us are safe and have urged governments to ensure their responses are in line with human rights obligations. However, many measures to contain the spread of Covid-19 have been proposed and implemented without full consideration of the potential consequences for the enjoyment of all human rights by all, and especially those who were already marginalized.

International human rights law and standards require that government responses be based on the best available scientific evidence and that they include the measures necessary to protect public health; these measures must be provided in law, and be necessary, proportionate, time-bound and non-discriminatory.² Putting human rights at the heart of responses to the pandemic is not an optional extra; it is crucial to ensuring an effective response to such a health crisis.

Over the course of the pandemic, governments have collectively issued thousands of public health and social measures related to Covid-19. Efforts to track and codify these interventions globally indicate that, far from being based on human rights, they have frequently both contravened states' human rights obligations and had a negative human rights impact.³ While the responses and contexts are varied, some key patterns have emerged that point to the reasons for such an impact.

¹WHO Coronavirus (COVID-19) Dashboard data as of 5 April 2022, covid19.who.int/

²UN Commission on Human Rights, 41st Session: Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights, 1984, UN Doc. E/CN.4/1984/4 (Siracusa Principles). The Human Rights Committee has issued further guidance around the validity of restrictions on Rights under the ICCPR within General Comments, which emphasize the duty on states to justify any limitations, and the requirements that any such measures are provided by law, necessary, proportionate and subject to review.

³See for example, the Health Intervention Tracking for COVID-19 (HIT-COVID) database, which has catalogued over 13,429 public health and social interventions and found that of the interventions that were implemented during January and June 2020, 71.67% "had potential human rights impacts." Q. Zheng, F. K. Jones, S. V. Leavitt, et al., "HIT-COVID, a global database tracking public health interventions to COVID-19," *Scientific Data* 7/1 (2020), pp. 1-8.; [nature.com/articles/s41597-020-00610-2](https://www.nature.com/articles/s41597-020-00610-2) The HIT-COVID database is described as "a curated and standardized global database that catalogues the implementation and relaxation of COVID-19 related [public health and social measures]"; hrjournal.org/2021/10/ensuring-rights-while-protecting-health-the-importance-of-using-a-human-rights-approach-in-implementing-public-health-responses-to-covid-19/

One area of particular concern, and the focus of this report, is states' widespread reliance on punitive approaches to enforcing public health and social measures, using penalties such as fines and arrests. Amnesty International has documented cases in at least 60 countries where authorities' use of such measures has violated a range of human rights.⁴ Activists and civil society organizations have highlighted how the impact of this punitive approach has fallen most heavily on marginalized communities, particularly those at risk of unjust criminalization – that is, of being the target of criminal sanctions or punitive laws, policies or regulations because of discrimination against, for example, their identities, work or socio-economic status (see below). This has exacerbated existing inequalities, government failures and exclusion from support mechanisms. This includes people who often experience systemic discrimination and exclusion because of their identities, actions, professions, or other status and are unjustly criminalized.

This report looks at the impact of Covid-19 regulations and their enforcement on people who come into contact with criminal or administrative law because they engage in sex work; because of their sexual orientation or gender identity and expression; because of drug use or HIV status; because they experience homelessness; or as a result of discriminatory laws that criminalize health services needed only by certain sectors of the population, such as safe abortion and gender-

affirming healthcare.⁵ The Covid-19 pandemic was an opportunity to pivot responses towards public health and human rights-based policies that better protect people. Unfortunately, some governments have instead intensified the criminalization of certain groups or actions during the pandemic.⁶

Amnesty International's research has identified three broad aspects of state failures in their responses to Covid-19. Firstly, a reliance on punitive enforcement approaches means that those for whom compliance with Covid-19 regulations is practically impossible,⁷ have been put at even greater risk of criminalization and a whole range of human rights abuses. Secondly, these punitive approaches have fostered stigma and discrimination. Thirdly, they have had a disproportionate impact on people who were already affected by unjust criminalization and increased challenges in complying with Covid-19 measures.

These state failures have frequently undermined the public health objectives that the punitive measures were supposed to serve. This should have come as no surprise to governments; the dangers of punitive public health measures are well known. A key lesson from efforts to control past health emergencies is that the success of interventions to prevent and control the spread of infectious diseases depends on cooperation and trust. Findings from a review of global Covid-19 infection and fatality rates have also found statistically significant associations between "trust in the government and interpersonal

⁴Amnesty International, *Covid-19 Crackdowns, Police Abuse and the Global Pandemic* (Index: ACT 30/3443/2020), 17 December 2020, [amnesty.org/en/documents/act30/3443/2020/en/](https://www.amnesty.org/en/documents/act30/3443/2020/en/)

⁵See the text box below for an explanation of how the terminology of "unjust criminalization" is used throughout this report. See also the report of the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (UN Special Rapporteur on the right to health), 16 July 2020, undocs.org/A/75/163

⁶Amnesty International, CREA, IWRAP-Asia Pacific and the Global Health Justice Partnership of Yale Law School and the Yale School of Public Health, Joint NGO Submission in Response to the Call for Input by the Independent Expert on Protection against Violence and Discrimination Based on Sexual Orientation and Gender Identity (Index: IOR 40/3902/2021), 1 July 2021, [amnesty.org/en/documents/ior40/3902/2021/en/](https://www.amnesty.org/en/documents/ior40/3902/2021/en/); Poland Federation for Women and Family Planning, Astra Network, A summary of the latest developments in Poland astra.org.pl/a-summary-of-the-latest-developments-in-poland/; Weronika Strzyżyńska, "Poland plans to set up register of pregnancies to report miscarriages", The Guardian, 3 December 2021, [theguardian.com/global-development/2021/dec/03/poland-plans-to-set-up-register-of-pregnancies-to-report-miscarriages?CMP=Share_iOSApp_Other&fbclid=IwAR2a3mDamezQt8H4aJnwWzDhPAEphoQ4ydT7UUvE-z_IPnggBE8-P8UtpEO](https://www.theguardian.com/global-development/2021/dec/03/poland-plans-to-set-up-register-of-pregnancies-to-report-miscarriages?CMP=Share_iOSApp_Other&fbclid=IwAR2a3mDamezQt8H4aJnwWzDhPAEphoQ4ydT7UUvE-z_IPnggBE8-P8UtpEO)

⁷Sophia A. Zweig et al., Ensuring Rights while Protecting Health: The Importance of Using a Human Rights Approach in Implementing Public Health Responses to COVID-19, *Health and Human Rights Journal*, Volume 23/2, December 2021, <https://www.hhrjournal.org/2021/10/ensuring-rights-while-protecting-health-the-importance-of-using-a-human-rights-approach-in-implementing-public-health-responses-to-covid-19/>, pp. 173-186.

⁸COVID-19 National Preparedness Collaborators, Pandemic preparedness and COVID-19: an exploratory analysis of infection and fatality rates, and contextual factors associated with preparedness in 177 countries, from 1 January to 30 September 2020, *The Lancet* 2021, 1 February 2022, [www.thelancet.com/journals/lancet/article/PIIS0140-6736\(22\)00172-6/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(22)00172-6/fulltext) 6

trust, as well as less government corruption” with “lower standardised infection rates”.⁸ Experts have therefore recommended that efforts to improve pandemic preparedness and response would benefit from greater investment in risk communication and community engagement strategies to boost the confidence that individuals have in public health guidance.⁹

An effective pandemic response is rooted in trust and the participation of all key stakeholders and affected parties. The Committee on Economic, Social and Cultural Rights (CESCR) has clarified that under the right to health, “coordinated efforts for the realization of the right to health should be maintained to enhance the interaction among all the actors concerned, including the various components of civil society”.¹⁰

In order to effectively curb the spread of Covid-19, provide medical care for those who need it and avoid harmful misdirection of resources, trust is essential. But for the public to have that trust, affected communities need to be contacted in time and have access to all relevant and available information to understand the nature of the health crisis. Where possible, this should be done with community participation and through early partnerships with local authorities. Failures to do so can heighten the sense of helplessness, anger and frustration, undermine the public health response, put the health of others at risk and lead to further human rights violations.

Amnesty International’s research indicates that unjust criminalization has created barriers to effective consultation and the participation of individuals and organizations whose expertise and experience could otherwise have informed and improved states’ pandemic responses.

In contrast, governments have turned to coercive measures – such as criminal sanctions, fines, mandatory quarantines in state-run facilities, surveillance, and behaviour control – without adequate social support. Such coercive measures place a heavy responsibility on individuals to manage their health risks and do not take account of systemic inequalities in access to the resources needed to comply effectively. Furthermore, punitive approaches have been found to “invite abuse and exacerbate social divisions”,¹¹ targeting people already disadvantaged and on the margins of society.

Rather than relying on punitive measures that blame individuals, governments should focus on protecting human rights for all and ensure that communities have access to universal medical healthcare and essential services for their protection. As a starting point, states should not enact or implement criminal sanctions to enforce or achieve public health goals. As governments learn and implement the lessons of the Covid-19 pandemic, they must ensure that the most marginalized, including groups targeted by unjust criminalization, are effectively included and protected in their pandemic response. In short, states must refrain from implementing repressive policies that cause harm, even if unintended, and fail to protect people in need.

In the longer term, this requires that states address drivers of marginalization and exclusion, including unjust criminalization. Therefore, governments should urgently act to remove punitive laws, policies and practices that have proven to hinder an effective public health response. This should include decriminalizing certain conduct and reversing decisions that have proved to be harmful to the protection of the health of groups affected by unjust criminalization in order to advance public health goals.

⁸COVID-19 National Preparedness Collaborators, Pandemic preparedness and COVID-19: an exploratory analysis of infection and fatality rates, and contextual factors associated with preparedness in 177 countries, from 1 January to 30 September 2020, *The Lancet* 2021, 1 February 2022.

¹⁰CESCR, General Comment 14: The Right to the Highest Attainable Standard of Health (Article 12), E/C.12/2000/4, para. 64.

¹¹Wendy K. Mariner, George J. Annas and Wendy E. Parmet, Pandemic Preparedness: A Return to the Rule of Law, 1 *Drexel Law Review*, 341 (2009) p. 358.

UNJUST CRIMINALIZATION

Unjust criminalization is directly linked to systemic discrimination and exclusion and a range of human rights violations and abuses. This report uses the term “unjust criminalization” to refer to criminal sanctions or punitive laws, policies or regulations that have the effect of punishing people because of discrimination on the basis of, for example, their identities, work, health or other socio-economic status. It includes punitive responses whether of a criminal, civil or administrative nature, such as fines and warnings. The following are some of the main examples of unjust criminalization focused on in this report.

Criminalization of people experiencing homelessness:

The UN Special Rapporteur on the Right to Adequate Housing has stated that the criminalization of people experiencing homelessness is “a form of systemic discrimination and social exclusion, recognizing that being deprived of a home gives rise to a social identity through which ‘the homeless’ is constituted as a social group subject to discrimination and stigmatization”.¹²

Criminalization of sexual orientation and gender identity:

Criminalizing, prosecuting and punishing consensual same-sex sexual activity are serious violations of states’ obligations under international law and violate human rights including the rights to non-discrimination, dignity and equality before the law.¹³ Even when such laws are not enforced, they foster stigmatization, policing and punishment of people whose sexual orientation or gender identity do not conform to strict norms.

Criminalization of sex work: Over 100 countries directly criminalize sex work through a range of punitive laws and policies that explicitly prohibit the sale or purchase of sex and/or related activities.¹⁴ Some states criminalize sex work and all related activities, others punish the purchase of sex or third parties who facilitate the sale of sex. This far-reaching approach to criminalizing sex work has profound consequences on sex workers’ lives and their decisions. Vital support functions that can keep sex workers safe, such as working together or using security guards may be prohibited, often requiring sex workers to work in isolation, putting them at greater risk of violence and abuse.

Criminalization of abortion: Where abortion is criminalized (usually through specific penal code provisions), it may involve punishment of the abortion provider, the pregnant person seeking the abortion, anybody who assists them or both. Governments generally permit access to abortion by providing for legal exceptions to allow abortion on specific grounds, which vary from country to country.¹⁵ However, such “partial criminalization” fails to align with evolving international human rights law and standards because people in need of abortion are still compelled to resort

to unsafe, clandestine and/or illegal abortions. It also reinforces abortion-related stigma and discrimination. International human rights bodies have long stated that to comply with human rights obligations, states should decriminalize abortion, liberalize restrictive laws and remove barriers that hinder access to safe abortion.¹⁶

Criminalization of the use and possession of drugs for personal use:

Drug policies around the world have been based on the blanket prohibition and criminalization of drugs, supposedly for the protection of public health. However, the heavy reliance on criminal law and repressive policies has failed to decrease the use and availability of drugs over the years and has instead exacerbated the risks and harms of using drugs and the violence associated with illicit markets. The prohibition of drugs has also resulted in widespread human rights violations, with many of the poorest and most marginalized communities suffering as a result of harsh drug control policies. These include discriminatory enforcement of drug laws against marginalized communities, including racial and ethnic minorities and the poorest sectors of society. The UN and multiple human rights mechanisms have called for the promotion of alternatives to the prohibition of drugs, including the decriminalization of the use and possession of drugs for personal use.

Criminalization of petty offences: This includes the criminalization of various minor offences, such as “being a rogue and vagabond”, “being an idle or disorderly person”, “loitering”, “begging”, “being a vagrant”, “failure to pay debts”, “being a common nuisance” or “disobedience to parents”.¹⁷ The criminalization of these offences usually has a disproportionate impact on people living in poverty and perpetuates their marginalization. The African Commission on Human and Peoples’ Rights found that the enforcement of petty offences has the effect of “punishing, segregating, controlling and undermining the dignity of persons on the basis of their status”.¹⁸ According to the African Commission, these laws also infringe upon people’s autonomy by restricting their ability to carry out life-sustaining activities in public spaces, particularly for people living in poverty.



A sex worker attends a protest during the lockdown ordered by the Colombian Government on 28 April 2020 in Bogota. Sex workers rallied against the Government quarantine that left them without any chance of income.

Photo by Leonardo Munoz/VIEWpress via Getty Images.

¹²See further, the Report of the UN Special Rapporteur on the Right to Adequate Housing on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination, 2015, UN Doc. A/HRC/31/54, para. 17(b).

¹³See further, the Yogyakarta Principles Plus 10, (2017) and the Yogyakarta Principles (2006), international principles relating to sexual orientation and gender identity developed by a group of distinguished international human rights experts, which found that the criminalization of same-sex sexuality and/or sexual orientation is incompatible with international human rights law, yogyakartaprinciples.org/principles-en/; UN General Assembly, Report of the Independent Expert on protection of violence and discrimination based on sexual orientation and gender identity, Embrace diversity and energize humanity, 2017, UN Doc. A/72/172, para. 32.

¹⁴Global Commission on HIV and Law, Risks, Rights & Health, 2012, p. 36, hivlawcommission.org/report/

¹⁵See Center for Reproductive Rights, The World's Abortion Laws, 2014, <https://reproductiverights.org/maps/worlds-abortion-laws/>

¹⁶UN Human Rights Committee, General Comment 36 (Article 6: Right to Life), 2018, UN Doc. CCPR/C/GC/36, para. 8; CESCR, General Comment 22 (2016) on the right to sexual and reproductive health (Article 12 of the International Covenant on Economic, Social and Cultural Rights), 2016, UN Doc. E/C.12/GC/22, para. 28; UN Committee on the Rights of the Child (CRC) Committee, General Comment 20 (2016) on the implementation of the rights of the child during adolescence, 2016, UN Doc. CRC/C/GC/20, para. 60.

¹⁷African Commission on Human and Peoples' Rights, Principles on the Decriminalisation of Petty Offences in Africa, 2017, Part I, Definitions achpr.org/legalinstruments/detail?id=2

¹⁸African Commission on Human and Peoples' Rights, Principles on the Decriminalisation of Petty Offences in Africa, 2017, Para. 7.

GLOSSARY



Decriminalization: The term generally refers to the removal of an offence or act that was criminal, and its associated penalties, from the law.¹⁹ In some cases, it also includes the process of removing administrative or civil measures that are overly punitive and have similar effects to those of criminal laws, even if the conduct has been removed from criminal codes (for example large fines or administrative detention). A decriminalization model aims to end all punishments for that specific conduct and facilitate access to health and social services.



Harm reduction: The term refers to policies, programmes and practices that aim primarily to reduce the adverse health, social and economic consequences of the use of licit and illicit drugs, without necessarily reducing an individual's level of use.



Intersectional discrimination: The term refers to discrimination on multiple grounds that combine to produce disadvantages distinct from any one ground of discrimination.



Lesbian, gay, bisexual, transgender and intersex (LGBTI) people: A wide variety of terms is currently used to address and refer to people with diverse sexual orientation, gender identity, gender expression or sex characteristics. The umbrella term LGBTI is used in this report, unless a different term is used or preferred by partner organizations in the relevant information, quote or publications. Terms including LGBT, LGBTI, LGBTIQ, LGBTIQ+ and LGBT+ are therefore used interchangeably throughout the text, respecting the choices of partner organizations.



Marginalization: This includes people who often experience systemic discrimination and exclusion because of their identities, behaviours, professions, or other status and are unjustly criminalized.



Sex work: The exchange of sexual services between consenting adults for some form of remuneration, with the terms agreed between the seller and the buyer. Sex work takes different forms and varies between and within countries and communities.



Sexual and reproductive health: The term is used in this report to include sexual and reproductive healthcare, goods and information, including equal access to HIV and sexually transmitted infection (STI) prevention, diagnosis and treatment, safe abortion, contraception, maternal and new-born care and gender-affirming care.

¹⁹African Commission on Human and Peoples' Rights, Principles on the Decriminalisation of Petty Offences in Africa, 2017 achpr.org/legalinstruments/detail?id=2 Part 1, Definitions.

2. METHODOLOGY

This report is one of several documents published by Amnesty International since March 2020 on human rights concerns relating to the impact of Covid-19 on marginalized communities and individuals.²⁰ It aims to provide an overview rather than an exhaustive country-by-country analysis.

It is based on information Amnesty International received in response to an online survey, distributed between May and September 2021, to partner organizations working with people affected by unjust criminalization. A total of 54 responses were received from civil society organizations working on issues including sex workers' rights, LGBTI rights, drug policy reform, homelessness, racial justice, Indigenous people's rights, discrimination based on work and descent, and sexual and reproductive rights. Organizations included community-based organizations, national and regional organizations and international NGOs and coalitions, and information provided related to 28 countries and territories: Angola, Argentina, Australia, Belize, Brazil, Cambodia, Canada, Colombia, Costa Rica, Dominican Republic, Hong Kong, India, Indonesia, Kyrgyzstan, Mexico, Mozambique, Nepal, Netherlands, Nicaragua, Nigeria, Panama, Peru, Poland, South Africa, Tajikistan, USA, Zambia and Zimbabwe. Some participants and organizations are

referenced in the report and others chose not to be named for security reasons.

The survey was available in five languages (English, French, Portuguese, Russian and Spanish) and included open and multiple-choice questions relating to the ways governments have enforced public health regulations related to Covid-19 and the ways the pandemic has impacted those organizations and the lives of people they work with. It also sought information on any positive changes or innovative measures adopted by governments or other stakeholders that empowered and supported marginalized communities.

Research for this report included an extensive literature review of media reports, academic articles and reports and statements by civil society and international mechanisms on Covid-19; and on research by Amnesty International as well as several other organizations on the impact of the pandemic, including on people affected by unjust criminalization. Amnesty International also spoke with several international organizations, experts and civil society organizations working on similar issues to confirm the information emerging from its survey and the literature review. Their observations are also reflected in the findings and conclusions of this report.

ACKNOWLEDGEMENTS

Amnesty International would like to thank all the civil society organizations that spoke to Amnesty International, shared their own experiences or provided support for the conduct of this research, including the more than 50 organizations that completed the survey and took part in interviews and discussions. This research would not have been possible without the invaluable participation and collaboration of the many organizations and human rights defenders around the world committed to challenge unjust criminalization.

²⁰Amnesty International, Covid-19 Research Archive <https://www.amnesty.org/en/topic/covid-19/>

3. UNJUST CRIMINALIZATION AS A RISK TO HEALTH AND HUMAN RIGHTS

“Several United Nations entities and human rights mechanisms have called for the immediate closure of compulsory drug detention centres and/or movement towards the decriminalization of non-violent drug offences, same-sex sexual activity and sex work and affording legal recognition to transgender persons”.

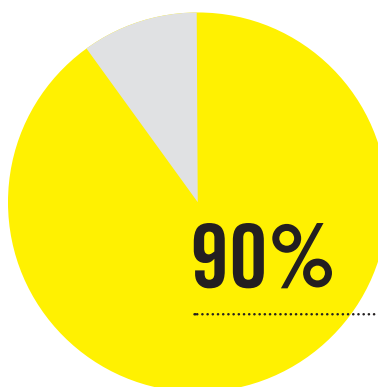
Former UN Special Rapporteur on the Right to Health²¹

Unjust criminalization is a barrier to the realization of people’s human rights, including their right to health. Although such criminalization is often couched in terms of being in the public interest, for example on the basis of “public health” or “public morality”, such claims are rarely evidence based. Indeed, the impact of such an approach is frequently to exacerbate the underlying public health concern by preventing the provision of effective health services and to foster a wide array of human rights abuses including arbitrary arrest and detention, harassment, stigmatization, discrimination and violence.²²

Research by Amnesty International and others has documented the harms of unjust criminalization across different and complex contexts. Punitive approaches do not address the many social, economic and personal issues, including stigma and discrimination, that shape people’s lives. Contact with the criminal justice system can also perpetuate cycles of poor health outcomes.²³

A clear example of this is the criminalization of abortion. For example, restrictive abortion laws – which are framed as exceptions to the broader criminal law, and which allow abortion access only in certain “exceptional circumstances”, such as when the pregnancy poses a threat to health or life, is the result of rape, or in cases of fetal impairment – have a harmful impact on pregnant people, particularly those who are most marginalized. Where abortion access is limited to selected grounds, those living in poverty or who are marginalized and cannot access abortion services through other routes are forced to resort to unsafe abortions, putting their health and lives at risk and increasing their risk of prosecution and punishment.

Recognizing this, UN human rights bodies are increasingly calling for full decriminalization of abortion and ensuring access to safe abortion for all those who need it without restrictions, barriers or discrimination.²⁴ Amnesty International also calls for abortion to be removed from criminal and other punitive laws and policies, and for states to stop punishing those in need of abortion and those obtaining, assisting with or providing abortion services. Full decriminalization of abortion is essential to protect human rights, including the rights to dignity, non-discrimination and health.



The vast majority of the organizations that responded to the Amnesty International survey said that, even prior to the pandemic, members of the communities they work closely with faced challenges accessing health services,²⁵ and experienced violence, stigma and discrimination because of criminalization or marginalization.²⁶ This included reports of abuse by law enforcement officials, which often go unpunished.

The trade union Syndicat du Travail Sexuel (STRASS) established by sex workers in France stressed that laws criminalizing sex work have resulted in arrests, fines, police harassment (especially for migrants), stigmatization and legal discrimination, particularly in housing and banking services. They also reported that the authorities obstructed the right to housing and private and family life of sex workers during the pandemic.²⁷

An organization supporting public health and human rights in Tajikistan reported that LGBTI people living there have experienced detention, blackmail, extortion, stigma and discrimination in work, school, healthcare institutions and that LGBTI people fear “outing” and being placed on the country’s LGBTI register.²⁸

UN human rights bodies are increasingly calling for full decriminalization of abortion and ensuring access to safe abortion for all pregnant people who need it without restrictions, barriers, or discrimination. Amnesty International also calls for abortion to be removed from criminal and other punitive laws and policies, and for states to stop punishing those in need of abortion and those obtaining, assisting with, or providing abortion services. Full decriminalization of abortion is essential to protect human rights, including the right to dignity, non-discrimination and the right to health.

²¹Report of the Special Rapporteur on the right to health, Dainius Pūras, 16 July 2020 UNDOC A/75/163, para 98 <https://undocs.org/A/75/163>

²²Amnesty International, *Body Politics: a Primer on Criminalization of Sexuality and Reproduction* (Index: POL 40/7763/2018), 12 March 2018, [amnesty.org/en/documents/pol40/7763/2018/en/](https://www.amnesty.org/en/documents/pol40/7763/2018/en/); *Amnesty International Policy on State Obligations to Respect, Protect and Fulfil the Human Rights of Sex Workers* (Index: POL 30/4062/2016), 26 May 2016, [amnesty.org/en/documents/pol30/4062/2016/en/](https://www.amnesty.org/en/documents/pol30/4062/2016/en/); *Amnesty International's Policy on Abortion* (Index POL 30/2846/2020), 28 September 2020, [amnesty.org/en/documents/pol30/2846/2020/en/](https://www.amnesty.org/en/documents/pol30/2846/2020/en/); *Amnesty International, Human Rights and Drug Policy: A Paradigm Shift* (Index: POL 30/1130/2019), 20 September 2019, [amnesty.org/download/Documents/POL3011302019ENGLISH.pdf](https://www.amnesty.org/download/Documents/POL3011302019ENGLISH.pdf)

²³Jessica Bresler and Leo Beletsky, COVID-19, Incarceration, and the Criminal Legal System, Chapter 31, Covid-19 Policy Playbook VI: Legal Recommendations for a Safer, More Equitable Future, March 2021, <https://www.publichealthlawwatch.org/covid19-policy-playbook> p. 228, noting "Contact with the criminal legal system is a documented driver of health harms on both individual and community levels".

²⁴See for example, CESCR General Comment No. 22 on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights), 2016, UN Doc. E/C.12/GC/22; UN CRC General Comment No. 20 (2016) on the implementation of the rights of the child during adolescence, 2016, UN Doc. CRC/C/GC/20, para. 60; UN Committee on the Elimination of Discrimination Against Women (CEDAW), General Recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations, 2013, UN Doc. CEDAW/C/GC/30, para. 52(c).

²⁵Responses to Amnesty International's survey.

²⁶Responses to Amnesty International's survey.

²⁷Response to Amnesty International's survey, France.

²⁸Response to Amnesty International's survey, Tajikistan; see further ILGA Europe, Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans, and Intersex People in Tajikistan covering the period of January to December 2018, noting same-sex relationships have not been prohibited by law in Tajikistan since 1998, LGBTI people face discrimination, bullying, blackmail and extortion, detention and torture, <https://www.ilga-europe.org/sites/default/files/tajikistan.pdf>

4. STIGMA AND DISCRIMINATION

One way that punitive approaches to public health are known to risk undermining the aim of health protection measures is that they often foster stigma and fear, eroding trust in the authorities.

Lessons from previous public health emergencies and efforts to control them have shown how the stigma associated with criminalized groups, including people who use drugs, people seeking abortions, LGBTI people and sex workers, drives people away from health authorities. It also discourages people from getting tested or seeking medical care out of fear of arrest, detention or other punitive measures.²⁹ This is counterproductive from a public health perspective as it further drives infection.

Findings from Amnesty International's survey indicate similar risks in the context of states' punitive responses to Covid-19.

Thirty-six organizations reported that the people they work with experienced increased fear of discrimination and harassment during the pandemic; 28 reported instances of violence; and 15 reported examples of people being blamed for Covid-19 infections.³⁰

Misinformation has been rife during the Covid-19 pandemic.³¹ Marginalized communities, including those excluded because of unjust criminalization, often bear the brunt of the impact of false rumours, hate speech and misinformation.³² As seen in previous pandemics, misinformation has once again fuelled pre-existing stigma in a context in which the politics of demonization was already prevalent.³³

For example, survey respondents reported that sex workers faced increased violence and abuse and, in many contexts, have been blamed for spreading Covid-19. Long-standing discrimination in law and practice has underpinned the violence. One organization from Argentina reported that police violence had intensified, stating: "institutional violence against sex workers increased dramatically. Many sex workers were harassed on their way to the supermarket, pharmacy or soup kitchen".³⁴ Another organization representing sex workers in Brazil, Anprosex, explained to Amnesty International that the authorities labelled sex workers as "the biggest transmitters of Covid-19" and made calls for them to stop working or "otherwise the virus will never go away".³⁵ The Canadian Alliance for Sex Work Law Reform reported in April 2020 that "public health authorities have unjustly called on 'citizens' to contact police and law enforcement on sex work establishments".³⁶

²⁹UNAIDS, Rights in the time of COVID-19: Lessons from HIV for an effective, community-led response, 2020, unaids.org/sites/default/files/media_asset/human-rights-and-covid-19_en.pdf

³⁰Responses to Amnesty International's survey.

³¹Amnesty International, Silenced and Misinformed: Freedom of Expression in Danger During Covid-19, (Index: POL 30/4751/2021), 19 October 2021, amnesty.org/en/documents/pol30/4751/2021/en/ The briefing reveals how governments' and authorities' reliance on censorship and punishment throughout the crisis has reduced the quality of information reaching people.

³²InterAction, Countering Stigmatization in the Humanitarian Response to Covid-19, Protection Working Group, 10 October 2020 interaction. [org/wp-content/uploads/2020/10/Countering-Stigmatization-in-the-Humanitarian-Response-to-COVID19-1.pdf](https://www.interaction.org/wp-content/uploads/2020/10/Countering-Stigmatization-in-the-Humanitarian-Response-to-COVID19-1.pdf)

³³Lawrence R. Poos, Lessons from past pandemics: Disinformation, scapegoating, and social distancing, Brookings, 16 March 2020, [brookings.edu/blog/techtank/2020/03/16/lessons-from-past-pandemics-disinformation-scapegoating-and-social-distancing/](https://www.brookings.edu/blog/techtank/2020/03/16/lessons-from-past-pandemics-disinformation-scapegoating-and-social-distancing/)

³⁴Response to Amnesty International's survey, Argentina.

³⁵Response to Amnesty International's survey, Brazil.

³⁶Amnesty International Canada, "The rights of sex workers are being ignored in the COVID-19 response: In conversation with Jenn Clamen of the Canadian Alliance for Sex Work Law Reform", 23 April 2020, [amnesty.ca/blog/womens-human-rights/rights-sex-workers-are-being-ignored-covid-19-response-conversation-jenn-clamen-canadian/](https://www.amnesty.ca/blog/womens-human-rights/rights-sex-workers-are-being-ignored-covid-19-response-conversation-jenn-clamen-canadian/)

Research from other sex worker organizations has raised similar concerns. The African Sex Worker Alliance reported that they received daily reports about violence towards sex workers related to Covid-19.³⁷ In Norway, the sex workers' rights organization PION reported that law enforcement agencies specifically targeted sex workers under quarantine and public health rules related to Covid-19.³⁸ They reported that the police sought to justify this in the media using stigmatized language, for example calling sex workers "contagion bombs" and a "threat to public health".³⁹

Organizations have raised similar concerns about an increase in the stigmatization of and discrimination against LGBTI people in the context of the Covid-19 pandemic. In India, stigma towards transgender people was reported as linked to posters on metro pillars in Hyderabad city in March 2020 warning that "those who speak to transgender persons will catch COVID-19". Amnesty International documented how this led to housing complexes asking transgender people to move out of their rented homes.⁴⁰

In some countries, governments have used restrictions related to Covid-19 to perpetuate stigma, discrimination and violence against LGBTI people. For example, public health and LGBTI rights advocates raised concerns about contact tracing processes established by the South Korean

government, which published data based on "cellular phone GPS, transportation history, and credit card transactions... [were] seemingly targeting the LGBTQ+ community".⁴¹ Amnesty International raised concerns of a spike in homophobia following an incident in 2020 where LGBTI people were blamed for spreading Covid-19 after an individual who visited a gay nightclub was confirmed positive for Covid-19, and the government disclosed the person's contact and location information.⁴² Similar incidents of targeting LGBTI people were reported in Belize, the Philippines and Uganda.⁴³

In Kazakhstan, an NGO providing support services and research on HIV prevention raised concerns that the government's response to Covid-19 had increased discrimination on the basis of sexual orientation and gender identity.⁴⁴

The International Lesbian, Gay, Bisexual, Trans and Intersex Association reported targeted hate speech from political and/or religious leaders in at least 12 countries in Europe and Central Asia. They warned that the Covid-19 health crisis was "being used as yet another opportunity by religious leaders and hostile politicians and governments to blame LGBTI people for societal problems" and was "further stirring up hatred against LGBTI people".⁴⁵

³⁷African Sex Worker Alliance, ASWA Research on the impact of COVID-19 on sex workers in Africa, 14 July 2021, aswaalliance.org/aswa-research-on-the-impact-of-covid-19-on-sex-workers-in-africa/, relating to 27 respondents of the ASWA survey.

³⁸International Committee on the Rights of Sex Workers in Europe, Sex workers on the frontline: The role of sex worker rights groups in providing support during the COVID-19 crisis in Europe, March 2021, eswalliance.org/sex_workers_on_the_frontlines

³⁹PION, Arrests and deportations of sex workers in Norway, 21 January 2021, pion-norge.no/aktuelt/arrests-and-deportations-of-sex-workers-in-norway

⁴⁰Amnesty International India, As The World Comes Together, India's Transgender Community Fights COVID-19 Alone, 1 April 2020, web.archive.org/web/20200402052833/https://amnesty.org.in/as-the-world-comes-together-indias-transgender-community-fights-covid-19-alone/; Donita Jose, Transgenders shocked by hate posters in Hyderabad amid coronavirus fear, New Indian Express, 30 March 2020, [newindianexpress.com/cities/hyderabad/2020/mar/30/transgenders-shocked-by-hate-posters-in-hyderabad-amid-coronavirus-fear-2123284.html](https://www.newindianexpress.com/cities/hyderabad/2020/mar/30/transgenders-shocked-by-hate-posters-in-hyderabad-amid-coronavirus-fear-2123284.html)

⁴¹Sara Wallach et al., Address Exacerbated Health Disparities and Risks to LGBTQ+ Individuals during COVID-19, *Health and Human Rights Journal*, Volume 22/2, December 2020, hrjournal.org/2020/08/address-exacerbated-health-disparities-and-risks-to-lgbtq-individuals-during-covid-19/ pp. 313-316.

⁴²Amnesty International, South Korea: 7-Point Human Rights Agenda for Presidential Candidates, (Index: ASA 25/5176/2022), 2022, [amnesty.org/en/wp-content/uploads/2022/02/ASA2551762022ENGLISH.pdf](https://www.amnesty.org/en/wp-content/uploads/2022/02/ASA2551762022ENGLISH.pdf); Jason Strother, South Korea's coronavirus contact tracing puts LGBTQ community under surveillance, critics say, *The World*, 22 May 2020, [the-world.org/stories/2020-05-22/south-korea-s-coronavirus-contact-tracing-puts-lgbtq-community-under-surveillance](https://www.theworld.org/stories/2020-05-22/south-korea-s-coronavirus-contact-tracing-puts-lgbtq-community-under-surveillance)

⁴³See further, the Asia Centre reported that in the Philippines, "Members of the LGBTQI+ community were targeted for purportedly violating the COVID-19 travel and health advisories. After three LGBTQI+ people were detained for staying outdoors after the curfew, the Barangay officer ordered them to kiss, dance, and do push-ups on a live social media broadcast (ABSCBN News, 2020)" Asia Centre, *The Securitisation of COVID-19 Health Protocols: Policing the Vulnerable, Infringing their Rights*, 24 August 2021, asiacentre.org/the-securitisation-of-covid-19-health-protocols-policing-the-vulnerable-infringing-their-rights/, page 38; In Uganda, LGBTI people were arrested at a shelter they lived in on the pretext that they were guilty of "a negligent act likely to spread infection of disease," as well as "disobedience of lawful orders". See Amnesty International, *Protecting the Human Rights of LGBTI People During the Covid-19 Pandemic* (Index: POL 30/2340/2020), 19 June 2020.

⁴⁴Response to Amnesty International's survey, Kazakhstan, reporting that visitors to a gay club had been detained.

⁴⁵ILGA Europe, COVID-19 impacts on LGBTI communities in Europe and Central Asia: A rapid assessment report, 19 June 2020, ilga-europe.org/sites/default/files/covid19-lgbti-assessment-2020.pdf including reports relating to religious leaders in Bulgaria, Germany, Georgia, Italy, Moldova, Montenegro, North Macedonia, Poland, Russia, Turkey, and Ukraine.

A number of governments exploited the disruption caused by the pandemic to pursue anti-LGBTI policies. The Hungarian government introduced a series of discriminatory, anti-LGBTI legal amendments; for example, in March 2020 it prohibited the legal gender recognition of trans people and in June 2021 it banned education and advertising deemed to “popularize”, or even depict, consensual same-sex conduct or affirming of one’s gender to children.⁴⁶ In Poland, a number of local governments declared themselves to be “LGBTI-free zones” and incumbent president Andrzej Duda engaged in advocacy of hatred against LGBTI people during his campaign for re-election.⁴⁷ And in Romania, parliament passed, without public debate, a law prohibiting the teaching about and training in gender identity,⁴⁸ that was later declared unconstitutional by the Constitutional Court.

Religious and political figures have also used Covid-19 as a pretext for advocating hatred against LGBTI people, blaming them for the pandemic.⁴⁹ For example, the international NGO Front Line Defenders found “LGBTIQ+ and sex worker communities in more than 10 countries, including Israel, Kenya, Mexico, Turkey, Uganda and the USA, reported defamation and verbal attacks from public officials and religious leaders related to Covid-19”.⁵⁰

At the beginning of the pandemic, some countries in Central and South America, including Peru, Colombia and Panama, designated specific days for men and women to leave their homes for essentials. This left trans people at risk of abuse, extortion and harassment.⁵¹ In Colombia⁵² and Panama, civil society organizations reported that the “pico y género” rule, which allowed men to leave their homes to buy food and medications on certain days and women to do so on other days, disproportionately impacted trans women.⁵³ In a positive move, the Panamanian government acknowledged in July 2021 that the policy fuelled transphobia and affirmed that Panama respects “diversity of identity and expression”. It also announced sanctions for those found guilty of discrimination.⁵⁴

⁴⁶Amnesty International, “Hungary: Proposed law a new frontal attack against LGBTI people”, 11 June 2021, [amnesty.org/en/latest/news/2021/06/hungary-proposed-law-a-new-full-frontal-attack-against-lgbti-people/](https://www.amnesty.org/en/latest/news/2021/06/hungary-proposed-law-a-new-full-frontal-attack-against-lgbti-people/); See also [euronews.com/2020/12/03/hungary-needs-the-power-of-love-not-viktor-orban-s-love-for-power-view](https://www.euronews.com/2020/12/03/hungary-needs-the-power-of-love-not-viktor-orban-s-love-for-power-view)

⁴⁷Amnesty International Report 2020/21, entry on Europe and Central Asia, [amnesty.org/en/location/europe-and-central-asia/report-europe-and-central-asia/](https://www.amnesty.org/en/location/europe-and-central-asia/report-europe-and-central-asia/)

⁴⁸Amnesty International Annual Report 2020/21, entry on Romania, [amnesty.org/en/location/europe-and-central-asia/romania/report-romania/](https://www.amnesty.org/en/location/europe-and-central-asia/romania/report-romania/)

⁴⁹UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Report to the UN General Assembly: The Impact of the Covid-19 Pandemic on the Human Rights of LGBT Persons, UN Ref: A/75/258, 28 July 2020, undocs.org/A/75/258

⁵⁰Front Line Defenders, LGBTIQ+ and Sex Worker Rights: Defenders At Risk During Covid-19, December 2020, frontlinedefenders.org/sites/default/files/front_line_defenders_covid-19.pdf p.17, citing UN OHCHR, COVID-19 and the Human Rights of LGBTI People, 17 April 2020, [ohchr.org/Documents/Issues/LGBT/LGBTIpeople.pdf](https://www.ohchr.org/Documents/Issues/LGBT/LGBTIpeople.pdf)

⁵¹Amnesty International, “Governments have failed to protect trans people from murder – and from COVID-19”, 20 November 2020, [amnesty.org/en/latest/news/2020/11/governments-have-failed-to-protect-trans-people-from-murder-and-from-covid19/](https://www.amnesty.org/en/latest/news/2020/11/governments-have-failed-to-protect-trans-people-from-murder-and-from-covid19/)

⁵²El Tiempo, These are the ‘pico y cédula’ rules in Colombia during quarantine, 21 July 2020, [eltiempo.com/colombia/otras-ciudades/pico-y-cedula-pico-y-genero-conozca-la-restriccion-en-cada-ciudad-de-colombia-484516](https://www.eltiempo.com/colombia/otras-ciudades/pico-y-cedula-pico-y-genero-conozca-la-restriccion-en-cada-ciudad-de-colombia-484516)

⁵³Sharifah Sekalala et al., Health and human rights are inextricably linked in the COVID-19 response. *BMJ Global Health* 2020 citing Human Rights Watch, [hrw.org/news/2020/04/02/panamas-gender-based-quarantine-ensnares-trans-woman](https://www.hrw.org/news/2020/04/02/panamas-gender-based-quarantine-ensnares-trans-woman) and [hrw.org/news/2020/05/28/myanmar-hundreds-jailed-covid-19-violations](https://www.hrw.org/news/2020/05/28/myanmar-hundreds-jailed-covid-19-violations)

⁵⁴Hannah Summers, Panama’s trans community failed by gendered lockdown measures – report, *The Guardian*, 30 September 2020, [theguardian.com/global-development/2020/sep/30/panamas-trans-community-failed-by-gendered-lockdown-measures-report](https://www.theguardian.com/global-development/2020/sep/30/panamas-trans-community-failed-by-gendered-lockdown-measures-report)

Increased discrimination, misinformation and stigma was also reported by communities of people who use drugs and organizations advocating for their rights. Responding to Amnesty International's survey, the Latin American Network of People who Use Drugs (LANPUD) explained that states' responses to Covid-19 have resulted in an increase in incidents of public humiliation and violence by law enforcement officials towards people who use or possess drugs, as well as reports of an increase in arrests, searches and harassment against a background of closed or reduced access to health and harm reduction services.⁵⁵

“WE KEEP HEARING ON THE STREETS THAT WE [PEOPLE WHO USE DRUGS] ARE THE ONES WHO TRANSMIT THE DISEASE, THAT WE DON'T GET TESTED OR WEAR MASKS AND THAT WE ALL LIVE IN A BUNCH TOGETHER. BUT THEY DON'T GIVE US ANY SUPPORT.”⁵⁶

An outreach worker at a safe injection site in Montreal, Canada.

A survey by the International Network of People who Use Drugs (INPUD) reported that 38% of respondents around the world perceived an increase in drug-related stigma and discrimination during the Covid-19 pandemic.⁵⁷ Globally, stigma associated

with people who use drugs has led to reduced access to care and restricted people's space to make decisions about their own treatment, while increasing the risk of forced or coerced treatment. The Network of Early Career Professionals working in the area of Addiction Medicine (NECPAM) reported that during the Covid-19 pandemic the needs of people who use drugs did not feature significantly in policy making because they are frequently seen as less deserving of care.⁵⁸

Amnesty International's research shows that governments have largely failed to draw on best practice learned from previous public health emergencies on the importance of respecting human rights, guaranteeing empowerment and engagement with communities and pursuing policies that build trust and solidarity across the population. Efforts to reduce HIV infections, for example, highlighted the need to remove “punitive laws, policies and practices that block an effective AIDS response”⁵⁹ and to include groups who are marginalized and at higher risk of infections as “essential partners in an effective response.”⁶⁰

States' reliance on coercive enforcement approaches to public health measures risks undermining the effectiveness of responses and, in the context of Covid-19, has often increased stigma and discrimination towards people affected by unjust criminalization.⁶¹ Such approaches have also resulted in fear and undermined trust in the authorities, which can create barriers to sharing reliable and accurate public health information, reduce access to services and undermine the right to health.

⁵⁵Response to Amnesty International's survey, Latin America.

⁵⁶Amnesty International interview with a community outreach worker from a community health centre in Canada, 18 August 2021.

⁵⁷INPUD, Online Survey on Covid-19 & People who Use Drugs Data Report 1, June 2020, drugsandalcohol.ie/32290/1/INPUD_COVID-19_Survey_DataReport1.pdf p. 17.

⁵⁸Lisa Dannatt et al., The Impact of Stigma on Treatment Services for People With Substance Use Disorders During the COVID-19 Pandemic – Perspectives of NECPAM Members, *Frontiers in Psychiatry*, Vol. 12, 2021, [frontiersin.org/article/10.3389/fpsy.2021.634515](https://www.frontiersin.org/article/10.3389/fpsy.2021.634515)

⁵⁹UNAIDS, Key populations, [unaids.org/en/topic/key-populations](https://www.unaids.org/en/topic/key-populations)

⁶⁰WHO, Consolidated Guidelines on HIV Prevention, Diagnosis, Treatment and Care for Key Populations – 2016 Update, [ncbi.nlm.nih.gov/books/NBK379697/](https://www.ncbi.nlm.nih.gov/books/NBK379697/)

⁶¹Umberto Pellecchia et al., Social Consequences of Ebola Containment Measures in Liberia, *Plos One* Volume 10, Issue 12, December 2015; Patrick M Eba, Ebola and human rights in west Africa, *The Lancet*, Volume 384, Issue 9960, p.2091-2093 [doi.org/10.1016/S0140-6736\(14\)61412-4](https://doi.org/10.1016/S0140-6736(14)61412-4); Global Commission on HIV and the Law, Risks, Rights & Health, 2012, [hivlawcommission.org/report](https://www.hivlawcommission.org/report); Robyn Martin, The Exercise of Public Health Powers in Cases of Infectious Disease: Human Rights Implications, *Medical Law Review*, Volume 14, Issue 1, 1 March 2006, <https://academic.oup.com/medlaw/article/14/1/132/990506> pp. 132-143.

5. ENFORCING RESTRICTIONS: PUNISHMENT RATHER THAN SUPPORT

“States should advance measures to support public health goals that do not rely on criminalisation and policing.”⁶²

Fair Trials

Governments around the world took urgent and extraordinary measures to respond to the Covid-19 crisis to slow down the spread of the virus and break the chains of person-to-person transmission; most opted to rely on punitive laws to enforce compliance.⁶³ In contexts of poverty and marginalization, complying with such measures was difficult, if not impossible, in the absence of assistance from the state. The decision to rely on punishment rather than support fostered an environment of increased risk of criminalization and human rights violations.

Examples of public health and social measures reported by survey participants included “lockdowns” or household confinement, school closures, curfews, mandatory isolation at home or in quarantine centres and, in some cases, forced confinement in camps or other state-run facilities. Other common measures included limiting gatherings by closing bars, restaurants, markets and other workspaces, as well as public assemblies and demonstrations.⁶⁴

These measures have had a particularly severe impact on the ability of people living in poverty and other marginalized communities to work and support themselves and their families. Amnesty International has documented how lockdowns and curfews have led to large numbers of workers in the informal economy losing their incomes, without recourse to adequate social protection. For example, across Africa, curfews, lockdowns and stay-at-home orders had a disproportionate impact on people working in the informal economy, who constituted 71% of the

region’s workforce.⁶⁵ Many lost their livelihoods and incomes and could not afford food or other essential supplies. This has had a disproportionate impact on women and girls, who make up the majority of workers in the informal sector globally.⁶⁶

Governments globally have predominantly relied on the security forces to enforce Covid-19 restrictions,⁶⁷ creating additional risks of discrimination, arbitrary arrests and detentions, excessive use of force and criminalization of groups who were already over-policed or the targets of discriminatory policing practices.⁶⁸

Under international human rights law, when states use enforcement measures, including for public health objectives, these must conform to the principles of necessity and proportionality. This requires the measures to be adequate to achieve their lawful purpose, the least intrusive instrument among those which might achieve the desired result and proportionate to the legitimate interest to be protected.⁶⁹ Long-standing international legal principles that guide states in implementing their human rights obligations also urge them to avoid unwarranted and unnecessary criminalization in relation to public health.⁷⁰ Despite the binding nature of these requirements and a growing body of evidence of their importance gathered from this and previous pandemics, governments around the world have widely flouted them using a variety of domestic legal provisions and punitive policies that contravene international human rights law and standards.

⁶²Fair Trials, Beyond the emergency of the COVID-19 pandemic: Lessons for defence rights in Europe, 2020 fairtrials.org/sites/default/files/publication_pdf/Beyond%20the%20emergency%20of%20the%20COVID-19%20pandemic.pdf

⁶³WHO, Overview of Public Health and Social Measures in the context of COVID-19, 18 May 2020, who.int/publications/i/item/overview-of-public-health-and-social-measures-in-the-context-of-covid-19; Qulu Zheng et al., HIT-COVID, a global database tracking public health interventions to COVID-19. *Scientific Data* 7, 286 (2020) [nature.com/articles/s41597-020-00610-2](https://www.nature.com/articles/s41597-020-00610-2)

⁶⁴Responses to Amnesty International’s survey.

⁶⁵International Labour Office (ILO), Women and men in the informal economy: a statistical picture (third edition), 2018, ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_626831.pdf, p. 28.

⁶⁶ILO, Women and men in the informal economy: a statistical picture (third edition), 2018, p. 28.

⁶⁷Amnesty International, *Covid-19 Crackdowns, Police Abuse and the Global Pandemic*, (Index: ACT 30/3443/2020), 17 December 2020, [amnesty.org/en/documents/act30/3443/2020/en/](https://www.amnesty.org/en/documents/act30/3443/2020/en/); Nina Sun and Joe Amon, The WHO We Need for the Next Pandemic, *Think Global Health*, 8 May 2020, thinkglobalhealth.org/article/who-we-need-next-pandemic

⁶⁸Amnesty International, Covid-19 Crackdowns, Police Abuse and the Global Pandemic, page 5; See also Fair Trials, Beyond the emergency of the COVID-19 pandemic: Lessons for defence rights in Europe, 2020, fairtrials.org/sites/default/files/publication_pdf/Beyond%20the%20emergency%20of%20the%20COVID-19%20pandemic.pdf

⁶⁹UN Human Rights Committee, General Comment 27: Article 12 (Freedom of Movement), 2 November 1999, UN Doc. CCPR/C/21/Rev.1/Add.9

⁷⁰Siracusa Principles, 1984, UN Doc. E/CN.4/1985/4; UN Commission on Human Rights, 43rd Session, 1987, Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, 1987, UN Doc. E/CN.4/1987/17, Annex (providing interpretive guidance regarding states’ compliance with the International Covenant on Economic, Social and Cultural Rights).

LACK OF OVERSIGHT AND ACCOUNTABILITY

Governments have relied on a variety of legal bases for their pandemic responses. According to a tracker by the International Center for Not-for-Profit Law, at least 110 countries issued emergency declarations as part of their Covid-19 response.⁷¹

Many governments – including those of Australia, Botswana, Colombia, the Dominican Republic, Finland, France, Italy, Kyrgyzstan, Mozambique, Peru and Venezuela – declared states of emergency, usually granting broad and often open-ended powers, that were used to impose arbitrary restrictions on human rights in some cases.⁷²

Countries such as India and South Africa relied on existing laws relating to disaster management to issue new regulations ordering Covid-19 measures and responses.

Whatever the specifics of the regulatory regime invoked, a common thread that has been reported by civil society organizations around the world is that states gave extensive and extraordinary powers to the executive branches of government to make legal and enforceable decisions with limited oversight and without regard to their impact on human rights.

A review of policing of Covid-19 related offences by the NGO Fair Trials, found that “European governments rushed through new laws criminalising non-compliance with pandemic-related measures. States enacted new criminal offences and extended police powers, often in haste under a state of emergency, with little parliamentary oversight, raising serious rule of law concerns.”⁷³ Countries such as Indonesia and Zimbabwe relied on existing public health laws and/or criminal codes which contained broad and punitive provisions as the primary basis for their responses.⁷⁴

“European governments rushed through new laws criminalising non-compliance with pandemic-related measures”.⁷³

⁷¹ICNL COVID-19 Civic Freedom Tracker, icnl.org/covid19tracker/?location=&issue=5&date=&type=

⁷²*Amnesty International Report 2020/21*.

⁷³See further, Fair Trials, *Beyond the emergency of the COVID-19 pandemic: Lessons for defence rights in Europe, 2020*, fairtrials.org/sites/default/files/publication_pdf/Beyond%20the%20emergency%20of%20the%20COVID-19%20pandemic.pdf

⁷⁴*Amnesty International Report 2020/21*; See also ICNL COVID-19 Civic Freedom Tracker, icnl.org/covid19tracker/?issue=5

DISCRIMINATORY, UNSAFE AND PUNITIVE – MANDATORY QUARANTINE IN STATE-RUN FACILITIES

In the Americas, many governments adopted repressive tactics to enforce pandemic-related public health measures.⁷⁵ Amnesty International reported early on in the pandemic that arbitrary arrests were becoming more common and often linked to the enforcement of Covid-19 restrictions.⁷⁶ For example, in countries such as Argentina, El Salvador, Paraguay and Venezuela, thousands of people were forcibly quarantined under the custody of the military and the police in state-run centres that failed to meet sanitary and physical distancing standards and may have resulted in ill-treatment and/or arbitrary detention.⁷⁷ Amnesty International found LGBTI and gender non-conforming people, sex workers, people who use drugs, people experiencing homelessness and those at risk of homelessness among the groups that have been particularly affected by human rights violations in this context.⁷⁸

IN EL SALVADOR, THE MINISTER OF JUSTICE AND SECURITY WARNED IN APRIL 2020 THAT PEOPLE WHO BROKE THE NATIONAL LOCKDOWN WOULD BE PLACED IN A CONTAINMENT CENTRE, “FAR FROM THEIR FAMILIES AND RUN THE RISK IN THOSE CENTRES OF QUARANTINE OF ALSO CONTRACTING THE VIRUS”.⁷⁹

This indicated that quarantine was seen as a punishment for breaking public health regulations and that the authorities were fully aware that centres lacked the appropriate standards to prevent contagion.⁸⁰ According to official figures, more than 2,000 people were detained in state-run quarantine centres for alleged violations of the mandatory national quarantine imposed in late March 2020, some for up to 40 days. The National Ombudsman for Human Rights in El Salvador received 406 complaints related to the implementation of containment measures between 21 March and 12 May 2020, raising concerns regarding the detention of people in particularly vulnerable situations, including migrants, people living in poverty and extreme poverty, informal workers and human rights defenders.⁸¹ Similarly, the Joint UN Programme on HIV and AIDS (UNAIDS) reported concerns of “sex workers being among the hundreds of people arrested for violating lockdown orders”.⁸²

⁷⁵Amnesty International, *When Protection Becomes Repression: Mandatory Quarantines under Covid-19 in the Americas* (Index: AMR 01/2991/2020), 2020, [amnesty.org/en/wp-content/uploads/2021/05/AMR0129912020ENGLISH.pdf](https://www.amnesty.org/en/wp-content/uploads/2021/05/AMR0129912020ENGLISH.pdf)

⁷⁶Amnesty International, *When Protection becomes Repression: Mandatory Quarantines under Covid-19 in the Americas*, 2020.

⁷⁷Amnesty International, *When Protection becomes Repression: Mandatory Quarantines under Covid-19 in the Americas*, 2020; Amnesty International Argentina, “Amnesty International warns of the excessive use of mandatory quarantines in isolation centres”, 21 January 2021, [amnistia.org.ar/formosa-amnistia-internacional-advierde-sobre-el-uso-desmedido-de-cuarentenas-obligatorias-en-centros-de-aislamiento/](https://www.amnistia.org.ar/formosa-amnistia-internacional-advierde-sobre-el-uso-desmedido-de-cuarentenas-obligatorias-en-centros-de-aislamiento/)

⁷⁸Amnesty International, *When Protection becomes Repression: Mandatory Quarantines under Covid-19 in the Americas*, 2020.

⁷⁹Amnesty International, “Americas: Authorities convert state-run quarantines into form of repression”, 21 September 2020, [amnesty.org/en/latest/news/2020/09/americas-state-run-quarantines-form-repression/](https://www.amnesty.org/en/latest/news/2020/09/americas-state-run-quarantines-form-repression/); *Amnesty International Report 2020/21*, entry on El Salvador, [amnesty.org/en/location/americas/central-america-and-the-caribbean/el-salvador/report-el-salvador/](https://www.amnesty.org/en/location/americas/central-america-and-the-caribbean/el-salvador/report-el-salvador/)

⁸⁰Amnesty International, “Americas: Authorities convert state-run quarantines into form of repression”, 21 September 2020, [amnesty.org/en/latest/press-release/2020/09/americas-state-run-quarantines-form-repression/](https://www.amnesty.org/en/latest/press-release/2020/09/americas-state-run-quarantines-form-repression/); *Amnesty International Report 2020/21*, entry on El Salvador, [amnesty.org/en/location/americas/central-america-and-the-caribbean/el-salvador/report-el-salvador/](https://www.amnesty.org/en/location/americas/central-america-and-the-caribbean/el-salvador/report-el-salvador/)

⁸¹José Apolonio Tobar Serrano, Procurador para la Defensa de los Derechos Humanos, San Salvador, junio de 2020, Informe Preliminar Sobre COVID-19 y Derechos Humanos en El Salvador, (Preliminary Report on COVID-19 and Human Rights in El Salvador) pddh.gob.sv/portal/wp-content/uploads/2020/06/informe-preliminar-junio-2020.pdf, p. 52.

⁸²UNAIDS, Rights in a Pandemic: Lockdowns, rights and lessons from HIV in the early response to COVID-19, 2020, [unaids.org/sites/default/files/media_asset/rights-in-a-pandemic_en.pdf](https://www.unaids.org/sites/default/files/media_asset/rights-in-a-pandemic_en.pdf) citing Global Network of Sex Work Projects, COVID-19 impact: El Salvador, 2020, [Nswp.org/news/covid-19-impact-el-salvador](https://www.nswp.org/news/covid-19-impact-el-salvador)

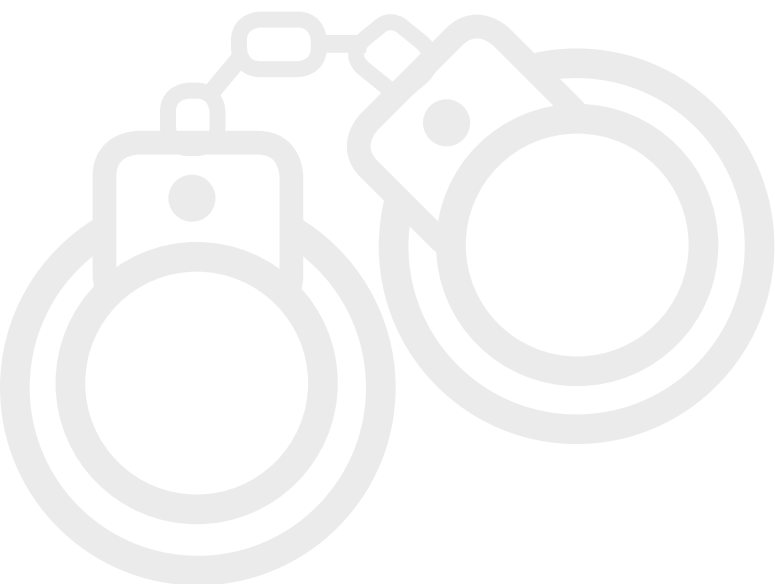
This reliance on and increased role for law enforcement and military agencies during the pandemic, is a securitization approach which has followed a similar pattern to that documented by Amnesty International and others following the 9/11 attacks in the USA. This saw governments adopt an agenda of increasing securitization, which in turn has driven a widespread restriction of civic space.⁸³ Since that time, governments have also increasingly used security powers to respond to public health threats.⁸⁴ Since the initial outbreak of Covid-19 in early 2020, this pattern has only intensified. For example, Amnesty International reported that in the Asia Pacific region, many governments responded to the Covid-19 pandemic by adopting or weaponizing repressive national security or counter-terrorism laws.⁸⁵ A similar strategy was also adopted in other regions.⁸⁶

INCREASED HARASSMENT AND PERSECUTION OF UNJUSTLY CRIMINALIZED GROUPS

“TODAY THE POLICE HAVE A DOUBLE POWER BECAUSE, ON THE ONE HAND, THEY PERSECUTE US WITH THE LAW THAT SAYS THAT WE ARE VIOLATING THE QUARANTINE AND, ON THE OTHER HAND, THEY USE LOCAL CODES THAT CRIMINALIZE THE USE OF PUBLIC SPACE”.

Representative of Asociación de Mujeres Meretrices de Argentina, a sex-worker led organization, in a media interview published in The Nation, November 2020.⁸⁷

When governments rely on punitive sanctions to enforce public health measures, the focus is on the individual, and people are punished without taking into account structural discrimination, marginalization and intersecting state failures to fulfil economic, social and cultural rights, as well as the criminalization of poverty. For example, as the UN Special Rapporteur on the Right to Health has noted, “punitive responses are applied disproportionately to address complex and unique social challenges”.⁸⁸



⁸³Amnesty International Report 2020/21; the ASIA Centre warn that from their research the Covid-19 response has resulted in an increased “militarisation and securitisation of health protocols” in Indonesia, Malaysia, Philippines, Singapore and Sri Lanka, Asia Center, The Securitisation of COVID-19 Health Protocols: Policing the Vulnerable, *Infringing Their Rights*, 24 August 2021, p. 29.

⁸⁴Wendy K. Mariner, George J. Annas & Wendy E. Parmet, *Pandemic Preparedness: A Return to the Rule of Law*, 1 Drexel Law Review 341 (2009), p. 379.

⁸⁵Amnesty International Report 2020/21.

⁸⁶Search for Common Ground, *Securitization of COVID-19 Response: Lessons from Kenya*, 23 June 2020, sfcg.org/covid-19/files/Securitization-of-COVID-19-Response_Lessons-from-Kenya.pdf

⁸⁷Gastón Rodríguez, *Trabajadoras sexuales denuncian el hostigamiento policial durante la pandemia* (Sex workers denounce police harassment during the pandemic), La Nación, 23 November 2020, lanacion.com.ar/seguridad/trabajadoras-sexuales-denuncian-el-hostigamiento-policial-durante-la-pandemia146-x-140-nid2517838/

⁸⁸Statement by Mr Dainius Pūras, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health at the 38th session of the Human Rights Council, 18 June 2018, ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23396&LangID=E

Historically, people who have limited access to resources and experience social and legal marginalization face specific challenges under this approach.⁸⁹ This has been true during the Covid-19 pandemic. People who are affected by unjust criminalization have been at increased risk of penalties because they have faced exclusion from the social and health protection necessary to be able to comply with regulations and because they are already the targets of over-policing by law enforcement.

As a positive measure to prevent Covid-19 outbreaks in places of detention, some governments issued moratoriums on arrests, including on the grounds of drug use and possession, sex work and homelessness. However, many organizations advocating for the rights of people impacted by these issues reported an increase in surveillance and harassment from law enforcement and in arrests, fines and detentions during the pandemic.

A review of policing and prosecutions of Covid-19 related offences by the NGO Fair Trials found an unprecedented number of criminal cases and large fines to punish people. The organization raised particular concerns over the discriminatory application of laws against minorities and marginalized people. According to Fair Trials, prosecutions, sanctions and fines imposed during the pandemic may subject people to insurmountable debts and may leave them with a criminal record that impedes their ability to find a job or housing.⁹⁰

THE MAJORITY
(71%)
 OF THE ORGANIZATIONS WHO RESPONDED TO AMNESTY INTERNATIONAL'S SURVEY STATED THAT PEOPLE FROM THE COMMUNITIES THEY WORK WITH, INCLUDING SEX WORKERS, PEOPLE WHO USE DRUGS, LGBTI PEOPLE AND PEOPLE IN NEED OF ABORTION, HAD RECEIVED PUNISHMENTS FOR BREACHING COVID-19 MEASURES.⁹¹ AMONG OTHER PUNITIVE MEASURES, ORGANIZATIONS REPORTED THE WIDESPREAD USE OF FINES, ARRESTS, CAUTIONS AND WRITTEN WARNINGS AND POLICE ORDERS TO "MOVE ON" OR STAY AWAY FROM A PUBLIC PLACE.⁹²

Crucially, over two thirds of respondents (**69%**) said that state responses to Covid-19 had exacerbated the negative impact of laws and regulations that criminalized and marginalized the people they work with⁹³ and, of these, **90%** reported that the communities they work with were specifically targeted and/or disproportionately impacted when Covid-19 measures were enforced.⁹⁴

Organizations reported that these communities had received penalties including, most commonly, monetary fines (26 organizations), arrests (24 organizations), cautions or written warnings (20 organizations) and use of force (18 organizations).



⁸⁹Wendy K. Mariner, George J. Annas & Wendy E. Parmet, Pandemic Preparedness: A Return to the Rule of Law, 1 Drexel Law Review 341 (2009), p. 358.
⁹⁰Fair Trials, Beyond the emergency of the COVID-19 pandemic: Lessons for defence rights in Europe, 2020, fairtrials.org/sites/default/files/publication_pdf/Beyond%20the%20emergency%20of%20the%20COVID-19%20pandemic.pdf
^{91,92, 93, 94} Responses to Amnesty International's survey.

Organizations working on drug policy reform highlighted the increase in policing related to drugs using increased law enforcement powers related to Covid-19. A community-based organization advocating for the rights of people who use drugs in Nigeria reported that people who use drugs were targeted for arrests through raids carried out on drug use hotspots in Gombe state, and community members were arrested and flogged.⁹⁵ INPUD reported that emergency powers were being used in many countries to specifically target people who use drugs and that people experiencing homelessness who use drugs were the main targets of policing, in part because people on the streets stand out more during lockdowns.⁹⁶

Release, a national organization in the UK providing advice and information on issues related to drug use and drug laws, reported via their online platform TalkingDrugs that when the UK was under its first lockdown in April 2020, the Metropolitan Police carried out 30,608 searches in London. Most of these searches (70%) were for drugs.⁹⁷ According to Release, this represented a 26% increase in searches compared to the previous month and was the highest rate of the use of these powers in at least two years. The rate of searches of Black people by Metropolitan Police officers increased from 7.2 per 1,000 people in March to 9.3 per 1,000 people in April. Disturbingly, Release reported the highest rates of searches were in boroughs with the highest rates of Covid-19 deaths.⁹⁸

Harm Reduction International (HRI) reported that the police in Indonesia conducted unlawful drug tests as part of Covid-19 related raids. After these raids, multiple people were arrested for breaking stringent drug laws, leading people to believe that the objectives of the raids were not to prevent Covid-19 transmission but to cast a wide net to detain people who use drugs.⁹⁹

The Mexican human rights organization Elementa explained to Amnesty International how the punitive “war on drugs” in the country has enabled police forces to target people who use and possess drugs through the enforcement of Covid-19 related measures, in many cases using excessive force.¹⁰⁰ In an alarming case that sparked widespread protests in the country, a construction worker, who was at the time under the influence of drugs, was arrested in the western state of Jalisco, allegedly for not wearing a face mask. He died in police custody days later. His body was covered in bruises and he had a bullet wound in his leg.¹⁰¹

Organizations defending the rights of people who use drugs also highlighted increased surveillance by law enforcement. For example, a harm reduction organization based in the USA described how police parking close to syringe exchange sites deterred people from coming to access services.¹⁰² Participants responding to a survey of people in Nigeria who use drugs also reported harassment by the police.¹⁰³

There have also been reports of law enforcement using Covid-19 measures to attack and target LGBTI organizations. In Uganda, in 2020, 23 youths were arrested in the shelter for LGBTI people where they lived on the pretext that they were guilty of “a negligent act likely to spread infection of disease,” as well as “disobedience of lawful orders.”¹⁰⁴ In April 2020, police in the Philippines forced three LGBTI people to perform humiliating acts as punishment for supposedly violating the curfew. The punishment was recorded on video and posted on social media.¹⁰⁵

⁹⁵Response to Amnesty International's survey, Nigeria.

⁹⁶INPUD, Online Survey on Covid-19 and People Who Use Drugs (PWUD) Data Report 1, June 2020, page 13, drugsandalcohol.ie/32290/1/INPUD_COVID-19_Survey_DataReport1.pdf

⁹⁷Jesse Bernard and Imani Robinson, UK Policing During The COVID-19 Pandemic, Talking Drugs, 2 June 2020, talkingdrugs.org/uk-policing-during-the-covid-19-pandemic

⁹⁸Response to Amnesty International's survey, UK.

⁹⁹Harm Reduction International, Caught in the Crossfire: Health and human rights impacts of COVID-19 measures on people who use drugs in Indonesia and the Philippines, 2021, hri.global/files/2021/11/10/HRI_-_Covid_People_who_use_drugs_IND_PH_FINAL.PDF

¹⁰⁰Amnesty International interview with ElementaDDHH on 16 August 2021.

¹⁰¹Joint Press Release, International organizations demand #JusticiaparaGiovanni and for the victims of human rights violations that occurred in the protests in Guadalajara, Jalisco, June 2020, wola.org/es/2020/06/organizaciones-internacionales-exigen-justicia-para-giovanni-jalisco-mexico/; See further Human Rights Watch, Mexico: Overhaul Police Forces, 24 July 2020, hrw.org/node/375865/printable/print

¹⁰²Amnesty International interview with National Harm Reduction Coalition, 10 August 2021.

¹⁰³Drug Harm Reduction Advocacy Network, Nigeria (DHRAN), Key Population Community Consultation Report 2021.

¹⁰⁴Amnesty International, Protecting the Human Rights of LGBTI People During the Covid-19 Pandemic, (Index: POL 30/2340/2020), 19 June 2020, amnesty.org/en/documents/pol30/2340/2020/en/; Human Rights Watch, Uganda LGBT Shelter Residents Arrested on COVID-19 Pretext, 3 April 2020, hrw.org/news/2020/04/03/uganda-lgbt-shelter-residents-arrested-covid-19-pretext

¹⁰⁵OHCHR, Covid-19 and the Human Rights of LGBTI People, 17 April 2020, ohchr.org/Documents/Issues/LGBT/LGBTIpeople.pdf

The Caribbean Vulnerable Communities Coalition, an association providing support services to marginalized communities, reported that in Belize an LGBT man was arrested, detained and beaten for not complying with the curfew. He later died at the hands of the police. The Coalition also reported that in the Dominican Republic several street-based sex workers were arrested and detained for “violating a public morality ordinance for working on the streets during the day”.¹⁰⁶

In Zanzibar, Tanzania, Front Line Defenders reported that in April 2020, as part of nationwide enforcement of Covid-19 related measures, police targeted houses known to be occupied by LGBTI people and sex workers and forced 15 sex workers to leave their homes, claiming they were breaching physical distancing requirements.¹⁰⁷

In Kyrgyzstan, an organization reported a case of extortion during the state of emergency when

“PATROL POLICE OFFICERS DETAINED TWO GAY MEN [AND] THREATENED TO CALL JOURNALISTS AND... PUBLISH THE DATA ON SOCIAL NETWORKS” UNLESS THEY PAID A BRIBE. “IN THE END, THE MEN PAID THE OFFICERS 2,000 SOMS (APPROXIMATELY US\$23.5) BUT DUE TO THE EMERGENCY THEY WERE UNABLE TO FILE A COMPLAINT WITH THE PROSECUTOR’S OFFICE”.¹⁰⁸

The organization Fair Trials reported homophobic enforcement trends by law enforcement officials in Greece and France, including cases of homophobic and racist abuse and excessive checks and use of force during the pandemic.¹⁰⁹

Sex worker rights organizations have also reported an increase in harassment and persecution by the security forces.

In Argentina, sex worker-led organization reported police violence against transgender sex workers, including

“BEATINGS, SEARCHES AND ARBITRARY DETENTIONS”¹¹⁰ AND THAT SEX WORKERS WERE HARASSED BY POLICE “FOR QUARANTINE VIOLATIONS WHEN THEY WENT TO THE SUPERMARKET OR THE NEIGHBOURHOOD PHARMACY. IN SOME CASES, THEY USED THE CHARGE OF ‘RESISTING ARREST’ TO DETAIN THEM AT THE POLICE STATION”.¹¹¹

¹⁰⁶Response to Amnesty International’s survey.

¹⁰⁷Front Line Defenders, LGBTIQ+ and Sex Worker Rights: Defenders At Risk During Covid-19, December 2020, frontlinedefenders.org/sites/default/files/front_line_defenders_covid-19.pdf, page 23.

¹⁰⁸Response to Amnesty International’s survey, Kyrgyzstan.

¹⁰⁹Fair Trials, Beyond the emergency of the COVID-19 pandemic: Lessons for defence rights in Europe, 2020, fairtrials.org/sites/default/files/publication_pdf/Beyond%20the%20emergency%20of%20the%20COVID-19%20pandemic.pdf, p. 34.

¹¹⁰Putas.Feministas, Instagram post, 1 December 2020, [instagram.com/p/CIRf_k6A-Id/](https://www.instagram.com/p/CIRf_k6A-Id/)

¹¹¹Putas.Feministas, Instagram post, 1 December 2020, [instagram.com/p/CIRf_k6A-Id/](https://www.instagram.com/p/CIRf_k6A-Id/); Gastón Rodríguez, Trabajadoras sexuales denuncian el hostigamiento policial durante la pandemia (Sex workers denounce police harassment during the pandemic), La Nación, 23 November 2020, lanacion.com.ar/seguridad/trabajadoras-sexuales-denuncian-el-hostigamiento-policial-durante-la-pandemia146-x-140-nid2517838/; Trabajadoras sexuales en Argentina denuncian violencia policial, YouTube, [youtube.com/watch?v=vFCcUmZSQEM](https://www.youtube.com/watch?v=vFCcUmZSQEM), 22 September 2020.

The Women's Legal Centre, an organization providing legal support to sex workers in South Africa, reported to Amnesty International that numerous sex workers were harassed by police and arrested during the lockdown period.¹¹² The Asociación de Mujeres Buscando Libertad reported that in Bogotá, Colombia, sex workers were pursued by police officers in public parks and fined up to a million pesos (approximately US\$260).¹¹³ Such fines were imposed even though sex workers were among those whose income was most severely impacted by Covid-19 related measures and therefore faced serious difficulties in paying them.¹¹⁴ Similar findings have been reported following research by other civil society organizations.¹¹⁵

According to Creating Resources for Empowerment in Action (CREA), police in Kenya and Sri Lanka were reported to be carrying out increased numbers of raids on the homes of sex workers and LGBTI and gender non-conforming people, sometimes using tear gas and excessive force. CREA reported that those affected believed that the police took advantage of the lockdown to target them, knowing that it would be more difficult to access support from lawyers. CREA has also received reports of sex workers in border towns in Uganda and Kenya facing increased stigma and violence from the community and the police and being accused of spreading the virus.¹¹⁶

Respondents to the Amnesty International survey in Europe reported that sex workers were "having to break the rules of lockdown and work under increased risks of police violence, blackmail,

detention and penalties, as well as potential exposure to the virus".¹¹⁷ Similarly, the International Committee on the Rights of Sex Workers in Europe has reported high levels of police surveillance and raids on sex workers' workplaces in countries including France, Germany, Italy, Poland and the UK.¹¹⁸ For example, the municipality of Rimini, Italy, issued a new by-law under which street-based sex workers can face fines of €400-€500; 229 charges were reportedly brought under this regulation between 25 May and 31 October 2021.¹¹⁹ In Norway, the sex worker rights organization PION reported that law enforcement agencies used legislation relating to the control of communicable diseases as a pretext for harassing sex workers, resulting in arrests, detentions, heavy fines and deportations of sex workers who are foreign nationals.¹²⁰

EXCESSIVE USE OF FORCE

Amnesty International reported in 2020 that law enforcement agencies have used excessive and unnecessary force in the enforcement of Covid-19 measures.¹²¹ Certain sectors of the population have been at greater risk of being targeted for such abuses, a risk that also extended to people providing support and assistance to those communities. Worryingly, over 61% of the organizations who responded to Amnesty International's survey reported that the enforcement of Covid-19 related regulations saw an increase in the excessive use of force by law enforcement officials.

In Zambia, a community-based organization advocating for the rights of sex workers reported a case where police officers released dogs to chase

¹¹²Response to Amnesty International's survey, South Africa; see further Siphokazi Vuso, Protest after arrest of 57 sex workers, Cape Times 10 December 2020 [iol.co.za/capetimes/news/protest-after-arrest-of-57-sex-workers-df343ed2-c1e8-4241-b5bd-7aa2163d3956](https://www.iol.co.za/capetimes/news/protest-after-arrest-of-57-sex-workers-df343ed2-c1e8-4241-b5bd-7aa2163d3956)

¹¹³Response to Amnesty International's survey, Colombia.

¹¹⁴Responses to Amnesty International's survey.

¹¹⁵See for example Gastón Rodríguez, Trabajadoras sexuales denuncian el hostigamiento policial durante la pandemia (Sex workers denounce police harassment during the pandemic), La Nación, 23 November 2020, lanacion.com.ar/seguridad/trabajadoras-sexuales-denuncian-el-hostigamiento-policial-durante-la-pandemia146-x-140-nid2517838/

¹¹⁶CREA, Submission to the Special Rapporteur on Violence against Women: COVID-19 and the Increase of Domestic Violence against Women, July 2020.

¹¹⁷Sex Workers' Rights Advocacy Network and International Committee on the Rights of Sex Workers in Europe, COVID-19 crisis impact on access to health services for sex workers in Europe and Central Asia Assessment, June 2020.

¹¹⁸International Committee on the Rights of Sex Workers in Europe, Sex workers on the frontline: The role of sex worker rights groups in providing support during the COVID-19 crisis in Europe, March 2021.

¹¹⁹Altarimini, La prostituzione a Rimini non si ferma nonostante il Covid e i controlli, pronta nuova ordinanza, 7 January 2021, altarimini.it/News143111-la-prostituzione-a-rimini-non-si-ferma-nonostante-il-covid-e-i-controlli-pronta-nuova-ordinanza.php

¹²⁰International Committee on the Rights of Sex Workers in Europe, Sex workers on the frontline: The role of sex worker rights groups in providing support during the COVID-19 crisis in Europe, March 2021.

¹²¹Amnesty International, Covid-19 Crackdowns: Police Abuse and the Global Pandemic (Index: ACT 30/3443/2020), 17 December 2020.

fleeing sex workers.¹²² Female sex workers in Nigeria reported an increase in police raids on brothels and arrests during the pandemic¹²³ and of transgender people being beaten and stripped naked in public prior to arrest and detention by police.¹²⁴

In the Democratic Republic of the Congo (DRC), the border city of Bukavu in the South-Kivu province was placed in total confinement following two cases of Covid-19. As police undertook contact tracing, sex worker organizations reported that sex workers were victims of beatings by the police and security services as well as extortion and rape.¹²⁵

Front Line Defenders reported in December 2020 that the Covid-19 pandemic triggered sharp increases in physical attacks, sexual assault and harassment by the security forces of people working to defend the rights of LGBTI people and sex workers in 13 countries.¹²⁶ Its December 2020 report highlighted how police were using Covid-19 related curfews and physical distancing requirements to justify increased violence against LGBTI people, sex workers and the urban poor, resulting in mass arrests, raids, public humiliation and beatings in the street.¹²⁷

These examples highlight the dangers of responding to a health crisis with criminal law and enforcing punishments. Coercive law enforcement measures have frequently failed to consider the situation of people who are most at risk of being seriously affected by or unable to comply with public health regulations. People affected by unjust criminalization have been particularly disadvantaged by this approach. Far from containing the virus,

decisions to fine, arrest, detain and use force have increased the social and economic challenges of complying with Covid-19 health advice and often risked increasing contagion – for both the law enforcement officials involved and those affected by law enforcement actions.

Coercive law enforcement measures should only be used as a last resort. Governments must ensure that the public is aware of the reasons for restrictions and that these are widely communicated in accessible formats. Governments must also put in place measures for people to be able to comply with the restrictions, including by enabling them to satisfy their essential needs, and take into account the situation of marginalized groups who may require support in order to be in a position to comply with the restrictions.

AS POLICE UNDERTOOK CONTACT TRACING, SEX WORKER ORGANIZATIONS REPORTED THAT SEX WORKERS WERE VICTIMS OF BEATINGS BY THE POLICE AND SECURITY SERVICES AS WELL AS EXTORTION AND RAPE.¹²⁵

¹²²Response to Amnesty International's survey, Zambia.

¹²³Drug Harm Reduction Advocacy Network, Nigeria (DHRAN), Key Population Community Consultation Report 2021, p. 49.

¹²⁴Drug Harm Reduction Advocacy Network, Nigeria (DHRAN), Key Population Community Consultation Report 2021, p. 62.

¹²⁵HODSAS, UMANDE and ACODHU-TS, Situation of Sex Workers in the Border Town of Bukavu/DRC after two weeks of total confinement due to Covid-19, Joint report, 2 April 2020.

¹²⁶Front Line Defenders, LGBTIQ+ and Sex Worker Rights: Defenders At Risk During Covid-19, December 2020, frontlinedefenders.org/sites/default/files/front_line_defenders_covid-19.pdf, P. 6.

¹²⁷Front Line Defenders, LGBTIQ+ and Sex Worker Rights Defenders At Risk During Covid-19, December 2020, frontlinedefenders.org/sites/default/files/front_line_defenders_covid-19.pdf, P. 22.

6. EXCLUSION FROM BASIC SOCIAL SECURITY GUARANTEES

“We are just criminals in their eyes.”¹²⁸

Public health measures adopted to deal with Covid-19 have had a devastating impact on people living in situations of poverty and marginalization. Many countries failed to consider the social and economic realities in which they implemented physical distancing and other restrictive measures and therefore failed to put in place adequate mitigating measures. Furthermore, other public health prevention approaches, such as regular hand washing and use of hand sanitizers and face masks, were often unavailable among the most marginalized communities, who often lack access to adequate water and sanitation.

States too often fail to fulfil their positive human rights obligations in relation to economic, social and cultural rights that can address structural discrimination, marginalization and poverty. Rather, they criminalize poverty.

The right to social protection: The Committee on Economic, Social and Cultural Rights, the body which monitors states’ adherence to the International Covenant on Economic, Social and Cultural Rights, has called on states to ensure social protection measures at “a minimum essential level that will provide for at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education.”¹²⁹

It has clarified that this includes measures aimed at: reducing poverty; access to affordable food, clean water and sanitation facilities; universal access to the necessary health services, including sexual and reproductive healthcare;¹³⁰ basic social security guarantees and basic income security (for example in cases of sickness, death, unemployment and loss of livelihood); shelters for victims of violence; and adequate housing and bans on evictions.¹³¹

The CESCR has called on states to ensure that “benefits cover all marginalized and disadvantaged individuals, particularly those who are severely affected by the COVID-19. In case of severe lack of resources, States parties should ensure minimum benefits for the selection of a core group of social risks and contingencies, made following a wide process of consultation.”¹³²

In the context of pandemics, the president of the UN Human Rights Council has emphasized the need to “enhance access to information and education for all persons, especially for those in vulnerable situations”.¹³³

¹²⁸Response to Amnesty International’s survey, Tanzania.

¹²⁹See CESCR General Comment No. 19 on the right to social security, 2008, E/C.12/GC/19, paras. 4(b), 6 and 59(a); The Universal Declaration of Human Rights (1948), Article 25(1); Concluding observations for Israel, 2019, UN Doc. E/C.12/ISR/CO/4, para. 35.

¹³⁰Restrictions on freedom of movement must not undermine women’s access to healthcare, including sexual and reproductive health services and information, CEDAW Articles 10 (h), 12 and 14 (2)(b); note also the OHCHR have emphasized that under the ICCPR “The right to life, as a non-derogable right, must be upheld in all responses to COVID-19, including the provision of healthcare to those infected by COVID, as well as to those whose life could be impacted by restrictions on other forms of health care, including abortion services” OHCHR, Internal HRTB toolkit of treaty law perspectives and jurisprudence in the context of COVID-19, 15 July 2020, [ohchr.org/Documents/HRBodies/TB/COVID19/HRTB_toolkit_COVID_19.pdf](https://www.ohchr.org/Documents/HRBodies/TB/COVID19/HRTB_toolkit_COVID_19.pdf)

¹³¹OHCHR, Internal HRTB toolkit of treaty law perspectives and jurisprudence in the context of COVID-19, 15 July 2020, [ohchr.org/Documents/HRBodies/TB/COVID19/HRTB_toolkit_COVID_19.pdf](https://www.ohchr.org/Documents/HRBodies/TB/COVID19/HRTB_toolkit_COVID_19.pdf)

¹³²CESCR General Comment No. 19 on the right to social security, 2008, UN Doc. E/C.12/GC/19, paras. 31 and 59(a) and citing Concluding observations for Israel, 2019, UN Doc. E/C.12/ISR/CO/4, para. 23(c).

¹³³Statement of the President of the Human Rights Council, Promoting the right of everyone to the enjoyment of the highest attainable standard of physical and mental health by enhancing capacity-building in public health against pandemics, 2016, UN Doc. A/HRC/PRST/30/2.

In response to the economic impact of pandemic measures, the Office of the UN High Commissioner for Human Rights (OHCHR) has estimated that governments have adopted around 1,400 social protection measures in 208 jurisdictions to “cushion the shock”.¹³⁴ Assistance has taken various forms, such as formal social protection systems, cash transfers and food assistance.¹³⁵ The International Labour Organization (ILO) reported that, in response to the Covid-19 pandemic, governments have “generated the largest mobilization of social protection measures ever seen”.¹³⁶ Nevertheless, the ILO also found that many measures were only temporary and the “pandemic has exposed pronounced gaps in social protection coverage, comprehensiveness and adequacy”.¹³⁷

Few countries have been able to provide comprehensive social protection support and the amount of support has frequently not met survival needs, especially for people who were already living in poverty and have no savings. Furthermore, the UN Special Rapporteur on Extreme Poverty has highlighted that “the intended beneficiaries of these schemes must often face systemic obstacle courses to access them”.¹³⁸

Access to social protection is vital for supporting compliance with public health measures. For example, a 2020 review of physical distancing compliance in Africa indicates that people’s compliance with such measures “is higher when combining lockdown measures with economic and fiscal interventions”.¹³⁹

Amnesty International’s research found widespread examples where people, especially those working in the informal sector or in insecure employment, have been left without access to income or food. For example, in Nepal, the government announced various social protection measures, including a temporary 25% reduction in electricity and telecoms prices, a 10% reduction in core food prices, the distribution of food aid through ward councils¹⁴⁰ and a programme

to provide 100 days of waged employment to the unemployed.¹⁴¹ However, organizations advocating for Dalit rights in Nepal, have highlighted the pervasive discrimination that Dalits face, with most living below the poverty line and reliant on daily wages.¹⁴² Organizations noted the lack of targeted relief and information for Dalits, with many reported as “facing debt and starvation” as a result of the increased challenges of the pandemic.¹⁴³

In Cambodia, in July 2020, the government provided “cash transfers to about 700,000 of the poorest and most vulnerable households”. However, in August 2020, Cambodia partially lost duty-free access to the EU market over human rights concerns,¹⁴⁴ compounding the devastating economic impact of the pandemic which combined to leave tens of thousands of garment workers, the majority of them women, out of work.¹⁴⁵ An organization in Cambodia that supports marginalized communities access adequate housing, explained that during the pandemic “given that Cambodia does not have all encompassing social protection mechanisms, welfare schemes or unemployment assistance, the poor and marginalized have been caught between the threat of contracting the virus versus the threat of starvation”. The organization also reported that in areas labelled Covid-19 “red zones”, marginalized communities faced the most restrictive measures and a “gruelling and practically impossible” situation for informal workers and working class or poverty-stricken communities, as “[t]housands are hungry and desperate and do not have any food to support their families”.¹⁴⁶

The National Ombudsman for Human Rights in El Salvador has stressed that many of the human rights abuses reviewed in March to May 2020 were characterized by the lack of access to income that prevented people living in poverty from complying with Covid-19 regulations, noting: “they leave their homes because of the most basic and urgent needs of themselves and their families”.¹⁴⁷

¹³⁴The Special Rapporteur on extreme poverty and human rights, Looking back to look ahead: A rights-based approach to social protection in the post-COVID-19 economic recovery, 11 September 2020, [ohchr.org/EN/Issues/Poverty/Pages/Covid19.aspx](https://www.ohchr.org/EN/Issues/Poverty/Pages/Covid19.aspx)

¹³⁵The ILO found that states have implemented a range of social protection measures and in the period February to December 2020, 16.5% of measures took the form of special allowances or grants, followed by income or job protection (14.9%). Other measures included funding for food and nutrition, housing and basic services and health services, see further ILO, World Social Protection Report 2020–22: Social Protection at the Crossroads – in Pursuit of a Better Future, 2021, [ilo.org/wcmsp5/groups/public/-/dgreports/@dcomm/@publ/documents/publication/wcms_817572.pdf](https://www.ilo.org/wcmsp5/groups/public/-/dgreports/@dcomm/@publ/documents/publication/wcms_817572.pdf), p. 64, 69 Figure 3.2.

¹³⁶ILO, World Social Protection Report 2020–22: Social Protection at the Crossroads – in Pursuit of a Better Future, 2021.

¹³⁷ILO, World Social Protection Report 2020–22: Social Protection at the Crossroads – in Pursuit of a Better Future, 2021.

¹³⁸UN Special Rapporteur on extreme poverty and human rights, Looking back to look ahead: A rights-based approach to social protection in the post-COVID-19 economic recovery, 11 September 2020, [ohchr.org/Documents/Issues/Poverty/covid19.pdf](https://www.ohchr.org/Documents/Issues/Poverty/covid19.pdf)

¹³⁹Al-mouksit Akim and Firmin Ayivodji, Interaction Effect of Lockdown with Economic and Fiscal Measures against COVID-19 on Social-Distancing Compliance: Evidence from Africa (7 June 2020). Available at SSRN: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3621693

¹⁴⁰The Nepalese government announced “10% discount on rice, flour, dal, salt, sugar and oil supplies from Nepal food Corporation and Salt Trading Corporation” and a temporary 25% reduction on the costs of electricity and data, ILO Country Office for Nepal, Social protection responses to COVID-19 in Nepal, [ilo.org/wcmsp5/groups/public/-/asia/-/ro-bangkok/-/ilo-kathmandu/documents/publication/wcms_809259.pdf](https://www.ilo.org/wcmsp5/groups/public/-/asia/-/ro-bangkok/-/ilo-kathmandu/documents/publication/wcms_809259.pdf)

¹⁴¹ILO Country Office for Nepal, Social protection responses to COVID-19 in Nepal, [ilo.org/wcmsp5/groups/public/-/asia/-/ro-bangkok/-/ilo-kathmandu/documents/publication/wcms_809259.pdf](https://www.ilo.org/wcmsp5/groups/public/-/asia/-/ro-bangkok/-/ilo-kathmandu/documents/publication/wcms_809259.pdf)

¹⁴²Response to Amnesty International’s survey, Nepal.

¹⁴³Response to Amnesty International’s survey, Nepal.

¹⁴⁴European Union, Cambodia loses duty-free access to the EU market over human rights concerns, Press Release 12, August 2020, ec.europa.eu/commission/presscorner/detail/en/IP_20_1469

¹⁴⁵Amnesty International Report 2020/21.

¹⁴⁶Response to Amnesty International’s survey, Cambodia. See also Khy Sovuthy, Hundreds in Meanchey district red zone protest to demand food, Cambodian Journalists Alliance Association, 30 April 2021, [cambojanews.com/hundreds-in-meachey-district-red-zone-protest-to-demand-food/](https://www.cambojanews.com/hundreds-in-meachey-district-red-zone-protest-to-demand-food/)

¹⁴⁷José Apolonio Tobar Serrano, Procurador para la Defensa de los Derechos Humanos San Salvador, junio de 2020, Informe Preliminar Sobre COVID-19 y Derechos Humanos en El Salvador, [pddh.gob.sv/portal/wp-content/uploads/2020/06/informe-preliminar-junio-2020.pdf](https://portal.wp-content/uploads/2020/06/informe-preliminar-junio-2020.pdf), p. 52.

In such a situation, day-to-day survival is in conflict with the need to comply with Covid-19 restrictions, forcing desperate people to risk further criminalization in order to feed themselves and their families. As one organization from Cambodia noted: “no measures and protocols that would benefit all communities, especially vulnerable ones, were taken into account”.¹⁴⁸

People affected by unjust criminalization have also faced additional barriers accessing social protection. Over half of the organizations surveyed reported that the community they work with had been excluded from any state support measures¹⁴⁹ and over half also reported specific barriers preventing people who are marginalized or criminalized from accessing Covid-19 relief services or support schemes.¹⁵⁰ Almost all (90%) reported that the pandemic has had either a negative or extremely negative impact on the communities they work with.¹⁵¹

The stigma and discrimination caused and perpetuated by criminalization has also created indirect barriers to accessing support during the pandemic. Some governments sought to address this, for example, the Ministry of Justice in Peru issued a resolution recognizing same-sex couples for the purpose of granting economic benefits to those whose partners were health workers who died due to Covid-19.¹⁵² But most governments did not and in fact their actions further ostracized marginalized communities.

Respondents to Amnesty International’s survey reported barriers due to sexual orientation and gender identity. For example, LGBT+ people have been excluded from state and municipal food donations and crisis centres. In Indonesia, an organization advocating for LGBTI rights emphasized that stigma towards LGBTI people meant it was difficult for them to obtain relief funds as “many communities could not publicize their need of donation because it would compromise their identity.”¹⁵³

The Zambia Sex Workers Alliance explained that they experience “social exclusion” in the context of intense stigma and discrimination towards sex workers and LGBTI people because state actors and entities responsible for these services “shun and disassociate from these groups” to appease those in power and public opinion. Consequently, such groups were effectively excluded from relief services.¹⁵⁴

SEX WORKERS’ EXCLUSION FROM COVID-19 SUPPORT MEASURES

Sex workers face particular challenges that highlight the way criminalization intensifies the negative impact of the measures adopted to tackle the pandemic, in particular because of their exclusion from economic and social support.

Amnesty International received reports from many organizations in different countries that access to state support during the pandemic was either impossible or highly challenging for sex workers. Although state financial support – including income or unemployment benefit, emergency hardship funds, rent or mortgage relief and food parcels – was reported to be available for sex workers in several countries – including in Austria, Australia, France, Germany, Hong Kong, Kenya, Nigeria, Netherlands, Switzerland, Thailand and the UK¹⁵⁵ – the findings of Amnesty International’s survey highlight a link between the criminalization of sex workers and their exclusion from many forms of state assistance.

STRASS, reported: “Our entire community was left with almost no income overnight. Several colleagues committed suicide out of despair”.¹⁵⁶ A sex worker-led organization in the Dominican Republic reported that sex workers were not included in any state programme.¹⁵⁷ A sex worker-led organization in Panama explained: “Our work is not regulated or recognized so we had no other options but to stay at home and go hungry or wait for a family member to help us with some food and toiletries.”¹⁵⁸

¹⁴⁸Response to Amnesty International’s survey, Cambodia.

¹⁴⁹Responses to Amnesty International’s survey.

¹⁵⁰Responses to Amnesty International’s survey.

¹⁵¹Responses to Amnesty International’s survey.

¹⁵²Amnesty International Report 2020/21, entry on Peru [amnesty.org/en/location/americas/south-america/peru/report-peru/](https://www.amnesty.org/en/location/americas/south-america/peru/report-peru/)

¹⁵³Response to Amnesty International’s survey, Indonesia.

¹⁵⁴Response to Amnesty International’s survey, Zambia.

¹⁵⁵NSWP, COVID-19 Impact Survey – Africa; NSWP, Impact of COVID-19 on Sex Workers in Europe, [nswp.org/es/news/impact-covid-19-sex-workers-europe](https://www.nswp.org/es/news/impact-covid-19-sex-workers-europe)

¹⁵⁶Response to Amnesty International’s survey, France.

¹⁵⁷Response to Amnesty International’s survey, Dominican Republic.

¹⁵⁸Response to Amnesty International’s survey, Panama.

In Canada, where sex work is criminalized, the Canadian Alliance for Sex Work Law Reform reported that most sex workers were excluded from the Canada Emergency Response Benefit (CERB) and other emergency income supports. To access these federal programmes, applicants were required to register employment or self-employment income and to have filed their taxes, which required a social insurance number.¹⁵⁹ Considering this, many sex workers, particularly migrant sex workers, were hesitant to apply to these programmes given the potential unwanted attention from the authorities.¹⁶⁰

Despite repeated attempts from sex worker rights groups to find other avenues to get equivalent financial support to sex workers,¹⁶¹ the Canadian government ultimately refused to offer anything more than a mere fraction of the support available to other workers.¹⁶² The only suggestion made by the Canadian government was for local organizations working with sex workers to apply to the \$350 million Canadian dollars (US\$279 million) Emergency Community Support Fund, which many sex work organizations did not qualify for, as they were not registered as a non-profit and/or charity. This fund also did not cover income replacements, which meant that sex work organizations were not able to apply for funding to offer emergency income support directly to sex workers. When sex workers were excluded from these emergency income and community responses, sex workers across Canada created emergency responses funds to help pay for rent, food, families, and other basic and essential needs. While these community-raised funds were helpful, they often paled in comparison to the government support offered through the CERB and other benefits. Speaking to Amnesty International in April 2020, the Canadian Alliance for Sex Work Law Reform stated that “Providing income support to only part of the population continues to send the message that only certain lives matter.”¹⁶³

A key barrier to state support is where grants or programmes are administered by organizations that undermine sex workers’ rights and agency by requiring a “prohibitionist” approach. As one organization which represents sex workers in France explained: “Most of the aid is still conditional on a ‘pathway out of prostitution’, prohibitionist associations have received resources that we do not have.”¹⁶⁴

“We ended up getting some service vouchers to distribute after a year during the third lockdown. But it’s hard to talk about it as a positive thing because most of these were given to prohibitionist associations who mainly meet people who have stopped sex work, or want to stop, and therefore are less affected by the restrictions on sex work.”¹⁶⁵

STRASS

In Ireland, the Sex Workers Alliance Ireland (SWAI) set up a hardship fund during the pandemic that raised over €25,000 for sex workers in need. Despite having been initially excluded from government funding during the pandemic,¹⁶⁶ in May 2021 the SWAI was reported to have received a grant of €135,000 from an equality funding grant.¹⁶⁷

Challenges accessing relief funding were reported by sex workers in the UK, as funds were exclusively administered by organizations that define sex work as a form of violence against women.¹⁶⁸

¹⁵⁹The benefit of up to 2,000 Canadian dollars for a four-week period “was available to workers: residing in Canada, who were at least 15 years old; who stopped working because of reasons related to COVID-19 or were eligible for Employment Insurance regular or sickness benefits or have exhausted their Employment Insurance regular benefits or Employment Insurance fishing benefits between December 29, 2019 and October 3, 2020; who had employment and/or self-employment income of at least \$5,000 in 2019 or in the 12 months prior to the date of their application, and who did not quit their job voluntarily”, canada.ca/en/services/benefits/ei/ceb-application.html

¹⁶⁰For example, in a survey conducted by Butterfly (Asian and Migrant Sex Workers Support Network) in April 2020, 40% of respondents said they were not eligible or were afraid to apply for CERB because of criminal or undocumented work and immigration status. Recommendations from the survey included: ensuring that information sharing firewalls exist in such a way that information about CERB applicants is not shared with federal immigration enforcement; and modifying application procedures to address migrant workers’ fears when applying for government financial relief, butterflysw.org/_files/ugd/5bd754_bacd2f6ecc7b49ebb3614a8aef3c0f5f.pdf, p. 3 and p. 8.

¹⁶¹Including a May 2020 letter to the minister for women and gender equality asking for sex work organizations to have flexible funding mechanisms to allow for the distribution of funds directly to sex workers using pre-paid debit cards or other low-barrier methods, see <https://amnesty.ca/news/canada-must-protect-rights-sex-workers-during-covid-19-ensuring-access-emergency-income/>

¹⁶²Response to Amnesty International’s survey, Canada.

¹⁶³Amnesty International Canada, The rights of sex workers are being ignored in the COVID-19 response: In conversation with Jenn Clamen of the Canadian Alliance for Sex Work Law Reform, 23 April 2020, amnesty.ca/blog/womens-human-rights/rights-sex-workers-are-being-ignored-covid-19-response-conversation-jenn-clamen-canadian/

¹⁶⁴Response to Amnesty International’s survey, France.

¹⁶⁵Response to Amnesty International’s survey, France.

¹⁶⁶Lynzi Armstrong, COVID-19 illuminates discriminatory sex work policies, Open Democracy, 9 June 2020, opendemocracy.net/en/beyond-trafficking-and-slavery/covid-19-illuminates-discriminatory-sex-work-policies/

¹⁶⁷Colin Coyle, Sex workers succeed in soliciting state for funds after U-turn on ‘values’ clash, The Sunday Times, 16 May 2021, [thetimes.co.uk/article/sex-workers-succeed-in-soliciting-state-for-funds-after-u-turn-on-values-clash-hvsg8pk9v](https://www.thetimes.co.uk/article/sex-workers-succeed-in-soliciting-state-for-funds-after-u-turn-on-values-clash-hvsg8pk9v)

¹⁶⁸Lynzi Armstrong, COVID-19 illuminates discriminatory sex work policies, Open Democracy, 9 June 2020, opendemocracy.net/en/beyond-trafficking-and-slavery/covid-19-illuminates-discriminatory-sex-work-policies/, noting reports from SCOTPEP and Umbrella Lane.

In India, the National Network of Sex Workers (NNSW), an umbrella organization with over 100,000 sex worker members, emphasized that the criminalization of some aspects of sex work (such as soliciting, brothels and living off the earnings of sex work) and sex workers' fears of being raided and confined in shelter homes, usually in abysmal conditions, discouraged sex workers from coming forward to access relief services provided by the government.¹⁶⁹ They highlighted that access to government relief packages in India has historically been "contingent on giving up sex work" and, in general, states in India have not recognized sex workers as a special category requiring assistance during Covid-19.¹⁷⁰ In December 2021, the Supreme Court raised concerns that their previous orders to include sex workers in relief assistance had not been implemented.¹⁷¹ The Court ordered the national, state and local government to supply dry food rations to sex workers without insisting on the production of identity documents, and asked authorities "not to associate police authorities in the distribution of dry rations to the sex workers" and to ensure "the names of the sex workers [are] kept confidential".¹⁷²

LACK OF IDENTITY DOCUMENTS

Immigration status, and specifically a lack of identity documentation to prove regular migration status, was a barrier to accessing support reported by many organizations who responded to Amnesty International's survey. Thirteen organizations that took part in the survey reported that the services responsible for issuing documents had been designated as non-essential during the pandemic and were therefore closed or unavailable.¹⁷³ Obtaining identity documents during the pandemic was therefore particularly challenging and this was an obstacle to accessing state support and increased the risk of individuals who were unable to access properly gendered documentation being criminalized under public health measures.

In Argentina, an organization supporting sex workers reported that in order to receive state aid, migrants must have been resident for two years and have up-to-date documentation showing that all immigration procedures have been completed.¹⁷⁴ This meant that trans people in an irregular migration situation were excluded from state programmes since the processes for changing an individual's gender indicator on personal documentation first requires permanent residency. An organization providing legal aid assistance in Indonesia raised similar concerns, noting that many LGBTI people who had been forced to run away from family settings and did not have access to their identity documents were therefore unable to access state support.¹⁷⁵

Women sex workers in India have long reported challenges accessing identity documents,¹⁷⁶ which has resulted in their being denied Covid-19 relief packages provided by state governments.¹⁷⁷ These challenges were especially common for sex workers who were stranded during the pandemic in different Indian states, cities, towns and districts from the ones mentioned on official documents.¹⁷⁸

Some countries made it even more difficult for certain groups of people to obtain identity documents. On 1 August 2020, the government of Kyrgyzstan passed amendments to the Law of the Kyrgyz Republic which removed a clause that made it possible to change the gender marker for transgender people.¹⁷⁹ One organization based in Kyrgyzstan explained to Amnesty International that "It was difficult for trans people to move around during the quarantine. Citizens of the country had to carry an itinerary and an identity document. Trans people who did not change their documents faced transphobia and lack of understanding".¹⁸⁰ The Hungarian parliament passed similar legislation in May 2020, banning the legal recognition of transgender and intersex people and restricting them from registering their names and obtaining associated documents in accordance with their gender identity.¹⁸¹

¹⁶⁹NNSW, Issues of Sex Workers in the Times of Covid in India, 6 August 2020, nnswindia.org/upload/NNSW-submission-NHRC.pdf

¹⁷⁰NNSW cite a good practice example by the government of Maharashtra's Department of Women and Child which recognized sex workers as a special category requiring assistance during the Covid-19 pandemic, (through a circular dated 23 July 2020), see further NNSW, Issues of Sex Workers in the Times of Covid in India, 6 August 2020, nnswindia.org/upload/NNSW-submission-NHRC.pdf

¹⁷¹The Supreme Court appointed a Committee in 2011 with a mandate to advise on "issues relating to prevention of trafficking, rehabilitation of sex workers who wish to quit sex work and the conditions conducive for sex workers to live with dignity in accordance with Article 21 of the Constitution of India" as a result of Committee recommendations, the Supreme Court has passed Orders, including "to facilitate sex workers access to Voter Identity cards, ration cards, opening of bank accounts etc. relaxing the rules on verification of residential addresses" Supreme Court of India Criminal Appeal No(s). 135/2010 *Budhadev Karmaskar v The State of West Bengal & Ors.* 14 December 2021, pp. 7-8.

¹⁷²Supreme Court of India Criminal Appeal No(s). 135/2010 *Budhadev Karmaskar v The State of West Bengal & Ors.* 14 December 2021, p. 12.

¹⁷³Responses to Amnesty International's survey.

¹⁷⁴Response to Amnesty International's survey, Argentina.

¹⁷⁵Response to Amnesty International's survey, Indonesia.

¹⁷⁶As documented by the Supreme Court from 2011 onwards Supreme Court of India Criminal Appeal No(s). 135/2010 *Budhadev Karmaskar v The State of West Bengal & Ors.* 14 December 2021, pp. 7-8.

¹⁷⁷NNSW, Issues of Sex Workers in the Times of Covid in India, 6 August 2020, nnswindia.org/upload/NNSW-submission-NHRC.pdf

¹⁷⁸NNSW, Issues of Sex Workers in the Times of Covid in India, 6 August 2020, nnswindia.org/upload/NNSW-submission-NHRC.pdf

¹⁷⁹Responses to Amnesty International's survey, Kyrgyzstan.

¹⁸⁰Responses to Amnesty International's survey, Kyrgyzstan.

¹⁸¹Amnesty International, "Hungary: Decision to strip trans people of the right to legal gender recognition is 'step back into the dark ages'" 19 May 2020, [amnesty.org/en/latest/news/2020/05/hungary/](https://www.amnesty.org/en/latest/news/2020/05/hungary/)

STEPPING UP TO FILL THE GAPS

In the context of exclusion from many state initiatives, organizations and individuals have engaged in innovative efforts to support their communities. In Argentina, Ammar, the sex workers' union, set up a national emergency fund to support sex workers during the national quarantine, which included the delivery of bags of food and hygiene supplies to combat Covid-19 infection.¹⁸² Similar support was provided by Redtrasex in Panama.¹⁸³

The International Committee on the Rights of Sex Workers in Europe has documented the “crucial work done by community-led organizations to fill the gaps in health services; protect sex workers and their families from Covid-19, HIV and STIs; and support their safety and security.”¹⁸⁴ Initiatives included the “distribution of masks, sanitizers, and condoms, providing psychological support and basic necessities like food, and connecting and sharing housing and bills.”¹⁸⁵

Civil society organizations have also helped provide access to information, a crucial element for an effective public health response. Organizations supporting communities affected by unjust criminalization heavily relied on the internet and social media as vital for communication, support, information, and to share mental health and social support.¹⁸⁶ In India, for example, local trans rights activists supported communities by translating information into “local languages” and by sharing WhatsApp voice notes.¹⁸⁷

Sex worker-led organizations mobilized quickly, creating communication networks and information resources on working safely during Covid-19,¹⁸⁸ and providing emergency funds and mutual aid, including distribution of food kits and hygiene kits for members in Belgium, Brazil, Chile, India, Peru, Senegal, Thailand and the USA and the creation of emergency solidarity funds for sex workers in need in Argentina, Austria, Colombia,¹⁸⁹ Germany, Greece, Ireland, the Netherlands, Poland, Singapore, South Africa and Spain.¹⁹⁰

Since early 2020, INPUD and regional networks of people who use drugs around the world rapidly mobilized to develop online peer resources and educational materials, including harm reduction guidelines and other practical resources to protect the rights of people who use drugs during the pandemic.¹⁹¹ Drug user networks around Europe, for example, played key roles in scaling up access to naloxone and other harm reduction services through peer-to-peer distribution and showed great flexibility and creativity in providing mutual aid and self support during lockdowns.¹⁹²

In Spain, the not-for-profit organization Metzineres quickly increased their shelter spaces for women and gender non-conforming people who use drugs and were facing violence, and provided drug checking and naloxone on site and around the community to prevent overdoses and other drug-related harms.¹⁹³

States have a human rights obligation to allow for public participation in decision-making processes and ensure a proper consultation with civil society organizations in pandemic responses.¹⁹⁴ However, unjust criminalization often excludes community-based organizations from effectively participating in decision making and the development, monitoring and implementation of health and social policies, compounding disadvantages and discrimination. States must ensure the full and meaningful consultation of all individuals and groups whose rights and interests may be affected by all measures aimed at responding to or preparing for pandemics.

¹⁸²Gastón Rodríguez, *Trabajadoras sexuales denuncian el hostigamiento policial durante la pandemia* (Sex workers denounce police harassment during pandemic), La Nación, 23 November 2020, lanacion.com.ar/seguridad/trabajadoras-sexuales-denuncian-el-hostigamiento-policial-durante-la-pandemia146-x-140-nid2517838/

¹⁸³Responses to Amnesty International's survey, Argentina.

¹⁸⁴International Committee on the Rights of Sex Workers in Europe and the Sex Workers' Rights Advocacy Network, *COVID-19 crisis impact on access to health services for sex workers in Europe and Central Asia Assessment*, June 2020.

¹⁸⁵International Committee on the Rights of Sex Workers in Europe and the Sex Workers' Rights Advocacy Network, *COVID-19 crisis impact on access to health services for sex workers in Europe and Central Asia Assessment*, June 2020, www.nswp.org/sites/default/files/covid19_swan_icrse_final_umbrella_interactive.pdf

¹⁸⁶Responses to Amnesty International's survey.

¹⁸⁷Amnesty International India, *As The World Comes Together, India's Transgender Community Fights COVID-19 Alone*, <https://web.archive.org/web/20201128024310/https://amnesty.org.in/as-the-world-comes-together-indias-transgender-community-fights-covid-19-alone/>

¹⁸⁸NSWP, *Sex Worker Community Responses*, nswp.org/es/page/sex-worker-community-responses, International Committee on the Rights of Sex Workers in Europe, for example, organized “several webinars on crowdfunding, community support, and advocacy to allow activists to gain knowledge on topics crucial to providing an emergency response to the crisis; see also International Committee on the Rights of Sex Workers in Europe, *Sex workers on the frontline: The role of sex worker rights groups in providing support during the COVID-19 crisis in Europe*, March 2021.

¹⁸⁹NSWP, *Sex Worker Community Responses*, nswp.org/es/page/sex-worker-community-responses

¹⁹⁰Sex Workers' Rights Advocacy Network and International Committee on the Rights of Sex Workers in Europe, *COVID-19 crisis impact on access to health services for sex workers in Europe and Central Asia Assessment*, June 2020, noting “Condom and lubricant distribution, as well as needle exchange programs, were able to continue to some extent, mainly because of the efforts of community groups and civil society organisations/service providers and support of donors”.

¹⁹¹INPUD, *COVID-19 Crisis: Harm reduction resources for people who use drugs*, 2020 accessed 25 June 2020.

¹⁹²Mat Southwell, *Time for a new normal*, guest blog, Change Grow Live, 26 June 2020, changeorglive.org/news/time-new-normal-guest-blog-mat-southwell

¹⁹³Eurasian Harm Reduction Association, *Harm reduction service delivery to people who use drugs during a public health emergency: Examples from the COVID-19 pandemic in selected countries*, November 2020, English, <https://harmreductioneurasia.org/covid-19-practices-english/>

¹⁹⁴CESCR, General Comment No. 14, *The Right to the Highest Attainable Standard of Health* (Article 12), UN Doc. E/C.12/2000/4 para. 11.

LACK OF ADEQUATE HOUSING

“The government imposed a curfew, so people couldn’t be outside after 8pm. The government said stay home, but when you do not have a home, where are you supposed to go?”

Outreach worker at a safe injection site in Montreal, Canada.¹⁹⁵

Homelessness was already a global human rights crisis before the pandemic.¹⁹⁶ Estimates suggest that 1.6 billion people across the world were experiencing homelessness or inadequate housing in March 2020.¹⁹⁷

Access to adequate housing was quickly recognized by human rights and public health experts as a critical aspect of Covid-19 prevention measures that was necessary to ensure people could self-isolate, quarantine, comply with curfews and access essential services, including water and sanitation. However, governments’ failure to prioritize access to social protection for people living in insecure or inadequate housing or experiencing homelessness and to end forced evictions¹⁹⁸ meant that large numbers of people faced serious and sometimes insurmountable obstacles in complying with protective measures. This created a context in which people who are experiencing homelessness or living in inadequate housing and without adequate support were penalized for not complying with public health measures.

Instances in which people are fined or prosecuted for failing to comply with public health measures and lockdown orders because they are experiencing homelessness are punitive, show a complete disregard for international human rights standards on equality and non-discrimination and exacerbate the challenges they face.¹⁹⁹



Police make arrests as City of Toronto crews began dismantling a homeless encampment at Lamport Stadium as Ontario tightens restrictions to slow the spread of the COVID-19 pandemic. 19 May 2021, Canada.
Photo by Steve Russell/Toronto Star via Getty Images

¹⁹⁵Interview with Amnesty International on 18 August 2021.

¹⁹⁶“The CESCR Committee has clarified in its General Comment No. 4 (1991) that States must regardless of their state of development, take certain steps to realize the right to adequate housing immediately and that in this respect priority must be given to those social groups living in unfavourable conditions (para. 10 and 11).” tbiinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT/CESCR/GEC/4759&Lang=en

¹⁹⁷UN Department of Economic and Social Affairs, First-ever United Nations Resolution on Homelessness, 9 March 2020, www.un.org/development/desa/dspd/2020/03/resolution-homelessness/

¹⁹⁸CESCR General Comment No. 7 and Report of the UN Special Rapporteur on the Right to Adequate Housing, 2015, UN Doc. A/HRC/31/54, para. 49.

¹⁹⁹Amnesty International, *Covid-19 Crackdowns: Police Abuse and the Global Pandemic* (Index: ACT 30/3443/2020), 17 December 2020.

INTERNATIONAL HUMAN RIGHTS LAW AND STANDARDS: THE RIGHT TO ADEQUATE HOUSING

Criminalization of people experiencing homelessness is prohibited under various human rights instruments²⁰⁰ and is linked to various human rights abuses, including discrimination, ill-treatment²⁰¹ and violations of the right to life.²⁰² Many countries, however, have criminal laws or regulations (such as by-laws) that punish homelessness and/or related offences, such as begging, loitering and hawking.²⁰³ The African Commission on Human and Peoples' Rights have emphasized that laws that create petty offences are inconsistent with the principles of equality before the law and non-discrimination because they either target or have a disproportionate impact on people living in poverty and marginalized groups, among others.²⁰⁴ The African Commission further warned that the enforcement of these laws perpetuates the stigmatization of poverty by mandating a criminal justice response to what should be addressed by socio-economic policies.²⁰⁵

The UN Special Rapporteur on the Right to Adequate Housing has emphasized the injustice of an approach to homelessness that resorts to punitive measures, including fines or incarceration, for activities linked to basic survival, such as constructing a shelter out of cardboard.²⁰⁶ For example, in South Africa, the city of Cape Town's by-laws criminalize homelessness and related activities, including begging or lying down, sitting or standing in some public places. Breaches of these by-laws carry fines of up to ZAR 2,000 (approximately US\$130).²⁰⁷

The UN Human Rights Committee and the Committee on the Elimination of Racial Discrimination have both expressed concern regarding the criminalization of homelessness in the USA, including "laws that prohibit activities such

as loitering, camping, begging, and lying [down] in public spaces" and the disproportionately high number of people experiencing homelessness from racial and ethnic minorities.²⁰⁸

In the context of Covid-19, the UN Special Rapporteur on the Right to Adequate Housing has called on states to "Declare an end to all evictions of anyone, anywhere for any reason until the end of the pandemic and for a reasonable period of time thereafter".²⁰⁹ They also called on states to immediately provide accommodation to all people experiencing homelessness, living "rough" or on the streets with a view to transitioning them to permanent housing so that they do not return to a situation of homelessness once the pandemic is over.²¹⁰

²⁰⁰The UN Guiding Principles on Extreme Poverty and Human Rights, adopted by the Human Rights Council by consensus on 27 September 2012, in resolution 21/11, provide that states should "repeal and reform any laws that criminalize life-sustaining activities in public places, such as sleeping, begging, eating or performing personal hygiene activities", at Section B Rights to liberty and security of the person, para. 66(c), [ohchr.org/Documents/Publications/OHCHR_ExtremePovertyandHumanRights_EN.pdf](http://www.ohchr.org/Documents/Publications/OHCHR_ExtremePovertyandHumanRights_EN.pdf); and the UN Guidelines for the Implementation of the Right to Adequate Housing, Report of the UN Special Rapporteur on the right to adequate housing, 26 December 2019, ref A/HRC/43/43, Guideline No. 5. Eliminate homelessness in the shortest possible time and stop the criminalization of persons living in homelessness, recommends that states "repeal all laws and measures that criminalize or penalize homeless people or behaviour associated with being homeless, such as sleeping or eating in public spaces" at para 33(c), <http://www.undocs.org/A/HRC/43/43>

²⁰¹For example, see Human Rights Committee, Concluding observations on the fourth periodic report of the United States of America, 2014, UN Doc. CCPR/C/USA/CO/4 noting "criminalization [of homelessness] raises concerns of discrimination and cruel, inhuman or degrading treatment (Articles 2, 7, 9, 17 and 26)", para. 19.

²⁰²See Human Rights Committee, General comment No. 36 Article 6: right to life, para. 26: "The duty to protect life also implies that States parties should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity... [including] homelessness".

²⁰³Open Society Foundations, Why It's Time to Repeal Petty Offense Laws, May 2021, [opensocietyfoundations.org/explainers/why-it-s-time-to-repeal-petty-offense-laws](https://www.opensocietyfoundations.org/explainers/why-it-s-time-to-repeal-petty-offense-laws)

²⁰⁴ACHPR Principles on the Decriminalisation of Petty Offences in Africa, Para. 6.

²⁰⁵ACHPR Principles on the Decriminalisation of Petty Offences in Africa, Para. 7.

²⁰⁶Report of the UN Special Rapporteur on the right to adequate housing, 2015, UN Doc. A/HRC/31/54, paras. 23-24.

²⁰⁷The Campaign to Decriminalise Poverty and Status explains that in South Africa, the City of Cape Town's municipal by-laws [By-law relating to Streets, Public Places and the Prevention of Noise Nuisances (2007) and the Integrated Waste Management By-law (2009)] criminalize homelessness "by making it a crime for persons living on the street to conduct ordinary life-sustaining activities, like sleeping, camping, resting, bathing, erecting a shelter or keeping personal belongings in public. The by-laws also make it a crime to "beg", lie down, sit or even stand in a public place. The City has labelled these activities "anti-social behaviour" and has used these by-laws to issue fines of up to R2,000 [US\$130] against homeless people for unavoidable conduct. Everyday, these by-laws are used by the City's law enforcement officers to threaten, harass, arrest and, in some instances, forcefully displace homeless people, as well as confiscate what little possessions homeless people own.", [pettyoffences.org/homeless-challenge-by-laws/](https://www.pettyoffences.org/homeless-challenge-by-laws/)

²⁰⁸Committee on the Elimination of Racial Discrimination (CERD), Concluding observations on the combined seventh to ninth periodic reports of United States of America 2014, UN Doc. CERD/C/USA/CO/7-9, [undocs.org/A/HRC/38/33/ADD.1](http://www.undocs.org/A/HRC/38/33/ADD.1)

²⁰⁹COVID-19 Guidance Note, Protecting residents of informal settlements, Leilani Farha, Special Rapporteur on the right to adequate housing, updated 23 April 2020, [ohchr.org/Documents/Issues/Housing/SR_housing_COVID-19_Guidance_informal_settlements.pdf](https://www.ohchr.org/Documents/Issues/Housing/SR_housing_COVID-19_Guidance_informal_settlements.pdf)

²¹⁰Leilani Farha, Special Rapporteur on the right to adequate housing, COVID-19 Guidance Note, Protecting those living in homelessness, updated 28 April 2020, https://www.ohchr.org/sites/default/files/Documents/Issues/Housing/SR_housing_COVID-19_guidance_homeless.pdf

Some states did introduce temporary emergency accommodation measures, including the use of empty buildings, hotels and schools to house people, providing financial support for rent and imposing moratoriums on evictions to protect people at risk of homelessness.²¹¹ However, these initiatives have not been systemic and were often only temporary.²¹²

Many governments have used the inability of people facing precarious housing and homelessness to comply with Covid-19 measures to criminalize them further. Moreover, unjust criminalization has created additional barriers for people to access relief measures of temporary accommodation and eviction moratoriums.

Punitive approaches to homelessness intersect with other forms of unjust criminalization, stigmatization and social exclusion.²¹³ For example, LGBTI people, especially LGBTI youth, are over-represented in contexts of homelessness and precarious housing globally, linked to rejection and abuse by their own families and communities, among other factors.²¹⁴

Moreover, many people who experience homelessness also have complex and unmet health and social needs, including trauma and drug dependence, which are often worsened during periods of detention. According to one survey, at least 22% of people who inject drugs globally experienced homelessness or unstable housing in 2017, a number that reached 50% in North America.²¹⁵ People experiencing homelessness who use drugs in public have been at higher risk during the pandemic of police abuses, arrest and criminalization. A study in the city of San Diego, USA, revealed that almost 40% of all people in the city's jails were experiencing homelessness when arrested – 29% of them on drug possession charges.²¹⁶ A US study found that people

experiencing homelessness are as much as 11 times more likely to experience incarceration than those in the general population.²¹⁷

People who experience homelessness are also at risk of a range of human rights violations, including abuse from police officers and sexual violence. In a survey of sex workers and LGBTIQ+ human rights defenders by Front Line Defenders, homelessness was reported as one of the top priorities human rights defenders are forced to address as it directly “increases both the likelihood and impact of all other risks”.²¹⁸

PEOPLE LIVING IN STREET SITUATIONS AND AT RISK OF HOMELESSNESS

Homelessness is the result of state failure to protect and fulfil everyone's right to adequate housing and requires an urgent and immediate human rights response. The UN Special Rapporteur on the Right to Adequate Housing has clarified that homelessness, including during a crisis and irrespective of nationality or legal status, is a violation of human rights. Governments cannot suspend their core obligation to protect the right to adequate housing or the right to health and food even in a state of emergency.²¹⁹

For many people experiencing homelessness, the pandemic increased challenges posed by stigma, discrimination and exclusion. Organizations that took part in Amnesty International's survey reported that in countries including Cambodia, Costa Rica, India, Indonesia and Poland, many people living in street situations lacked information on how to prevent Covid-19, where to stay and how to keep safe,²²⁰ and shelters and support services were closed.²²¹ Exacerbating these challenges, many people who live in public spaces were fined for breaching curfews.²²² And where governments did take steps to provide accommodation, these

²¹¹FEANTSA, Homeless in Europe: Room in the Recovery, feantsa.org/public/user/Resources/magazine/2021/Winter/FEA_012-21_magazine_winter_v4.pdf

²¹²Amnesty International, Covid-19 and the Right to Housing, a Submission to the UN Special Rapporteur on the right to adequate housing (Index: IOR 40/2626/2020), June 2020, amnesty.org/en/documents/ior40/2626/2020/en/

²¹³Report of the UN Special Rapporteur on the right to adequate housing on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, 2015, UN Doc. A/HRC/31/54, para. 4. See also the CESCR General Comment No. 20 (2009) on non-discrimination in economic, social and cultural rights, noting the obligation that “States must combat discrimination, stigma and negative stereotyping of homeless people as a matter of urgency and provide legal protection from discrimination because of social and economic situation, which includes homelessness”, para. 35; Ndifuna Ukwazi, press statement: Eleven people who are homeless go to court to challenge Cape Town's discriminatory by-laws, pettyoffences.org/homeless-challenge-by-laws/

²¹⁴UN Campaign for LGBTI Rights, Free and Equal, unfe.org/safehome/; A. Abramovich et al., Investigating the impacts of COVID-19 among LGBTIQ2S youth experiencing homelessness, PLoS ONE 16(9): e0257693, 2021, doi.org/10.1371/journal.pone.0257693

²¹⁵Tetyana Vasylyeva, Pavlo Smyrnov, Steffanie Strathdee and Samuel R. Friedman, Challenges posed by COVID-19 to people who inject drugs and lessons from other outbreaks, Journal of the International AIDS Society, 19 July 2020, doi.org/10.1002/jia2.25583

²¹⁶Gary Warth, Study: Number of homeless people among county's jail population growing, The San Diego Union Tribune, 17 October 2019, sandiegouniontribune.com/news/homelessness/story/2019-10-17/study-more-arrested-people-becoming-homeless

²¹⁷National Law Center on Homelessness & Poverty, Housing not Handcuffs: Ending the Criminalization of Homelessness in U.S. Cities, homelesslaw.org/wp-content/uploads/2018/10/Housing-Not-Handcuffs.pdf, p. 38.

²¹⁸Front Line Defenders, LGBTIQ+ and Sex Worker Rights Defenders At Risk During Covid-19, December 2020, frontlinedefenders.org/sites/default/files/front_line_defenders_covid-19.pdf, p. 11.

²¹⁹COVID-19 Guidance Note, Protecting those living in homelessness Leilani Farha, UN Special Rapporteur on the right to adequate housing Updated 28 April 2020, ohchr.org/Documents/Issues/Housing/SR_housing_COVID-19_guidance_homeless.pdf

²²⁰Responses to Amnesty International's survey.

²²¹Responses to Amnesty International's survey.

²²²Responses to Amnesty International's survey.

measures were often made less effective because of the punitive and criminalizing approach adopted.

For example, between the beginning of the health emergency on 31 January and mid-June 2020, in Italy, Avvocato di Strada, a NGO providing legal assistance to people in need, documented at least 17 cases in which people experiencing homelessness were fined for breaching lockdown measures and restrictions on movement.²²³ In Spain, Amnesty International raised concerns regarding the disproportionate impact of the enforcement of lockdown measures on people experiencing homelessness.²²⁴ In France, media reports also showed that the police fined dozens of people experiencing homelessness for their inability to comply with lockdown measures.²²⁵ In the UK, police were empowered to enforce the government's "stay at home" guidance, issued on 23 March 2020 and although those who were homeless were to be excluded from the regulation on restriction of movement, a number of NGOs reported that homeless people were fined by the police.²²⁶

The use of hotel accommodation as a direct response to homelessness was reported in some high-income countries including Australia,²²⁷ Belgium²²⁸ and the UK²²⁹ and some states in the USA.²³⁰ In the USA, the federal government provided US\$1 billion to local governments to help people experiencing homelessness and those at risk of losing their shelter.²³¹ Despite the success of these interventions, they were generally time limited responses to the pandemic and were largely ended or reduced as restrictions eased.

People experiencing homelessness who use drugs reported increased challenges in accessing this type of emergency accommodation because of stringent restrictions, such as total bans on the use of drugs on the premises.²³² For example, the Canadian Alliance for Sex Work Law Reform reported that in Canada, although hotel rooms were opened across the country to provide accommodation for people at risk of homelessness, "sex workers using drugs or leaving the premises for cigarettes have been kicked out and not allowed back in."²³³

In many contexts, however, the provision of temporary shelters fell short of adequate standards and governments failed to protect people from human rights abuses. In South Africa, local governments were mandated to set up shelters for people experiencing homelessness during the national lockdown in March 2020 and given powers to "forcibly evacuate people" to such sites.²³⁴ The use of police to enforce these measures reportedly increased fears among people experiencing homelessness that they would be pressured to go to the camp.²³⁵ Furthermore, the authorities failed to consult local communities²³⁶ or the people targeted by the intervention. In addition, poor management and preparation of the site; lack of protection from winter weather and basic provisions, including healthcare, beds, toilets and sanitation facilities; and insufficient space to maintain the recommended physical distance combined to create a high risk of Covid-19 infection at the shelters, with health experts warning such approaches could create "the perfect petri dish to culture the pandemic".²³⁷ Similar concerns were reported in the USA.²³⁸

²²³Amnesty International phone interview with representative of avvocato di strada 14 May 2020. <https://www.avvocatodistrada.it/project/homeless-more-rights-2021/>

²²⁴Amnesty International, "España: Amnistía Internacional denuncia casos de arbitrariedad policial en la imposición de multas durante el estado de alarma" 8 May 2020, [es.https://www.amnesty.org/en-que-estamos/noticias/noticia/articulo/espana-amnistia-internacional-denuncia-casos-de-arbitrariedad-policial-en-la-imposicion-de-multas-du/](https://www.amnesty.org/en-que-estamos/noticias/noticia/articulo/espana-amnistia-internacional-denuncia-casos-de-arbitrariedad-policial-en-la-imposicion-de-multas-du/)

²²⁵Fabien Leboucq, "Est-ce que des SDF ont été verbalisés en France pour non-respect du confinement?", Liberation, (Have any homeless people been fined in France for not respecting the confinement?) 24 March 2020, https://www.liberation.fr/checknews/2020/03/24/est-ce-que-des-sdf-ont-ete-verbalises-en-france-pour-non-respect-du-confinement_1782742/ and Justine Boch, "Lyon: des réfugiés sans abris verbalisés pendant le confinement" (Lyon: homeless refugees fined during lockdown), Lyon Capitale, 28 May 2020, [lyoncapitale.fr/actualite/lyon-des-refugies-sans-abris-verbalises-pendant-le-confinement/](https://www.lyoncapitale.fr/actualite/lyon-des-refugies-sans-abris-verbalises-pendant-le-confinement/)

²²⁶Fair Trials, Beyond the emergency of the COVID-19 pandemic: Lessons for defence rights in Europe, 2020, [fairtrials.org/sites/default/files/publication_pdf/Beyond%20the%20emergency%20of%20the%20COVID-19%20pandemic.pdf](https://www.fairtrials.org/sites/default/files/publication_pdf/Beyond%20the%20emergency%20of%20the%20COVID-19%20pandemic.pdf), p. 34 and Fair Trials submission to the Justice Committee, Covid-19 and the criminal law, 9 April 2020 citing the UK Crown Prosecution Service Review, June 2020. See also Manchester Evening News, "Charge of breaching coronavirus lockdown law against drunk man withdrawn after court told it doesn't apply to the homeless", April 2020; See also Amnesty International, Policing the pandemic: Human rights violations in the enforcement of COVID-19 measures in Europe 2020.

²²⁷Victoria state government, Amendment to homelessness services guidelines and conditions of funding, [dhhs.vic.gov.au/housing-and-homelessness-coronavirus-covid-19](https://www.dhhs.vic.gov.au/housing-and-homelessness-coronavirus-covid-19)

²²⁸Mauro Striano, Hotels as Accommodation for Homeless People in Brussels: A Temporary Solution or a Herald of Longer-term Changes? in FEANTSA, Homeless in Europe: Room in the Recovery, [feantsa.org/public/user/Resources/magazine/2021/Winter/FEA_012-21_magazine_winter_v4.pdf](https://www.feantsa.org/public/user/Resources/magazine/2021/Winter/FEA_012-21_magazine_winter_v4.pdf)

²²⁹Wendy Wilson and Hannah Cromarty, "Coronavirus and help for rough sleepers" Briefing Paper 08867, House of Commons Library, pp 1, 25 June 2020, <https://commonslibrary.parliament.uk/research-briefings/cbp-9057/>; CRISIS, "£105m announced to keep people sleeping rough safe and off the streets during pandemic – Crisis response", <https://www.crisis.org.uk/about-us/media-centre/105m-announced-to-keep-people-sleeping-rough-safe-and-off-the-streets-during-pandemic-crisis-response/>, 24 June 2020.

²³⁰City of New York, Isolation Hotel Program for Those with COVID-19, 2021, www1.nyc.gov/site/helphnyc/get-help/covid-19-hotel-program.page; Baltimore City Health Department, Lord Baltimore Hotel, Triage, Respite, and Isolation (TRI) Center, www.icarol.info/ResultDetails.aspx?org=2046&agencynum=68805084

²³¹National Law Center on Homelessness & Poverty et al., Addressing the Impact of Covid-19 on People experiencing Homelessness, [homelesslaw.org/wp-content/uploads/2020/10/Addressing-the-Impact-of-COVID-19-on-People-Experiencing-Homelessness-Factsheet-UPDATED.pdf](https://www.homelesslaw.org/wp-content/uploads/2020/10/Addressing-the-Impact-of-COVID-19-on-People-Experiencing-Homelessness-Factsheet-UPDATED.pdf)

²³²Scott Greenstone, Renton City Council moves to shut down hotel housing homeless people, restrict future shelters, Seattle Times, 24 November 2020, [seattletimes.com/seattle-news/homeless/renton-city-council-moves-to-shut-down-hotel-housing-homeless-people-restrict-future-shelters/](https://www.seattletimes.com/seattle-news/homeless/renton-city-council-moves-to-shut-down-hotel-housing-homeless-people-restrict-future-shelters/); Jody Doherty-Cove, Homeless in Brighton hotel told toasters will be seized, The Argus, 23 February 2021, [theargus.co.uk/news/19110112.homeless-brighton-hotel-told-toasters-will-be-seized/](https://www.theargus.co.uk/news/19110112.homeless-brighton-hotel-told-toasters-will-be-seized/); Transform Drug Policy Foundation, Blog, Reality Check: Policing of People Who Use Drugs during the Covid-19 Pandemic, 31 March 2020, [transformdrugs.org/blog/reality-check-policing-of-people-who-use-drugs-during-the-covid-19-pandemic/](https://www.transformdrugs.org/blog/reality-check-policing-of-people-who-use-drugs-during-the-covid-19-pandemic/)

²³³Amnesty International Canada, "The rights of sex workers are being ignored in the COVID-19 response: In conversation with Jenn Clamen of the Canadian Alliance for Sex Work Law Reform", 23 April 2020, [amnesty.ca/blog/womens-human-rights/rights-sex-workers-are-being-ignored-covid-19-response-conversation-jenn-clamen-canadian/](https://www.amnesty.ca/blog/womens-human-rights/rights-sex-workers-are-being-ignored-covid-19-response-conversation-jenn-clamen-canadian/)

²³⁴Tessa Marcus et al., Harm reduction in an emergency response to homelessness during South Africa's COVID-19 lockdown, Harm Reduction Journal, Volume 17 Article 60 (2020), doi.org/10.1186/s12954-020-00404-0, noting the Disaster Management Act Regulations "simultaneously mandates the state to create temporary shelters for the homeless and authorizes enforcement officers to forcibly evacuate people to them in order to preserve their own and others' lives."

²³⁵The Sex Workers Education and Advocacy Taskforce (SWEAT), Sisonke, the National Movement of Sex Workers and Triangle Project, joint press statement: How did Robyn Montsumi die in the custody of Mowbray Police Station, 29 May 2020, [sweat.org.za/2020/05/29/press-statement-how-did-robyn-montsumi-die-in-the-custody-of-mowbray-police-station/](https://www.sweat.org.za/2020/05/29/press-statement-how-did-robyn-montsumi-die-in-the-custody-of-mowbray-police-station/)

²³⁶Suné Payne, Human Rights Commission report flays Cape Town's Strandfontein relocation site, The Daily Maverick, 29 April 2020, [dailymaverick.co.za/article/2020-04-29-human-rights-commission-report-flays-cape-towns-strandfontein-relocation-site/](https://www.dailymaverick.co.za/article/2020-04-29-human-rights-commission-report-flays-cape-towns-strandfontein-relocation-site/)

²³⁷Tessa Marcus et al., Harm reduction in an emergency response to homelessness during South Africa's COVID-19 lockdown, Harm Reduction Journal, Volume 17 Article 60 (2020), doi.org/10.1186/s12954-020-00404-0

²³⁸Juliana Nnoko-Mewanu and Clive Baldwin, Business As Usual Isn't Good Enough for World's Homeless, Human Rights Watch, 7 May 2020, [hrw.org/news/2020/05/07/business-usual-isnt-good-enough-worlds-homeless#](https://www.hrw.org/news/2020/05/07/business-usual-isnt-good-enough-worlds-homeless#)

Temporary camps also lacked social and harm reduction services for people who use drugs.²³⁹ A case study of the Caledonian Stadium mass temporary shelter in the City of Tshwane, South Africa, highlighted how such oversights resulted in a lack of services for hundreds of people struggling with withdrawal symptoms,²⁴⁰ which can cause severe pain and suffering if not alleviated by appropriate medical treatment and that in certain circumstances may amount to torture or other ill-treatment.²⁴¹ On the other hand, a successful intervention to provide opioid substitution therapy services at one temporary camp showed the possibility and necessity of providing shelter and healthcare services to homeless people and people who use drugs “in ‘normal’ times”.²⁴²

The use of government-run temporary shelters in the city of Manila in the Philippines also reportedly led to arbitrary detentions and other human rights abuses, with people being prevented from leaving and beaten by the shelter’s security guards.²⁴³

Grassroots organizations working with at-risk groups have frequently stepped up to fill the gaps in governments’ response to the pandemic. They provided shelters, food and healthcare for people in need.²⁴⁴ However, the negative economic impact of the pandemic on many NGOs providing community support has been significant.

In addition, while Covid-19 regulations related to physical distancing reduced access to homeless shelters and food provision, some states intensified the negative impact by taking an increasingly punitive approach towards homelessness. For

example, media reports documented 15 incidents in Miami, USA, where police officers destroyed tents and arrested over 300 people between March and April 2020.²⁴⁵ Moreover, the city of Miami introduced a new ordinance in 2020 prohibiting anyone from providing food without a permit to more than 25 people experiencing homelessness; those who breached the regulations faced fines of US\$250. The measure was justified by officials as intended to “help in keeping city streets clear of trash and debris that has traditionally been left after these feedings have occurred”.²⁴⁶ The Florida Justice Institute described the impact of this new regulation as “cruel and inhumane, given its proposed implementation at the height of the Covid-19 pandemic” and in the context of an economic crisis.²⁴⁷

INFORMAL SETTLEMENTS

People living in precarious housing and situations of poverty have faced enormous challenges complying with Covid-19 health and social regulations in the absence of the necessary material and other support. As a result, the impact of policing to enforce Covid-19 related measures has had a disproportionate impact on these marginalized communities. Amnesty International has documented several instances in which informal settlements and migrant camps have been heavily policed and where law enforcement officials have used unlawful force against inhabitants.²⁴⁸

In some countries, authorities have imposed discriminatory targeted mandatory quarantines on entire areas where specific marginalized communities live.²⁴⁹

²³⁹Tessa Marcus et al., Harm reduction in an emergency response to homelessness during South Africa’s COVID-19 lockdown, Harm Reduction Journal, Volume 17 Article 60 (2020)

²⁴⁰Tessa Marcus et al., Harm reduction in an emergency response to homelessness during South Africa’s COVID-19 lockdown, Harm Reduction Journal, Volume 17 Article 60 (2020), noting “As a consequence [of the intervention], a combined comprehensive approach to deliver services to these populations is being planned for long term implementation by the city, the university and the relevant partner organisations”.

²⁴¹Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, January 2009, UN Doc. A/HRC/10/44, para. 57.

²⁴²Tessa Marcus et al., Harm reduction in an emergency response to homelessness during South Africa’s COVID-19 lockdown, Harm Reduction Journal, Volume 17 Article 60 (2020).

²⁴³Alecs Ongcal, “We just need food”: Manila’s newly homeless tell stories of survival in lockdown, The Guardian photo essay, 8 October 2021, [theguardian.com/global-development/2021/oct/08/we-just-need-food-manilas-newly-homeless-tell-stories-of-survival-in-lockdown-photo-essay](https://www.theguardian.com/global-development/2021/oct/08/we-just-need-food-manilas-newly-homeless-tell-stories-of-survival-in-lockdown-photo-essay)

²⁴⁴Carlos Mesquita, Cape Town homeless share their Covid-19 pandemic stories, IOL, 2 June 2021, [iol.co.za/capeargus/opinion/cape-town-homeless-share-their-covid-19-pandemic-stories-269ddeb9-97cd-48eb-9db7-1ae20cf38c8d](https://www.iol.co.za/capeargus/opinion/cape-town-homeless-share-their-covid-19-pandemic-stories-269ddeb9-97cd-48eb-9db7-1ae20cf38c8d)

²⁴⁵Jerry Lannelli, Despite Coronavirus Warnings, Miami Area Police Are Still Arresting Hundreds of Homeless People, The Appeal, 7 May 2020, theappeal.org/miami-police-arrest-homeless/ as cited in homelesslaw.org/wp-content/uploads/2020/10/Addressing-the-Impact-of-COVID-19-on-People-Experiencing-Homelessness-Factsheet-UPDATED.pdf

²⁴⁶Francisco Alvarado, Miami Escalates Assault on Homeless People by Regulating Public Feedings, Miami New Times, 13 July 2020, [miaminewtimes.com/news/miami-ordinance-limits-public-feeding-of-homeless-11665011](https://miami.newtimes.com/news/miami-ordinance-limits-public-feeding-of-homeless-11665011)

²⁴⁷Open Letter, 25 June 2020, Florida Justice Institute and Other Stakeholders Oppose Proposed “Regulations for Street and Public Large Group Feedings” Ordinance, floridajusticeinstitute.org/our-work/florida-justice-institute-and-other-stakeholders-oppose-proposed-regulations-for-street-and-public-large-group-feedings-ordinance/

²⁴⁸Amnesty International, *Policing the pandemic: Human rights violations in the enforcement of COVID-19 measures in Europe 2020* (EUR 01/2511/2020), 24 June 2020; Amnesty International, *Covid-19 Crackdowns: Police Abuse and the Global Pandemic* (Index: ACT 30/3443/2020), 17 December 2020.

²⁴⁹Amnesty International, *Policing the pandemic: Human rights violations in the enforcement of COVID-19 measures in Europe* (EUR 01/2511/2020), 24 June 2020.

In Bulgaria, Cyprus, France, Greece, Hungary, Serbia and Slovakia, for example, this included Roma informal settlements, villages and specific areas of towns, as well as settlements where refugees, asylum seekers and migrants live, despite the lack of evidence that these communities posed a threat to public health.²⁵⁰

In Cambodia, in April 2021, during a third wave of Covid-19, the government designated city areas with severe Covid-19 outbreaks as “red zones” and prohibited people living in those areas from leaving their homes even to buy food and other basic necessities. These included people living in poverty and in poor housing so that entire families were confined to a single dwelling, often without running water or electricity.²⁵¹ These draconian measures brought the country to the brink of a humanitarian disaster and thousands of people were left desperate for food.²⁵² The government’s failure to prioritize access to basic necessities was compounded by an over-reliance on punitive enforcement of Covid-19 regulations, with people who disobeyed the administrative measures facing a range of excessive and disproportionate penalties, including prison sentences of up to 20 years and fines of up to 20 million riels (approximately US\$5,000).²⁵³

Any measures that deliberately target entire communities, without evidence that such communities present a danger for public health during the pandemic, are likely to be arbitrary and disproportionate, and may constitute discrimination.

FORCED EVICTIONS

Forced evictions are a violation of international human rights law and have a disproportionate impact on marginalized communities. Evictions should never take place without offering the affected people appropriate alternative housing. This becomes even more crucial during a pandemic when people who have lost their homes are exposed to an increased risk of contagion.

INTERNATIONAL HUMAN RIGHTS LAW AND STANDARDS: FORCED EVICTIONS

Forced eviction is a human rights violation. The right not to be forcibly evicted is an element of the right to adequate housing.²⁵⁴ The term “forced eviction” is defined by the CESCR as “the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection. The prohibition on forced evictions does not, however, apply to evictions carried out by force in accordance with the law and in conformity with the provisions of the International Covenants on Human Rights.”²⁵⁵

Forced eviction occurs when one or more people are removed:

- Against their will;
- From homes or land that they occupy either permanently or temporarily;
- Without being provided with alternative housing, compensation and resettlement or access to productive land;
- Whether or not they have legal title to the house or land (informal settlers or “squatters” may not be forcibly evicted even if they are illegally occupying land); or
- Without the provision of, and access to, appropriate forms of legal or other protection.

Forced evictions are often carried out by state officials. Sometimes non-state or private individuals or companies forcibly evict people, while the state either cooperates or fails to stop them. In these cases, the state is either directly or indirectly responsible.

²⁵⁰Amnesty International, *Policing the pandemic: Human rights violations in the enforcement of COVID-19 measures in Europe* (EUR 01/2511/2020), 24 June 2020; Amnesty International also reported that “Bulgaria and Slovakia put a number of Roma settlements under compulsory quarantine, arguing that such measures are necessary for the protection of public health and safety.” The organization raised concerns about the implementation and enforcement of the quarantine measures. Specifically, that the authorities have failed to provide the Roma families living in affected settlements with the necessary means to protect themselves and have also failed to ensure that they have adequate access to water, sanitation, food, hygiene products and healthcare. See Amnesty International, *Stigmatizing Quarantines of Roma Settlements in Slovakia and Bulgaria* (Index: EUR 01/2156/2020), 17 April 2020, [amnesty.org/en/documents/eur01/2156/2020/en/](https://www.amnesty.org/en/documents/eur01/2156/2020/en/)

²⁵¹Response to Amnesty International’s survey, Cambodia.

²⁵²Amnesty International, “Cambodia: Authorities must avert COVID-19 humanitarian crisis”, 30 April 2021, [amnesty.org/en/latest/press-release/2021/04/cambodia-humanitarian-crisis-covid/](https://www.amnesty.org/en/latest/press-release/2021/04/cambodia-humanitarian-crisis-covid/)

²⁵³Punishment under the Law on Measures to Prevent the Spread of COVID-19 and other Serious, Dangerous and Contagious Diseases (COVID-19 Law) was promulgated on 11 March 2021, Under Article 10, for example, disobeying administrative measures is punishable by up to five years imprisonment if it is deemed to seriously impact public health, see Amnesty International, “Cambodia: Authorities must avert COVID-19 humanitarian crisis”, 30 April 2021, [amnesty.org/en/latest/press-release/2021/04/cambodia-humanitarian-crisis-covid/](https://www.amnesty.org/en/latest/press-release/2021/04/cambodia-humanitarian-crisis-covid/)

²⁵⁴Article 11.1 of the International Covenant on Economic, Social and Cultural Rights recognizes “the right of everyone to an adequate standard of living... including adequate food, clothing and housing, and to the continuous improvement of living conditions”.

²⁵⁵CESCR General comment 7, The right to adequate housing (Article 11.1 of the Covenant): forced evictions, 1997, para. 3.

In violation of international human rights law and standards,²⁵⁶ law enforcement agencies have continued to carry out forced evictions during the pandemic. Amnesty International has reported forced evictions in Addis Ababa (Ethiopia), Nairobi (Kenya), Accra (Ghana), Calais (France), and Rome and Turin (Italy).²⁵⁷

Although some states issued moratoriums on evictions, these have ended in many places with disastrous consequences. In the UK, evictions increased sharply in the three months after the ban ended.²⁵⁸ In the USA, evictions resulted in thousands of avoidable deaths linked to Covid-19, as states that removed eviction bans in the summer of 2020 “had twice as many COVID-19 cases and five times as many deaths as their counterparts”.²⁵⁹

EXCLUSION FROM SECURE HOUSING PROTECTION

Amnesty International found unjust criminalization was a common barrier preventing people in marginalized situations from accessing the protection of moratoriums on evictions.

Sex workers and others in precarious work who do not have formal rental contracts reported being at risk of eviction.²⁶⁰ Many sex workers live in their places of work, including hotels, bars and other venues that were forced to close under Covid-19 regulations. Criminalization of sex work meant that many sex workers experienced evictions, police raids and a lack of housing – which in turn put them at further risk of violence and penalties for violating public health restrictions.²⁶¹

A ban on evictions for rent or mortgage arrears was reported as including sex workers in countries including Australia,²⁶² Ecuador²⁶³ and Nigeria.²⁶⁴ In many countries, however, despite formal protection against eviction, sex worker-led organizations reported that sex workers were at risk of homelessness.²⁶⁵ In France, a trade union organization representing sex workers reported that “hotel owners or managers have driven sex workers out of their homes.”²⁶⁶ In India, the NNSW reported that sex workers who were unable to pay their rent were forced to vacate their rented rooms amid nationwide lockdowns.²⁶⁷

²⁵⁶Forced evictions are prima facie incompatible with the requirements of Article 11.1 of the International Covenant on Economic, Social and Cultural Rights which recognizes “the right of everyone to an adequate standard of living... including adequate food, clothing and housing, and to the continuous improvement of living conditions” and Article 17.1 of the International Covenant on Civil and Political Rights which complements the right not to be forcibly evicted without adequate protection. That provision recognizes, among other things, the right to be protected against “arbitrary or unlawful interference” with one’s home. See further CESCR, General comment 7, The right to adequate housing (Article 11.1 of the Covenant): forced evictions, 1997.

²⁵⁷Amnesty International, Covid-19 Crackdowns: Police Abuse and the Global Pandemic, (Index: ACT 30/3443/2020), 17 December 2020, p. 19.

²⁵⁸Citizens Advice, Housing issues surge as end of the eviction ban nears 21 May 2021 citizensadvice.org.uk/cymraeg/amdanom-ni/about-us1/media/press-releases/housing-issues-surge-as-end-of-the-eviction-ban-nears/; Lucie Health, Landlord possessions increase by 207% following end of eviction ban, Inside Housing 15 November 2021 <https://www.insidehousing.co.uk/news/news/landlord-possessions-increase-by-207-following-end-of-eviction-ban-73348>

²⁵⁹Eviction Lab, Covid-19 Housing Policy Scorecard, 2020, evictionlab.org/covid-policy-scorecard/, and Courtney Lauren Anderson, A Pandemic Meets a Housing Crisis, Chapter 35 Covid-19 Policy Playbook IV: Legal Recommendations for a Safer, More Equitable Future, March 2021, <https://www.publichealthlawwatch.org/covid19-policy-playbook> pp. 187-188 citing Expiring Eviction Moratoriums and COVID-19 Incidence and Mortality, American Journal of Epidemiology, 2021, doi.org/10.1093/aje/kwab196 22 Aug 2021

²⁶⁰See for example International Committee on the Rights of Sex Workers in Europe, Sex workers on the frontline: The role of sex worker rights groups in providing support during the COVID-19 crisis in Europe, March 2021.

²⁶¹Responses to Amnesty International’s survey.

²⁶²NSWP COVID-19 Impact Survey – Asia and the Pacific.

²⁶³NSWP COVID-19 Impact Survey – Latin America.

²⁶⁴NSWP COVID-19 Impact Survey – Africa.

²⁶⁵Sabrina Sanchez, Aproxex, OTRAS, Spain quoted in International Committee on the Rights of Sex Workers in Europe, Sex workers on the frontline: The role of sex worker rights groups in providing support during the COVID-19 crisis in Europe, March 2021

²⁶⁶Response to Amnesty International’s survey, France.

²⁶⁷NSWP COVID-19 Impact Survey – Asia and the Pacific.

In the DRC, despite an official ban on evictions, in the town of Bukavu, on the border between the DRC, Rwanda and Burundi, where 65% of sex workers live in their place of work, sex workers faced eviction when business dried up.²⁶⁸ In one case, 36 sex workers were reportedly evicted without any consideration as to how they were to survive without a home or income during lockdown.²⁶⁹

The criminalization of sex work also created challenges for sex workers trying to support each other by sharing accommodation. The Sex Workers' Rights Advocacy Network reported that the risks of criminalization under laws that target third parties who facilitate the sale of sex increased during the pandemic.²⁷⁰ For example, sex workers in France, Kazakhstan and North Macedonia started to live and work in communal accommodation and support each other with rent and bills. However, laws criminalizing certain aspects of sex work, particularly working together in a private space, meant that they had to do so clandestinely, which in turn increased barriers to accessing health and support services.²⁷¹

A global survey by INPUD among people who use drugs found that 23% of respondents had been evicted or knew other people who use drugs who had been evicted during the pandemic.²⁷² People who use drugs have also faced particular challenges in paying their rent as their work dried up during the pandemic and found heightened difficulties in engaging in income-generating activities in the formal and informal economy during periods of lockdown and other restrictions.²⁷³

In the USA, evictions resulted in thousands of avoidable deaths linked to Covid-19, as states that removed eviction bans in the summer of 2020 “had twice as many COVID-19 cases and five times as many deaths as their counterparts”.²⁵⁹

²⁶⁸HODSAS, UMANDE and ACODHU-TS, Situation of Sex Workers in the Border Town of Bukavu/DRC after two weeks of total confinement due to Covid-19, Joint report, 2 April 2020.

²⁶⁹HODSAS, UMANDE and ACODHU-TS, Situation of Sex Workers in the Border Town of Bukavu/DRC after two weeks of total confinement due to Covid-19, Joint report, 2 April 2020.

²⁷⁰Sex Workers' Rights Advocacy Network and International Committee on the Rights of Sex Workers in Europe, COVID-19 crisis impact on access to health services for sex workers in Europe and Central Asia Assessment, June 2020.

²⁷¹Sex Workers' Rights Advocacy Network and International Committee on the Rights of Sex Workers in Europe, COVID-19 crisis impact on access to health services for sex workers in Europe and Central Asia Assessment, June 2020.

²⁷²INPUD, Online Survey on Covid-19 & People who Use Drugs Data Report 1, June 2020, p. 17, drugsandalcohol.ie/32290/1/INPUD_COVID-19_Survey_DataReport1.pdf

²⁷³Tetyana Vasylyeva, Pavlo Smyrnov, Steffanie Strathdee and Samuel R Friedman, Challenges posed by COVID-19 to people who inject drugs and lessons from other outbreaks, Journal of the International AIDS Society, 19 July 2020, doi.org/10.1002/jia2.25583

7. OBSTRUCTING THE RIGHT TO HEALTH

“Health inequities are a concern for all, and are avoidable, preventable and unjust. They are a cost to society, both within and beyond the health sector”.

WHO Build Back Fairer²⁷⁴

As countries pivoted their health systems to respond to Covid-19, healthcare not related to Covid-19 has been deprioritized, restricted or even become completely unavailable.²⁷⁵ While this has affected many sectors of society, the impact has been particularly acute on community-run services and outreach projects aimed at marginalized individuals.

In Canada, for example, medical clinics run in partnership with health authorities held at sex worker outreach projects were cancelled.²⁷⁶ Front Line Defenders reported similar concerns regarding widespread closures of community-run health clinics in East African countries following state directives mandating physical distance, quarantine or suspension of non-essential business.²⁷⁷

For communities experiencing marginalization, including as a result of unjust criminalization, this has created additional barriers to accessing health services and triggered health emergencies. Over two-thirds of the organizations who took part in Amnesty International’s survey reported that members of the communities they work with had experienced difficulties accessing health services specifically as a result of Covid-19 measures.²⁷⁸

For health services already stigmatized due to the link with unjust criminalization, Covid-19 measures created additional access challenges. For example, screening at entrances to health facilities in South Africa, where telemedicine²⁷⁹ options for abortion were not available in the public sector, created an

additional barrier to access safe abortion care for survivors of sexual violence, with reports indicating many survivors were opting to forego assistance rather than explain their reasons for needing health services.²⁸⁰

Unjust criminalization is a driver of poor health outcomes and is linked to violations of the right to health, among other rights. It creates and perpetuates marginalization, stigma and discrimination and can create barriers to health information, goods and services. For example, unjust criminalization can compromise individuals’ access to care by allowing, and in some cases encouraging, discrimination against them in the provision of services by healthcare workers.²⁸¹

Unjust criminalization also obstructs access to essential health services, goods and information, especially where they are regulated by criminal laws and legal restrictions that do not apply to other public health services. For example, the UN Special Rapporteur on the Right to Health has cautioned that “In their application, criminal laws and other legal restrictions may prevent access to certain sexual and reproductive health-care goods, such as contraceptive methods, directly outlaw a particular service, such as abortion, or ban the provision of sexual and reproductive information through school-based education programmes.”²⁸² Similarly, criminalization of the use and possession of drugs is a barrier to policy makers implementing and maintaining effective initiatives that respect the

²⁷⁴WHO #BuildBackFairer, cdn.who.int/media/docs/default-source/documents/social-determinants-of-health/who-multicountry-special-initiative-sdh-equity.pdf?sfvrsn=dac26a6d_22&download=true

²⁷⁵Sara Wallach et al. Address Exacerbated Health Disparities and Risks to LGBTQ+ Individuals during COVID-19, Health and Human Rights Journal Volume 22/2, December 2020, hrjournal.org/2020/08/address-exacerbated-health-disparities-and-risks-to-lgbtq-individuals-during-covid-19/, pp. 313-316.

²⁷⁶Response to Amnesty International’s survey, Canada.

²⁷⁷Front Line Defenders, LGBTQ+ and Sex Worker Rights: Defenders At Risk During Covid-19, December 2020, frontlinedefenders.org/sites/default/files/front_line_defenders_covid-19.pdf, p. 25.

²⁷⁸Responses to Amnesty International’s survey.

²⁷⁹The WHO define ‘Telemedicine’ and ‘Telehealth’ as interchangeable terms which refer to “the provision of healthcare services at a distance with communication conducted between healthcare providers seeking clinical guidance and support from other healthcare providers (provider-to-provider telemedicine); or conducted between remote healthcare users seeking health services and healthcare providers (client-to-provider telemedicine)” WHO Implementing telemedicine services during COVID-19 : guiding principles and considerations for a stepwise approach 13 November 2020 [who.int/publications/i/item/WPR-DSE-2020-032](https://publications/i/item/WPR-DSE-2020-032)

²⁸⁰Gender, Health and Justice Research Unit, University of Cape Town (UCT) submission to Dr Tlaleng Mofokeng, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 10 June 2021, ohchr.org/Documents/Issues/Health/sexual-reproductive-health-covid/CSOs/ngo.gbjru.pdf

²⁸¹Amnesty International, *Body Politics: a primer on criminalization of sexuality and reproduction*, (Index: POL 40/7763/2018), 12 March 2018, amnesty.org/en/documents/pol40/7763/2018/en, p. 65.

²⁸²Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, report on the interaction between criminal laws and other legal restrictions relating to sexual and reproductive health and the right to health, 2011, UN Doc. A/66/254, para. 14.

right to health of people who use drugs and better protect public health.

Barriers to health information, goods and services related to the criminalization of specific activities and decisions, such as sex work, drug use and possession, or abortion, have been exacerbated during the pandemic. Firstly, barriers linked to stigma and discrimination towards people targeted by unjust criminalization have continued and been intensified by the use of law enforcement as gatekeepers to healthcare and to enforce Covid-19 related measures.

Secondly, states have either been slow – or indeed have abjectly failed – to categorize certain types of healthcare as essential to ensure they remained accessible during the pandemic. There is a concern that this is linked to the fact that these health services – such as abortion, contraception, gender-affirming healthcare or harm reduction services for people who use drugs – are provided and regulated differently to other healthcare because they relate to decisions or activities that are criminalized.

Thirdly, in some contexts, states have exploited the pandemic to introduce regressive and discriminatory measures to further regulate or criminalize some healthcare services.

These three factors have taken a heavy toll, with the Covid-19 pandemic having a detrimental impact on the physical and mental health of millions of people around the world. Overall, 41 organizations that took part in Amnesty International’s survey reported concerns of deteriorating mental health and 33 of deteriorating physical health in the communities they work with.²⁸³

²⁸³Responses to Amnesty International’s survey.

²⁸⁴CESCR, General Comment No. 14: The Right to the Highest Attainable Standard of Health (Article 12), UN Doc. E/C.12/2000/4, para. 16.

²⁸⁵CESCR, General Comment No. 22 (2016) on the right to sexual and reproductive health (Article 12 of the International Covenant on Economic, Social and Cultural Rights), 2016, UN Doc. E/C.12/GC/22, para. 34.

INTERNATIONAL LAW AND STANDARDS: THE RIGHT TO HEALTH

The terms “the right to the highest attainable standard of health” and “the right to health” are often used as a short version of: “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health” – Article 12 of the International Covenant on Economic, Social and Cultural Rights.

The right to health must be understood as a right to the enjoyment of a variety of facilities, goods, services and conditions necessary for the realization of the highest attainable standard of health. The right to health includes also underlying social determinants of health such as access to safe water and sanitation, adequate housing, adequate supply of food and lack of discrimination including through removal of unjust criminalization which undermines the right to health. The CESCR also lists social factors essential to good health (the “social determinants of the right to health”) including environmental safety, education, economic development and gender equity (General Comment 14).²⁸⁴

The CESCR has also clarified that “States parties are under immediate obligation to eliminate discrimination against individuals and groups and to guarantee their equal right to sexual and reproductive health. This requires States to repeal or reform laws and policies that nullify or impair the ability of certain individuals and groups to realize their right to sexual and reproductive health. There exists a wide range of laws, policies and practices that undermine autonomy and right to equality and non-discrimination in the full enjoyment of the right to sexual and reproductive health, for example criminalization of abortion or restrictive abortion laws. States parties should also ensure that all individuals and groups have equal access to the full range of sexual and reproductive health information, goods and services, including by removing all barriers that particular groups may face.”²⁸⁵

While states cannot be held responsible for everybody’s personal health, as this is dependent on individual factors, they do have an obligation to respect, protect, and take steps towards realizing the right to health. In this sense, governments are required to put in place action plans and policies which will lead to better healthcare for all, without discrimination, in the shortest possible time.

DISCRIMINATION AND STIGMA: BARRIERS TO THE RIGHT TO HEALTH

Respondents to Amnesty International's survey reported additional fears among people who had had negative experiences when seeking healthcare before the pandemic because of stigma and discrimination. Other organizations raised similar concerns, for example, the NNSW reported that sex workers in India experienced an increase in verbal abuse and stigma from healthcare providers when accessing sexual and reproductive health services.²⁸⁶

Fear of discrimination, stigma and a lack of privacy and confidentiality were also reported to have "significantly deterred" LGBTI people from accessing healthcare.²⁸⁷ In a global online survey by the free gay social networking app, Hornet, in April and May 2020, over 4,000 respondents reported "being worried they would face discrimination or violence based on their sexual orientation and/or gender identity if they accessed government resources or healthcare".²⁸⁸

Fears over the lack of privacy and confidentiality have also been linked to the use of health surveillance technology to trace the contacts of people with Covid-19. For example, in May 2020 in South Korea a Covid-19 outbreak among club visitors in Itaewon, a nightlife district in Seoul, generated media reports that suggested unfounded links between infections and sexual orientation. Some reports in the media included personal information, such as the age, address, workplace,

occupation and commuting patterns of individuals, violating their right to privacy. Many LGBTI people reportedly subsequently avoided Covid-19 testing for fear of being outed. Following calls from civil society for the government to offer anonymous testing and make testing nationally available, the authorities revised their practice of publicizing personal information so that third parties could not use information such as location history to identify individuals.²⁸⁹

Covid-19 related measures and the way they have exacerbated certain forms of stigma have also been shown to take a heavy toll on mental health. Respondents to Amnesty International's survey reported that in Cambodia increased exposure to stigma, discrimination and gender-based violence among people who already experienced marginalization led to "mental health issues and a feeling of loneliness and desperation".²⁹⁰ The Zambia Sex Workers Alliance, a community-based organization supporting sex workers and LGBTI people in the country, highlighted concerns of "mental health issues and loss of self-worth and esteem by LGBT members forced to live with unsupportive family members" with incidents of shame, blackmail and harassment reported.²⁹¹ A legal aid organization in Indonesia highlighted similar concerns, noting that "many LGBTI people experienced an increase of psychological violence".²⁹² In India, the NNSW reported an increase in suicides and depression among sex workers linked to the closure of government mental health facilities.²⁹³

²⁸⁶NNSW, Issues of Sex Workers in the Times of Covid in India, 6 August 2020, nswindia.org/upload/NNSW-submission-NHRC.pdf

²⁸⁷Sara Wallach et al., Address Exacerbated Health Disparities and Risks to LGBTQ+ Individuals during COVID-19, Health and Human Rights Journal Volume 22/2, December 2020, hrjournal.org/2020/08/address-exacerbated-health-disparities-and-risks-to-lgbtq-individuals-during-covid-19/, pp. 313-316.

²⁸⁸See further Glenn-Milo Santos et al., Economic, Mental Health, HIV Prevention and HIV Treatment Impacts of COVID-19 and the COVID-19 Response on a Global Sample of Cisgender Gay Men and Other Men Who Have Sex with Men, AIDS and Behavior, 2021, pubmed.ncbi.nlm.nih.gov/32654021/ reporting the findings of a cross-sectional global survey implemented by the free gay social networking app, Hornet, from 16 April to 4 May 2020, over 4,000 users from more than 150 countries completed this survey.

²⁸⁹Amnesty International Report 2020/21.

²⁹⁰Response to Amnesty International's survey, Cambodia.

²⁹¹Response to Amnesty International's survey, Zambia.

²⁹²Response to Amnesty International's survey, Indonesia.

²⁹³NNSW, Issues of Sex Workers in the Times of Covid in India, 6 August 2020, nswindia.org/upload/NNSW-submission-NHRC.pdf

OBSTACLES TO ACCESSING HEALTH SERVICES RESTRICTED BY CRIMINAL LAW

“The punitive laws have not helped any of our communities.”

The Hidden Pockets Collective, a sexual and reproductive health organization working in India.²⁹⁴

Covid-19 related measures have had a specific negative impact on the provision of essential health services that are restricted by criminal law. In the context of Covid-19, this has contributed to failures by states to categorize such services – including abortion, harm reduction and gender-affirming hormone therapy – as essential health services and/or ensure services remained accessible.

In some countries, such as Indonesia, these services were unavailable before the pandemic,²⁹⁵ while in countries where services were available only in legally restricted circumstances, they were increasingly inaccessible. This exceptional situation, in which healthcare is regulated by criminal laws, has contributed to the failure of governments to categorize these services as essential from the outset to guarantee the realization of the right to health. This is a human rights failure that cannot be justified by the pandemic.²⁹⁶

OBSTACLES TO ACCESSING SEXUAL AND REPRODUCTIVE HEALTH SERVICES

Globally, the redirection of health services and Covid-19 related restrictions such as lockdowns have led experts to warn of “catastrophic losses for sexual and reproductive health”.²⁹⁷

Aware that previous public health emergencies have had a devastating impact on rates of unwanted pregnancies, maternal mortality and morbidity, and sexual violence, the WHO stressed from the outset of the Covid-19 pandemic that “sexual and reproductive care is an essential health service that needs to be made available to populations”.²⁹⁸ Abortion and contraception are essential healthcare and therefore states have an obligation to ensure services are available, accessible, acceptable and of adequate quality without discrimination or coercion, at all times, regardless of a pandemic.²⁹⁹

The WHO recommended that states maintain access to services and innovate where possible, for example through the use of telemedicine and self-management approaches.³⁰⁰ Abortion medications mifepristone and misoprostol are listed as essential medicines by the WHO.³⁰¹ Similarly, UN experts joined together to remind states of their human rights duty to ensure access to contraception.³⁰²

²⁹⁴Response to Amnesty International's survey, India.

²⁹⁵Response to Amnesty International's survey, Indonesia.

²⁹⁶Gender, Health and Justice Research Unit, University of Cape Town (UCT) submission to Dr Tlaleng Mofokeng, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 10 June 2021, ohchr.org/Documents/Issues/Health/sexual-reproductive-health-covid/CSOs/ngo.ghjru.pdf

²⁹⁷Guttman Institute, Estimates of the Potential Impact of the COVID-19 Pandemic on Sexual and Reproductive Health in Low- and Middle-Income Countries, 16 April 2020, guttman.org/journals/ipsrh/2020/04/estimates-potential-impact-covid-19-pandemic-sexual-and-reproductive-health

²⁹⁸WHO, Maintaining essential health services: Operational guidance for the COVID-19 context (Geneva: WHO, 2020), p. 29.

²⁹⁹Amnesty International, “Why abortion and contraception are essential healthcare”, 22 April 2020, [amnesty.org/en/latest/news/2020/04/abortion-contraception-essential/](https://www.amnesty.org/en/latest/news/2020/04/abortion-contraception-essential/); Statement by the UN expert on the right to health on the protection of people who use drugs during the COVID-19 pandemic, 16 April 2020, ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25797&LangID=E#_edn1

³⁰⁰WHO, Maintaining essential health services: Operational guidance for the COVID-19 context (Geneva: WHO, 2020), p. 29.

³⁰¹WHO, Expert Committee on the Selection and Use of Essential Medicines, The selection and use of essential medicines (Geneva: WHO, 2019).

³⁰²UN Human Rights Special Procedures, Tlaleng Mofokeng, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; members of the Working Group on discrimination against women and girls: Elizabeth Broderick (Chair), Melissa Upreti (Vice Chair), Alda Facio, Ivana Radačić, and Meskerem Geset Techane; Dubravka Simonovic, Special Rapporteur on violence against women, its causes and consequences, and Victor Madrigal-Borloz, Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, States must ensure access to contraceptives even during COVID-19 pandemic, UN experts say, 26 September 2020, cdn1.sph.harvard.edu/wp-content/uploads/sites/2469/2020/09/un-experts-contraception-abortion.pdf

Amnesty International found that many states have failed to ensure access to sexual and reproductive health information and services or to categorize them as essential services, which resulted in individuals in need of them, and in some cases healthcare workers, being unable to overcome lockdown restrictions in order to access or deliver them. This compounded pre-existing barriers to safe abortion services in many countries where access was already limited due to restrictive abortion laws.

Restrictions on freedom of movement, including lockdowns and curfews, were widely reported as having dangerous consequences for people in need of emergency healthcare or time-bound services related to pregnancy. In Zimbabwe, between March and June 2020, a total of 106 maternal deaths were recorded which were largely linked to movement restrictions which prevented many pregnant women from accessing health services.³⁰³

In some cases, stigma towards people in marginalized contexts was reported as a direct barrier to health services, especially where there were perceptions of high rates of Covid-19 in certain work sectors or communities. For example, an organization that took part in Amnesty International's survey reported that factory workers in Cambodia faced discrimination, as pregnant workers could not access medical care properly because both public and private hospitals refused to provide services to them due to the perception that factories have high rates of Covid-19.³⁰⁴

In India, the organization Hidden Pockets Collective, which advocates for sexual and reproductive rights, reported that the government initially failed to formally recognize abortion as an

essential health service with the result that "Service providers were telling women that abortion was 'not essential' – that abortion should not happen in a pandemic."³⁰⁵ In addition, the stigma related to abortion meant women felt unable to tell police why they were leaving their homes for healthcare during lockdown.³⁰⁶

“The punitive approach to the pandemic and the new laws affected women and increased stigma of abortion, and restricted access”.

Hidden Pockets Collective, India³⁰⁷

Marie Stopes International (MSI) also reported catastrophic barriers to sexual and reproductive health services in India, estimating “an additional 1 million unsafe abortions, an additional 650,000 unintended pregnancies and 2,600 maternal deaths, due to lack of access to MSI's India services alone”.³⁰⁸

During the pandemic, organizations globally have reported an increase in unplanned pregnancies, including among sexually active young people³⁰⁹ and as a result of increased sexual violence.³¹⁰ For example, civil society organizations in Kenya reported a steep rise in adolescent pregnancy.³¹¹ Strict Covid-19 related restrictions on movement and laws criminalizing abortion and adolescent sexuality³¹² led to government failures to ensure women's and girls' right to health, as they were unable to leave home or access sexual and reproductive health services and information via telehealth.

³⁰³Amnesty International Report 2020/21.

³⁰⁴Response to Amnesty International's survey, Cambodia.

³⁰⁵Amnesty International interview with Hidden Pockets Collective, India, 18 August 2021.

³⁰⁶Amnesty International interview with Hidden Pockets Collective, India, 18 August 2021.

³⁰⁷Amnesty International interview with Hidden Pockets Collective, India, 18 August 2021.

³⁰⁸Noting “India have faced a particularly strict lockdown, resulting in 1.3 million fewer women served than forecast, with 920,000 fewer safe abortion and post-abortion care services being delivered.” MSI, Resilience, adaptation and action: MSI's response to COVID-19 (2020).

³⁰⁹Responses to Amnesty International's survey.

³¹⁰See further the report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Tlaleng Mofokeng, Sexual and reproductive health rights: challenges and opportunities during the COVID-19 pandemic, July 2021, UN Doc. A/76/172, noting that “In El Salvador, the Ministry of Health recorded 258 pregnancies of girls, aged 10-14 years; and 6,577 pregnancies of girls and young women aged 15-19 years, from January to June 2020”.

³¹¹Plan International, press release, COVID-19: Lockdown linked to high number of unintended teen pregnancies in Kenya, 25 June 2020, reliefweb.int/report/kenya/covid-19-lockdown-linked-high-number-unintended-teen-pregnancies-kenya

³¹²In Kenya, abortion is criminalized and “Abortion is not permitted unless, in the opinion of a trained health professional, there is need for emergency treatment, or the life or health of the mother is in danger, or if permitted by any other written law” and under the Sexual Offences Act, consensual sex is criminalized before the age of 18, see further the Center for Reproductive Rights, Kenya's Abortion Provisions, reproductiverights.org/maps/provision/kenyas-abortion-provisions/

ACCESS TO TELEMEDICINE: A HUMAN RIGHTS IMPERATIVE

Human rights advocates have urged states to ensure access to telemedicine for abortion as a “human rights imperative”.³¹³

Several countries have implemented telemedicine for some abortion services, including France, Ireland, Nepal, South Africa³¹⁴ and the UK. The WHO issued updated guidelines endorsing telemedicine as a safe option for early abortions.³¹⁵ In the UK, the government implemented new guidelines on medical abortion in response to the Covid-19 pandemic in March 2020, allowing people wanting to end an early pregnancy to take the medication at home,³¹⁶ a measure that members of parliament voted to make permanent in March 2022.³¹⁷

The UK’s Royal College of Obstetricians and Gynaecologists and other expert institutions involved in evaluating the impact of the guidelines, found telemedicine abortion care in the UK to be equally safe and effective and as acceptable for patient privacy as medical abortion administered in-person at a health facility, with key advantages of earlier access to care.³¹⁸ MSI have similarly reported that telemedicine was “well received by both clients and providers, with 98% of clients rating their experience as good (14%) or very good (84%).”³¹⁹

In Nepal, MSI credit a coordinated response between government, NGOs and multilateral organizations resulting in strong guidelines with ensuring clients and health workers could gain temporary exemptions from Covid-19 related travel restrictions and allowing medical abortion services to be provided in clients’ homes.³²⁰

Despite the potential for telemedicine to increase the availability, accessibility and acceptability of safe abortion services, several countries have continued to create unnecessary barriers. In the USA, eight states carved out exceptions for abortion in their telemedicine policies and 19 states require in-person administration of abortion medication, thereby indirectly prohibiting remote care.³²¹ In South Africa, despite calls from civil society, the government failed to update guidelines to make provision for abortion services via telemedicine in the public sector.³²²

In some countries, the Covid-19 pandemic was exploited to increase restrictions on access to essential health services such as abortion. For example, in Colombia, organizations working to defend women’s rights reported that the barriers to accessing legal abortion services had increased since the beginning of the pandemic. In February 2022, the Constitutional Court decriminalized abortion in the first 24 weeks of pregnancy, following a petition from 91 civil society organizations and 134 activists which highlighted the high rates of unsafe and illegal abortion in Colombia and inequality in access to legal abortion as a result of the criminal sanctions on pregnant people and healthcare workers.³²³

In the USA, states including Texas and Ohio used Covid-19 regulations to prevent access to abortion services.³²⁴ Noting the negative trends in the Americas region, the Inter-American Commission on Human Rights raised concerns regarding “the adoption of reform bills that restrict access to pregnancy termination, including in cases of rape, incest, danger to the life of the pregnant woman or person in question, and obstetric emergencies. This has led to the criminalization and persecution of those who might need such services and those who advocate for access to sexual and reproductive health care services”.³²⁵

³¹³Jaime Todd-Gher and Payal K. Shah, Abortion in the context of COVID-19: a human rights imperative, *Sexual and Reproductive Health Matters*, 2020, DOI:10.1080/26410397.2020.1758394.

³¹⁴Melusi Dhlamini, Pills and phone calls: How COVID restrictions forced us to conduct abortions telephonically, 29 September 2020, *Bhekisisa Centre for Health Journalism*, bhekisisa.org/article/2020-09-29-pills-and-phone-calls-how-covid-restrictions-forced-us-to-conduct-abortions-telephonically/

³¹⁵WHO, Abortion Care Guideline, 2022, apps.who.int/iris/handle/10665/349316

³¹⁶Ilaria Bertini, The first-year anniversary of the application of telemedicine to early medical abortions in UK, 4 April 2021, *Journal of Medical Ethics*, blogs.bmj.com/medical-ethics/2021/04/04/the-first-year-anniversary-of-the-application-of-telemedicine-to-early-medical-abortions-in-uk/

³¹⁷Denis Campbell, “MPs vote to continue abortion ‘pills by post’ scheme in England”, *The Guardian*, 30 March 2022, [theguardian.com/world/2022/mar/30/mps-vote-to-continue-abortion-pills-by-post-scheme-in-england](https://www.theguardian.com/world/2022/mar/30/mps-vote-to-continue-abortion-pills-by-post-scheme-in-england)

³¹⁸Ara Aiken et al., Effectiveness, safety and acceptability of no-test medical abortion (termination of pregnancy) provided via telemedicine: a national cohort study, *International Journal of Obstetrics and Gynaecology*, 18 February 2021.

³¹⁹MSI, Resilience, adaptation and action: MSI’s response to COVID-19, 2020.

³²⁰MSI, Resilience, adaptation and action: MSI’s response to COVID-19, 2020.

³²¹Rachel Rebouché, Assuring Access to Abortion, Chapter 15, *Covid-19 Policy Playbook III: Legal Recommendations for a Safer, More Equitable Future*, March 2021, <https://www.publichealthlawwatch.org/covid19-policy-playbook-p117>.

³²²Gender, Health and Justice Research Unit, University of Cape Town (UCT) submission to Dr Tlaleng Mofokeng, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 10 June 2021, ohchr.org/Documents/Issues/Health/sexual-reproductive-health-covid/CSOs/ngo_ghjru.pdf, para. 24.

³²³After 24 weeks, legal abortion will continue to only be permitted in certain cases of a risk to the life or health of the pregnant person; the existence of life-threatening fetal malformations; or when the pregnancy is the result of rape, incest or non-consensual artificial insemination, Amnesty International, “Colombia: Decriminalization of abortion is a triumph for human rights”, 21 February 2022, [amnesty.org/en/latest/news/2022/02/colombia-decriminalization-abortion-triumph-human-rights/](https://www.amnesty.org/en/latest/news/2022/02/colombia-decriminalization-abortion-triumph-human-rights/)

³²⁴Amy Braunschweiger, Ohio, Texas Use COVID-19 to Stop Abortions: Abortion Access an Essential Component of Health Care, *Human Rights Watch*, 24 March 2020, [hrw.org/news/2020/03/24/ohio-texas-use-covid-19-stop-abortions](https://www.hrw.org/news/2020/03/24/ohio-texas-use-covid-19-stop-abortions)

³²⁵The Inter-American Commission on Human Rights, The IACHR expresses its concern over the adoption of regressive measures in the area of sexual and reproductive rights in the region, 11 August 2021, [oas.org/en/IACHR/jForm?File=/es/cidh/prensa/comunicados/2021/208.asp](https://www.oas.org/en/IACHR/jForm?File=/es/cidh/prensa/comunicados/2021/208.asp)

In Poland, under the cover of the Covid-19 crisis, a Constitutional Tribunal issued a ruling in October 2020 virtually banning legal abortion.³²⁶ This was followed in April 2020 and November 2021 by two draconian “citizens’ initiative” bills being brought before parliament, that sought to criminalize sexuality education, while falsely claiming a link between homosexuality and paedophilia, and ban access to abortion by equating abortion with killing.³²⁷ The bill on abortion was rejected in parliament in December 2021, whereas the bill to restrict sexuality education was sent to a parliamentary committee in April 2020 and has not been further discussed since. In Slovakia, a draconian bill which attempted to roll back access to abortion by increasing waiting periods and creating barriers to care³²⁸ was narrowly defeated in November 2021.

Such extreme regulatory frameworks have undermined the right to health of millions of people worldwide by denying them access to safe, legal abortion.

In some countries, governments used the pandemic as a pretext to restrict access to hormone therapy and other medical treatment for trans people.³³⁰ Organizations have highlighted how the withdrawal of hormone therapy has compounded stigma and discrimination and that “Isolation and inaccessibility of services, lead to deterioration in physical and mental health”.³³¹

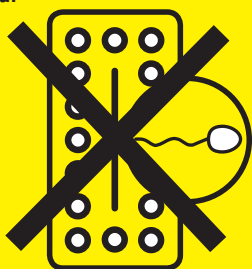
OBSTACLES TO ACCESSING HARM REDUCTION HEALTH SERVICES FOR PEOPLE WHO USE DRUGS

Harm reduction services, including opioid substitution therapy (OST), needle and syringe exchange programmes, the distribution of naloxone to effectively reverse the effects of an opioid overdose, and drug consumption rooms are essential for the protection of the right to health of people who use drugs. Early on in the pandemic, the UN Special Rapporteur on the Right to Health called on governments to acknowledge these harm reduction services as key services during the pandemic that should remain available, accessible, acceptable and of adequate quality without discrimination.³³²

Covid-19 measures had a severe impact on the accessibility and availability of harm reduction services as many states failed to ensure they were designated as essential services and remained available during the pandemic.³³³ These failures have had a devastating impact on the physical and mental health of people with drug dependence.³³⁴

Globally, the UN has estimated that 36 million people have a drug dependence that may require treatment services.³³⁵ The pandemic and the restrictions on freedom of movement introduced to curb its spread – such as border closures, travel bans and other movement restrictions – drove shortages in the supply of illicit drugs, increased adulteration of drugs and led to shifts to either more harmful substances and/or riskier methods of use, making harm reduction services ever more important.³³⁶

The Guttmacher Institute, a global sexual and reproductive health and rights research and policy organization estimates that just a 10% decline in access to contraceptive methods in low- and middle-income countries could “result in an additional 49 million women with an unmet need for modern contraceptives and an additional 15 million unintended pregnancies over the course of a year” and “an additional 3.3 million unsafe abortions” which could “result in an additional 1,000 maternal deaths.”³²⁹



³²⁶On 22 October 2020, The Constitutional Tribunal ruled that abortion on grounds of “severe and irreversible fetal defect or incurable illness that threatens the fetus’s life” was unconstitutional. The government brought the case to the tribunal after parliament failed to adopt legislation with the same effect. The ruling came into force on 27 January 2021, Amnesty International, “Poland’s Constitutional Tribunal Rolls Back Reproductive Rights”, 22 October 2022, [amnesty.org/en/latest/news/2020/10/polands-constitutional-tribunal-rolls-back-reproductive-rights/](https://www.amnesty.org/en/latest/news/2020/10/polands-constitutional-tribunal-rolls-back-reproductive-rights/)

³²⁷Amnesty International, “Poland: Attempt to equate abortion with killing must be rejected” 30 November 2021, [amnesty.org/en/latest/news/2021/11/poland-attempt-to-equate-abortion-with-killing-must-be-rejected/](https://www.amnesty.org/en/latest/news/2021/11/poland-attempt-to-equate-abortion-with-killing-must-be-rejected/); Amnesty International, “Poland: Abortion ban and regressive sexuality education laws must not be rushed through under cover of COVID-19”, 14 April 2020, [amnesty.org/en/latest/news/2020/04/poland/?utm_source=annual_report&utm_medium=pdf&utm_campaign=2021&utm_term=english](https://www.amnesty.org/en/latest/news/2020/04/poland/?utm_source=annual_report&utm_medium=pdf&utm_campaign=2021&utm_term=english)

³²⁸Amnesty International, Slovakia: Attempt to rollback access to abortion must be rejected, 10 November 2021, [amnesty.org/en/latest/news/2021/11/slovakia-attempt-to-rollback-access-to-abortion-must-be-rejected/](https://www.amnesty.org/en/latest/news/2021/11/slovakia-attempt-to-rollback-access-to-abortion-must-be-rejected/); Amnesty International, Slovakia: Draconian restrictions on abortion would endanger the lives of women and girls, 16 September 2020, [amnesty.org/en/latest/news/2020/09/slovakia-draconian-restrictions-on-abortion-would-endanger-the-lives-of-women-and-girls/](https://www.amnesty.org/en/latest/news/2020/09/slovakia-draconian-restrictions-on-abortion-would-endanger-the-lives-of-women-and-girls/)

³²⁹Guttmacher Institute, Estimates of the Potential Impact of the COVID-19 Pandemic on Sexual and Reproductive Health in Low- and Middle-Income Countries, 16 April 2020 [guttmacher.org/journals/ipshr/2020/04/estimates-potential-impact-covid-19-pandemic-sexual-and-reproductive-health](https://www.guttmacher.org/journals/ipshr/2020/04/estimates-potential-impact-covid-19-pandemic-sexual-and-reproductive-health)

³³⁰Amnesty International Report 2020/21.

³³¹Responses to Amnesty International’s survey.

³³²Statement by the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Dainius Pūras, on the protection of people who use drugs during the COVID-19 pandemic, 16 April 2020, [ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25797&LangID=E#_edn1](https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25797&LangID=E#_edn1)

³³³Responses to Amnesty International’s survey.

³³⁴Responses to Amnesty International’s survey.

³³⁵UNODC, World Drug Report 2021, Booklet 2, p. 2.

³³⁶Gary McKenna, COVID-19 effects hit illegal drug supply, put addicts in danger, Tri-City News, 1 April 2020, available at <https://bit.ly/3bduuVK>; Emma Reynolds, It’s stockpiling, but not as you know it. Why coronavirus is making people hoard illegal drugs, CNN, 5 April 2020, [cnn.it/2RBn2yY](https://www.cnn.it/2RBn2yY). See also, European Monitoring Centre for Drugs and Drug Addiction, EMCDDA update on the implications of COVID-19 for people who use drugs (PWUD) and drug service providers, 25 March 2020, available at bit.ly/2yjqK9p

However, the UN Office on Drugs and Crime (UNODC) reported that critical health services for people who use drugs were partially or completely disrupted in at least 84 countries.³³⁷

For example, a community worker at a safe injection site in Montreal, Canada, told Amnesty International that there was a sharp increase in overdoses from the day that the government declared a curfew.³³⁸ As she explained, once the borders were closed at the beginning of the pandemic, the price of drugs increased amid fears that there would be shortages. This led to most drugs, including cocaine, methamphetamine and speed being cut with fentanyl.³³⁹ In Nigeria, the Drug Harm Reduction Advocacy Network reported a doubling in the price of some drugs and a significant increase in needle and syringe sharing.³⁴⁰

In the USA and Canada, where overdose deaths were already alarmingly high amid an opioid crisis, new spikes were reported in deaths due to overdoses because of changes in drug supply, more people using alone or attempting suicide and directives to emergency responders in some jurisdictions limiting their ability to respond to overdose calls.³⁴¹ In the USA, the Centers for Disease Control and Prevention reported a 22.7% increase in the number of deaths due to drug overdose between May 2019 and May 2020, reaching a record 97,516 deaths.³⁴² By December 2020, the Los Angeles Times reported that an average of two people a day died of a drug overdose in San Francisco during 2020, an increase of nearly 30% compared to 2019 figures.³⁴³

Long-standing punitive and inflexible rules regulating access to OST, such as compulsory urine testing or daily witnessed ingestion that required people to physically attend clinics, exacerbated obstacles in accessing these key services. In Indonesia, for example, an organization providing legal aid support

to people who use drugs reported concerns over service providers requiring a Covid-19 negative test before accessing their services as this was creating new barriers to access harm reduction services.³⁴⁴

The additional costs, limited availability of transport and fears of surveillance have taken an additional toll on people who use drugs. In particular, the UNODC reported that the challenges that women and girls who use drugs face when trying to access health and harm reduction services, including high levels of stigmatization in the family and the community, were exacerbated during the initial stages of the pandemic.³⁴⁵

Lessons should be learned from the Covid-19 response to ensure harm reduction is regarded as essential healthcare³⁴⁶ and that proactive measures are built into pandemic planning. These must ensure continuity in access to these key services that guarantee the rights of people who use drugs. There is also an opportunity to embrace positive policy shifts drawing on innovative responses to harm reduction provision triggered by the Covid-19 pandemic to ensure that access to harm reduction care is easier and more effective and based on human rights beyond the pandemic.

As the UN has noted, the Covid-19 pandemic “triggered innovation in drug prevention and treatment services”.³⁴⁷ For example, Amnesty International has received reports of an increase in take-home or carry methadone and telemedicine appointments for OST.³⁴⁸ These changes mitigated the need for people to travel during the pandemic, but have been long called for interventions to meet the needs of people who use drugs.³⁴⁹ In Australia, for example, civil society organizations reported working with state authorities to ensure people who were quarantined or having to isolate could have their OST delivered.³⁵⁰

³³⁷UNODC, World Drug Report 2021, Booklet 5: Covid-19 and drugs, p. 12.

³³⁸Amnesty International interview with a community outreach worker from a community health centre in Canada on 18 August 2021.

³³⁹Christopher Curtis, Intervention worker’s overdose shows depths of tainted drug crisis, *Richochet Public-interest journalism*, 16 July 2021, ricochet.media/en/3730/intervention-workers-overdose-shows-depths-of-tainted-drug-crisis

³⁴⁰Drug Harm Reduction Advocacy Network Nigeria (DHRAN), Key Population Community Consultation Report 2021.

³⁴¹Judy Chang, Jake Agliata and Mauro Guarinieri, COVID-19 Enacting a “new normal” for people who use drugs. *International Journal of Drug Policy*, Vol. 83 2020, p. 3.

³⁴²USA Centers for Disease Control and Prevention, National Center for Health Statistics, Provisional Drug Overdose Death Counts, [cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm](https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm)

³⁴³Rachel Scheier, San Francisco struggles to stem ‘horrific’ uptick in opioid overdoses, drug abuse, *Los Angeles Times*, 31 December 2020, reporting that “Drug overdoses killed 621 people in the first 11 months of 2020, up from 441 in 2019 and 259 in 2018”, [latimes.com/california/story/2020-12-31/san-francisco-struggles-to-stem-horrific-uptick-in-opioid-overdoses-drug-abuse](https://www.latimes.com/california/story/2020-12-31/san-francisco-struggles-to-stem-horrific-uptick-in-opioid-overdoses-drug-abuse)

³⁴⁴Response to Amnesty International’s survey, Indonesia.

³⁴⁵UNODC, Covid-19 and drugs: Impact Outlook, in *World Drug Report 2021*, p. 70.

³⁴⁶Tessa Marcus et al., Harm reduction in an emergency response to homelessness during South Africa’s COVID-19 lockdown, *Harm Reduction Journal* (2020) Vol. 17, Article number: 60

³⁴⁷UNODC, Covid-19 and drugs: Impact Outlook in *World Drug Report 2021*, [unodc.org/res/wdr2021/field/WDR21_Booklet_1.pdf](https://www.unodc.org/res/wdr2021/field/WDR21_Booklet_1.pdf), p. 12.

³⁴⁸Response to Amnesty International’s survey.

³⁴⁹Corey S. Davis, Amy Judd Lieberman, Access to Treatment for Individuals with Opioid Use Disorder, Chapter 17 Covid-19 Policy Playbook III: Legal Recommendations for a Safer, More Equitable Future, March 2021, <https://www.publichealthlawwatch.org/covid19-policy-playbook> p.133.

³⁵⁰Response to Amnesty International’s survey, Australia.

In the USA, federal agencies approved simplified prescribing requirements and increased flexibility for people in need of opioid agonist medication³⁵¹ and take-home methadone doses.³⁵² Some US states implemented other innovative practices, including using vending machines to dispense opioid agonist medication and postal services to distribute sterile needles and syringes.³⁵³ Transport barriers to accessing medicines were also mitigated by the authorization of temporary off-site locations and law enforcement personnel to deliver methadone to existing patients.³⁵⁴ Telemedicine has also been found to work for harm reduction services. Other positive developments include orders to law enforcement not to arrest people on certain drug-related charges in countries including South Africa and the USA.³⁵⁵

Unfortunately, innovations have been isolated and have not been linked to broader policy reform opportunities. A review by UNAIDS of 16 countries in early 2020 found that none had allowed take-home doses of opioids in response to the Covid-19 pandemic, and South Africa was the sole country included in the review that permitted secondary distribution or distribution of large volumes in needle-syringe programmes.³⁵⁶

In addition, many of these positive changes were set to expire once the Covid-19 crisis eased.³⁵⁷ Amnesty International's research has found that the continued criminalization of the use and possession of drugs could be a barrier to policy makers implementing and maintaining effective initiatives that respect the right to health of people who use drugs and better protect public health.³⁵⁸ It is urgent that states make these legislative and regulatory changes permanent in order to remove barriers to evidence-based harm reduction and treatment services.³⁵⁹

³⁵¹Therapeutic drugs used for the management of opioid dependence, see WHO Opioid agonist pharmacotherapy used for the treatment of opioid dependence (maintenance).

³⁵²See further Corey Davis, Amy Judd Lieberman, Access to Treatment for Individuals with Opioid Use Disorder, Covid-19 Policy Playbook III: Legal Recommendations for a Safer, More Equitable Future, March 2021, noting that in the USA "In response to the COVID-19 epidemic, the U.S. Drug Enforcement Administration (DEA) and other federal agencies have taken steps to temporarily remove some legal and regulatory barriers to [effective opioid use disorder] medications", <https://www.publichealthlawwatch.org/covid19-policy-playbook> at p. 133.

³⁵³UN Office on Drugs and Crime, World Drug Report 2021, Executive Summary, [unodc.org/res/wdr2021/field/WDR21_Booklet_1.pdf](https://www.unodc.org/res/wdr2021/field/WDR21_Booklet_1.pdf), p. 28.

³⁵⁴Corey Davis, Amy Judd Lieberman, Access to Treatment for Individuals with Opioid Use Disorder, Covid-19 Policy Playbook III: Legal Recommendations for a Safer, More Equitable Future, March 2021, <https://www.publichealthlawwatch.org/covid19-policy-playbook> p.134.

³⁵⁵Brandon del Pozo and Leo Beletsky, No "back to normal" after COVID-19 for our failed drug policies, International Journal of Drug Policy, Volume 83, September 2020, <https://www.sciencedirect.com/science/article/pii/S0955395920302401> noting US "frontline personnel in a growing number of jurisdictions were instructed to limit drug arrests and other encounters with the public".

³⁵⁶UNAIDS, Rights in a Pandemic, Lockdowns, rights and lessons from HIV in the early response to COVID-19, 2020, p. 33. The countries reviewed were Argentina, Botswana, Brazil, Cameroon, the Central African Republic, Chile, Colombia, El Salvador, Ethiopia, Jamaica, Kenya, Malawi, Nigeria, Peru, South Africa and Uganda, see p. 14.

³⁵⁷Corey Davis, Amy Judd Lieberman, Access to Treatment for Individuals with Opioid Use Disorder, Covid-19 Policy Playbook III: Legal Recommendations for a Safer, More Equitable Future, March 2021, <https://www.publichealthlawwatch.org/covid19-policy-playbook> p. 135.

³⁵⁸Brandon del Pozo and Leo Beletsky, No "back to normal" after COVID-19 for our failed drug policies, International Journal of Drug Policy, Volume 83, September 2020, <https://www.sciencedirect.com/science/article/pii/S0955395920302401> noting "pathbreaking legal and policy responses have not been part of a larger, coordinated effort to address the nation's overdose crisis."

³⁵⁹Corey Davis, Amy Judd Lieberman, Access to Treatment for Individuals with Opioid Use Disorder, Covid-19 Policy Playbook III: Legal Recommendations for a Safer, More Equitable Future, March 2021, <https://www.publichealthlawwatch.org/covid19-policy-playbook> p.136. Other cited examples of positive developments at state level include "New York has implemented delivery of methadone to high-risk patients who are more than 50 years old who are permitted at least seven days of take-home doses, and Oregon has issued guidance for OTPs that closely mirrors that from SAMHSA [Substance Abuse and Mental Health Services Administration]. Virginia's Medicaid program has provided guidance to OTPs that includes eliminating penalties for missed urine drug screens, and West Virginia has suspended counselling requirements for OTP patients during the COVID-19 emergency."

8. GENDER-BASED VIOLENCE: RISKS RISE WHILE PROTECTIONS REMOVED

Rates of gender-based violence remain shockingly high worldwide, but Covid-19 control measures have exacerbated the situation. Government orders to “stay at home” and related Covid-19 restrictions on freedom of movement have had a devastating impact on the safety and security of people at risk of gender-based violence. Many women and LGBTI people were confined with abusers under lockdown.

Some governments took emergency steps to assist survivors. However, many others classified support for them, including sexual and reproductive health and counselling services, as non-essential, leading to their scaling down or suspension during lockdowns. This failure by states to ensure adequate access to services related to gender-based violence which were not categorized as “essential” during pandemic restrictions has had specific consequences for people targeted by unjust criminalization for whom seeking safety from violence may result in abuse or other harms from law enforcement. The risk of penalties for non-compliance with Covid-19 related restrictions added another layer of exclusion from protection, support services or justice.³⁶⁰

Such state failures have had catastrophic consequences. The majority (60%) of organizations who responded to Amnesty International’s survey reported that the people they work with had experienced gender-based violence during the period of pandemic measures.³⁶¹ For example, in South Africa, the Women’s Legal Centre reported that “[w]omen who sought to access legal services were directly affected as most organizations closed their office doors and moved their work to online platforms. Women who sought refuge from domestic violence within the home were restricted and confined to their homes with

their perpetrators and unable to seek legal advice and assistance”.³⁶² Similarly, the Hidden Pockets Collective reported that in India domestic violence rates increased “[and restrictions] on networking and mobility forced domestic violence victims to stay with the abuser.”³⁶³

Organizations reported that the closure of shelters and support services for LGBTI people at risk of violence also had a profound effect.³⁶⁴ Many LGBTI people who were isolated with hostile family members reported experiences of violence, harassment, intimidation and abuse.³⁶⁵ This was especially concerning in countries where same-sex conduct or expressions of gender identity are criminalized, where survivors face barriers to support and justice for fear of facing persecution and criminalization.³⁶⁶ For example, an organization in Tanzania reported that many LGBTI people “experienced shame, blackmail and harassment due to being outed or exposure brought about by confinement with their families”.³⁶⁷ In Kyrgyzstan, an organization reported concerns that many LGBTI people staying with relatives during the pandemic were victims of psychological and physical violence.³⁶⁸

Sex workers, already facing high rates of violence and lack of protection and justice before the Covid-19 pandemic,³⁶⁹ reported an increased risk of violence from clients, the police and other members of the public who blamed them for spreading Covid-19.³⁷⁰ Criminalization and policing of sex work has been found to triple sex workers’ chances of experiencing sexual or physical violence.³⁷¹ In India, the NNSW also documented that “Sex workers report facing higher levels of abuse (verbal, and physical) from their families due to their inability to bring in money during this period.”³⁷²

³⁶⁰Amnesty International, *Body Politics: A Primer on Criminalization of Sexuality and Reproduction* (Index: POL 40/7763/2018), 12 March 2018.

³⁶¹Responses to Amnesty International’s survey.

³⁶²Response to Amnesty International’s survey, South Africa.

³⁶³Response to Amnesty International’s survey, India.

³⁶⁴Responses to Amnesty International’s survey.

³⁶⁵Outright Action International, Domestic violence and COVID-19, 31 March 2020, outrightinternational.org/content/domestic-violence-and-covid-19; Amnesty International, “Pride is a timely reminder that LGBTI people must not be left out of COVID-19 response”, 26 June 2020, [amnesty.org/en/latest/news/2020/06/pride-lgbti-people-excluded-from-covid-19-response/](https://www.amnesty.org/en/latest/news/2020/06/pride-lgbti-people-excluded-from-covid-19-response/); Amnesty International, “Governments have failed to protect trans people from murder – and from COVID-19”, 20 November 2020, [amnesty.org/en/latest/news/2020/11/governments-have-failed-to-protect-trans-people-from-murder-and-from-covid-19/](https://www.amnesty.org/en/latest/news/2020/11/governments-have-failed-to-protect-trans-people-from-murder-and-from-covid-19/); UNAIDS, Six Concrete Measures to Support Women and Girls in all their Diversity in the Context of the Covid-19 Pandemic, 2020, [unaids.org/sites/default/files/media_asset/women-girls-covid19_en.pdf](https://www.unaids.org/sites/default/files/media_asset/women-girls-covid19_en.pdf)

³⁶⁶Amnesty International, Protecting the human rights of LGBTI people during the Covid-19 Pandemic (Index: POL 30/2340/2020), 19 June 2020, [amnesty.be/IMG/pdf/2020_protecting_the_human_rights_of_lgbti_people_during_the_covid-19_pandemic_.pdf](https://www.amnesty.be/IMG/pdf/2020_protecting_the_human_rights_of_lgbti_people_during_the_covid-19_pandemic_.pdf)

³⁶⁷Responses to Amnesty International’s survey.

³⁶⁸Response to Amnesty International’s survey, Kyrgyzstan.

³⁶⁹Amnesty International, *Include Sex Workers in the Covid-19 Response: Public Statement* (Index: POL 30/2788/2020), 28 July 2020, [amnesty.org/en/documents/pol30/2788/2020/en/](https://www.amnesty.org/en/documents/pol30/2788/2020/en/)

³⁷⁰Nita Bhalla, Africa’s sex workers are being battered by lockdowns, clients and even the police, Business Day, 4 June 2020, [businesslive.co.za/bd/world/africa/2020-06-04-africas-sex-workers-are-being-battered-by-lockdowns-clients-and-even-the-police/](https://www.businesslive.co.za/bd/world/africa/2020-06-04-africas-sex-workers-are-being-battered-by-lockdowns-clients-and-even-the-police/)

³⁷¹Lucy Platt et al., Associations between sex work laws and sex workers’ health: A systematic review and meta-analysis of quantitative and qualitative studies, *PLoS Med*, December 2018; 15(12), [ncbi.nlm.nih.gov/pmc/articles/PMC6289426/](https://doi.org/10.1371/journal.pmed.1002626)

³⁷²NNSW, Issues of Sex Workers in the Times of Covid in India, 6 August 2020, [nnswindia.org/upload/NNSW-submission-NHRC.pdf](https://www.nnswindia.org/upload/NNSW-submission-NHRC.pdf)

9. CONCLUSIONS AND RECOMMENDATIONS

Around the world, many governments have opted for coercive approaches in their response to the Covid-19 pandemic, rather than measures rooted in respect for human rights that emphasize empowerment and meaningful community engagement, including policies that build trust and solidarity. They have relied widely on punitive measures, including penalties such as fines or prison sentences, to enforce public health restrictions and stop the spread of Covid-19.

Such punitive approaches to public health have frequently created additional obstacles to accessing services essential to protect the right to health, especially for groups that already face discrimination, stigma and unjust criminalization. The impact has often been to drive people to turn to riskier options to meet essential needs and to prevent the provision of effective health services, resulting in preventable illness, deaths and a wide array of human rights abuses.

This report documents how the Covid-19 pandemic has exposed what those in the fight for human rights already knew: that those who are marginalized – including due to unjust criminalization – often face the greatest barriers to accessing their rights.

Some powers granted under Covid-19 regulations have breached international human rights law and standards by failing to comply with the principles of legality, necessity, proportionality and non-discrimination. Sometimes, regulations have granted broad and vague powers that have been implemented in a discriminatory manner against marginalized groups.

The introduction and enforcement of punitive and coercive measures have often targeted disadvantaged communities, restricting their access to rights and essential services and goods.

Indeed, some states have used the pandemic to roll back rights, resulting in increased stigma, fear and distrust in the authorities. Such punitive and coercive measures have further exacerbated pre-existing human rights concerns and exposed structural inequality and discrimination, recurrent patterns of abuse faced by marginalized communities and highlighted the lack of accountability for such abuses.

Many of those most gravely impacted by this punitive approach already had poorer health outcomes because of historical marginalization in the allocation of resources and discrimination in access to healthcare, employment and housing. Widespread reliance on punitive measures further disadvantaged them, by imposing measures that were impractical or impossible for them to comply with.

Moreover, as a result of the way in which identities and certain activities, status and decisions have been unjustly criminalized, many individuals experienced further human rights violations and abuses during the pandemic, including harassment, intimidation, arbitrary arrests and killings by state and non-state actors. Punitive responses to Covid-19 have also fostered and perpetuated stigma and discrimination against communities who were already at risk of criminalization, and have also created new barriers to accessing support measures and undermined the right to health and adequate housing.

Pandemic responses must ensure that the most marginalized, including groups affected by unjust criminalization, are included in state responses and protected. States must end unjust criminalization, which has, among others, proved to undermine the right to health and non-discrimination, in order to effectively ensure their protection and advance public health goals.

RECOMMENDATIONS TO STATES

1. ADOPT A HUMAN RIGHTS

COMPLIANT APPROACH

Ensure that all legal, policy and other regulatory pandemic measures which result in restrictions of human rights are provided for by a law formulated with sufficient precision and are necessary and proportionate to the purpose of protecting public health or another legitimate purpose under international human rights law. Penalties for failing to comply with public health restrictions must be a last resort and the least intrusive instrument among those which might achieve the desired result.

Review the continuing consequences of the measures adopted even after they are lifted and take concrete steps to redress harm to those who have suffered injustice during or in consequence of the measures adopted during the crisis.

Refrain from enacting or implementing criminal sanctions to enforce or achieve public health goals.

Prioritize policies that enable and support people to comply voluntarily with the required public health measures.

Identify the impact of public health restrictions on people's livelihoods when designing responses to public health emergencies which could have a negative impact on a range of human rights including the rights to food, housing, water, sanitation, health and education. Take appropriate action to mitigate these to the extent possible, including by modifying measures introduced wherever possible to account for people's specific circumstances.

Take precautions to ensure that the enforcement of public health responses do not specifically or disproportionately target or otherwise impact those who are already subject to discrimination and stigmatization or affected by unjust criminalization.

Ensure that marginalized communities and individuals are not penalized or otherwise sanctioned solely for not having the necessary resources and conditions to comply with public health restrictions.

2. ENSURE THE RIGHT TO HEALTH

Recognize and define sexual and reproductive healthcare, goods and information; and gender-affirming care; opioid substitution therapy and other harm reduction services, as "essential healthcare". Ensure that all these services remain adequately resourced, accessible and available throughout the public health emergency.

Expand and improve access to telemedicine services, including by removing undue restrictions and improving access in remote communities and those living in poverty.

Ensure access to healthcare regardless of immigration status, ID requirements or other discriminatory barriers.

Ensure access to services for survivors of gender-based violence.

3. ENSURE THE RIGHT TO ACCESS TO INFORMATION

Provide people affected by marginalization, including unjust criminalization, with free and unhindered access to reliable, objective and evidence-based information about the public health situation and the public health measures implemented in response, in relevant languages for the targeted communities and in accessible formats to ensure they are able to comply with any restriction and meaningfully participate in the design, implementation, monitoring and evaluation of such measures.

4. ENSURE PARTICIPATION BY MARGINALIZED GROUPS

Develop clear guidelines to ensure the full, equal, meaningful and effective participation of people affected by public health policies, especially those unjustly criminalized, through civil society organizations and community representatives in decision making and the development, monitoring and implementation of all plans related to pandemic responses at all levels.

5. ENSURE IMPLEMENTATION OF PUBLIC HEALTH MEASURES DOES NOT HAVE A DISPROPORTIONATE IMPACT ON MARGINALIZED GROUPS

Ensure that law enforcement officials, to the extent possible, exercise restraint in the enforcement of public health and social regulations, including lockdowns, on people who are particularly at risk of being seriously affected by regulations or unable to comply with them.

Issue clear guidance to law enforcement officials to refrain from using force to enforce public health restrictions when people act in breach of those provisions in order to meet their basic needs for survival. In no circumstances should they resort to the use of force as a means of punishment at any time, including for violations of lockdown regulations.

Ensure that law enforcement powers are narrowly defined, proportionate to and necessary for a legitimate aim and that orders, rules, policies and practices by law enforcement officials can be reviewable by a court of law.

6. END UNJUST CRIMINALIZATION

Repeal existing laws and refrain from introducing new laws that criminalize or penalize directly or in practice the various actions and decisions of people who are marginalized and that have a negative impact on their human rights, particularly their right to health.

Remove abortion from the criminal law and ensure that criminal or other punitive laws, policies and practices are not applied to those seeking or obtaining an abortion or to healthcare providers and others solely for having performed abortions or assisted or facilitated abortion medication or services.

Immediately drop criminal charges, expunge resulting criminal records and release all individuals who have been imprisoned for having an abortion, miscarriage, or another pregnancy related complication or for having procured abortion medication.

Decriminalize same-sex relationships and sexual activity and repeal all laws and remove any policies that allow for the punishment, arrest and/or detention of individuals on the basis of sexual orientation, gender identity or expression.

Immediately drop criminal charges, expunge resulting criminal records and release all individuals who have been imprisoned on the grounds of their real or perceived sexual orientation, gender identity or expression.

Allow individuals to change their legal name and gender, including the gender markers on official documents issued by the state, through a quick, accessible, and transparent procedure and in accordance with the individual's sense of gender identity and ensure that health services are accessible to trans people, without discrimination.

CONCLUSIONS AND RECOMMENDATIONS TO STATES

Repeal existing laws and refrain from introducing new laws that criminalize or penalize directly or in practice the consensual exchange of sexual services between adults for remuneration.

Abolish laws, policies and measures that criminalize people for experiencing or being at risk of homelessness or for activities associated with homelessness, such as sleeping or eating in public spaces. Prohibit the forced expulsion of people experiencing homelessness from public spaces.

Decriminalize the use and possession of drugs for personal use and expand health and other social services, including harm reduction and drug treatment, to address the risks related to drugs.

Include and prioritize the participation in decision making of communities that have been affected by unjust criminalization when developing, implementing or revising public health responses to guarantee the appropriate consideration of the lived realities of people most affected by such laws.

7. ELIMINATE STIGMA AND DISCRIMINATION

Publicly condemn discriminatory acts and statements and ensure state officials are held accountable for making discriminatory statements against marginalized communities.

Take action to ensure people belonging to marginalized communities and/or affected by unjust criminalization, including sex workers, people who use drugs, LGBTI people and people in need of abortion, are not subjected to hate crimes or hate speech due to an alleged or perceived link with the pandemic.

Ensure that victims of hate crimes have access to remedy and that no statements are made by public officials which encourage the public to associate specific groups of people with a pandemic or other public health crisis.

Ensure public health measures do not discriminate against any individual or community, either by targeting them directly in a discriminatory manner or by having a disproportionate adverse impact on them.

Ensure that protections against discrimination are embedded in all measures to enforce public health responses.

8. ENSURE OVERSIGHT AND ACCOUNTABILITY FOR HUMAN RIGHTS VIOLATIONS

Accompany any declaration of states of emergency for the protection of public health with robust oversight and accountability mechanisms that ensure the right to remedy for victims of human rights violations.

Ensure that all alleged incidents of human rights violations perpetrated by law enforcement agencies, or those carrying out law enforcement roles, are thoroughly, effectively and independently investigated, and that, where applicable, those responsible are brought to justice in fair trials without recourse to the death penalty. Implement effective mechanisms to provide for adequate reparations for victims of such violations.

9. ENSURE BASIC SOCIAL SECURITY GUARANTEES

Ensure that everyone is supported and empowered to act in accordance with public health and safety requirements and change the discriminatory practices used to prevent people affected by unjust criminalization from accessing social services and shelter.

Provide targeted support to people and groups particularly affected by public health measures, in particular those working in the informal sector such as sex workers, those who have no health insurance or social security and those who experience discrimination.

Ensure that ID requirements are not a barrier to accessing social protection

10. ENSURE THE RIGHT TO ADEQUATE HOUSING

Ensure that people experiencing homelessness who have been provided with temporary accommodation during the public health crisis are not returned to a situation of homelessness once the emergency wanes.

Ensure that, in compliance with the principle of non-retrogression, all positive measures implemented to fulfil the rights of marginalized people during the emergency are retained once the public health situation improves.

Protect people from evictions by prohibiting evictions for non-payment of rent, rental arrears, mortgage payment default, and utility payment arrears during the pandemic and for a reasonable period thereafter.

RECOMMENDATIONS TO THE WORLD HEALTH ASSEMBLY

Ensure that in the process of discussing and developing a Pandemic Treaty or similar instrument, there is meaningful engagement with the full and growing range of diverse experts, researchers, civil society organizations, human rights defenders and representatives from marginalized communities and people affected by unjust criminalization.

Index: **POL 30/5477/2022**
Publication: **May 2022**
Original language: **English**
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