



GENEVA FOR HUMAN RIGHTS Global Training

GENEVE POUR LES DROITS DE L'HOMME
Formation Internationale

H.E. Ambassador Elisabeth Tichy-Fisslberger
President of the Human Rights Council
Palais des Nations
1211 Geneva 10

Geneva, 22nd of April 2020

Re: our contribution to your draft President's Statement

Excellency,

The undersigned non-governmental organisations hope this letter finds you, your colleagues in the Bureau of the Human Rights Council and all supporting staff well protected. As you are preparing the draft President's Statement for the Council on the current COVID-19 pandemic, we herewith respectfully submit our contribution to its elaboration.

Preamble

In this global health and economic crisis, the actions of the High Commissioner and her Office, of the special procedures and of the treaty bodies have been significant, and we suggest this to be welcomed in the preamble of the President's Statement.

(1) Priority to the most vulnerable

This pandemic is unprecedented. Many individuals, groups, communities and peoples across the world are being strongly impacted. Our human rights organisations are deeply worried about the fate of the most vulnerable, firstly women and girls, those in extreme poverty, those unemployed and homeless, persons with disabilities, LGBTI persons, the elderly, children, people of African descent, minorities and indigenous peoples, internally displaced, migrants and refugees who are often already innocent victims of armed conflicts. It is a matter of human dignity: their human rights are at stake.

These people pay the highest price, and the worst is to be feared with the pandemic now affecting all the countries in the South. They have no adequate housing, drinking water, public services, basic education or health care, and, for these reasons, no equal access to medical treatment and protective equipment. In slums and remote rural areas, lockdowns

imposed to stop the spread of the pandemic even prevent access to food. The numbers of victims are disproportionately high amongst these groups. Such dramatic protection gaps highlight the need to rethink the best ways to implement the right to development. Vulnerable people are often unrepresented in domestic and international mechanisms. They need specific public policies, in the elaboration of which their participation is fundamental.

In their public health and emergency measures, Governments must respect all the rights of all, and many Inter-Governmental Organisations and programmes play a major role in this. We are convinced that the only sustainable response to the COVID-19 pandemic is a rights-based approach, and we call on the Human Rights Council, as a main human rights organ of the UN, to not only reaffirm the basic international human rights obligations and commitments of States, but also to respond to this crisis by focusing its future priorities and decisions on those who suffer the most.

This is why we suggest to include in the President's Statement operative paragraphs on children, unemployed and homeless, the rights of persons with disabilities, as well as on:

1. The social impact of the health and economic crises, and of the policies adopted to overcome them: whilst we obviously support efforts to eradicate the virus, it is urgent to recall the commitment of the international community to eradicate extreme poverty ('Sustainable Development Goal', No.1).
2. The principle of non-discrimination: to recall the definition in Article 1 of the *International Convention on the Elimination of All Forms of Racial discrimination* (ICERD), that this includes 'any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origins'.
3. The right to health: to recall that everyone has the right to life-saving interventions, with no exception, that this responsibility lies with States and that the scarcity of resources or insurance schemes cannot justify discrimination against certain groups.
4. The right to water and sanitation: to recall that these rights have to be available, accessible, safe, acceptable and affordable to all, without discrimination.
5. The obstacles to the right to development: to call for debt relief, for lifting unilateral economic sanctions, and for increasing financial and economic support to weak countries, as well as to remind the agreed principle of civil society's participation and control on the ways such additional resources will be used.
6. The rights of women: to recall the principle of gender equality, to assess that women already assuming so many tasks, and to urge Governments to provide them special protections, as they are increasingly victims of domestic violence in this crisis..
7. The rights of elderly: to call for specific protection measures for older people, who have the highest number of death, especially those in nursing homes.
8. The rights of indigenous peoples: to call on Governments to provide culturally acceptable healthcare, food and other humanitarian relief, whilst acknowledging their

cultural, spiritual, and religious rights and responsibilities, and respecting the principle of free, prior and informed consent.

9. The rights of refugees, migrants and stateless persons: calling on the international community to protect them, as overwhelmed health systems have little room for them. For instance by endorsing the joint statement issued on April 3rd by UNHCR, IOM, WHO and OHCHR.

(2) Combating racism and xenophobia

We note with dismay that public statements by authorities regarding the pandemic have been used in certain countries to target particular groups, such as minorities or individuals. In his press release of the 23rd of March, the Special Rapporteur on the rights of minorities reported that *'politicians and groups were exploiting fears surrounding the disease to scapegoat certain communities, leading to a rise in violence against them'*.

This concurs with reports we have received on threats and attacks against Asians, LGBTI and persons of African Descent, and on hate speeches blaming Muslims, Roma, Hispanics and migrants for the spread of the virus. Some political leaders have even demanded that migrants be denied access to medical services.

This is why we suggest including in the President's Statement operative paragraphs on:

10. Incitement to racial discrimination: to call Governments to ensure that their response to the pandemic does not contribute to xenophobia and racial discrimination, and to eradicate xenophobia throughout all State policy and messaging. States should be recalled that they *'shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination'* (ICERD, Art. 4, c), and that they have *'to adopt immediate and effective measures, (...) with a view to combating prejudices which lead to racial discrimination'* (ICERD, Art. 7).
11. Hatred: to recall that *'any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law'* (International Covenant on Civil and Political Rights, ICCPR, Art. 20).
12. Rights of minorities: to condemn scapegoating, threats and attacks against groups and individuals belonging to ethnic and religious minorities and against LGTBI persons.

(3) Respecting civil and political rights

Countrywide lockdowns imply severe limitations on human rights. Complying with these emergency measures, including home confinement, is indeed a matter of solidarity to slow

down the spread of the virus and to support those on the frontline, in particular health- and social workers. However, in many cases, restrictions to civil and political rights appear to be disproportionate. Moreover, these measures have to be limited in time.

In this crisis, there is an urgent and global need for full and reliable information. This depends on good governance, transparency, access to all public sources, press freedom and, obviously, monitoring and reporting by civil society organisations.

We are dismayed that certain Governments are taking advantage of the crisis to reinforce their powers, become autocratic, limit the independence of the judiciary, and repress journalists, physicians, health workers and human rights defenders, who are targeted for having exposed the gravity of the health crisis and the fate of marginalized people.

Also shocked by the numerous reports we are receiving on summary executions, excessive use of force by police and security forces and torture in places of detention. As 37 special procedures reported in their 17 April statement, people living in vulnerable situations are particularly targeted. The mandate holders reminded '*governments and law enforcement agencies that the prohibition against arbitrary deprivation of life, torture and other ill-treatment, is absolute and non-derogable at all times*', adding: '*breaking a curfew, or any restriction on freedom of movement, cannot justify resorting to excessive use of force by the police; under no circumstances should it lead to the use of lethal force*'.

Places of detention literally become death traps in times of pandemic. We are alarmed at the governments' inaction to protect detainees (and prison staff alike). Physical distancing is a concept that is not workable without a drastic reduction of prison population. Those arbitrarily detained should be immediately released. The same for those in long pre-trial detentions.

This is why we suggest including in the President's Statement operative paragraphs on:

13. States of emergency: to recall that, in conformity with ICCPR Article 4, measures of public emergency '*which threatens the life of the nation*' have to be proportionate, limited in time, and in no way discriminatory. Reference should be made to the statement issued on the 16th of March by 17 mandate holders of the Special procedures, who recalled that '*the use of emergency powers must be publicly declared and should be notified to the relevant treaty bodies when fundamental rights including movement, family life and assembly are being significantly limited*'..
14. Killings, use of force and torture: to recall that the rights to life, physical integrity and not to be submitted to torture or other inhuman, degrading treatment or punishment cannot be derogated from (as listed under ICCPR, Article 4, 2).

15. Freedom of information: to recall that under international human rights law, all Governments have a duty to provide reliable information in accessible formats to all, and that it is essential that Governments provide truthful information at local, national and international levels about the nature of the threat posed by the virus.
16. Prisons conditions: to remind that Governments have the obligation to protect all detainees, and to call for the immediate release of all political prisoners and of all those in long pre-trial detention.
17. Human rights defenders, as well as journalists, health workers, physicians: to remind all Governments that all defenders have the rights and duty to monitor and report situations of abuses, that their contribution to the truth is essential, and that the Covid crisis cannot constitute a cover for repressive action used to silence the work of human rights defenders.

(4) Perspectives

As this global crisis is volatile, unpredictable, but likely long lasting, we appreciate that, at this stage, a predictable planning for the forthcoming sessions of the Human Rights Council and its mechanisms cannot be available. *We nevertheless wish to make the following proposals, which in our views should be confirmed in operative paragraphs in the President's Statement:*

18. OHCHR's Group of Eminent Persons: we suggest that the President's Statement requests the High Commissioner for Human Rights to set-up a Group of Eminent Persons, from all the regions, to advise, monitor and ensure the implementation of human rights standards during the period of the emergency.
19. Adoption of resolutions by silent procedures: contrary to the proceedings of the UN General Assembly, the sessions of the Human Rights Council allow all non-governmental observers, national institutions and duly accredited NGOs, to fully participate. We therefore believe that the procedure of silent adoption should be limited to exceptional cases.
20. Participation of NGOs in virtual official sessions of the Human Rights Council: we believe that the same rules and practices should apply as for the ordinary sessions of the Council. The suppression of side-events, as was decided during the second part of the 43rd session of the Council, should not constitute a precedent.
21. Special procedures: all mandate holders should be invited in their next reports to the Council to report on the human rights impacts of the COVID-19 crisis, in particular the policies put in place by Governments and the human rights abuses committed during this period.
22. Possible special session of the Human Rights Council: some suggest a special session of the Human Rights Council to be held. We believe this would make sense

only if such a session would focus on the fate of the most vulnerable, be based on reports of the OHCHR and thematic procedures and be open to the full and active participation of civil society representatives from the regions and from the most vulnerable groups.

23. Universal Periodic Review: the President's Statement should encourage all States to prepare an addendum to their national reports on their response to the COVID-19 crisis, indicating how a human rights approach was built into planning, decision-making, implementation, and any ongoing evaluation.

24. Mechanisms of the Human Rights Council: we call on the Council not to suppress sessions of its mechanisms without indicating at least a provisional alternative date. We strongly believe that the annual session of the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) should absolutely take place this year.

Geneva, 22nd of April 2020

Signed by:

NGOs in consultative status:

NGOs without status

Individuals from partner CSO and NGO