



# EQUAL RIGHTS TRUST

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## The Equal Rights Trust

Response to the joint questionnaire by the Special Procedure mandate holders on the impact of the COVID-19 pandemic on the enjoyment of human rights

June 2020

### **Introduction**

1. The Equal Rights Trust (the Trust) is grateful for this opportunity to inform the Special Rapporteurs' forthcoming thematic reports to the United Nations Human Rights Council or the General Assembly on the impact of the COVID-19 pandemic on the enjoyment of human rights.
2. The Trust is an independent international organisation whose mission is to eliminate all forms of discrimination and ensure everyone can participate in life on an equal basis. We work in partnership with equality defenders – civil society organisations (CSOs), lawyers, government representatives and others committed to using law to create an equal world – providing them with the technical, strategic, and practical support they need to secure the adoption and implementation of comprehensive equality laws. In connection with this work, we engage with UN bodies and procedures with the aim of increasing knowledge and understanding of equality law and its role in the realisation of other rights and development.
3. The COVID-19 pandemic has transformed our world. As of June 2020, the number of recorded cases has surpassed eight million, while families and friends are mourning the loss of more than 430,000 people.<sup>1</sup> With the stated intention of controlling the spread of the virus and protecting lives, States have implemented unprecedented restrictions on movement both within and between countries (“lockdowns”) or adopted other emergency measures, such as closing schools and businesses, with significant and wide-ranging impacts on societies and economies.
4. As these measures have taken effect, it has become clear that, while the virus is indiscriminate, the impacts of state responses are not. In May 2020, the Equal Rights Trust brought together an unprecedented coalition of leading global equality organisations to issue a joint Call to Action to express our shared grave concern that States were failing to meet their binding legal obligations to ensure non-discrimination in the enjoyment of human rights for all in their response to the pandemic. We noted that “there is clear and growing evidence that state responses in delivery of healthcare, in the implementation of lockdown and other emergency measures and in policies designed to mitigate economic impacts are having disproportionate and discriminatory impacts”.<sup>2</sup>
5. These effects are being experienced by all groups exposed to discrimination, including, but not limited to, older persons, children, persons with disabilities, women, ethnic and religious minorities and indigenous peoples, LGBTI persons, persons living with HIV and AIDS, and migrants, refugees and stateless persons. They are impacting upon the enjoyment of rights ranging from freedom of movement to access to education and from access to information to an

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<sup>1</sup> See, World Health Organization, *WHO Coronavirus Disease (COVID-19) Dashboard*, visited 23 June 2020, available at: <https://covid19.who.int>.

<sup>2</sup> Equal Rights Trust and others, “Call to Action: Addressing discrimination and inequality in the global response to COVID-19”, May 2020, available at: <https://www.equalrightstrust.org/sites/default/files/images/COVIDResponse.pdf>.

adequate standard of living, together, of course, with the rights to life and to health. Moreover, as states emerge from lockdown or move into the next phase of their response, it is clear that new patterns of discrimination will emerge.

6. In this submission, we provide selected evidence of discriminatory impacts of state responses to the pandemic. We also highlight a number of areas in which new patterns of discrimination are emergent, or where discriminatory impacts of proposed policies for the next phase of the pandemic can be anticipated. Our aim is not to be comprehensive, but rather to illustrate the wide range of actual and potential discriminatory impacts and, in so doing, to demonstrate the need for states to take effective measures to identify and eliminate these impacts, if they are to fulfil their non-discrimination obligations under international law.
7. We urge the Special Rapporteurs to join us in recommending that states incorporate an equality impact assessment as an integral element of their ongoing public health, economic, and social policy responses to the crisis. It is only through integrating equality impact assessment into their policy responses that States can effectively discharge their binding non-discrimination obligations under international law.

### **States non-discrimination obligations under international human rights law**

8. These discriminatory impacts are occurring despite the fact that almost every State in the world has accepted non-discrimination obligations, through *inter alia* ratification of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>3</sup> While many States have also accepted obligations to guarantee the rights to equality and non-discrimination under instruments to eliminate discrimination against women, discrimination on the basis of race and discrimination against persons with disabilities, we focus on these instruments as they have received almost universal recognition: 173 states have ratified the ICCPR and 170 states have ratified the ICESCR.<sup>4</sup>
9. States' non-discrimination obligations under these instruments apply to all: citizen and non-citizen, irrespective of their identity, status or beliefs. The UN Human Rights Committee has stated that the rights in the ICCPR "apply to everyone, irrespective of reciprocity, and irrespective of his or her nationality or statelessness".<sup>5</sup> The Committee on Economic, Social and Cultural Rights has clarified that the list of grounds of discrimination provided in the ICESCR (and by implication in the ICCPR) is illustrative and that, irrespective of their omission from the original text of the Covenant, States are obligated to ensure non-discrimination on grounds such as age, disability, gender identity and sexual orientation.<sup>6</sup>
10. At a bare minimum, these obligations require, that the State does not discriminate in its actions, whether through law, policy or practice. They also create a duty to provide effective protection

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<sup>3</sup> Under Article 2(1) of the International Covenant on Civil and Political Rights (ICCPR) and Article 2(2) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), states guarantee the enjoyment of the rights provided in those Covenants without discrimination. In addition, Article 26 of the ICCPR contains an explicit requirement that "the law shall prohibit any discrimination (...) on any ground such as (...) sex". The UN Human Rights Committee has noted that Article 26 "provides (...) an autonomous right" which "prohibits discrimination in law or in fact in any field regulated and protected by public authorities" (Human Rights Committee, *General Comment 18: Non-discrimination*, 1989, Para 12).

<sup>4</sup> Office of the UN High Commissioner for Human Rights (OHCHR), *Status of Ratification Interactive Dashboard*, visited 23 June 2020, available at: <https://indicators.ohchr.org>.

<sup>5</sup> Human Rights Committee, *General Comment No. 15: The Position of Aliens Under the Covenant*, UN Doc. HRI/GEN/1/Rev.6 at p. 140, 1986.

<sup>6</sup> Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)*, UN Doc. E/C.12/GC/20, 2009 (CESCR, General Comment No. 20), Paras 15 and 27-35.

from all forms of discrimination by private actors and to make reasonable accommodation when required. The CESCR, for example, has noted that states are required to ensure that their “constitution, laws and policy documents do not discriminate”, to refrain from discriminatory actions and to “take concrete, deliberate and targeted measures” to eliminate discrimination, in particular through the adoption of legislation.<sup>7</sup>

11. The CESCR has noted that non-discrimination obligations are “immediate and cross-cutting”.<sup>8</sup> These obligations apply irrespective of whether the discriminatory impact is intended or foreseen: as the Human Rights Committee has noted, in order to meet their obligations to guarantee the enjoyment of rights without discrimination, states are required to eliminate discrimination in both purpose and effect.<sup>9</sup> Crucially, the Committee has also stated that one of the conditions for limiting the enjoyment of human rights in times of emergency is that measures taken do not discriminate.<sup>10</sup>

### **Discriminatory impacts of state responses to the pandemic: an emerging picture**

12. Discrimination, both direct and indirect, is at the heart of the human rights crisis engendered by state responses to the pandemic. While the full range of discriminatory impacts of state responses is not yet clear – and some apparent patterns of discrimination have yet to be verified – there is already compelling evidence of discrimination affecting various groups’ enjoyment of their human rights in different areas of life. These patterns extend across characteristics, and indeed across the intersection of characteristics. Moreover, as some states begin to end their lockdowns and others move into the next phase of their response, there are credible warnings about the emerging and potential discriminatory impacts of state responses.
13. This section offers selected examples of evidenced and emerging impacts. We should reiterate for the avoidance of doubt that the examples provided here are illustrative, not comprehensive nor exhaustive. New evidence is emerging with each week, while new policy measures are having novel discriminatory effects and consequences. Many discriminatory impacts have yet to be fully documented or verified, while other discriminatory impacts are as yet only anticipated. As such, these examples are provided with the purpose of demonstrating the breadth, depth and severity of the problem, and to underline the fact that it is only through proactive, pre-emptive equality impact assessment of their policy responses that states can identify and understand the actual and potential discriminatory impacts of their responses and take effective measures to eliminate these impacts.

#### **(i) Evidenced impacts**

##### **Right to health**

14. Lockdown and other containment strategies adopted by many States to control the spread of the virus have not been applied equally in all settings, resulting in discrimination in respect of the right to health. Early in the crisis, the UN Independent Expert on the enjoyment of all human rights by older persons noted that “[r]eports of abandoned older persons in care homes or of dead corpses found in nursing homes are alarming”.<sup>11</sup> Conversely, the UN Special Rapporteur on the

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<sup>7</sup> *Ibid.*, Paras 8 and 36-37.

<sup>8</sup> *Ibid.*, Para 7.

<sup>9</sup> Human Rights Committee, *General Comment 18: Non-discrimination*, 1989, Para 12.

<sup>10</sup> Human Rights Committee, *General Comment No. 29: States of emergency (art. 4)*, UN Doc. CCPR/C/21/Rev.1/Add.11, 2001, Para 8.

<sup>11</sup> UN Independent Expert on the enjoyment of all human rights by older persons, ““Unacceptable” – UN expert urges better protection of older persons facing the highest risk of the COVID-19 pandemic”, March 2020, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25748&LangID=E>

rights of persons with disabilities noted that "containment measures, such as social distancing and self-isolation, may be impossible for those who rely on the support of others to eat, dress and bathe".<sup>12</sup> Despite these warnings, there are ongoing concerns that older persons and persons with disabilities living in residential care facilities may be denied medical care.<sup>13</sup> Older people make up the majority of reported COVID-19 deaths, yet there is a lack of age-disaggregated mortality data in many State, meaning that the true impact of the pandemic on older people may be significantly understated.<sup>14</sup>

15. The crisis has also exposed the way in which pre-existing inequalities between ethnic groups in certain states can result in discrimination in health. For example, in England, a June 2020 review from Public Health England found that the highest age standardised diagnosis rates of COVID-19 per 100,000 population were among people from Black ethnic groups (486 in females and 649 in males) and the lowest were in people from White ethnic groups (220 in females and 224 in males).<sup>15</sup> The review noted that:

*Health inequalities known to affect the BAME communities in England may be increasing the risk of transmission (overcrowded housing, reliance on transport, living in population centres) and the risk of mortality (high underlying risk of co-morbidities: CVD, diabetes, obesity). Furthermore, the measures to control the spread of the COVID-19 across the country may have led to further economic or housing instability.*<sup>16</sup>

16. Similarly, a June 2020 study by the APM Research Lab in the United States of America, which compiled mortality data for Washington D.C. and 43 states, found significant racial disparities.<sup>17</sup> It noted that almost 22,000 Black people have died from COVID-19 in the USA, accounting for about a quarter of overall deaths, despite constituting only approximately 13% of the population. Moreover, a study in Brazil by the Nucleus of Health Operations and Intelligence, found evidence that the COVID-19 pandemic is killing proportionately more black Brazilians than whites, exposing underlying inequalities.<sup>18</sup> The study examined health service data on 30,000 patients diagnosed with COVID-19, who had either recovered or died by 18 May 2020: It found that 55% of the Black and mixed-race patients died, compared to 38% of White patients.
17. There is also evidence that indigenous persons have been disproportionately impacted by Covid-19. In the US, reports have shown that the Navajo Nation has one of the highest Covid-19 infection

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<sup>12</sup> UN Special Rapporteur on the rights of persons with disabilities, "COVID-19: Who is protecting the people with disabilities?", March 2020, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25725&LangID=E>

<sup>13</sup> Disability Rights International, "Action steps to protect children and adults with disabilities during COVID-19 pandemic – especially in institutions and orphanages", 20 April 2020, p.10-12, available at: <https://www.driadvocacy.org/covid19-action-steps/>

<sup>14</sup> Lloyd-Sherlock, P., et al., "COVID-19 and older adults in low and middle-income countries", *Corona Older*, 25 June 2020, available at: <https://www.corona-older.com/post/problems-of-data-availability-and-quality-for-covid-19-and-older-people-in-lmics>

<sup>15</sup> Public Health England, *Beyond the data: Understanding the impact of COVID-19 on BAME groups*, 2020, available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/892376/COVID\\_stakeholder\\_engagement\\_synthesis\\_beyond\\_the\\_data.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/892376/COVID_stakeholder_engagement_synthesis_beyond_the_data.pdf).

<sup>16</sup> *Ibid.*, p.6

<sup>17</sup> APM Research Labs, *The Color of Coronavirus: COVID-19 Deaths by Race and Ethnicity in the U.S.*, updated 10 June 2020, available at: <https://www.apmresearchlab.org/covid/deaths-by-race>.

<sup>18</sup> Batista, A. et al., "Análise socioeconômica da taxa de letalidade da COVID-19 no Brasil", *Núcleo de Operações e Inteligência em Saúde (NOIS)*, Nota Técnica 11, 27 May 2020, available at: <https://drive.google.com/file/d/1tSU7mV4OPnLRFMMY47JIXZgzkkvkydO/view>.

rates per capita in the US.<sup>19</sup> The Navajo Nation is reported to have instated one of the country's most extensive lockdown orders, but inadequate infrastructure and lack of access to basic needs is intensifying the crisis; 30% of the population does not have access to running water in their homes.<sup>20</sup> According to figures compiled by the Articulation of Indigenous Peoples of Brazil (APIB), the country's principal indigenous federation, 9.1% of indigenous people who contract the disease die, nearly double the 5.2% rate among the general Brazilian population.<sup>21</sup> In Canada, while public health officials are expressing cautious optimism that efforts to contain COVID-19 are proving effective, Human Rights Watch highlights that indigenous communities are still at risk because of the systemic inequities and discrimination they face.<sup>22</sup>

### Discriminatory violence and hate speech

18. Many groups at risk of discrimination have been exposed to increased discriminatory violence and hate speech as a result of the crisis. There have been reports of racist and xenophobic hate speech and hate crimes being committed against individuals perceived as Asian, as well as other ethnic and religious groups.<sup>23</sup> In India, Muslims have been scapegoated as "vectors" of the disease.<sup>24</sup> After public authorities blamed a Muslim religious gathering of the Tablighi Jamaat movement in Delhi for the spread of the pandemic, Online disinformation campaigns ensued, with #CoronaJihad trending on Twitter and the religious gathering being labelled as "corona terrorism".<sup>25</sup>
19. Ageism against older people has trended on social media<sup>26</sup> and the worth of saving older people's lives has been called into question;<sup>27</sup> in one instance, a UK journalist suggested "culling" older people would have a beneficial economic effect.<sup>28</sup>
20. The Office of the High Commissioner for Human Rights has noted that "LGBTI people have previously been blamed for disasters, both manmade and natural, and there are scattered reports

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<sup>19</sup> Baek, G., "Navajo Nation residents face coronavirus without running water", *CBS News*, 8 May 2020, available at: <https://www.cbsnews.com/news/coronavirus-navajo-nation-running-water-cbsn-originals/>.

<sup>20</sup> *Ibid.*

<sup>21</sup> Wallace, S., "Disaster looms for indigenous Amazon tribes as COVID-19 cases multiply", *National Geographic*, 15 June 2020, available at: <https://www.nationalgeographic.co.uk/science-and-technology/2020/06/disaster-looms-for-indigenous-amazon-tribes-as-covid-19-cases>.

<sup>22</sup> Carling, A. and Mankani, I., "Systemic Inequalities Increase Covid-19 Risk for Indigenous People in Canada", *Human Rights Watch Dispatches*, 9 June 2020, available at: <https://www.hrw.org/news/2020/06/09/systemic-inequities-increase-covid-19-risk-indigenous-people-canada>.

<sup>23</sup> UN, "COVID-19 stoking xenophobia, hate and exclusion, minority rights expert warns", *UN News*, 30 March 2020, available at: <https://news.un.org/en/story/2020/03/1060602>.

<sup>24</sup> Citizens Against Hate, *Hit Job: Using COVID-19 to Deepen Anti-Muslim Bias and Weaken Muslim Voice*, 18 May 2020, available at: <http://citizensagainsthate.org/wp-content/uploads/2020/05/HIT-Job-Final.pdf>.

<sup>25</sup> *Ibid.*

<sup>26</sup> Whalen, A., "What is "Boomer Remover" and Why Is It Making People So Angry?", *Newsweek*, 31 March 2020, available at: <https://www.newsweek.com/boomer-remover-meme-trends-virus-coronavirus-social-media-covid-19-baby-boomers-1492190>.

<sup>27</sup> Der Tagesspiegel, "Boris Palmer provoziert in Coronavirus-Krise", *Der Tagesspiegel*, 28 April 2020, available at: <https://m.tagesspiegel.de/politik/boris-palmer-provoziert-in-coronavirus-krise-wir-retten-moeglicherweise-menschen-die-in-einem-halben-jahr-sowieso-tot-waeren/25782926.html>.

<sup>28</sup> Roberts, J., "Telegraph journalist says coronavirus "cull" of elderly could benefit economy", *Metro*, 11 March 2020, available at: <https://metro.co.uk/2020/03/11/telegraph-journalist-says-coronavirus-cull-elderly-benefit-economy-12383907/>.

of this happening in the context of the COVID-19 pandemic”.<sup>29</sup> These reports include a priest in Poland stating that Covid-19 is divine punishment for homosexuality and abortion,<sup>30</sup> and a DUP councillor in Northern Ireland suggesting the pandemic was the “judgement of God” on the legalisation of abortion and same sex marriage in Northern Ireland, and an “immoral and corrupt government”.<sup>31</sup>

21. There is also emerging evidence of an increase in domestic violence against women during lockdowns in a number of States.<sup>32</sup> The European Network for Equality Bodies, Equinet, has reported that national equality bodies have identified increased domestic violence against women resulting from State imposed lockdowns.<sup>33</sup>

#### Freedom of assembly and police brutality

22. Examples have also been recorded of discrimination in respect of freedom of expression, assembly and association. In Kyrgyzstan, for example, following a decision to ban mass rallies citing COVID-19,<sup>34</sup> a march for International Women’s Day was dispersed,<sup>35</sup> while at the same time, a large group of men were permitted to participate in a traditional ceremony to ward off coronavirus.<sup>36</sup> There have been reports from Uganda of police targeting LGBTI organisations under the pretext of enforcing presidential directives to combat the spread of COVID-19.<sup>37</sup> Nairobi, Kenya, has seen an increase in police brutality and extrajudicial killings since the implementation of a dusk-till-dawn curfew in March 2020 with the stated aim of mitigating the spread of COVID-19.<sup>38</sup>
23. In the USA, protests in May and June 2020 sparked by the killing of George Floyd by a Minneapolis police officer have been marked by widespread incidents of police violence, including punching, kicking, gassing, pepper-spraying and driving vehicles at often peaceful protesters in state across

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<sup>29</sup> Office of the UN High Commissioner for Human Rights, *COVID-19 and the Human Rights of LGBTI People*, 17 April 2020, available at: <https://www.ohchr.org/Documents/Issues/LGBT/LGBTIpeople.pdf>.

<sup>30</sup> Gowans, G., “Wrocław Priest Blames Coronavirus on Homosexuality & Abortion”, *Wrocław Uncut*, 5 March 2020, available at: <https://wroclawuncut.com/2020/03/05/priest-coronavirus-lgbt-abortion/>.

<sup>31</sup> Cockburn, H., “Coronavirus: DUP politician “blames pandemic on abortions and same-sex marriage””, *Independent*, 2 April 2020, available at: <https://www.independent.co.uk/news/uk/politics/coronavirus-dup-john-carson-ballymena-county-antrim-abortion-same-sex-marriage-god-facebook-a9444216.html>.

<sup>32</sup> UN, “UN chief calls for domestic violence ‘ceasefire’ amid ‘horrifying global surge’”, *UN News*, 6 April 2020, available at: <https://news.un.org/en/story/2020/04/1061052>.

<sup>33</sup> Hale, S., “COVID-19 Impact on Equality: Equinet Launches New Online Database”, *Equinet*, 20 May 2020, available at: <https://equineteurope.org/2020/covid-19-impact-on-equality-equinet-launches-new-online-database/>.

<sup>34</sup> The News International, “Volatile Kyrgyzstan temporarily bans protests”, *The News International*, 6 March 2020, available at: <https://www.thenews.com.pk/print/624656-volatile-kyrgyzstan-temporarily-bans-protests>.

<sup>35</sup> AKIpress, “Как сорвали женский марш солидарности”, *AKIpress*, 9 March 2020, available at: <https://tv.akipress.org/news:1601467/?from=kgnews&place=maincats>.

<sup>36</sup> AKIpress, “В Бишкеке провели түлөө против коронавируса”, *AKIpress*, 8 March 2020, available at: <https://kg.akipress.org/news:1601482?from=svodka&place=newstoplast>.

<sup>37</sup> Ghosal, N., “Uganda LGBT Shelter Residents Arrested on COVID-19 Pretext”, *Human Rights Watch Dispatches*, 3 April 2020, available at: <https://www.hrw.org/news/2020/04/03/uganda-lgbt-shelter-residents-arrested-covid-19-pretext>.

<sup>38</sup> Sperber, A., “‘They have killed us more than corona’: Kenyans protest against police brutality”, *The Guardian*, 9 June 2020, available at: <https://www.theguardian.com/global-development/2020/jun/09/they-have-killed-us-more-than-corona-kenyans-protest-against-police-brutality>.

the country.<sup>39</sup> The excessive force used in the police response to Black Lives Matter protests has been contrasted with the policing of anti-lockdown protests which took place across the country.<sup>40</sup>

24. Lockdown regulations have been applied by the police in the UK in ways which restrict Black Lives Matter protests.<sup>41</sup> An analysis of data obtained by Liberty Investigates, part of the civil liberties group Liberty, and *The Guardian*, has shown that across England and Wales, BAME people were 54% more likely to be fined for violating lockdown regulations than white people.<sup>42</sup>

**(ii) Emerging impacts**

25. In our May 2020 Call to Action, we noted that there were “credible warnings about the emerging and potential discriminatory impacts of state responses”. Our partners in that statement have, *inter alia*, raised concerns that responses to the virus were feeding and deepening the historical and structural discrimination against persons with disabilities;<sup>43</sup> exacerbating inequalities for women and girls;<sup>44</sup> creating barriers preventing transgender and intersex individuals from accessing healthcare,<sup>45</sup> and failing to factor the stateless into decision-making.<sup>46</sup> In the intervening period, many of these concerns have been borne out by the emerging evidence.
26. Moreover, as states emerge from lockdown or move into the next phase of their response, our experience at the Equal Rights Trust – and our engagement with equality defenders across the globe – leads us to anticipate that other patterns of discrimination will emerge. Our partners have highlighted emerging discriminatory threats, ranging from expected impacts of education policies on black children in the UK to emerging evidence of employment discrimination in Bolivia and

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<sup>39</sup> See, for instance, Gabbatt, A., “Protests about police brutality are met with wave of police brutality across US”, *The Guardian*, 6 June 2020, available at: <https://www.theguardian.com/us-news/2020/jun/06/police-violence-protests-us-george-floyd>.

<sup>40</sup> See, for instance, Ismail, A., “The Anti-Lockdown Protests Prove Police Know How to Treat Protesters Fairly”, *Slate*, 28 May 2020, available at: <https://slate.com/news-and-politics/2020/05/police-response-george-floyd-minneapolis-shutdowns.html>; SBS News, “How US police responded differently to protesters demanding justice for George Floyd and anti-lockdown rallies”, *SBS News*, 28 May 2020, available at: <https://www.sbs.com.au/news/how-us-police-responded-differently-to-protesters-demanding-justice-for-george-floyd-and-anti-lockdown-rallies>; Zhou, L. and Amaria, K., “These photos capture the stark contrast in police response to the George Floyd protests and the anti-lockdown protests”, *Vox*, 27 May 2020, available at: <https://www.vox.com/2020/5/27/21271811/george-floyd-protests-minneapolis-lockdown-protests>.

<sup>41</sup> Liberty, “Our Right to Protest is More Important Than Ever During Lockdown”, *Liberty*, 12 June 2020, available at: <https://www.libertyhumanrights.org.uk/issue/our-right-to-protest-is-more-important-than-ever-during-lockdown/>.

<sup>42</sup> Gidda, M. and Dodd, V., “Police Forces In England and Wales up to Seven Times More Likely to Fine BAME People in Lockdown”, *Liberty Investigates*, 17 June 2020, available at: <https://libertyinvestigates.org.uk/articles/police-forces-in-england-and-wales-up-to-seven-times-more-likely-to-fine-bame-people-in-lockdown/>.

<sup>43</sup> International Disability Alliance, “Disability Rights During the Coronavirus Pandemic: Launch of the COVID-19 Disability Rights Monitor”, *International Disability Alliance*, 17 April 2020, available at: <http://www.internationaldisabilityalliance.org/covid-drm>.

<sup>44</sup> Equality Now, “COVID-19: A time for strength, humanity and kindness”, *Equality Now*, 26 March 2020, available at: [https://www.equalitynow.org/covid\\_19](https://www.equalitynow.org/covid_19).

<sup>45</sup> Botha, K., “LBTI Caucus Statement in Response to the COVID-19 Pandemic”, *ILGA*, 6 April 2020, available at: <https://ilga.org/lbti-caucus-covid19-statement>.

<sup>46</sup> De Chickera, A., “As the world washes its hands of the stateless, they risk facing COVID-19 alone”, *Open Democracy*, 27 April 2020, available at: <https://www.opendemocracy.net/en/world-washes-its-hands-stateless-they-risk-facing-covid-19-alone/>; see also, Institute on Statelessness and Inclusion, *Joint Statement in Solidarity with the Stateless*, 2020, available at: <https://www.institutesi.org/resources/joint-statement-in-solidarity-with-the-stateless>.

Pakistan. We are also seriously concerned at the myriad potential discriminatory impacts of antibody testing, immunity passports and associated policies.

27. Below, we highlight three areas in which evidence of discriminatory impacts is emergent but not yet confirmed, and others in which we anticipate discriminatory impacts which have yet to manifest.

#### Right to education

28. While access to education for millions of learners has been compromised by school closures, the Right to Education Initiative,<sup>47</sup> amongst others, has highlighted the potentially discriminatory impacts on the right to education for students whose households cannot afford the equipment necessary to facilitate online and home learning. In Lebanon, concerns have been raised that students with visual disabilities cannot make use of many online courses which are available.<sup>48</sup> In the UK, there are concerns that the routine under-prediction of grades for Black students<sup>49</sup> will lead to even greater challenges than normal as the UK moves to a system in which the grades of all final year students will be predicted by exam boards and teachers.<sup>50</sup> Serious concerns have also been raised about the other discriminatory impacts of school closures on children in vulnerable situations, including, for example, girls at risk of sexual abuse.<sup>51</sup>

#### Right to work

29. As the International Labour Organisation has highlighted, “[t]he world of work is being profoundly affected by the global virus pandemic”.<sup>52</sup> The discriminatory impacts of lockdown and business closures on the right to work are becoming clearer with each week. Before the crisis, labour markets in many states were effectively segregated on the basis of race, gender and other characteristics, with women being overrepresented in social care and ethnic minorities being overrepresented in service sector roles, for example. In the context of horizontally segregated labour markets, States’ decisions on issues such as whether and how to close certain sectors of the economy; designate essential roles; enforce working from home requirements; and provide financial support to workers who cannot work, all have serious potential discriminatory impacts.
30. Further issues will arise as we move forward, where restrictions which have previously been of a blanket nature are lifted for specific sectors of the economy, public services, or groups of people. We are concerned that both horizontal and vertical segregation in labour markets will result in discriminatory impacts on women, ethnic minorities and other groups who are overrepresented in certain sectors or in certain positions within particular sectors.

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<sup>47</sup> Right to Education Initiative, “Pandemic shakes up the world’s education systems”, 19 March 2020, available at: <https://www.right-to-education.org/blog/pandemic-shakes-world-s-education-systems>

<sup>48</sup> *Ibid.*

<sup>49</sup> UCL Institute of Education, “Predicted grades: accuracy and impact: A report for University and College Union”, December 2016, available at: [https://www.ucu.org.uk/media/8409/Predicted-grades-accuracy-and-impact-Dec-16/pdf/Predicted\\_grades\\_report\\_Dec2016.pdf](https://www.ucu.org.uk/media/8409/Predicted-grades-accuracy-and-impact-Dec-16/pdf/Predicted_grades_report_Dec2016.pdf)

<sup>50</sup> Thompson, I., “Guest Post: “Let us look into the UK’s Equality and Discrimination laws in the Age of Black Lives Matter” by Ife Thompson”, *Equal Rights Trust*, 25 June 2020, available at: [https://www.ucu.org.uk/media/8409/Predicted-grades-accuracy-and-impact-Dec-16/pdf/Predicted\\_grades\\_report\\_Dec2016.pdfhttps://www.equalrightstrust.org/news/guest-post-let-us-look-uk%E2%80%99s-equality-and-discrimination-laws-age-black-lives-matter-ife-thompson](https://www.ucu.org.uk/media/8409/Predicted-grades-accuracy-and-impact-Dec-16/pdf/Predicted_grades_report_Dec2016.pdfhttps://www.equalrightstrust.org/news/guest-post-let-us-look-uk%E2%80%99s-equality-and-discrimination-laws-age-black-lives-matter-ife-thompson)

<sup>51</sup> Thomson Reuters Foundation, “Teen pregnancy risks rises as schools shut for coronavirus in Africa”, 19 March 2020, available at: <https://news.trust.org/item/20200319115906-eieyl/>

<sup>52</sup> International Labour Organisation, “COVID-19 and the world of work”, n.d., available at: <https://www.ilo.org/global/topics/coronavirus/lang--en/index.htm>

## Anti-body testing, immunity passports and associated policies

31. States' movement towards the use of anti-body testing, immunity passports, "track-and-trace" applications and other measures designed to identify those at risk of infection and those who pose a risk of spreading the virus and to track and manage the spread of the virus pose myriad discriminatory risks.
32. The use of new information technologies in states' responses to the pandemic not only threatens the rights to privacy and data protection, but also risks long-standing discriminatory effects. The discriminatory potential of the mass collection and processing of personal data is yet to be fully understood.<sup>53</sup> Nevertheless, in the context of the pandemic, there is a real and pertinent risk that the collection of location data will enable the monitoring of specific communities,<sup>54</sup> and that the use of profiling and predictive data models will "lead to discriminatory outcomes, often shielded from interrogation by the 'black box' of indecipherably complex technology".<sup>55</sup>
33. There is a significant risk that the use of anti-body testing and immunity data will result in discriminatory restrictions on movement or on access to services on the basis of health status. There are, for example, historical precedents for disease-based restrictions on entering, living, and working in countries.<sup>56</sup> We are concerned that as anti-body testing and data collection regimes are rolled out, discriminatory treatment may occur at the hands of the state or private actors, in employment – in the form of dismissal, demotion, exclusion from work-related opportunities – and in access to goods and services. While these discriminatory impacts are potentially justifiable as measures to protect the health of the individual or as a public health measure, these justifications must be tested to ensure that a legitimate purpose is being achieved only by means which are necessary and proportionate.
34. Moreover, the use of new information technologies risks compounding pre-existing patterns of discrimination, with particularly harmful consequences for groups who have already been exposed to discrimination in state responses to the COVID-19 pandemic. There is real threat of discriminatory impacts occurring on the basis of perceived immunity status among individuals whose non-immunity may relate to age, disability, or one or more other protected characteristics; or among communities with worse outcomes of infection with the disease.<sup>57</sup> The use of digital tracing and immunity certification may also reinforce patterns of discrimination already exacerbated in the context of the COVID-19 pandemic, such as the disproportionate use of force in policing, and the use of stop and search.<sup>58</sup>

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<sup>53</sup> Equal Rights Trust, "Submission to the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance on new information technologies, racial equality and nondiscrimination", 19 December 2019, available at: <https://www.equalrightstrust.org/news/equal-rights-trusts-submission-un-special-rapporteur-contemporary-forms-racism>

<sup>54</sup> Joint Committee on Human Rights, "Written evidence from the Information Law and Policy Centre, Institute for Advanced Legal Studies, University of London (COV0098)", 11 May 2020, available at: <https://committees.parliament.uk/writtenevidence/4720/html/>

<sup>55</sup> Joint Committee on Human Rights, "Written evidence from Liberty (COV0092)", 6 May 2020, available at: <https://committees.parliament.uk/writtenevidence/4081/html/>

<sup>56</sup> Ada Lovelace Institute, "Something to declare? Surfacing issues with immunity certificates" 2 June 2020, available at: <https://www.adalovelaceinstitute.org/something-to-declare-surfacing-issues-with-immunity-certificates/>

<sup>57</sup> Nuffield Council of Bioethics, "Rapid policy briefing: COVID-19 antibody testing and 'immunity certification'", 18 June 2020, available at: <https://www.nuffieldbioethics.org/assets/pdfs/Immunity-certificates-rapid-policy-briefing.pdf>

<sup>58</sup> *Ibid.*

35. Furthermore, there is a risk that digital tracing schemes – whether mandatory or voluntary – will further perpetuate the digital divide, resulting in indirect discrimination on the grounds of age, disability or ethnic identity, given evidence from the UK’s Office of National Statistics suggesting that these groups make up a disproportionate number of non-internet users.<sup>59</sup>

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

36. In this submission, we have sought to provide examples of emerging and anticipated impacts to demonstrate the breadth, depth and severity of non-discrimination issues engendered by the crisis. These examples underline that it is only through proactive, pre-emptive equality impact assessment that states can identify and understand the actual and potential discriminatory impacts of their responses and take effective measures to eliminate these impacts. As such, it is only through the use of equality impact assessment that states can ensure that they meet their obligations under the ICCPR and ICESCR to ensure non-discrimination in the enjoyment of rights.
37. We urge the Special Rapporteurs to recommend that States incorporate equality impact assessment into their ongoing public health, economic, and social policy responses to the crisis, as a means of fulfilling their minimal and binding obligations contained in the ICCPR and the ICESCR, to guarantee the enjoyment of human rights to all, without discrimination. We call on the Special Rapporteurs to use their forthcoming thematic reports to recommend the following:
- a. All policy responses to the pandemic must be subject to equality impact assessment;
  - b. Equality impact assessments must be aimed at identifying and eliminating the actual or potential discriminatory effects of State policies. They should also ensure that policies and programmes respond to and accommodate the different needs of diverse groups with due consideration to intersectionality and that they do not create or exacerbate inequality.
  - c. Equality impact assessments must be pre-emptive, coming before new policy measures are adopted and before any changes are made to policies which are already in force;
  - d. Where measures have already been adopted, equality impact assessments must be undertaken as an urgent priority.
  - e. Where discriminatory impacts are identified, measures to eliminate any discrimination or inequality of impact must be taken with immediate effect;
  - f. Groups at risk of discrimination and experiencing inequality must be involved and consulted in conducting equality impact assessment;
  - g. Equality impact assessments must be an essential element of the monitoring and review of policy responses to the pandemic, and of their on the ground effects.
  - h. Both initial assessments and ongoing monitoring must be informed by the collection of data on the experiences and outcomes of groups exposed to discrimination.

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<sup>59</sup> In the UK, the Office of National Statistics reported that the largest proportion of adult ‘internet non-users’ are those aged over 65; that disabled adults make “up a large proportion of adult internet non-users”; and that “wide disparities [exist] between ethnic groups”. Office for National Statistics, “Exploring the UK’s digital divide”, 4 March 2019, available at:

<https://www.ons.gov.uk/peoplepopulationandcommunity/householdcharacteristics/homeinternetandsocialmediausage/articles/exploringtheuksdigitaldivide/2019-03-04>