



Monitoring and data in the context of Covid-19

Monitoring Working Group Response to the COVID-19 Crisis

April 2020

Introduction

The Covid-19 pandemic has had wide-reaching impacts on people's human rights, including economic, social, and cultural rights (ESCR), largely due to the measures governments have taken to control the spread of infection. Evidence highlighted by ESCR-Net Monitoring Working Group (MWG) members shows that many of these measures are exacerbating existing structural inequalities further undermining the ESCR of vulnerable groups.

During emergencies, ESCR remain, and states retain legal obligations towards the realisation of ESCR, such as health, education, sanitation, social security, and housing, as well as eradicating discrimination and reducing inequalities in the enjoyment of these rights - all of which require strong monitoring processes and robust data.

This brief draws from discussions with, and statements by, members of the Monitoring WG and other members of ESCR-Net and identifies recommendations to advance a human rights-based approach to data and democratic decision-making in the context of Covid-19, in line with the MWG's prior work on these issues.

1. Identify and adequately protect vulnerable groups

Groups who are marginalized and suffer discrimination as a result of their [economic status](#), ethnicity or nationality, legal status ([prisoners](#), [migrants](#), [undocumented people](#)) and other factors, are more likely to suffer from pre-existing health conditions, enjoy lower access to healthcare, and are less able to comply with prescribed containment measures, because they do essential work, such as providing care or due to inadequate standards of living. Therefore they are more vulnerable to the virus.

States have an obligation to collect data to identify different forms of discrimination and vulnerability, and to take steps to ensure that appropriate, evidence-based actions are taken to remedy it. As official data on Covid-19 in most countries is linked to testing, groups with lower



access to testing and the healthcare system more broadly are less likely to be reflected in the data. This is important as exclusion from the data means that any policy developed on the basis of that data will not respond to the needs of those groups.

Our members working alongside [homeless people in the US](#), [Roma communities](#) and people living in [informal settlements in South Africa](#), Serbia, India and Kenya, have stressed that the lack of access to clean water, sanitation and shelter means that these groups are unable to implement measures to prevent and contain the spread of the virus. Also, economic and physical vulnerability go hand in hand. [Informal workers](#), couriers, workers in grocery stores, factories, [tea plantations](#) and other groups of low-paid or precarious workers are significantly more exposed to the virus than people who are able to self-isolate at home, especially if not provided with the necessary protective equipment.

Patterns of historical discrimination further aggravate these vulnerabilities. Our members have raised significant concerns around the right to healthcare of Palestinians living in Israel, Palestinians [prisoners and detainees in Israeli custody](#), and those within Israel's direct control such as [Palestinian residents of East Jerusalem](#), who have [inadequate access to testing, treatment and health information](#) in Arabic.

2. Privacy and security issues

Public health methods, such as contact tracing, used by States to contain, mitigate and address the spread of COVID-19, must be undertaken in accordance with human rights. Our members have raised concerns about the increased use of surveillance tools in ways that raise concern for human rights and that are often conducted in close cooperation with surveillance companies that [hold dubious human rights records](#). Declarations of public health emergency do not override human rights requirements. While public health protection may be a legitimate justification for collecting personal data in some cases, data collected should be anonymized and limited to essential information that is strictly necessary to address acute or imminent epidemiological concerns, and therefore timebound. The purpose of data collection must be factually justified and the use must be for evidence-based, public health aims that are in furtherance of human rights. These methods, and the data collection associated with them, should be proportionate to the aim and do not harm privacy and security.

Oftentimes the surveillance systems put in place are neither of these things. For instance, the effectiveness of some of the apps using geo-location or Bluetooth technology and the accuracy of this kind of data for contact tracing are under question, while the ways in which the data is stored and used raises serious human rights concerns. Countries, such as [Israel](#), China, and Thailand,



are deploying mass surveillance tools in ways that breach the right to privacy and the principles of proportionality and necessity, with little or no scrutiny and oversight by public bodies. In other instances, such as in [Montenegro](#) and [India](#), our members report that personal data of people who have or have come in contact with people with Covid-19 have been publicly shared by local authorities following alleged non-compliance of quarantine restrictions by some people. Not only is the disclosure of personal data unnecessary and disproportionate to contrast the spread of Covid-19, but in at least a few instances, it led to people not being able to access services due to threats, real and perceived. Also, on a broader scale, such breaches of data protection have fuelled racist abuse and violence against minority groups (e.g. in India, Muslims communities and [indigenous people from North-East India](#)).

Privacy issues also arise across other ESCR, for instance, in education, where over 1.5 billion learners are temporarily out of school due to the pandemic. As education carries on through the use of ICT and online learning, the privacy of children and educators is vulnerable due to the [lack of regulation protecting children's data privacy in most countries](#).

3. Unequal enjoyment of ESCR

For many groups of people, such as those [living in poverty](#), [informal settlements residents](#), [migrants](#), [undocumented people](#), workers from the [informal economy](#), women who are doing unpaid care work, the measures many states have taken hinder their rights to a livelihood, food, education, amongst others. Many alternative arrangements made around access to basic services, such as food and education as well as home working are discriminatory as they require a certain standard of living such as adequate space at home, electricity, internet etc. For instance in Serbia, public schooling is carried out over television, but 47% of households in informal collective centers for internally displaced Roma do not have access to electricity and therefore are unable to continue education. Beyond education, poorer groups are also more likely to face food insecurity and starvation due to loss of livelihood. Another example is that in India, millions of [migrant workers](#) have been facing risk of starvation after the announcement of a general lockdown forced them to return to their homes with no access to food, water or income.

4. Lack of participation, transparency and accountability

MWG members stressed that as information is an essential precondition for the exercise of any right, in times of crisis democratic processes for public accountability should be strengthened, not weakened. However, in the wake of Covid-19 a number of states have restricted or suspended access to information on the grounds that it diverts states capacity and that documents that are not in digital formats and unavailable to public information officers due to home



working. In México for example, where the government has reduced activities to a minimum, the fulfillment of freedom of information requests is being reduced since there is no public official available to answer them. At the same time, states, [financial institutions](#) (e.g. European Investment Bank, World Bank), private actors and multilateral donors are allocating a significant amount of funding to mitigate the impacts of lockdown measures and the looming economic crisis. This requires increased transparency and public scrutiny to ensure that resources should be allocated in the public interest and to the benefit of people who are most affected by the current crisis rather than serving the interests of powerful groups and individuals, including corporate actors.

Recommendations:

In the context of Covid-19, data should be used to engage in infection containment and mitigation in line with human rights obligations and to respond to urgent and long-term needs of communities. We call on states to:

1. Protect the right to health, with particular attention to marginalized groups:

- Identify vulnerable groups on the basis of profession, health and economic status, ethnicity and nationality, place of residence, gender and other vulnerabilities, and ensure that policies are designed to afford those people maximum protection. Protections should be both in the form of personal protective equipment, but also towards economic and social well-being, through for example paid sick leave and other social protection measures, as well as the immediate provision of testing and treatment, clean water and sanitation, shelter, and access to health services (including health information).
- Ensure that the data and evidence used to make public health decisions is accurate, rigorous, and collected in a timely manner and includes marginalised groups.
- Health information aimed at the public must be accurate and tailored to the needs of specific groups, and delivered across multiple mediums, including digitally, through TV, letters, posters, etc and in accessible languages and formats.

2. Protect the right to privacy and security:

- Ensure full transparency about how data is collected, stored, and used so that decision-making processes can be scrutinized and that relevant actors can be held accountable.
- Ensure that the collection and use of personal data are [necessary, legitimate, proportionate](#) and respect the principles of confidentiality and ‘do not harm’. They should



be centered on advancing public health in accordance with human rights rather than pursuing surveillance for criminalization purposes.

- Collection and storage of personal data should be limited to the period of the emergency and should be destroyed afterwards.
- Governments must protect privacy and anonymity to the extent possible and refrain from publicly disclosing personal data of people. Access to data should be limited to health authorities.
- Ensure that data collected and used by private companies for the purposes of curtailing the spread of COVID-19 complies with relevant regulation regarding data privacy and is not used for commercial ends.

3. Address discrimination and inequality regarding the enjoyment of ESCR

- When designing policies and programmes to address COVID-19 and its impacts, states must ensure that marginalized groups are included in such policies and that targeted measures are put in place to address the specific circumstances of at-risk groups.
- Undertake a human rights-based analysis of who benefits from recovery and mitigation measures – such as impact of such measures on both poorer and wealthier groups to ensure that the measures do not exacerbate inequalities. This analysis should be conducted applying an intersectional approach that takes into account overlapping forms of exclusion and discrimination.

4. Ensure meaningful participation in decision-making over mitigation measures:

- The views and needs of marginalized communities should guide the measures states are taking to mitigate the impact of Covid-19 on all human rights. States should consult a range of groups who are adversely impacted, and meaningfully involve them in conducting impact assessments to measure access to food, water and sanitation, education, and livelihoods during the crisis.

5. Guarantee access to information and strengthen transparency and accountability:

- States should refrain from suspending access to information laws and strengthen mechanisms for public monitoring and oversight over resource allocation and



expenditure. Information that should be immediately made available in formats that are accessible for people with different levels of data literacy and at no cost, includes:

- norms that establish budgetary allocation made specifically in relation to the pandemic, and their expected outcomes (goals and results), and procedures to access mitigation measures
- public procurement data (e.g. medical and hospital supplies), including source of funding, beneficiaries and entity receiving the funding.
- data detailing the allocation and expenditure of funding towards mitigation measures (e.g. stimulus packages, economic relief measures, direct transfers for social protection, food assistance, etc.), including sources of funding