

## A call for comprehensive human rights redress

### Strategic Litigation Working Group Response to the COVID-19 Crisis April 2020

As human rights violations underscored and worsened by the coronavirus pandemic reverberate around the world, the realization of environmental, economic, social, and cultural rights (ESCR) provides the path forward for any lawful and effective response. ESCR-Net's Strategic Litigation Working Group (SLWG) members<sup>1</sup> are promoting justice and the effective implementation of human rights. Comprising organizations and defenders from around the world, many SLWG members are asking domestic and international justice mechanisms to reckon with state and private actor responses to the pandemic that reinforce chronic human rights problems or do not adequately rise to the challenges posed by long standing policies enabling systemic inequalities and impoverishment. The situation demands comprehensive human rights redress. At a time when many other forms of protest, social organizing, and civic life are curtailed, litigation and legal advocacy may not only be the last resort; they may be the only one.

Accordingly, the SLWG members urge justice mechanisms—including domestic courts and justice officials; international and regional human rights forums and special procedures; and National Human Rights Institutions, gender commissions, ombudspersons offices, and other “fourth branch” institutions—to:

1. *suo moto* monitor violations due to state and private actor responses to the COVID pandemic and issue concrete reparations measures, including systemic guarantees of non-repetition and the full realization of human rights;
2. act with a view to prioritizing the needs of those persons and collectives most vulnerable to human rights harms flowing directly or indirectly from the pandemic, in line with an intersectional analysis promoting substantive equality;

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<sup>1</sup> This statement draws on general discussions among various working group members and does not imply individual endorsement by any particular member.

3. remain accessible, including by increasing flexible procedures, such as dispensing with notary requirements, utilizing e-filing, issuing online judgements, and hosting remote sessions, while maintaining certain offline functioning or provision of resources to avoid digital exclusion; and
4. make use of emergency injunctive-type relief such as precautionary, provisional, interim, and similar measures for human rights matters, including in relation to urgent ESCR claims.

It is laudable that many justice systems and mechanisms have been responsive in relation to human rights issues posed by COVID-19 in jurisdictions around the world. In the international sphere, the [United Nations Committee on ESCR](#), the [African Commission on Human and Peoples' Rights](#), the [African Committee of Experts on the Rights and Welfare of the Child](#), the [Inter-American Commission on Human Rights](#), the [Inter-American Court of Human Rights](#), and the [European Committee of Social Rights](#) have all issued statements detailing human rights-based standards concerning the pandemic. Several [international](#) and [regional](#) special procedures mandate holders have been active and issued statements on the topic as well. The Inter-American Commission on Human Rights has created a [Rapid and Integrated Response Coordination Unit](#) for the COVID-19 pandemic crisis (SACROI COVID-19) and has also adopted [Resolution 01/2020](#) urging states to fully respect human rights during the pandemic. TB-Net, of which [Global Initiative for Economic, Social, and Cultural Rights \(GI-ESCR\)](#) is a member, called on United Nations treaty bodies to continue their important work monitoring human rights and impacts on the population, particularly disadvantaged groups, and to ensure the modalities for their continued operations are inclusive and accessible for civil society and address security and privacy issues that might arise with virtual interactions. Domestically, positive examples include the Indian Supreme Court's flexibilization of procedural requirements necessary to promote access to justice during the lockdown, a measure for which the [Human Rights Law Network \(HRLN\)](#), among others, advocated. Fourth branch institutions, such as the [Canadian Human Rights Commission](#), could also play a significant role, processing complaints, convening online hearings, providing prompt avenues in which to engage

the government, representing rights holders, and intervening before courts and administrative tribunals. The [South African Human Rights Commission](#) has established a Civil Society Advisory Committee to undertake monitoring during the lockdown. The SLWG members urge justice mechanisms to be proactive, including by exploring uses of urgent actions at their disposal, such as emergency injunctive-type relief, being mindful not to unfairly limit these to the civil and political rights arena at a time of aggravated ESCR peril.

Members recognize the challenges faced by justice mechanisms during the current period. The [International Commission of Jurists](#) produced a “Guidance on the Courts and COVID-19” briefing note, addressing issues such as suspension of “non-urgent” matters, video-conferencing, risks, and other matters related to keeping judiciaries running. The [Due Process of Law Foundation \(DPLF\)](#) hosted a webinar series on the operation of justice systems in Latin America for the guaranteeing of rights during the pandemic.

SLWG members recognize that access to justice begins with rights holders themselves. Accordingly, [Observatori DESC](#), based in Barcelona, recently co-published a “Rentals COVID-19 Kit,” containing legal guidelines for tenants facing uncertainty or vulnerability due to the pandemic. The [Socio-Economic Rights Institute \(SERI\)](#) of South Africa has done specific outreach to ensure those at risk can reach them during the pandemic and have their cases brought forward. [Bangladesh Legal Aid and Services Trust \(BLAST\)](#) is increasing its use of mobile hotlines for legal advice to workers and to women and girls, and has included COVID-19 response information to its existing mobile app, [Sromik Jiggyasha](#), on workers’ rights.

Several members have already petitioned justice systems in response to COVID. [Adalah](#), the Legal Center for Arab Minority Rights in Israel, has filed before the Supreme Court to secure coronavirus testing for 150,000 Palestinians living in overcrowded refugee camps in East Jerusalem. Adalah has also filed other actions, including a case to limit mass surveillance in the name of public health and another “demanding access to computers and internet for children in unrecognized and newly-

recognized Palestinian Bedouin villages in Naqab (Negev) region in order to enable them to learn during the coronavirus period.” The [Center for Constitutional Rights \(CCR\)](#) has, along with allies, legally challenged an anti-immigrant rule in the United States (US) penalizing non-citizen recipients of a wide range of public benefits, stating, “[a]mid this global health crisis, it is critical that everyone, regardless of immigration status, have full access to healthcare and the public benefits for which they are eligible.” The [Center for Reproductive Rights](#) “and its partners filed an emergency application with the US Supreme Court, asking it to restore the federal district court’s temporary restraining order allowing patients in Texas seeking abortion care during the COVID-19 pandemic to access medication abortion.” [Justiça Global](#), [Terra de Direitos](#), and [Plataforma DHESCA](#) petitioned the Brazilian Supreme Federal Tribunal to suspend the 20-year fiscal austerity cap on all social expenditures, including on health and education. [HRLN](#) has filed a series of litigations before the Constitutional Courts on issues covering migrant workers, slum dwellers, persons experiencing homelessness, frontline workers, and farmers.

Other members have conducted non-litigation legal advocacy in relation to the pandemic. For example, [Fundación de Estudios para la Aplicación del Derecho \(FESPAD\)](#) sent an open letter to El Salvador’s Supreme Court of Justice detailing human rights requirements attached to use of emergency powers. [Center for Justice and International Law \(CEJIL\)](#), [Comisión Colombiana de Juristas \(CCJ\)](#), and [Colectivo de Abogados José Alvear Restrepo \(CAJAR\)](#), along with allies, filed a complaint before Colombian authorities regarding, “the persistence of occurrences of intimidation, threats, killings, and violations of the rights of Venezuelan citizens, leaders, social leaders, ex-combatants, and Indigenous Peoples in the department of Putumayo, in the context of the state of emergency decreed regarding COVID-19.” [BLAST](#) wrote to the Chief Justice of Bangladesh welcoming reports of a proposed limited release of selected convicted persons deprived of liberty who had served lengthy terms of imprisonment, and calling for the release of the majority of persons incarcerated in situations of extreme overcrowding. The [Coalición Internacional para el Hábitat - Oficina para América Latina \(HIC-AL\)](#), along with 61 organizations

and 207 academics and activists, developed statements to the three branches in Mexico requesting urgent measures in relation to housing, water, and food.

Many members of the SLWG have also conducted direct advocacy with governments based on human rights law. For example, the [Initiative for Social and Economic Rights](#) in Uganda produced a document on "Maintaining Human Dignity and Respect for Social and Economic Rights during the COVID-19 Pandemic", a filing that contributed to bringing about, among other issues, a moratorium on evictions. [HRLN](#), along with its partners, released a report titled, "A Citizens Charter - Urban Planning Response in Mumbai, during the Covid 19 Lockdown" based on its survey of low income habitats for the megapolis of Mumbai. [FIAN International](#) launched a preliminary report to monitor the impact of measures taken by states to stop contagion that are intensifying ongoing human rights violations, especially regarding the right to adequate food; FIAN calls upon states to "ensure that their actions do not cause foreseeable harm beyond their borders, nor hamper the ability of other countries to honor their human rights obligations." The Workers' Safety Forum in Bangladesh, of which BLAST is a part, has called for ensuring payments of wages to workers in the ready made garments industry and to ensure protection for them. The [Asociación Interamericana para la Defensa del Ambiente \(AIDA\)](#) called on states to respect the rule of law and comply with their environmental and human rights obligations, refraining from retrogression in the form of prejudicial changes to standards or the approval of projects without adequate social and environmental harm assessments.

Throughout, the members have called for comprehensive human rights redress aimed at immediately addressing the pandemic, as well as systemic violations implicated. As [Franciscans International \(FI\)](#) affirms, "we should not wish a return to normality, as long as normality equates environmental destruction and egregious inequalities. Instead, we should draw lessons from past failures; build on some good practices that States came up with during the pandemic; push for a change in our model of development; shield social services and rights from business interests and greed and, last but not least, cultivate the fraternity and solidarity within and across communities

that we are seeing amid the global governance crisis.” Justice mechanisms can play a vital role in scrutinizing state resourcing decisions in their economic relief/recovery packages, examining the human rights adequacy and equity of resource mobilization. The [GI-ESCR](#) COVID-related article series hosts an entry by individual member [Alicia Yamin](#), noting “[t]his crisis provides a window for pushing through substantial redistribution (and support for health, social protection, education, housing and other ESC rights) at the national level in many countries—and substantial reimagination of global economic governance.” As the [Center for Economic and Social Rights](#) has argued, international cooperation must be guided by states' extraterritorial human rights obligations, including the duty of wealthier states and international financial institutions not to undermine the capacity of other countries to marshal the maximum available resources to address the pandemic. In line with this broader vision of the role of law in responding to the pandemic, the [Dullah Omar Institute](#) proposes in South Africa a strong commitment to participatory national and provincial legislating, urging, “strengthening social-cohesion by playing a stronger role in linking the voices of marginalised groups of people to decision-making structures.”

In sum, at a time of devastating impairment of ESCR, the critical oversight and accountability work of justice mechanisms must continue. The SLWG members have been calling for international and domestic justice mechanisms to respond to the pandemic in ways that adapt their modes of working to the realities of accessibility, the need to bridge the digital divide, and the urgent human rights needs of the moment; that are driven by human rights principles centering the needs of those most vulnerable; that include actions taken *suo moto*; and that provide for both immediate and systemic human rights redress. Even in the best of circumstances, many justice mechanisms have been hesitant to adopt transformative human rights measures. That needs to change, and the change needs to start now.