

Advocacy Toolkit:

A Guide to Challenging COVID-19 Measures that Undermine Human Rights



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Edited by Stephanie Ross

Design and Layout by Chelsea Very www.chelseavery.com

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Acronyms and abbreviations

ACHPR	African Court on Human and Peoples' Rights
ASEAN	Association of Southeast Asian Nations
CESCR	UN Committee on Economic, Social and Cultural Rights
ECtHR	European Court of Human Rights
HRC	UN Human Rights Council
IACHR	Inter-American Commission of Human Rights
IACtHR	Inter-American Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IMF	International Monetary Fund
NHRI	National Human Rights Institution
UN	United Nations
UPR	Universal Periodic Review

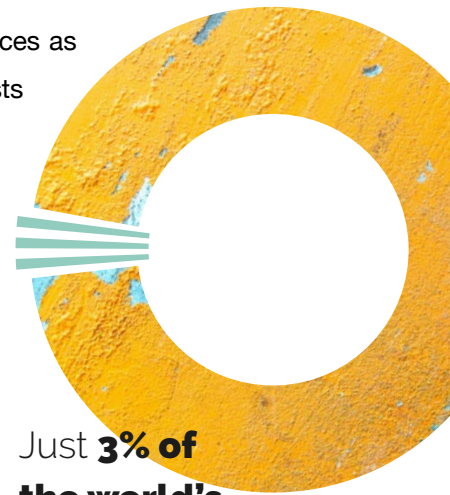
Introduction

The world faces multiple interlinked crises on a number of fronts: climate, economic, democratic, humanitarian, gender injustice, conflict and militarisation. These have been considerably worsened by COVID-19. We are seeing a global trend of reversal of democracy as governments, political and economic elites increasingly suppress dissenting voices, crack down on activists and human rights defenders, and undermine political and civil rights. [The Civicus Monitor](#), a global research collaboration, shows that just 3% of the world's population are now living in countries where their fundamental rights are in general protected and respected – in 2017 it was 4%.

COVID-19 is providing cover for authoritarian regimes to further close civic spaces as they expand emergency powers, institute surveillance regimes and attack activists and movements, all while refusing to provide relief to those facing the social and economic effects of the pandemic. Lockdowns have limited access to justice as criminal justice systems are closed or their operations shrunk, leaving activists and movements without recourse.

As highlighted by the [Civicus State of Civil Society 2020 Report](#), the COVID-19 pandemic has exacerbated, accelerated and further exposed crucial global challenges that were at the fore prior to the pandemic. We see increased systematic campaigns of misinformation, disinformation, manipulation, and shrinking access to information controlling our democratic narratives, processes, institutions and practices.

This undermines young people, youth movements and citizens' capacity to engage politically and demand accountability from governments, corporations and other non-state actors, including on management of the pandemic. The trend of closing civic spaces is also impacting the achievement of ActionAid's mission: to achieve social justice, gender equality and poverty eradication by working with people living in poverty and exclusion, their communities, people's organisations, activists, social movements and supporters.



Just **3% of the world's population** are now **living in countries where their fundamental rights are in general protected and respected.**

“According space to civil society is not optional. International human rights law places an obligation on states to respect rights and freedoms that are indispensable for civil society to develop and operate, including the freedoms of opinion and expression, peaceful assembly and association and the right to participate in public affairs. International law also protects the lives, liberty, physical integrity, and privacy of civil society actors from arbitrary state interference.”

- UN High Commissioner for Human Rights¹

ActionAid believes that people living in poverty and exclusion must be central to driving social change towards a more just and equal world. Within this we prioritise women and young people in our work, to strengthen their leadership and engagement in organisations and social movements as well as national, regional and global policy spaces. ActionAid is committed to working with these groups to enlarge democratic spaces so that all people have space to organise, including around electoral processes to achieve social justice, gender equality and eradication of poverty. ActionAid commits to stepping up efforts aimed at enhancing democracy through participation of



Sponsored child, Unas, partner from Heliópolis, São Paulo. Photograph: Divulgação Unas Heliópolis

excluded individuals and groups, and together with allies to influence institutions that impact on international rules and standards on democracy, creating space for direct engagement between these groups and policymakers.

To address the underlying causes and long-term consequences of the COVID pandemic, the freedoms of expression, association and peaceful assembly and the right to participate in public affairs at multilateral and national levels are central to democracy. In responding to the COVID emergency, it is of utmost importance that states maintain principles of democracy and the rule of law at national level by ensuring that any measures taken are necessary and proportionate, pursue legitimate purposes, are limited in time, and are non-discriminatory and respectful of international law, including human rights law.

Guided by feminist and human rights-based principles and approaches, ActionAid seeks to shift and transform power through empowerment, solidarity, campaigning and the generation of alternatives to ensure that every person can enjoy a life of dignity and freedom from all forms of oppression.

We have developed this advocacy toolkit to support ActionAid staff, people living in poverty and exclusion, individual human rights defenders and organisations/movements that hold governments to account for the effectiveness of their responses based on international human rights law, in order to protect human rights during and post-pandemic at national level.



Photograph: Steven Benard, ActionAid Tanzania

About this toolkit

Restrictions on movement, lockdowns, social distancing measures and other government responses to the COVID-19 pandemic have severely impacted human rights, often in ways that exacerbate pre-existing inequalities. While some restrictions on human rights can be justified by a genuine public health need, governments have an obligation to ensure that emergency measures are proportionate, time limited and non-discriminatory.

However, the COVID-19 crisis is providing cover for authoritarian regimes to further close civic spaces, target marginalised groups, expand emergency powers, institute surveillance regimes and attack activists and movements. We have seen particularly in countries where civic space was a challenged before the pandemic, including Myanmar, Guatemala, Zimbabwe, Uganda and Tanzania. There is a danger that states may cling on to emergency powers long after the public health emergency is over, with at least 51 countries, including Brazil, Guatemala, Zimbabwe and Bolivia, having enacted emergency measures without a time limit in response to the COVID-19 pandemic.²

The decline of civic and democratic space is at risk of being further entrenched by restrictions on civil and political rights during the pandemic. Over 130 countries have enacted COVID-19 measures that affect freedom of assembly,³ and at least 60 digital surveillance measures have been introduced.⁴ Restrictions on media freedom during the pandemic have been documented in 96 countries.⁵ The UN High Commissioner for Human Rights stated that, “an emergency situation



Photograph: Steven Benard, ActionAid Tanzania

is not a blank cheque to disregard human rights obligations.”⁶ To prevent the pandemic becoming an excuse for the suspension of hard-won human rights, COVID-19 measures that violate human rights must be challenged.

This toolkit focuses on human rights violations arising from the COVID-19 pandemic, and the advocacy tools available within the human rights system to challenge COVID-19 measures. This toolkit is for ActionAid staff and partners seeking to challenge such measures, develop campaign plans and undertake advocacy and lobbying. It may be useful for anyone involved in developing an overall campaign plan, by helping to identify advocacy tools.

This guide will help ActionAid staff, people living in poverty and exclusion, individual human rights defenders and organisations/movements to:

- **SCRUTINISE** COVID-19 measures from a human rights perspective
- **UNDERSTAND** the human rights obligations of states in their response to COVID-19
- **HIGHLIGHT** key domestic, regional and international advocacy mechanisms available to challenge COVID-19 measures
- **ACCESS** further resources.

This toolkit is not a guide to research, campaigning or advocacy in general. Any advocacy strategy targeting COVID-19 measures should follow the general principles and guidance set out in ActionAid’s manual “Action for Global Justice in Practice: ActionAid’s Human Rights-based Approach”.⁷ The current toolkit is complementary to existing ActionAid resources, and is aimed at providing specific guidance on human rights mechanisms and the human rights impact of COVID-19.

How is this toolkit structured?

This toolkit is in two parts. **Part 1** provides an overview of human rights concerns during the COVID-19 pandemic and state obligations under international human rights law. **Part 2** covers advocacy and domestic, regional and international advocacy mechanisms available within the broader system of human rights protection to challenge COVID-19 measures that undermine human rights.

Part 1:

Human rights concerns during
the COVID-19 pandemic and state
obligations under international
human rights law

States are responsible for respecting, protecting and fulfilling the rights of everyone under their jurisdiction. In their response to COVID-19, states are obliged to uphold the right to life and health of everyone, but must do so in a way that does not unjustifiably interfere with other human rights.

Under international human rights law, some human rights can never be curtailed, even during states of emergency. These ‘absolute’ rights include the prohibition of torture and slavery. However, most human rights, including the rights to freedom of expression, freedom of movement and the right to private and family life, can be restricted on the grounds of public health. Any such restriction is subject to a triple test of:

- **LEGALITY** – the restriction must be set out in law
- **LEGITIMACY** – the restriction must pursue a legitimate aim, such as public health
- **NECESSITY** – the restriction must be *necessary* to reach that aim, in that it is the least intrusive option for achieving the specified aim, and *proportionate* to it, in that the benefits of the restriction outweigh the costs.⁸

The principle of *non-discrimination and equality* is an over-arching standard that applies to all human rights obligations – states must ensure that all persons can enjoy human rights, including those set out below, on an equal basis with others without distinction based on race, colour, gender, language, religion, political or other opinion, national or social origin, property, birth or other status.⁹ Both intentional and unintentional discrimination, including unjustified disparate impacts on certain groups, are prohibited. The disproportionate impact of both the COVID-19 virus and the measures taken to slow the virus based on factors such as people’s age, socio-economic status, gender and/or belonging to a minority or indigenous group undermines the right to non-discrimination.

The sections below provide a short overview of the obligations of states under human rights law, alongside concerns raised during the COVID-19 pandemic for each right.

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A. States of emergency

At least 96 countries across the world declared states of emergency, granting exceptional powers to the executive in response to the COVID-19 pandemic.¹⁰ States are permitted to derogate from certain human rights obligations during an emergency, but must clearly set out what obligations they will not uphold, why and for how long.¹¹

Any restrictions on human rights during a state of emergency must be:

- provided for and carried out in accordance with the law
- directed toward a legitimate objective, such as public health
- strictly necessary to achieve the objective
- the least intrusive and restrictive option available to reach the objective (i.e. proportionate)
- neither arbitrary nor discriminatory in application
- of limited duration and subject to review.

These requirements are set out in the Siracusa Principles which, along with the UN Human Rights Committee's general comment on states of emergency, provide further guidance on state obligations during emergency situations.¹²

Emergency laws and policies must be open to judicial scrutiny and parliamentary oversight. To ensure the exceptional and time-limited nature of emergency measures, emergency laws should include provisions ('sunset clauses') to end after a certain period, or require review and renewal by parliament.



Photograph: Prensa Comunitaria (08 October 2020)

B. Freedom of expression and right to access information

Governments have an obligation to protect the right to freedom of expression, which includes seeking, receiving and imparting information.¹³ Restrictions on freedom of expression are permitted for public health reasons if they are prescribed by law, necessary and proportionate in the circumstances, and do not impair the essence of the right.¹⁴ Actions to silence or threaten healthcare workers, journalists and human rights defenders speaking out about issues concerning COVID-19 undermine the right to freedom of expression. Laws prohibiting the spreading of “fake news” about the COVID-pandemic have been used to censor activists and journalists in violation of their rights to freedom of expression.¹⁵

For those unable to leave their homes, the internet and online spaces are becoming a lifeline for expression and assembly. People and organisations such as schools now use the online space to express solidarity, connect isolated communities, voice opinions, but also for access to important, life-saving information and to educate under lockdown. However, this lifeline is under threat in some countries, and insufficiently protected in many more.¹⁶ Hoax news can be as damaging as censorship in some contexts.

Governments should take urgent steps to guarantee online freedom of expression while safeguarding rights to factual information, privacy and security.

Governments must provide access to information concerning, “the main health problems in the community, including methods of preventing and controlling them.”¹⁷ States must not withhold basic information about the virus and their response. Misinformation, including underreporting cases of infection, downplaying the severity of the virus and barriers to internet access, undermine the public health response and the right to access information.

C. Freedom of peaceful assembly and movement

Lockdowns, quarantines and travel bans in response to COVID-19 restrict the right to freedom of movement on the grounds of public health. Any such restriction must meet the triple test of legality, legitimacy and necessity set out above. Quarantines and lockdowns must not be discriminatory in their application. *Open-ended* lockdowns and *blanket* bans on travel are unlikely to be considered necessary or proportionate to achieving the aim of slowing the spread of COVID-19.¹⁸ *Mandatory* quarantines, where a person cannot leave for any reason, go beyond a restriction on movement and constitute deprivation of liberty, which requires states to observe certain safeguards.¹⁹ These safeguards include the right to be informed about the reasons for detention and their rights and obligations under law, the right to independent legal counsel, and the right to bring proceedings before court to challenge the lawfulness and arbitrariness of the deprivation of liberty.

Where police and security forces are responsible for enforcing restrictions on movement, they must not abuse or exceed their powers and must not use excessive force.²⁰ Reports of physical violence and lethal force by police upholding COVID-19 restrictions prompted a group of UN Special Procedure mandate holders to note that, “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.”²¹ Any penalties for violating restrictions on movement during the COVID-19 pandemic must be reasonable and proportionate to the violation.

Lockdowns and social distancing measures have also impacted on people's ability to exercise their right to peaceful assembly. The UN Human Rights Committee notes that:

“The protection of “public health” grounds may exceptionally permit restrictions to be imposed, for example where there is an outbreak of an infectious disease and gatherings are dangerous.”²²

Any restrictions on protests on public health grounds must meet the triple test of legality, legitimacy and necessity. The use of COVID-19 powers to clamp down on anti-government protests, including using excessive force, has been documented in many countries, including Bolivia, Ghana, Uganda and Zimbabwe.²³

While COVID-19 might be a legitimate reason to impose certain requirements on protests, a wholesale ban on protesting is unlikely to be proportionate.²⁴ A rights-respecting response to COVID-19 should allow protest as a permitted reason to leave home during a lockdown, but may require protestors to observe social distancing rules. Socially-distanced protests, including car convoys and sit-down demonstrations, have occurred during the COVID-19 pandemic, such as that in Lebanon in April 2020, where citizens took part in a car convoy from central Beirut to where parliament was convening to protest against the ongoing economic crisis in a socially distanced manner.²⁵

D. Freedom of association

UN Special Rapporteurs have emphasised the closing of civic space online during the COVID-19 pandemic.²⁶ Many countries have used digital surveillance and personal data collection to monitor and contain the COVID-19 virus, with negative effects on privacy, freedom of expression and freedom of association. Any surveillance and data collection activities must be transparent, in accordance with the law, and necessary for and proportionate to legitimate public health objectives.

The right to freedom of association includes the right to form trade unions. Dismissing employees for speaking up about the need for protection and safety in their workplaces, or using the pandemic as an excuse to remove union activists, violates the right to freedom of association.

The UN Special Rapporteur on the rights to freedom of peaceful assembly and association has emphasised the need for civil society actors to be allowed to continue their work during the COVID-19 pandemic, including through exemptions permitting their freedom of movement. The Special Rapporteur has also urged states to, “ensure the right to freedom of association is fully respected, including by registering associations without constraint and by ensuring that civil society organisations are able to conduct advocacy freely, including on the international level.”²⁷

E. Rule of law and protection of human rights defenders

Powers related to COVID-19 have been used to target anti-government protestors, clamp down on political opponents and restrict the work of human rights defenders. The UN Special Rapporteur on the rights to freedom of peaceful assembly and association has warned that, “governments have seized on the crisis to suspend constitutional guarantees, to pass sweeping emergency laws and to rule by decree”.²⁸ States must not use emergency powers as a basis to target human rights defenders or opposition politicians, or to suppress civil society organisations.

States also have an obligation to protect the life and personal integrity of human rights defenders, including from the actions of non-state actors. The Inter-American Commission on Human Rights has denounced attacks on human rights defenders during the COVID-19 pandemic in Brazil, Colombia, Honduras and Mexico.²⁹

States must also take necessary measures to enable human rights defenders to continue their activities during the COVID-19 pandemic, including through exemptions on restrictions on freedom of movement, and release human rights defenders detained in connection with their human rights work.³⁰



Centro de Promoción de la Mujer Gregoria Apaza. Photograph: ActionAid

F. Economic and social rights

Measures to slow the spread of COVID-19 have wide ranging impacts on economic and social rights, including the rights to work, an adequate standard of living, health and education. States are obliged to take measures to prevent and mitigate these impacts. Even during an emergency situation, states are under a “minimum core” obligation to ensure “minimum essential levels of each of the rights” set out in the International Covenant on Economic, Social and Cultural Rights.³¹

In its statement on COVID-19, the UN Committee on Economic, Social and Cultural Rights (CESCR) emphasised that emergency measures should respect and protect the inherent dignity of all people and called on states to devote, “their maximum available resources to the full realisation of all economic, social and cultural rights, including the right to health.” States must also adopt “special targeted measures” and “mobilise the necessary resources” to protect and mitigate the impact of the pandemic on vulnerable groups.

The right to health requires states to take all steps necessary for the prevention, treatment and control of diseases, including providing protective equipment and other goods and services needed to control the spread of COVID-19. The right to an adequate standard of living includes access to adequate housing, food, water and sanitation. In the context of COVID-19, the International Covenant on Economic Social and Cultural Rights (ICESCR) has recommended steps to uphold the right to housing including a moratorium on evictions, as well as, “urgent measures to provide homeless people with adequate shelter, which is the minimum core content of the right to adequate housing.”³²

Without free, universal, public health systems, it is nearly impossible for governments to respond to a pandemic of this magnitude. Private health providers and privatised health insurance-based systems that charge fees and premiums for tests and treatments cannot prevent a pandemic, because they only cater for those who can pay – leaving millions out. A pandemic also shows the vital role that governments and public authorities play or should play, because no private entity – whether for-profit or NGO – can work at the scale that governments can, nor impose the binding measures needed.



Distribution of educational materials for the prevention of gender violence by the partner Centro das Mulheres do Cabo. Photograph: ActionAid

In the ActionAid report, *Who cares for the future: finance gender responsive public services!*,³³ compelling new evidence is presented on the underfunding of public health, public education and water and sanitation – and on how the financing of these services can be transformed dramatically through action on debt, austerity and tax justice.³⁴ In many cases governments can more than double their spending on key public services – and now is the time to advance the case for this.

Governments should scale up budgetary allocations to fund public health and other public services. Governments, especially in the global South, will need to take a number of steps to free up resources to finance public services, including rejecting IMF policy conditions and advice that require cuts in public health and service budgets (including cuts to wage sector bills that have led to the understaffing of public services), as well as objecting to public private partnerships (PPPs) and privatisation of services such as health, water and sanitation.

G. Women's rights

Pandemic lockdowns have limited women's access to healthcare, education and employment, and increased the incidence of gender-based violence. Women have been hardest hit by the social and economic disruptions caused by COVID-19, whether in respect of their paid work – often in vulnerable, low paid roles with little protection – or their unpaid care and domestic work, which has risen dramatically as public services have closed and more people have been taken ill. Women make up close to 70% of health and social care workers globally,³⁵ mostly as nurses, who are more likely than doctors to be exposed to the virus.³⁶ Women are also concentrated in other affected roles such as teachers, service industry workers, domestic workers, community volunteers and organisers.

Across the globe, reports of domestic violence are surging. In some countries reported cases have doubled,³⁷ alongside increased confinement, isolation and paralysed support systems such as helplines, shelters and legal aid for survivors of violence.

Additionally, the pandemic, coupled with high pressure on public services, has had a disproportionate impact on those who face multiple and intersecting forms of discrimination. For LGBTQ+ people, the situation is worse in countries where sexual orientation and gender identity and expression are criminalised, hindering the ability of those experiencing violence or harassment to access justice.

Some countries have reported increased workplace violence in the health sector as well as abuse and exploitation of sex workers and domestic workers, many of whom are migrants. There is also increased risk of sexual exploitation and violence by state officials and armed forces.³⁸

International human rights law requires that measures taken in response to the COVID-19 pandemic do not discriminate against women.³⁹ States have an obligation to protect women from, and ensure accountability for, gender-based violence. The provision of safe shelters and effective access to justice for women and girls impacted by gender-based violence must be maintained during the COVID-19 pandemic.⁴⁰

States must also continue to provide sexual and reproductive health services, including safe abortion and maternity care, during the pandemic.⁴¹ Measures to ensure that women and girls can continue their education at home and to secure the participation of women in decision-making in the formulation of COVID-19 policies are essential.⁴²

States must take into account the intersectional nature of discrimination and mitigate the impact of COVID-19 on marginalised groups of women, including older women, women with disabilities, women in poverty, refugee and internally displaced women, indigenous women, LGBTQ+ women and those in detention.⁴³ States should collect comprehensive data on the gendered impact of the pandemic to monitor potential discrimination.



This family lost their family head who went for search of food during COVID-19 in 2020. Photograph: Bhola Pasawan

H. The rights of young people and children

While young people and children are not often severely affected by the COVID-19 virus itself, they have been particularly affected by its socio-economic impacts. Young people are more likely to be unemployed or work in low-paid and less secure jobs, exposing them to greater risks of poverty and exploitation in times of economic crisis. One hundred and eighty-eight countries have imposed countrywide school closures, affecting more than 1.5 billion children and young people.⁴⁴ The closure of educational institutions has particularly affected poorer young people and children and those living in informal settlements and camps, who lack access to remote learning tools and the internet, and who may have relied on schools for free meals and essential services. Young women and girls are particularly at risk of having their education permanently cut short in favour of domestic roles at home.

As governments initiate measures to expand social protection as a response to COVID-19, it is critical to ensure young people – particularly young women, LGBTQ+ and migrant youth – and youth-specific impacts are factored into policy and social protection measures. States and policymakers must meaningfully engage young people in the development of health, economic, and social interventions in response to COVID-19 and in its recovery, protect the rights of migrants, refugees and LGBTQ+ youth, and combat the rise of xenophobia and racism.

The UN Committee on the Rights of the Child has urged states to, “ensure that responses to the pandemic, including restrictions and decisions on allocation of resources, reflect the principle of the best interests of the child.”⁴⁵ The African Committee of Experts on the Rights and Welfare of the Child noted that states have an obligation to protect the right to education, including through providing distance learning platforms and activities tailored to home learning, and to ensure children receive child-friendly information on matters concerning them.⁴⁶ Children also have a right to protection from violence, abuse and exploitation, which has increased in domestic settings due to social distancing measures.⁴⁷ The UN Committee on the Rights of the Child has urged states to strengthen phone and online reporting and referral systems for physical and psychological violence at home, as well as awareness-raising activities. The Committee has also advised that socio-economic measures in response to the COVID-19 pandemic should include specific measures to protect children.⁴⁸



Independent youth are demanding accountability of government in Kathmandu. Photograph: Barsha Shah

I. Further resources on human rights and

COVID-19

- **UN Office of the High Commissioner for Human Rights (OHCHR):** [COVID-19 Guidance](#). The OHCHR has issued guidance on the human rights obligations of states in specific areas, useful for identifying precise policy recommendations for states.
- **OHCHR:** [Compilation of Statement by Human Rights Treaty Bodies in the Context of COVID-19](#) & [Internal Human Rights Treaty Body Toolkit of Treaty Law Perspectives and Jurisprudence in the Context of COVID-19](#). These documents provide detailed guidance on the obligations of states under international human rights treaties during the COVID-19 pandemic.
- **Rights and Security International:** [Covid-19 Toolkit for Civil Society Partners](#). Provides a checklist/questionnaire to scrutinise COVID-19 measures from a human rights perspective.
- **Open Government Partnership:** [A Guide to Open Government and the Coronavirus: Open Response + Open Recovery](#). Contains examples of state “good practice” in responses to COVID-19, which may be useful for persuading decision-makers.
- **Organisation of American States:** [Practical Guide to Inclusive and Rights-Based Responses to Covid-19 in the Americas](#)
- **African Commission on Human and Peoples’ Rights:** [Press Statement on Human Rights-Based Effective Response to the Novel COVID-19 Virus in Africa](#)
- **Women’s Link Worldwide, Amnesty International, International Planned Parenthood Federation:** [Guidelines for Protecting the Right of Women and Girls during the COVID-19 Pandemic](#)

Part 2:

Advocacy using domestic, regional and international mechanisms to challenge COVID-19 measures that undermine human rights

Advocacy refers to the “deliberate process of influencing those who make policy”, and is one tactic within ActionAid’s human rights-based approach (HRBA). Any advocacy strategy to challenge harmful COVID-19 measures should be in line with ActionAid’s HRBA principles.

A key prerequisite for effective advocacy using human rights mechanisms is compiling evidence of human rights violations through research. Research is crucial to demonstrate that states are failing to comply with their human rights obligations, and to ensure any advocacy calls are based on evidence. Staff and partners should refer to ActionAid’s [Research Signature](#) and [Feminist Research Guidelines](#) for further guidance.

ActionAid's 8 HRBA principles

#1

We put people living in poverty first and enable their active agency as rights activists. We analyse and confront unjust and unequal power.

#3

We work in partnership.

#5

We rigorously monitor and evaluate to evidence our impact and we critically reflect and learn to improve our work.

#7

We are innovative, solutions-oriented and promote credible feminist alternatives.

#2

We advance women’s rights, taking a feminist approach.

#4

We are accountable and transparent.

#6

We ensure links across levels to address the structural causes of poverty and injustice.

#8

We promote credible, sustainable and feminist alternatives.

A. The role of human rights mechanisms in advocacy

This toolkit is focused on advocacy mechanisms within the human rights system at the domestic, regional and international levels. Numerous bodies and courts oversee state compliance with international human rights law – these are generally judicial (such as national courts), quasi-judicial (bodies that are not courts, but rule on individual complaints) or supervisory (assessing and advising on human rights compliance). Securing a positive decision, statement or other action from any of these bodies is only the first step – civil society and activists must then advocate for the implementation of any decisions, and any domestic follow-up to an international or regional advocacy “win” is often as crucial as the decision itself. Any international or regional advocacy tactic must be situated within a broader domestic advocacy initiative(s) or campaign(s).

Whether human rights mechanisms are an appropriate advocacy tool to challenge a particular COVID-19 measure will depend on a campaign’s power analysis and theory of change. This may be influenced by a variety of factors, including the legitimacy of the particular international, regional or domestic body, the wider political context, the availability of relevant research and the existence of partners and potential collaborators to engage in this form of advocacy. With the exception of domestic courts, international and regional advocacy essentially relies on the power of “naming and shaming” – first consider whether the state in question is responsive to this kind of pressure.



Project Maré de Sabores, from Redes da Maré, partner from Favela da Maré, Rio de Janeiro, distributes meals to homeless people. Photograph: Douglas Lopes / Redes da Maré

In the case of individual complaints and judicial/quasi-judicial mechanisms, selecting a particular forum to bring a complaint requires understanding which regional and international human rights instruments apply in your jurisdiction, the case law or approach of the particular body, the outcomes available, practical considerations such as case processing time and deadlines, and the geographical, temporal and thematic jurisdictions of each body.

As with other forms of advocacy, working in coalition with other organisations and social movements is often essential to securing change through human rights mechanisms. Organisations may collaborate on submissions to treaty bodies, or jointly intervene as third parties in domestic litigation. International NGOs also play an important role in facilitating access to international and regional mechanisms for smaller grassroots groups and human rights defenders. Working in partnership with others is a principle of ActionAid's human rights-based approach, and further guidance may be found in the Action for Global Justice in Practice⁴⁹ resource and [Partnership Framework](#).

B. Managing risks

People engaged in human rights advocacy and campaigning can face risks due to their work, including intimidation and reprisals for bringing issues before regional and international human rights mechanisms. Careful and ongoing risk assessments should be part of any strategy involving the use of human rights mechanisms.

The resources below provide guidance on how to assess and manage security risks, and how to conduct advocacy in difficult environments. Limited support is available for victims of intimidation or reprisals for cooperating with UN [treaty bodies](#) and [special procedures](#).

Resources

- **Tactical Technology Collective:** [Holistic Security: A Strategy Manual for Human Rights Defenders](#)
- **Front Line Defenders:** [Workbook on Security: Practical Steps for Human Rights Defenders at Risk](#)
- **Lifeline:** [Advocacy in Restricted Space: A Toolkit for Civil Society Organisations](#)

C. Domestic accountability and oversight mechanisms

What?

Domestic oversight and accountability mechanisms must be available to scrutinise executive measures. Oversight may be conducted by a range of bodies, commonly including parliaments, national human rights institutions (NHRIs) and ombudspersons.

In terms of parliamentary oversight, the UN has viewed the creation of “an independent or opposition-led parliamentary committee, which meets publicly online, to scrutinise executive action during the crisis” as ‘best practice’.⁵⁰ Some countries have established dedicated COVID-19 parliamentary committees, while others have relied on existing human rights committees to provide oversight of COVID-19 measures.⁵¹ Emergency measures should also be subject to parliamentary review or renewal, providing an opportunity for oversight and accountability.

Activities undertaken by NHRIs and ombudspersons during COVID-19 include:

- **ANALYSING** COVID-19 measures and providing recommendations and legal opinions to government
- **MONITORING** places of detention and quarantine facilities
- **OPERATING** “hotlines” and online systems for receiving individual complaints
- **INVESTIGATING** the human rights impact of COVID-19, including field research
- **EDUCATIONAL AND MEDIA ACTIVITIES** to inform government officials of their human rights obligations and raise public awareness of their rights
- **COMMUNICATING** national human rights concerns to regional and international human rights bodies.

Who?

NHRIs are independent national bodies tasked with promoting and protecting human rights.⁵² Most NHRIs have the power to receive and investigate complaints of human rights violations and make recommendations to parliaments and government. In some countries, ombudspersons have similar competencies as NHRIs.

Parliamentary oversight may be exercised by committees made up of members of parliament or by individual members of parliament, including through questioning of ministers.

How?

Activists and organisations can engage in advocacy towards domestic oversight and accountability mechanisms to influence their decision-making. This may include bringing research conducted by ActionAid or other organisations to the attention of parliamentarians and NHRIs, supporting people affected by COVID-19 measures to speak up for their rights before these mechanisms, or lobbying them through meetings, letters and other direct engagement. Some NHRIs may also have formal complaint systems, which may be used as a channel to raise human rights concerns regarding the impact of COVID-19.

Parliamentary committees often operate according to a timetable, with set times for hearings and inquiries, so any advocacy and lobbying work should be carefully timed to ensure maximum effectiveness.

Key risks and challenges

- Parliaments have been suspended due to the risk of COVID-19 in some countries, while others have moved hearings and voting online and limited the number of staff and visitors. While broadcasting parliamentary hearings online has expanded their reach, many COVID-19 measures limit the scope for civil society participation.
- In some countries, NHRIs are not fully independent from government and receive inadequate funding, reducing their ability to effectively challenge human rights violations.
- Governments frequently fail to implement recommendations and decisions by NHRIs.
- Many NHRIs have reduced in-person activities due to the COVID-19 pandemic.

Case study 1:

National Human Rights Commission of Mongolia

Mongolia's NHRI – the National Human Rights Commission of Mongolia (NHRCM) – has undertaken numerous activities to monitor the human rights impact of COVID-19 and provide guidance to Mongolian authorities.⁵³ The NHRCM has issued press statements, developed educational videos for the general public and run online learning modules and monthly webinars on human rights and COVID-19. Individuals are able to submit complaints regarding rights violations during the pandemic using an online form, their Facebook page and a 24-hour hotline. The NHRCM has conducted advocacy to influence the response to COVID-19 by Mongolian authorities, including parliamentary submissions and meetings with government ministers, and undertaken field research in state institutions.

Following complaints of discrimination against Mongolian migrant workers and students in South Korea, the NHRCM collaborated with South Korea's NHRI to lobby relevant government departments in South Korea.

Where to find out more

- **OHCHR:** [NHRI Responses to the COVID-19 Pandemic](#)

D. Domestic litigation

What?

Courts play an essential role in providing a forum for victims of human rights violations to obtain an effective remedy, and in ensuring the compliance of government actions with the rule of law and human rights principles. Success in domestic litigation can benefit both the individual or group bringing the claim and lead to broader changes in policy and law.

Domestic courts have played an active role in reviewing and, where necessary, amending or overturning COVID-19 measures that excessively limit fundamental rights in many countries, including Brazil, Colombia, France, Germany, India and Zimbabwe.⁵⁴ Depending on the jurisdiction, challenges to COVID-19 measures may be brought based on non-compliance with a state's obligations under international human rights law, which may automatically form part of a state's domestic law upon ratification of a human rights treaty, or under domestic legislation.

Who?

Exactly who can bring a claim – whether individuals, civil society groups or groups of people – varies in different jurisdictions. Similarly, claimants might have different options for where to bring a claim (i.e. the forum for litigation), including under administrative, civil or criminal law.

How?

Activists and NGOs seeking to challenge COVID-19 measures through the courts must first seek legal advice to identify whether litigation is an option in their jurisdiction and, if so, the appropriate case and forum to bring a claim.

Litigation as a tactic for achieving change in government policy, law or practice must be situated within a broader campaign, rather than being seen as an end in itself. A legal challenge may bring about change either through securing a positive judgement and its implementation and/or by forcing authorities to respond to human rights allegations and publicly exposing injustice.

Organisations may be able to bring a complaint themselves or on behalf of affected individuals. Alternatively, organisations may be permitted to submit a third-party intervention (as *amicus curiae*) in a case brought by others. The latter requires considerably fewer resources and expertise.

Key risks and challenges

- Court activity in some countries has been restricted due to COVID-19 – courts have moved their activities online, limited claims to urgent matters, or suspended and postponed cases.⁵⁵
- The financial cost of litigation is high, especially where an applicant is unsuccessful and must pay the legal costs of the opposing side – crowdfunding for litigation is a common tactic to raise funds.
- The outcome of litigation is uncertain, and an unsuccessful case can generate negative publicity for a campaign.
- Organisations must consider whether they have staff with appropriate skills and expertise or access to lawyers to conduct a case.
- The length of proceedings may be longer than the planned time for a campaign.
- Litigation is public, exposing both the individual bringing a claim and organisations supporting them to potential backlash and intimidation.
- Enforcement of court orders may be a challenge, requiring additional resources to monitor and ensure compliance with any court decision.



Women arrested for vending food stuff during lockdown board a prisons truck after being remanded.
Photograph: NBS TV



Case study 2:

Litigation on access to information during the COVID-19 pandemic in Brazil

Courts in Brazil have played an important role in restraining potential abuses of power and protecting marginalised groups during the COVID-19 pandemic. President Jair Bolsonaro has downplayed the severity of the COVID-19 pandemic and opposed preventative social distancing measures. The Federal Supreme Court overturned executive orders by President Bolsonaro, including attempts to strip state governments of the authority to enact COVID-19 measures and to exempt churches and lotteries from health regulations. The Federal Supreme Court also ordered the suspension of police operations in the state of Rio de Janeiro and the implementation of COVID-19 measures in prisons and youth detention centres.

On 23 March 2020, President Bolsonaro issued a presidential order to suspend deadlines for information requests from government agencies, including information regarding health policies. The order was heavily condemned as an attack on the right to access information.⁵⁶ In response to a challenge brought by the Brazilian Bar Association, a Federal Supreme Court justice issued a preliminary injunction on 26 March 2020 to suspend the proposed changes, noting that, "the political participation of citizens in a representative democracy is only strengthened in an environment of total visibility".⁵⁷ The preliminary injunction, a provisional measure, was made permanent on 30 April 2020.⁵⁸ As a result, President Bolsonaro's proposed changes to freedom of information legislation were not implemented. When the Ministry of Health stopped sharing COVID-19 infection data in June, the Federal Supreme Court again intervened and the government resumed publishing COVID-19 statistics.⁵⁹

Where to find out more

- **Advocates for International Development:** [Short Guide – Strategic Litigation and its Role in Promoting and Protecting Human Rights](#)

E. Regional human rights mechanisms

What?

Regional human rights systems are an important mechanism for the promotion and protection of human rights. In general, regional human rights mechanisms can: adjudicate on human rights complaints against states, engage in fact-finding and reporting, review state compliance with human rights laws, and provide guidance to states and policy recommendations.

Regional human rights mechanisms have been actively monitoring and promoting human rights compliance during the COVID-19 pandemic, through analysing COVID-19 measures, publishing policy guidance, issuing press statements and sending communications to governments that have undermined human rights in their responses to the pandemic. The Inter-American Commission on Human Rights created a specific unit (the [Rapid and Integrated Response Coordination Unit for COVID-19 Pandemic Crisis Management \(SACROI COVID-19\)](#)) in March 2020 to collect evidence on the impact of the COVID-19 pandemic on human rights, provide recommendations and technical assistance to states, and identify urgent COVID-19-related individual complaints.



Photograph: The Zimbabwean Mail

Who?

Regional bodies and mechanisms include, but are not limited to:

- 1) Africa:** African Commission on Human and Peoples' Rights, African Court on Human and Peoples' Rights (ACHPR).
- 2) South-east Asia:** ASEAN Intergovernmental Commission on Human Rights.
- 3) Europe:** The Council of Europe, including the European Court of Human Rights (ECtHR), The EU Fundamental Rights Agency.
- 4) The Americas:** Inter-American Court of Human Rights (IACtHR), Inter-American Commission of Human Rights (IACHR).

The Inter-American and African systems include individual experts, called rapporteurs, who monitor human rights conditions in specific areas such as discrimination and freedom of expression. The Council of Europe Commissioner for Human Rights performs a similar function without a specific thematic mandate.

How?

Civil society organisations can engage with regional mechanisms to bring human rights issues to their attention and influence their actions towards states. This may include bringing ActionAid's or other research to the attention of rapporteurs and commission members and lobbying them through meetings, letters and other engagement.

Bringing an individual complaint to a regional human rights court is generally only possible after any available and effective domestic remedies, such as local courts, have been exhausted, and where the same issue is not already under examination by another international or regional judicial body.

The IACHR, ECtHR and ACHPR allow applicants to request interim or precautionary measures where the situation is particularly serious and urgent, and where such measures are necessary to prevent irreparable harm to the victims.

As in the case of domestic litigation, civil society organisations can seek to influence regional human rights judgements through third-party interventions, which involve considerably fewer resources and carry less risks than bringing an individual complaint.

Key risks and challenges

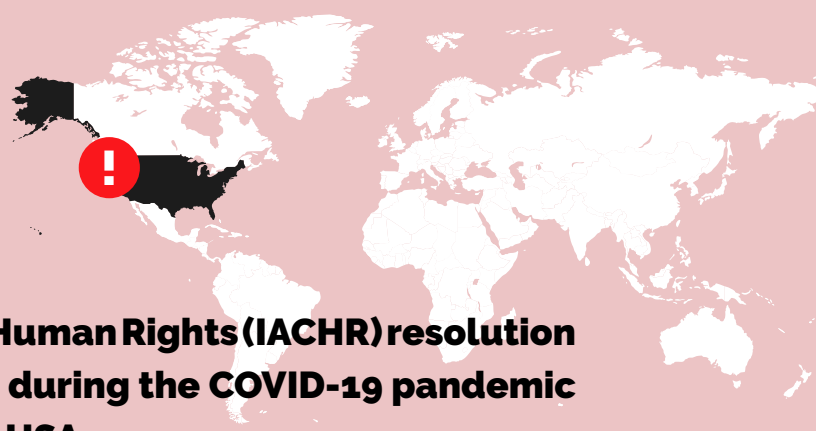
- For individual complaints, the requirement to exhaust domestic remedies and lengthy decision-making processes mean it may be years before any judgement is obtained – though, where the criteria for interim or precautionary measures is met, the process is much quicker.
- Individual complaints are a form of litigation, and so carry the same risks and challenges identified in the section above.
- Regional human rights mechanisms have had to adapt their working practices during the pandemic, including holding sessions virtually and extending filing deadlines, limiting some avenues for civil society engagement.
- The influence of statements and decisions by regional human rights mechanisms varies by region and country – in some contexts, where governments have a hostile relationship to regional authorities, the intervention of a regional mechanism may be detrimental to a cause.

Where to find out more

- **International Justice Resource Center (IJRC):** The IJRC advises advocates and individual victims on using regional and international human rights mechanisms, and its website contains guidance and region-specific links to further resources.



Cleide, president of Unas, partner from Heliópolis, in an emergency action for support the community.
Photograph: Divulgação Unas Heliópolis



Case study 3:

Inter-American Commission on Human Rights (IACHR) resolution regarding detention conditions during the COVID-19 pandemic at Northwest Detention Center, USA

Northwest Detention Center (NWDC) in Washington is one of the largest immigration detention facilities in the USA. On 17 April 2020, women detainees began a hunger strike to protest unsafe conditions at the centre during the COVID-19 pandemic, including overcrowding, inadequate medical care and poor sanitation.⁶⁰ Three organisations – the Seattle University Law School Human Rights Clinic, La Resistencia NW, and Global Rights Advocacy – jointly filed a petition with the IACHR challenging detention conditions at the facility.

In July 2020, the IACHR granted precautionary measures in favour of the detainees, finding that, “the rights to life, personal integrity and health of the migrants being detained at the NWDC face a serious and urgent situation of irreparable harm.”⁶¹ The IACHR requested the USA adopt measures to protect the rights to life, personal integrity and health of the detainees, and to ensure that their detention conditions complied with international standards. The IACHR specifically called on the USA to increase efforts to identify, “all those who might fall under discretionary release based on medical circumstances” due to COVID-19, “improve its capacity in effectively preventing the spread of the virus within the NWDC, such as by properly cleaning and disinfecting the facility”, and facilitate social distancing by reducing, “the number of people being held at the NWDC”.

F. International human rights mechanisms

What?

The UN human rights system is made up of four key mechanisms:

- **UN treaty bodies** are institutions within the UN system mandated to monitor compliance with international human rights treaties. They adjudicate on individual complaints and periodically issue recommendations to states in the form of “concluding observations”.
- **UN Special Procedures** are mechanisms of the UN Human Rights Council that examine, report and advocate on human rights issues within their country or thematic mandate. They can conduct fact-finding missions, clarify the nature of state obligations, send letters and urgent appeals to states, issue press releases and prepare thematic reports.
- **The UN Human Rights Council (HRC)** is an intergovernmental body of the UN where states discuss human rights issues in UN member states.
- **Universal Periodic Review (UPR)** is a periodic process where each UN member state’s human rights record is reviewed, and recommendations made.

International human rights mechanisms have played a very active role in promoting human rights compliance during the COVID-19 pandemic. Special Procedures and treaty bodies have issued numerous recommendations and criticised certain COVID-19 measures. A joint questionnaire by the UN Special Procedures on the impact of COVID-19 has elicited a large number of responses from civil society organisations and states. The Human Rights Council adopted a [statement](#) on human rights during the COVID-19 pandemic, including a call on the High Commissioner for Human Rights to prepare a report on the human rights impact of COVID-19 for its 46th session in February/March 2021.⁶²

Who?

UN treaty bodies and Special Procedures are the most accessible targets for advocacy regarding specific COVID-19 measures. The UPR process is more suited to assessing a country's overall human rights record, and takes place once every four years.

UN treaty bodies with relevant mandates include:

- [Human Rights Committee \(CCPR\)](#)
- [Committee on Economic, Social and Cultural Rights \(CESCR\)](#)
- [Committee against Torture \(CAT\)](#)
- [Committee on the Elimination of Discrimination against Women \(CEDAW\)](#)
- [Committee on the Elimination of Racial Discrimination \(CERD\)](#)
- [Committee on the Rights of Persons with Disabilities \(CRPD\)](#)
- [Committee on the Rights of the Child \(CRC\)](#).

There are 44 UN Special Procedures with thematic mandates, many of which are relevant to the human rights impact of COVID-19. The list is available [here](#).

How?

Advocacy organisations can engage with UN human rights bodies through submitting information and lobbying. In the case of UN treaty bodies, information may be submitted in the form of a 'shadow report' during the state's periodic reporting session, or in response to civil society consultation by the treaty body. 'Shadow reports' are an opportunity to present advocacy calls to governments and compel their response, and to influence the questions asked by committee members and their final concluding observations. Opportunities for lobbying take place during treaty body sessions.

UN Special Procedures are generally more accessible and able to respond quickly to emerging issues. Information can be submitted to UN Special Procedures on an ad-hoc basis or in response to a formal call for input. Organisations can also request an official communication to the government from a UN Special Procedure by making a formal [submission](#). Meetings with mandate holders and participating during country visits are additional channels of influence.

Organisations seeking to bring a complaint must first verify that their state has signed up to the relevant protocols or provisions of the treaty that establish the mandate of that treaty body, and check whether their state made any relevant reservations from that treaty.

Individuals may address a complaint of a human rights violation to a UN treaty body according to the procedure set out [here](#).

As with regional human rights bodies, bringing an individual complaint is generally only possible after domestic remedies have been exhausted, and where the same issue is not already under examination by another international or regional judicial body.

Organisations seeking to bring individual complaints will also need to consider issues of jurisdiction (who can bring a case, when and where), forum (which body), time limits and evidence. UN treaty bodies are quasi-judicial, and so it is advisable to seek legal assistance in drafting an official individual complaint. Like regional human rights courts, UN treaty bodies generally have an option to request interim measures, where there is an urgent risk of irreparable harm.

Key risks and challenges

- COVID-19 has affected the work of international human rights mechanisms – treaty body sessions were postponed and conducted online, and country visits by special mechanisms were delayed or cancelled.⁶³ Civil society organisations, particularly those with fewer resources and/or in the global South, have faced increased obstacles to engaging with multilateral institutions during this time.
- UN Special Procedure mandate holders work on a voluntary basis with limited institutional support. Their capacity to take on issues is very limited.
- The UN human rights system largely operates out of Geneva and New York, which limits opportunities for engagement by organisations in the global South.
- There may be a risk of reprisals or intimidation by the state against organisations and human right defenders who take their issues to international fora (see ‘Managing risks’ section).
- UN Special Procedures are not legally binding mechanisms, so compliance is at the state’s discretion. Even treaty body decisions, which are quasi-judicial, are sometimes not respected by states.



Case study 4:

UN Special Procedures on the arrest of LGBTQ+ Ugandans during the COVID-19 pandemic

Twenty young people living in a shelter for LGBTQ+ people near Kampala, Uganda, were imprisoned after police raided the shelter on 29 March 2020. They were charged with disobeying COVID-19 regulations and committing, "negligent acts likely to spread infection of disease". The case was one example of Ugandan authorities misusing COVID-19 powers to unfairly and disproportionately target the LGBTQ+ community. Civil society organisations and activists campaigned for their release. On 27 April 2020, five UN Special Procedures⁶⁴ issued a joint statement expressing alarm at the use of COVID-19 emergency laws to target LGBTQ+ people, and calling for their release. The prosecutor eventually dropped the charges and, on 18 May, a court ordered the release of the detainees.⁶⁵

Where to find out more

- **CIVICUS:** [Guide to Reporting Human Rights Violations to UN Special Procedures](#)
- **OHCHR:** [Working with the United Nations Human Rights Programme: A Handbook for Civil Society](#)

Endnotes

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International Registration number: 27264198

Website: www.actionaid.org

Telephone: +27 11 731 4500

Fax: +27 11 880 8082

Email: mailjhb@actionaid.org

ActionAid International Secretariat,
Postnet Suite 248, Private Bag X31, Saxonwold 2132,
Johannesburg, South Africa.

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