

EXECUTIVE SUMMARY



“THERE IS NO HELP FOR OUR COMMUNITY”

THE IMPACT OF STATES' COVID-19
RESPONSES ON GROUPS AFFECTED BY
UNJUST CRIMINALIZATION

AMNESTY
INTERNATIONAL



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“We keep hearing on the streets that we [people who use drugs] are the ones who transmit [Covid-19], that we don’t get tested or wear masks and that we all live in a bunch together...But they don’t give us any support...The government imposed a curfew, so people couldn’t be outside [after] 8pm. The government said stay home, but when you do not have a home, where are you supposed to go?”

Outreach worker at a safe injection site in Montreal, Canada

Millions of lives have been lost and devastated by the Covid-19 pandemic over the past two years. Governments around the world have responded by introducing urgent and extraordinary measures to deal with the crisis. The measures have varied, depending on the national context. However, a clear trend has emerged of governments failing to address the human rights consequences of the restrictions and introducing punitive sanctions, particularly for people who were already marginalized. Contrary to the often-voiced claim by governments that “we were all in this together”, the truth is that their responses to Covid-19 have been experienced unequally.

Nowhere is this more evident than in the impact of Covid-19 measures on people who are discriminatorily targeted by criminal sanctions

or punitive laws, policies or regulations – that is, people who face unjust criminalization. The focus of this report is the impact of Covid-19 regulations and their enforcement on people who are unjustly criminalized because of who they are or what they do. This includes those targeted because of their sexual orientation or gender identity and expression or because they engage in sex work, use drugs or experience homelessness. It also includes those impacted by discriminatory laws and policies that criminalize health services needed by specific sectors of the population, such as safe abortion and gender-affirming healthcare. The criminalization, discrimination and stigma faced by people in these groups meant many were already disadvantaged and faced human rights violations, including barriers to their right to health, long before the pandemic.

Amnesty International's research has identified three broad aspects of states' failure to take into account and mitigate the particular impact of their Covid-19 responses on members of these marginalized groups. Firstly, there has been a widespread reliance on punitive enforcement approaches that punish non-compliance rather than supporting people to enable them to comply. The consequence of this is that those facing overwhelming and sometimes insurmountable obstacles in conforming to Covid-19 regulations were put at even greater risk of criminalization and a whole range of human rights abuses. Secondly, these punitive approaches have deepened stigma and discrimination towards these groups. Thirdly, by creating barriers to accessing support for some groups, Covid-19 measures have had a disproportionate impact on people who were already affected by unjust criminalization and undermined their human rights.

Unjust criminalization has also created barriers to the meaningful consultation and participation in governments' decision-making by individuals and organizations whose expertise and experience could otherwise have informed and improved states' pandemic responses. This disregard for the experience of marginalized groups long predates the arrival of Covid-19, but the pandemic has reinforced and accentuated the consequences of the exclusion of these voices from debates on public health and decision-making.

Putting human rights at the heart of government efforts to address public health emergency responses is not an optional consideration, it is an obligation. And, as this report shows, governments' failure to fulfil their human rights obligations can and has undermined the effectiveness of the public health measures adopted.

Under international human rights law, government responses to pandemics must be based on the best available scientific and public health evidence. Any restriction on human rights must be provided in law, and be necessary and proportionate to a legitimate aim, time-bound and non-discriminatory. The measures must be adequate to achieve their

legitimate purpose, be the least intrusive option to achieve the desired result and be proportionate to the legitimate interest being protected.

Longstanding international legal principles that guide states' implementation of their human rights obligations also require governments to avoid criminalization in pursuit of public health objectives. Furthermore, under the right to health, states must maintain consultation with civil society and those affected throughout the design, implementation and monitoring of public health policies.

These obligations – set out in international law and standards and supported by a growing body of evidence from this and previous health emergencies – have been widely flouted by governments during the Covid-19 pandemic. Authorities around the world have used a variety of domestic legal provisions and punitive policies that are in breach of their obligations under international human rights law and standards.

This report is based on information Amnesty International received in response to an online survey, distributed between May and September 2021, among partner organizations working with people affected by unjust criminalization. A total of 54 responses were received from civil society organizations working on issues including sex workers' rights, LGBTI rights, drug policy reform, homelessness, racial justice, Indigenous people's rights, discrimination based on work and descent, and sexual and reproductive rights. When further information was required, Amnesty International conducted interviews with representatives of organizations.

The report incorporates country-specific primary research on the impact of Covid-19 measures previously published by Amnesty International. In addition, an extensive literature review of media reports, academic articles, reports and statements by civil society organizations and international mechanisms was carried out, as well as interviews with several international organizations, public health experts and civil society representatives.

This research would not have been possible without the invaluable participation and collaboration of the many organizations and human rights defenders around the world committed to challenging unjust criminalization.

STIGMA AND DISCRIMINATION

Punitive approaches to public health are known to risk undermining the aim of health protection measures because they often foster stigma and fear, eroding trust in the authorities. The unjust criminalization of certain identities and behaviours is frequently informed and influenced by harmful stereotypes that label individuals as “immoral”, “unreliable” and “irresponsible”. When a person’s identity or behaviour does not conform to society’s dominant social norms and is criminalized, it is easier for the authorities and societies as a whole to assign blame and scapegoat these groups in situations of crisis, as this report shows has been the case during Covid-19.

Stigma and discrimination in turn creates barriers to sharing reliable public health information and limits access to services that are essential for addressing the emergency. This report highlights, how stigma associated with criminalization has served to discourage people who use drugs, people seeking abortions, LGBTI people or sex workers from seeking medical care because they fear judgmental attitudes, arrest, detention or other punitive measures, a long-term challenge that has deepened during the pandemic. Stigma and discrimination are therefore key factors for determining health outcomes.

Such stigma has been amplified by misinformation, a worryingly prevalent aspect of public discourse during the Covid-19 pandemic that has often targeted those who face unjust criminalization. The punitive enforcement of Covid-19 regulations has consistently reflected and entrenched existing stigma and discrimination against people who are marginalized. They have not only experienced increased violence and abuse, but, in many contexts, have been blamed for the spread of Covid-19. For example, civil society organizations have reported increases in stigma, discrimination and violence on the basis of sexual orientation and gender identity during the pandemic in countries including Belize, Kyrgyzstan, Tanzania and Uganda. Sex workers, who were already facing high levels of

violence and lack of protection from authorities, also reported an increased risk of violence from clients, the police and other members of the public who blamed them for spreading Covid-19.

ENFORCING RESTRICTIONS: PUNISHMENT RATHER THAN SUPPORT

The widespread reliance on the security forces to enforce Covid-19 restrictions has created additional risks of human rights violations, including discrimination, arbitrary detentions, excessive use of force and criminalization for groups who were already over-policed or targeted by discriminatory policing. Civil society organizations have reported that marginalized communities, particularly those who are the targets of criminal sanctions or punitive laws, policies or regulations rooted in discrimination, have seen an increase in surveillance and harassment from law enforcement and have been disproportionately affected by arrests, fines and detentions during the pandemic.

Drug policy reform organizations particularly highlighted the increase in arrests, surveillance and harassment of people who use drugs as law enforcement powers were increased in response to Covid-19. Sex worker rights organizations have similarly reported an increase in harassment and persecution by the security forces. There have also been reports of law enforcement misusing Covid-19 measures to attack and target LGBTI organizations.

In Argentina, for example, police violence towards sex workers increased dramatically following the outbreak of Covid-19. A regional organization supporting people who use drugs in Latin America also reported that states’ responses to Covid-19 resulted in an increase in incidents of public humiliation and violence by law enforcement officials towards people who use or possess drugs.

Among other punitive measures, civil society organizations reported the widespread use of fines, arrests, cautions or written warnings, and police orders to “move on” or stay away from a public place. Such measures inevitably had a greater impact on particular groups for whom public spaces were the main or only spaces where they could live or work. Research for this report made alarmingly clear that in the overwhelming majority of cases the authorities made little or no attempt to mitigate the

disproportionate impact on such groups. Indeed, almost two thirds of the organizations surveyed reported an increase in the use of excessive force by law enforcement officials in such situations.

In contexts of poverty and marginalization, the absence of access to state assistance made complying with Covid-19 measures difficult and, in some cases, impossible. In many countries, the decision to rely on punishment rather than support fostered an environment of increased risk of criminalization and additional human rights violations.

For example, the National Ombudsman for Human Rights in El Salvador has highlighted how lack of access to income prevented people living in poverty from complying with Covid-19 regulations. Forced to break the national curfew to meet the most basic and urgent needs for themselves and their families, they were then punished by the authorities. In practice, therefore, the authorities created a situation where day-to-day survival was in conflict with compliance with Covid-19 restrictions, forcing desperate people to risk further criminalization under punitive Covid-19 regulations in order to feed themselves and their families.

BARRIERS TO SOCIAL PROTECTION, HEALTH AND ADEQUATE HOUSING

As countries failed to consider the social and economic realities in which they implemented restrictive Covid-19 measures, parts of the population were left without the support they needed to enable them to comply. Among those particularly impacted were groups excluded from what social protection was available, including people facing unjust criminalization.

Although many governments adopted some form of social protection measures, countries rarely provided comprehensive support for the most marginalized communities and the amount of support frequently failed to meet survival needs, especially for people who were already living in poverty. Among those disproportionately impacted were people working in the informal sector or in insecure employment who were often left without access to income or food. In Nepal, for example, many Dalits who live below the poverty line and rely on daily wages, faced extreme debt and starvation as a result of the increased challenges of the pandemic. Furthermore, critical public health measures, such as regular hand

washing and face masks, were often unavailable to the most marginalized communities who often lack access to adequate water and sanitation.

People affected by unjust criminalization faced particular barriers to accessing social support during the pandemic. Organizations reported that stigma towards LGBTI people, for example, resulted in their exclusion from state and municipal food donations and crisis centres in countries like Indonesia and Zambia. Organizations in many other countries, including Canada, the Dominican Republic and Ireland, reported that access to state support during the pandemic was either impossible or highly challenging for sex workers, particularly where grants or programmes were administered by organizations that undermine sex workers' rights and agency. As one organization representing sex workers in France explained: "Most of the aid is still conditional on a 'pathway out of prostitution', prohibitionist associations have received resources that we do not have".

Covid-19 measures also had a specific negative impact on the provision of essential health services that are restricted by criminal law. In particular, access to community-run services and outreach projects aimed at marginalized individuals became severely restricted or completely unavailable as health systems pivoted their attention to respond to Covid-19.

Many governments around the world abjectly failed to categorize certain types of healthcare as essential, which would have ensured they remained accessible during the pandemic. These included abortion, contraception, gender-affirming healthcare and harm reduction services for people who use drugs.

There were additional barriers to accessing health information, goods and services related to specific activities and decisions, such as sex work, use of drugs or abortion. For example, the criminalization of the use and possession of drugs created a context in which governments saw the closure of harm reduction services as an easy option. Although in some countries the Covid-19 pandemic was seen as an opportunity to allow people to take home larger doses of methadone and carry out telemedicine appointments for opioid substitution therapy, innovations in these services have unfortunately been isolated and temporary.

Similarly, access to sexual and reproductive

health services and information, including contraception, abortion and emergency obstetric care, was severely restricted. In India, for example, the punitive approach to the pandemic affected women by restricting access to abortion and increasing stigma towards people in need of this essential health service. Several countries – including France, Ireland, Nepal and the UK – implemented telemedicine for abortion services, thereby increasing the availability, accessibility and acceptability of safe abortion services. However, several others – including Colombia, Poland, Slovakia and the USA – continued to create unnecessary barriers to abortion services. For example, in the USA, eight states carved out exceptions for abortion in their telemedicine policies and 19 states require in-person administration of abortion medication, thereby prohibiting remote care indirectly. And in South Africa, the government failed to make provision for abortion services via telemedicine.

People at risk of gender-based violence were also acutely affected by the lack of support amid orders to “stay at home” and other restrictions on movement. Many women and LGBTI people were confined with abusers at home and without an alternative safe place to go. While some governments took emergency steps to assist survivors, many shelters were forced to close and counselling services had to scale down or close altogether. Many civil society organizations reported that the closure of shelters and support services for LGBTI people at risk of violence also had a profound effect leading to violence, harassment, intimidation and a negative impact on mental health.

People experiencing or at risk of homelessness have also been particularly affected by the punitive enforcement of Covid-19 regulations and the lack of support during the pandemic. Some countries imposed temporary moratoriums on evictions and introduced temporary emergency accommodation measures, including the use of empty buildings, hotels and schools to house people. However, in many cases, the provision of temporary shelters fell short of adequate standards and sometimes excluded people affected by unjust criminalization. Governments, including in the Philippines, South Africa and the USA, failed to protect people from human rights abuses occurring in state-provided emergency accommodation centres, including due

to unsanitary conditions, sexual and gender-based violence and use of excessive force from security guards. In addition, and with complete disregard for international human rights standards, people experiencing homelessness were fined for breaching curfews even in contexts where they had nowhere else to go.

In countries like Cambodia, Costa Rica, India, Indonesia and Poland, people living in street situations were not provided with information on where to stay and how to keep safe, making their situation even more complicated as shelters and support services were closed. Moreover, barriers posed by unjust criminalization made it more difficult for specific groups to access temporary accommodation and benefit from moratoriums on evictions. Civil society organizations reported a spike in evictions among LGBTI people, people who use drugs and of sex workers, highlighting once again how people facing unjust criminalization were disproportionately impacted by the pandemic and at heightened risk of violations of their human rights, including their right to adequate housing.

STEPPING UP TO FILL THE GAPS

As people affected by unjust criminalization were excluded from many state initiatives, civil society organizations and millions of individuals around the world engaged in innovative efforts to support affected communities. Civil society organizations also helped provide access to information, a crucial element of an effective public health response, relying on new technologies to share information and provide mental health and social support. Sex worker-led organizations mobilized quickly from the outset of the pandemic, creating communication networks and information resources on how to work safely during Covid-19. In countries such as Belgium, Brazil, Chile, India, Peru, Senegal, Thailand and the USA, they provided emergency funds and mutual aid, including the distribution of food and hygiene kits for members.

In India, trans rights activists supported communities by translating information into local languages and sharing WhatsApp voice notes. In Spain, civil society organizations quickly increased their shelter spaces for women and gender non-conforming people who use drugs and were facing violence. International and regional networks of

people who use drugs also mobilized rapidly to develop online peer resources and educational materials, including harm reduction guidelines and other practical resources to protect the rights of people who use drugs during the pandemic.

Governments' failures to ensure opportunities for meaningful participation of civil society organizations has deprived decision makers and communities of the knowledge, experience, energy and creativity of community leaders, which in turn has weakened the pandemic response.

CONCLUSION

Responses to the Covid-19 pandemic have magnified inequalities with a particularly acute impact on those who are marginalized, including those facing unjust criminalization, or otherwise experience exclusion from state support systems. Governments' punitive approaches to public health have frequently created additional obstacles to accessing essential services and support that could have enabled people to better comply with public health restrictions. People affected by unjust criminalization have been at increased risk of penalties and have been driven to take riskier decisions to meet essential needs, resulting in preventable illness, deaths and a wide array of human rights abuses.

Rather than relying on punitive measures that blame individuals, governments should focus on protecting human rights for all and ensure that communities have access to universal medical healthcare and essential services for their protection.

KEY RECOMMENDATIONS TO GOVERNMENTS

- Ensure that a human rights perspective is at the centre of all pandemic responses and that measures introduced fully comply with international human rights laws and standards, including by ensuring that any restrictions are provided by law, necessary, proportionate, time-bound and non-discriminatory.
- Ensure that all responses take into account and mitigate any disproportionate impact measures may have on groups or individuals who are marginalized or face discrimination, including people facing unjust criminalization.
- Put in place mechanisms to enable civil society organizations, human rights defenders and people directly affected by public health policies, especially those affected by unjust criminalization, to participate fully, meaningfully and effectively in the design, decision making, implementation and monitoring of all plans related to pandemic responses at all levels.
- Prioritize policies that enable and support people to comply voluntarily with the required public health measures and refrain from enacting or implementing criminal sanctions to enforce or achieve public health goals.
- Refrain from coercively enforcing public health measures and from bestowing additional powers on law enforcement officials to enforce them.
- Recognize as "essential healthcare" and decriminalize services required for the right to health such as sexual and reproductive health services, goods and information; gender-affirming care; and harm reduction services for people who use drugs. Ensure that these services as well as services for survivors of gender-based violence remain adequately resourced, accessible and available throughout the public health emergency, including through telemedicine, and are not denied due to immigration status, ID requirements or other discriminatory barriers
- Repeal existing laws and policies and refrain from introducing new laws that criminalize or penalize directly or in practice the various identities, actions and decisions of people who are marginalized and that have an adverse impact on their human rights, particularly their right to health.

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