

PRESS STATEMENT

UNAIDS condemns misuse and abuse of emergency powers to target marginalized and vulnerable populations

GENEVA, 9 April 2020—UNAIDS is deeply concerned by reports that the COVID-19 epidemic is being used as an excuse to target marginalized and vulnerable populations, restrict civil society space and increase police powers. In particular, UNAIDS is extremely concerned by reports of new laws that restrict rights and freedoms and target criminalized groups in a manner that will harm the rights and health of people living with or vulnerable to HIV.

“In times of crisis, emergency powers and agility are crucial; however, they cannot come at the cost of the rights of the most vulnerable,” said Winnie Byanyima, Executive Director of UNAIDS. “Checks and balances that are the cornerstone of the rule of law must be exercised in order to prevent misuse of such powers. If not, we may see a reversal of much of the progress made in human rights, the right to health and the AIDS response.”

Experience from past and present epidemics shows clearly that an effective response to health crises such as COVID-19 must be deeply rooted in trust, human solidarity and unwavering respect for human rights. However, reports have recently emerged that some countries are using emergency powers or public health justifications to restrict rights related to personal autonomy, gender identity, freedom of speech and sexual and reproductive health and rights. There have also been concerning reports of increases in criminal penalties in relation to HIV transmission, exposure and non-disclosure and the use of police powers to target, through arrests and brutality, vulnerable and criminalized groups, such as sex workers, people who use drugs, people living with HIV and lesbian, gay, bisexual, transgender and intersex (LGBTI) people.

In Hungary, a new bill has been introduced to remove the right of people to change their gender and name on official documents in order to ensure conformity with their gender identity, in clear breach of international human rights to legal recognition of gender identity.

In Poland, a fast-tracked amendment to the criminal law that increases the penalties for HIV exposure, non-disclosure and transmission to at least six months in prison and up to eight years in prison has been passed—a clear contravention of international human rights obligations to remove HIV-specific criminal laws.

UNAIDS is concerned by reports of countries resorting to the use of criminal law, such as the criminalization of the transmission of COVID-19, and arresting and detaining people for breaching restrictions. Our experience in the HIV epidemic is that criminalization of virus transmission leads to significant human rights violations, undermines the response and is not based on science. The ability to prove actual transmission from one person to another, as well

as necessary intent, is almost impossible and fails to meet rule of law requirements for criminalization. Criminalization is often implemented against vulnerable and stigmatized communities. In Uganda, 23 people connected with a shelter for providing services for the LGBTI community have been arrested—19 have been charged with a negligent act likely to spread infection or disease. Those 19 are being held in prison without access to a court, legal representation or medication.

UNAIDS is also concerned by reports from a number of countries of police brutality in enforcing measures, using physical violence and harassment and targeting marginalized groups, including sex workers, people who use drugs and people who are homeless. The use of criminal law and violence to enforce movement restrictions is disproportionate and not evidence-informed. Such tactics have been known to be implemented in a discriminatory manner and have a disproportionate effect on the most vulnerable: people who for whatever reason cannot stay at home, do not have a home or need to work for reasons of survival.

In Kenya, civil society organizations, prompted by concerns about actions being not consistent with a human-rights based epidemic response, released an advisory opinion calling for a human rights-based approach to be adopted in the COVID-19 response and have released a letter calling for a focus on community engagement and what works for prevention and treatment rather than disproportionate and coercive approaches.

While some rights may be limited during an emergency in order to protect public health and safety, such restrictions must be for a legitimate aim—in this case, to contain the COVID-19 pandemic. They must be proportionate to that aim, necessary, non-arbitrary, evidence-informed and lawful. Each order/law or action by law enforcement must also be reviewable by a court of law. Law enforcement powers must likewise be narrowly defined, proportionate and necessary.

UNAIDS urges all countries to ensure that any emergency laws and powers are limited to a reasonable period of time and renewable only through appropriate parliamentary and participatory processes. Strict limits on the use of police powers must be provided, along with independent oversight of police action and remedies through an accountability mechanism. Restrictions on rights relating to non-discrimination on the basis of HIV status, sexual and reproductive health, freedom of speech and gender identity detailed above do not assist with the COVID-19 response and are therefore not for a legitimate purpose. UNAIDS calls on countries to repeal any laws put in place that cannot be said to be for the legitimate aim of responding to or controlling the COVID-19 pandemic.

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The Joint United Nations Programme on HIV/AIDS (UNAIDS) leads and inspires the world to achieve its shared vision of zero new HIV infections, zero discrimination and zero AIDS-related deaths. UNAIDS unites the efforts of 11 UN organizations—UNHCR, UNICEF, WFP, UNDP, UNFPA, UNODC, UN Women, ILO, UNESCO, WHO and the World Bank—and works closely with global and national partners towards ending the AIDS epidemic by 2030 as part of the

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