

## Summary Notes

### Human Rights in The New Normal Webinar 1: Human Rights and Democratic Standards at Risk in The Time of Covid19

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University of Oslo

INDONESIAN NCHR ALUMNI

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Time

HUMAN RIGHTS  
IN THE NEW NORMAL

Lessons from Norwegian, European, and  
Indonesian context

WEBINAR 1/2 : Human Rights and Democratic  
Standards at Risk in the Era of Covid-19

The democratic and human rights principles under threat  
UNOHCHR's Covid-19 response guidelines and challenges in implementation  
Norwegian, European, Indonesian approaches in managing rights impacts and protecting  
the vulnerable

Speakers

Professor Gentian Zyberi,  
Member of UN Human Rights  
Committee of Civil  
and Political Rights

Muktiono, S.H., M.Phil  
Brawijaya University

Moderator

Iver Ørstavik,  
Rafto Foundation of  
Human Rights

Indria Fernida

On Tuesday, 2 June 2020, the Norwegian Centre for Human Rights (NCHR) supported a group of its Indonesian alumni who held the first of two webinars on the human rights impact of Covid-19. The event saw the presentations from [Professor Gentian Zyberi](#), Head of NCHR and Member of the UN Human Rights Committee, [Iver Ørstavik](#) Senior Advisor of the Rafto Foundation, and [Muktiono, SH., MPhil.](#), human rights lecturer from University of Brawijaya, Indonesia. Muktiono, as well as the moderator, [Indria Fernida](#), were alumni of University of Oslo's Master's program on Theory and Practice of Human Rights. Indria is currently the Regional Program Coordinator of the Asia Justice and Rights (AJAR).

The webinar series is a response to the need to exchange ideas and share some of the lessons learned from the European- including Norwegian- and Indonesian contexts, as Covid-19 continues to spread globally. The world is moving towards a situation that is termed as "the new normal". There is no clear definition what "the new normal" is, but thus far, the Covid-19 era has seen many human

rights implications as governments implement various measures, many of them restricting basic rights and freedoms, to curb the spread of the virus and prevent fatalities.

In the first webinar, Professor Zyberi opened the discussion by highlighting the challenges the pandemic has posed to democracies, one of the more significant being upholding the rule of law and the obstacles in exercising the necessary checks and balances in the *trias politica* construct. In most democratic contexts, the executive has had to implement policies such as restricting mobility, and while in moments like this supervision by different branches of the government crucial to minimise abuse of power and violation of rights, the restricted mobility obstructs such scrutiny. He also outlined that while generally all countries were caught unprepared by Covid-19, the UN Human Rights mechanisms, all [ten treaty bodies](#) and [56 special procedures](#), have issued statements to ensure that the response to the pandemic will not limit human rights in a way that violates the permissible restrictions or derogations (in case a state of emergency is put in place). The UN Human Rights Committee issued an [important statement](#) concerning derogations to the ICCPR under Article 4. Professor Zyberi pointed to the two fundamental principles of human rights that must be considered by States when adopting measures to counter the pandemic, namely substantive

equality and non-discrimination. States have to take into account the particular vulnerabilities of certain groups in designing the response to the pandemic, including migrant workers, asylum seekers, and women.

Iver Ørstavik in his remarks outlined that human rights have actually been in turmoil for a while, and this pandemic only highlights the different facets under threat. He agreed that initially the pandemic caught the global society unprepared, and it is too early to draw lessons from how different contexts react to the biological, systemic, and economic shocks Covid-19 gave to the world. However, thus far, we can see that in response to pandemic like this, universal health care is better than private insurance-based, and that countries with more robust public systems and resources tend to fare better. In terms of the European Union, Mr. Ørstavik notes that the pandemic shows that there is not enough health infrastructure within the union, which results in seeming lack of coordinated regional response to the pandemic.

Elaborating on the Indonesian experience, Muktiono also reaffirms the state of unpreparedness of the government of Indonesia (GOI) when the pandemic hit, where effective response is further hampered by its huge and complex bureaucracy. Worse still, the GOI's response has been encumbered by unchecked sectoral ego that leads to ineffectiveness and inconsistencies at different levels of government (local-national) and even between institutions. Designing effective responses is also further made difficult by the lack of an integrated data center, making evidence-based policy near impossible. So far the policies are made without participation and inclusion of relevant parties. These policies seem to have little effect, as the fatality rate reaches 5.9 % of all detected cases and the Ministry of Finance projects that the number of people below the poverty line will increase from 1.89 to 4.86 million, unemployment will be at the range of 2.92 to 5.23 million people, and the economic growth will be between 2.3 - -0.4% by end of 2020. Presently, the policies in response to Covid-19 can be categorized into three clusters, namely health emergency management, social safety net, and economic security, with the social safety net in form of various social assistance programs taking a major chunk of the IDR 677,2 trillion/NOK 447,5 billion budget at 30 %. However, the supervision of how the funds are used is lacking and there is no clear monitoring on the effectiveness of the overall programs. Supervision is further made difficult with the weakened anti-corruption commission and civil society organizations under constant attacks by different groups, including those seemingly affiliated with the State. Human rights defenders in Indonesia during the pandemic also continue to be subjected to repression, arrest, and criminalization by State actors. Some of them have had their social media accounts hacked without any investigation against the perpetrators, silencing critical voices. The new normal in Indonesia seems to comprise of unclear policies leading to opening the economy without fulfilling the requirements of sufficient decline in positive case and fatality rate, while the public is distracted by various controversies and critical voices are silenced by more restrictive policies. In the meanwhile, the GOI including the parliament continues to pursue its pre-Covid-19 legislative agendas that further places under attack labour rights and environmental sustainability through bills such as the Draft Omnibus Law on Job Creation.

In the question and answers session, some issues were raised, especially with regard to state human rights obligations. This is especially in view that some states are taking restrictive measures by exercising emergency measures to a different extent, such as Poland and Hungary. Professor Zyberi outlined the importance of operating within the allowed derogation requirements even under emergency situations. The stipulations for derogations in time of emergency within the Council of Europe framework can be seen in the [Guide on Article 15 of the European Convention on Human Rights](#); the factsheet of the European Court on Human Rights on "[Derogation in time of emergency](#)". Further relevant references can also be

found in the Venice Commission "[Compilation on States of Emergency](#)" of 16 April 2020. The [text of derogations](#) entered by State parties to the ECHR provides insights on what rights are most affected during such emergencies.

In terms of the Covid-19 guidance by the United Nations, it is important to consider the policy papers issued by the UN Secretary-General and the various statements by UN Human Rights mechanisms during this period. Guidance for labour rights during the pandemic, for example, can be seen in part in the UN Committee on Economic, Social and Cultural Rights (UNCESCR)'s "[Statement on the coronavirus disease \(COVID-19\) pandemic and economic, social and cultural rights](#)". Para. 16 of this UNCESCR statement captures best the response of the State to protecting workers' rights:

"All workers should be protected from the risks of contagion at work, and States parties should adopt appropriate regulatory measures to ensure that employers minimise the risks of contagion according to best practice public health standards. Until such measures are adopted, workers cannot be obliged to work and should be protected from disciplinary or other penalties for refusing to work without adequate protection. In addition, States parties should take immediate measures to protect the jobs, pensions... and other social benefits of workers during the pandemic, and to mitigate its economic impacts through, for example, subsidizing wages, providing tax relief and establishing supplementary social security and income protection programmes."

For more elaborate guidance on socio-economic concerns caused by the pandemic, one should also refer to the UN Security General's policy brief on the [socio-economic response](#), especially section 3 and item 7 in the Annex.

The discussion also underlines the importance for all policies in the new normal should be science driven, and the government and human rights defenders take an active role to not empower and refute false news and conspiracy theories that will further detract the society from responding to the pandemic in a manner that protects the rights of all.

The second webinar will be held on Tuesday June 16, 2020 whereby we will discuss further the building a new normal based on human rights standards and principles, We shall focus on state's duties and business responsibilities on the human rights impacts of the global pandemic and the relevant action points for civil society, academics and the government to ensure that the new normal is built on human rights principles and standards. As speakers we will have [Professor Bård Anders Andreassen](#) and [Professor Stener Ekern](#) from the Norwegian Human Rights Centre, University of Oslo and [Henry Thomas Simarmata](#) from Indonesian Institute for Law and Human Rights.