

Aide memoire: NHRIs, Human Rights and COVID-19

Introduction

The COVID-19 pandemic is an unprecedented public health emergency with significant human rights dimensions. Medical responses can simultaneously address a wide range of human rights challenges, whether they arise from the health crisis itself or measures to contain it. COVID-19 impacts upon countries differently depending on the severity and spread of the virus, health infrastructure, preparedness and response measures as well as the political, economic and social context. It will also affect individuals and parts of the population in different ways.

This document aims to facilitate the integration of human rights in preparedness and response to COVID-19 by identifying key issues. OHCHR fully acknowledges the valuable and important work that has already been undertaken by NHRIs globally to respond to the pandemic and offers this guidance to complement those efforts, and to share good practices. It is a dynamic document and NHRIs may modify it according to their situation and experiences.

1. Preparedness: National public health emergency management coordination

National Human Rights Institutions (NHRIs) are encouraged to participate in preparedness for COVID 19, including by ensuring that their independent mandate and role are integrated in related public health mechanisms at national and local levels, as appropriate. Government mechanisms should coordinate the work of relevant agencies e.g. social services, education, and law enforcement, in support of health action and to address the impact of related measures.

NHRIs are also encouraged to mobilize a diverse range of civil society actors in preparedness at local and national levels, in a manner consistent with inclusivity, participation and non-discrimination. NHRIs could, for example, mobilise and integrate women human rights defenders and organizations representing those most at risk of marginalization in communication and social engagement that forms part of health measures. The same applies to other groups such as migrants, racial and ethnic minorities, older persons, persons with disabilities, and other historically marginalized populations. This would help ensure that those at risk of being 'left behind' receive community messaging and have opportunities to contribute to it.

Access to information and participation: NHRIs' role to monitor and assist in the dissemination of accurate, evidence-based, information is crucial at all stages of the crisis. Information on the prevention and early diagnosis of the disease should be accessible and available to everyone, relayed in different languages and adapted to specific needs, including those of persons with disabilities, linguistic minorities, indigenous peoples and migrants. It is also critical for the public to have access to information about preventive measures and support services for victims of gender-based violence and about how to access essential sexual and reproductive health services during the pandemic.

Access to information also facilitates participation: Preparedness measures can allow populations to participate meaningfully in decision-making and establish mechanisms that enable consultations, feedbacks and complaints. Governments and NHRIs should aim to keep civic space as open as possible under the circumstances, as a vibrant civil society that contributes to measures and provides feedback on their effectiveness is essential during the pandemic, including ensuring trust in the health system.

NHRIs could establish forums for participation: It is important that the public is able to raise issues at local and national levels. Where feasible, Participatory mechanisms should give special attention to groups and individuals at risk of being left behind, those with specific needs or that require urgent attention. Taking into consideration the restrictions (i.e. social distancing), NHRI could set up hotlines, social messaging groups¹ or other platforms to enable the public to raise issues even if meeting in person is not possible, and channel those issues to the competent authorities for action.

Preliminary analysis and monitoring: NHRIs are encouraged to carry out a preliminary analysis on how the COVID-19 outbreak and health measures may impact human rights in their country, taking into consideration gender aspects and all civil, political, economic, social and cultural rights. It is also important to re-assess the situation throughout the response as the short and long-term impact of measures introduced to address the disease may create new vulnerabilities.

NHRIs may bring attention to gender-specific risks such as a potentially greater exposure to infection, gender-based violence, widening economic inequalities between women and men, and any diversion of resources from other crucial life-saving interventions that women and girls in particular require, such as sexual and reproductive health. NHRIs may also help gather or advocate for the gathering of data on the impact of COVID-19 disaggregated, at a minimum by sex, age and disability.

NHRIs have an important role in identifying risks faced by persons deprived of their liberty and advocating for mitigation measures.² For example, persons in detention, including in immigration detention facilities and other places of deprivation of liberty such as migrants/refugee camps, geriatric/psychiatric/social care institutions, compulsory drug rehabilitation centre and prisons are especially vulnerable to virus transmission.

Leaving no-one behind: NHRIs can identify and map individuals or groups who may be left out of preparedness and response, as well as the risks they face and ensure that measures address their situation. All societies include people who are extremely poor, marginalized, lacking access to connectivity and who will therefore face difficulty putting in place protective measures and addressing their daily needs:

- ***Indigenous peoples*** may suffer challenges due to a lack of clean drinking water, limited health services and overcrowded housing. Indigenous peoples living in voluntary isolation or initial contact should be recognised as particularly vulnerable

¹ Possible platforms include WhatsApp, Signal and Viber.

²<https://interagencystandingcommittee.org/system/files/202003/IASC%20Interim%20Guidance%20on%20COVID-19%20-%20Focus%20on%20Persons%20Deprived%20of%20Their%20Liberty.pdf>

groups. The free, prior and informed consent of indigenous peoples must be obtained when making decisions that directly affect them. For those indigenous peoples living in voluntary isolation or initial contact, States and other parties should consider them particularly vulnerable groups. Cordons that prevent outsiders from entering the territories of these peoples should be strictly implemented to avoid any contact.

- **LGBTI people also face heightened risks during this pandemic**, and specific measures should be incorporated into response plans to address these impacts. Available data suggests LGBTI people are more likely to work in the informal sector, and have higher rates of unemployment and poverty. Health services particularly relevant for LGBTI people should continue during this crisis, including, HIV treatment and testing. It is also important to address misinformation fuelling further stigma and discrimination against LGBT people.
- **Marginalised minorities** might face discrimination regarding limitations on freedom of movement and in accessing schooling. They may face poor housing conditions where there is little sanitary protection, as well as a lack of access to public health services or resources that can prevent and contain COVID-19, including meaningful information regarding the disease in their languages.
- **Migrants** can be particularly vulnerable to stigma and discrimination and can be excluded in law, policy and practice from access to information, health services and recovery responses, including due to irregular immigration status. Migrants who travel, live and work in inadequate and unsafe conditions, including those living in homelessness, overcrowded shelters, informal or official camp situations or inadequate housing, might be more exposed to a rapid spread of the virus.
- **People living in informal settlements, emergency shelters and the homeless** lack access to water, sanitation and adequate housing and are particularly vulnerable to the virus. Job losses and economic hardship could result in people facing evictions and homelessness.
- **Persons with disabilities and older persons** may face additional challenges due to limited mobility, difficulty accessing information, goods and services, social exclusion and stigmatization.

2. Response: Respect for civil, political, economic and social rights

The duty to protect life implies that States parties take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity. These general conditions may include the prevalence of life threatening diseases (Human Rights Committee, General Comment 36, paragraph 26).³

³ https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf

NHRIs are encouraged to engage in response to COVID-19, to the extent that their mandate, staff health, safety and capacities permit and in coordination with national health emergency management mechanisms. NHRIs should monitor the situation, build their knowledge, identify key issues and address them, including by bringing them to the attention of appropriate responders and making recommendations. Some human rights concerns may also be an issue for the health response as they may undermine its effectiveness if not addressed:

- If a **state of emergency** is to be established, recall its exceptional nature, the need for precise definition in terms of scope and geographic coverage, and the need to respect the provisions of non-derogable norms of international human rights and customary law, including Article 4 of the International Covenant on Civil and Political Rights, as interpreted by General Comment No. 29.⁴ Surveillance measures and interventions that restrict the right to peaceful assembly must be based on law, necessary and proportional. Recall the minimum core obligations of the International Covenant on Economic, Social and Cultural Rights, the principle of *non-refoulement*, the prohibition of collective expulsion, the prohibition of arbitrary detention and other applicable norms.
- Provide constructive advice on the legal framework related to **limitations on freedom of movement, expression assembly and association**, including limitations related to quarantines. Advocate for restrictions to be time bound, as non-intrusive as possible, understand and address gender-specific dimensions and impacts. Measures should be subject to review, and in accordance with the requirements of legality, necessity and proportionality. Limitations on freedom of movement or restrictions on entry or stay should not unduly affect human rights protections including the right to seek asylum, nor imply mandatory detention. They should be applied in ways that ensure non-discrimination, non-stigmatization, confidentiality and dignity.
- **Health monitoring and surveillance should be specifically related to, and used for, public health aims.** It should be limited in both duration and scope as required by the situation. Robust safeguards should be implemented to ensure any such measures are not misused by Governments or companies through the collection of confidential, private information for purposes not related to the public health crisis.
- **Advise on mitigating measures to avoid the spread of the virus in confined places.** This could include advocacy for compliance with international standards related to deprivation of liberty, including in prisons and immigration detention facilities. Possible measures include the isolation of ill people from healthy ones, the building of additional isolation areas to care for the ill, systematic checks of newly arrived detainees or outgoing detainees.
- **Release of individuals may also be considered.** This could include children, persons with underlying health conditions, persons with low risk profiles and who have committed minor and petty offences, persons with imminent release dates and those detained for

⁴https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CCPR%2fC%2f21%2fRev.1%2fAdd.11&Lang=en

offences not recognized under international law. Release of children needs to be done in consultation and partnership with child protection actors and relevant government authorities to ensure adequate care arrangements. The release of detainees with low sentences or individuals detained because of their migration status may also be considered. This would have to be accompanied by preventive measures such as testing to avoid the possible spreading of the virus.

- People under quarantine, in care homes or in places of detention should have **access to information** in languages and formats that they can understand. Access to communications with families, and continued enjoyment of their rights must be emphasized.
- Promote measures to respect the **right to fair trial and the right of victims** when COVID-19 related measures are taken by the judicial systems.
- Promote **access to good quality health care** and services for all, without discrimination, and including for those requiring critical care for other conditions and those with other health needs such as paediatric, maternal and geriatric care. Specific measures should be adopted to address the rights and needs of specific groups or individuals who may face obstacles in accessing health services. This includes specific obstacles women and girls and LGBTI people face in health services or the services they require for sexual and reproductive health, for example.
- Advocate for **food, water, shelter, sanitation and protective and hygiene goods**, including menstrual hygiene items, and other assistance to reach the entire population without discrimination; food should be nutritious and of good quality and must satisfy dietary needs, taking into account the individual's age, living conditions, health, occupation and sex.
- Promote **occupational health and safety** including adequate facilities, medicines and personal protective equipment in health care settings and attention to the impact of working conditions on health personnel, the majority of which will likely be women with gender-specific requirements. Advocate for safe and fair conditions of work and equal pay between men and women health workers.
- Monitor the impact of COVID-19 and related measures taken by authorities on people's **rights to work, to an adequate standard of living and to livelihoods**. NHRIs can also advocate for measures to address impacts. Plans should consider social protection measures for those who, due to COVID-19, lost income and are unable to provide for their families. Attention is needed for the specific impacts on women who are more likely to be unpaid; on insecure, temporary and short-term contracts; and concentrated in low-wage, part-time, informal work, service and retail industries. Migrant workers are likely to be in precarious working conditions and disproportionately affected by unemployment or reduced employment because of the pandemic.
- Assess the **impact of the pandemic on the economy and effective enjoyment of related rights** and consider whether Government economic relief measures are designed to

effectively address these impacts. Economic stimulus packages should aim to build back better, in line with the 2030 Agenda for Sustainable Development, by supporting innovation, social protection, education, capacity-building, critical infrastructure and a just transition to a low-carbon economy.

- Address **stigma, discrimination, racism, xenophobia and incitement to violence** through accurate, clear, gender-responsive and evidence-based information and awareness-raising campaigns. Special attention should be given to **discrimination against people who contract COVID-19**, survivors and their families, health workers, victims of gender-based violence, as well as people particularly vulnerable to attitudes and behaviours that seek to stigmatize and scapegoat the 'other' in situations of fear and uncertainty, such as migrants and minorities associated with migration.
- Advocate to **transform discriminatory social norms**, including on gender (e.g. stereotypes that confine a woman and girl's role to caregiving, potentially putting them at greater risk of infection), that existed prior to the pandemic and are likely exacerbated during the response, leading to continued exclusion of women and girls and certain population groups with life-long impacts.

OHCHR's COVID-19 related guidance is available at our dedicate webpages:

<https://www.ohchr.org/EN/NewsEvents/Pages/COVID-19.aspx>

This includes a summary of OHCHR's guidance which can be downloaded here:

https://www.ohchr.org/Documents/Events/COVID-19_Guidance.pdf