

# Now is the time for solidarity on human rights

## The need for human rights in COVID-19 responses in Europe

23 April 2020

The novel coronavirus disease (COVID-19) pandemic has put states across the world to a test like none before, and not least in Europe. As the outbreak rapidly develops, governments have taken broad and strict measures to reduce the virus' spread, prevent a breakdown of healthcare systems and save lives. In these responses, all human rights must be kept at the heart, as they can help us in overcoming this public health challenge while protecting our dignity and democratic freedoms.

We, National Human Rights Institutions (NHRIs) in Europe, have [monitored](#) our states' reactions since the pandemic began, while advising our governments and parliaments on human rights standards and informing the public about their rights during this crisis. We will continue doing so, individually and collectively, fulfilling [our mandate](#) under the UN Paris Principles to promote and protect human rights.

All states in Europe, whether they are members of the Council of Europe or European Union, have committed to upholding human rights, democracy and the rule of law, including under the European Convention on Human Rights, EU Charter of Fundamental Rights and UN treaties. We are calling for solidarity at all levels to ensure that these standards are respected, helping us see this pandemic through while staying true to our democratic values.

In particular, we underline the following principles.

### 1. Human rights remain in force in a time of crisis

Human rights continue to apply, even when a state declares a state of emergency or a derogation from its human rights obligations. States can only derogate to the extent strictly required by the situation and must announce their intention to do so in a timely manner. The prohibition of torture and inhuman or degrading treatment, as well as the prohibition of discrimination, cannot be derogated from at all.

### 2. Measures must be legally-based, proportionate and time-limited

Measures must have a legal basis, be proportionate and be time-limited. Decisions should be continually re-evaluated with a rebalancing of the rights involved, especially since they have to be

made with limited knowledge about the virus, including the conditions under which it can be lethal, the lack of therapies and vaccinations, and the scarcity of tests and protective gear. In this uncertain context, the longer restrictions on human rights are in place, the more negative impacts they have. States must consider that what is proportionate at the start of the pandemic may become disproportionate over time, and if this is the case, the measure should be mitigated or abolished.

### **3. Measures cannot have any discriminatory impacts**

Government measures in response to COVID-19 must protect the rights of all people and cannot discriminate. The impacts of measures on the human rights of particular groups, including women, older people, people with disabilities, children, migrants, people seeking asylum and people living in poverty or homelessness, must be assessed beforehand. Should people belonging to such groups be disproportionately affected, mitigation measures need to be put in place. This is required by the prohibition of discrimination.

### **4. Situations of vulnerability must be addressed**

While protecting everyone's human rights, states must particularly assess and address situations of vulnerability caused or exacerbated by its measures. These can include: women and children facing violence at home due to curfews and overcrowding at shelters; homeless people unable to access an indoor place to stay; migrants unable to self-isolate due to limitations at reception centres; people in long-term care or hospitals suffering mental health problems due to visitation prohibitions; and children living in poverty unable to access online schooling or a space to learn.

### **5. Broad public debate is as important as ever**

Since the COVID-19 pandemic and government responses deeply impact on all people and their human rights, broad public debate and consultation are essential. The state must fully ensure media freedoms and a safe space for civil society and human rights defenders to engage in their activities. These are means for the public to ensure that their governments make decisions that are in the interest of everyone, especially in this context of high uncertainty. Also, measures should be clearly communicated in accessible ways to ensure that all people, including people with disabilities and ethnic and linguistic minorities, can participate in public debate.

### **6. Parliaments must hold governments to account**

Given that all legislation and executive regulations must respect human rights, parliaments should regularly assess the human rights impacts of COVID-19 measures, including through appropriate powers of the opposition (in accordance with each state's constitutional structure) for effective

parliamentary oversight. The parliament must not cede its responsibility to the government, and the government must not prevent parliament from fulfilling its legislative and supervisory roles.

### **7. Judicial independence must be protected**

During a crisis, governments and parliaments should be particularly vigilant in protecting the independence of the judiciary so that courts can scrutinise laws, as well as their implementation, for human rights compliance. Fair procedures and the enforcement of judgements are also essential elements in this regard, helping to ensure that rights and freedoms are protected during the crisis.

### **8. Restrictions on democratic rights must be kept in check**

If freedom of assembly limitations are put in place to contain COVID-19, a blanket ban must be speedily replaced by other measures that achieve this objective. If surveillance measures are installed to tackle further spread of COVID-19, they should respect the right to privacy of each individual. Governments should avoid making decisions in highly-contested areas or calling elections, as long as such restrictions on democratic rights are in place. If elections must go ahead, parliaments should make sure that opposition parties have equal access to the people, that election laws are not amended (unless supported by the parliamentary opposition), and that voters can take part in elections in practice.

### **9. States should engage with their NHRIs**

States should work with NHRIs in their efforts to combat COVID-19. As independent, pluralistic institutions mandated by the state, we monitor and provide credible advice on the human rights implications of state measures. We are well-placed to advise on the legality of human rights derogations due to our expertise in international human rights standards. We also handle individuals' complaints and work with civil society and human rights defenders to raise the voices of all affected people, including the most vulnerable, such as by reporting to national and international bodies.

## **A call for solidarity**

Respect for human rights during the COVID-19 pandemic calls for solidarity at all levels. Within states, measures to combat the pandemic should be motivated by the conviction of all people to contribute to preventing the virus' spread, while states must stand by those most at risk. As the pandemic knows no borders, states need to collaborate in their efforts, and the Council of Europe and European Union should mutually reinforce each other to help states align their actions with human rights.

This pandemic is a test for the commitment of states to human rights. It is a test for the Council of Europe as the conscience of Europe, and for the European Union on whether it is indeed a community based on common values and fundamental rights. As European NHRIs, we are committed to promoting and protecting human rights, democracy and the rule of law and stand ready to act in solidarity with all to advance human rights during this crisis and beyond.

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*ENNHRI is the European Network of National Human Rights Institutions. We bring together over 40 National Human Rights Institutions (NHRIs) across Europe to enhance the promotion and protection of human rights in the region. Our network provides a platform for collaboration and solidarity in addressing human rights challenges and a common voice for NHRIs at the European level.*

