

National Human Rights Institutions in a Public Emergency

A REFERENCE TOOL



This report is part of ODIHR's ongoing efforts to respond to human rights challenges caused by the COVID-19 pandemic throughout the OSCE.

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and Human Rights (ODIHR)

Miodowa 10
00–251 Warsaw
Poland

Telephone: +48 22 520 06 00

Fax: +48 22 520 0605

Email: office@odihhr.pl

osce.org/odihhr

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INTRODUCTION: THE PURPOSE OF THE REFERENCE TOOL

States of emergency differ for a number of reasons: according to their causes (a military or terrorist threat, an insurgency, a natural disaster, a contagious disease, such as COVID-19, or some other threat to the life of the country and its people), and according to the responses of governing institutions. Which human rights are suspended or limited, in what manner and for how long will depend on the nature and context of the emergency.¹ As states and their respective national human rights institutions (NHRIs) also differ, the array of responses by NHRIs in a specific situation will also vary.

This reference tool aims to assist NHRIs in the exercise of their functions during times of public emergency and post-emergency, whether these are formally declared (as emergency situations or states of emergency,² or under some other formal designation) or *de facto* imposed.³ The tool does not provide an exhaustive list of actions to be undertaken or offer prescriptions. Instead, it aims to serve as reference and as an incentive and inspiration for action by NHRIs.

The tool has been written in the context of the COVID-19 pandemic and, as such, makes reference to this specific health crisis situation. At the same time, it is meant to assist NHRIs in any emergency – in any case where an extraordinary situation prompts a state to restrict guaranteed human rights and fundamental freedoms.

International human rights standards foresee the possibility, under certain strict conditions, for derogating from international human rights obligations in times of public emergency “threatening the life of a nation.”⁴ In such exceptional circumstances, derogations are allowed under international law, but remain subject to the key principles of necessity, proportionality, legality and non-discrimination, and must be time-bound.

OSCE commitments envision derogations during a “state of public emergency”, which is “justified only by the most exceptional and grave circumstances.”⁵

Derogation clauses generally require the following overall conditions to be fulfilled for states to validly seek to derogate, as also elaborated in the OSCE Copenhagen (1990) and Moscow (1991) Documents:⁶

- The existence of an extraordinary situation posing a fundamental, real and current or imminent threat to a country;
- That the nature of the emergency and of the derogation is temporary;
- That certain procedural requirements are followed by the state in terms of declaration and public proclamation of the derogation, in accordance

1 UN Office of the High Commissioner of Human Rights (OHCHR), “Emergency Measures and COVID-19: Guidance”, 27 April 2020, <https://www.ohchr.org/Documents/Events/EmergencyMeasures_COVID19.pdf>.

2 Some countries make a distinction between a state of emergency and an emergency situation, with one of the differences being that a state of emergency applies nationwide, whereas an emergency situation may be localized to a municipality, city or a region of a state.

3 “*De facto* imposed” refers either to applying restrictive norms that already exist in laws on public health, countering communicable diseases, natural and other disasters, counter-terrorism, etc., but are not invoked in ordinary times; or by introducing amendments to these laws to the same effect; or by implementing or interpreting existing norms in a more restrictive way (including the issuance by the executive of decrees, directives or binding instructions that, in practice, results in a more restrictive implementation of existing laws); or in another way, but all without formally declaring an extraordinary situation or state of emergency.

4 UN General Assembly, “International Covenant on Civil and Political Rights” (ICCPR), 16 December 1966, Art. 4, para. 1, <<https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>>; and Council of Europe, “European Convention on Human Rights” (ECHR), November 12, 1950, Art. 15, para. 1, <https://www.echr.coe.int/Documents/Convention_ENG.pdf>.

5 See: OSCE, “Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE” (Copenhagen Document), 29 June 1990), para. 25, <<https://www.osce.org/odihr/elections/14304>>; and “Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE” (Moscow Document), 3 October 1991, para. 28.1, <<https://www.osce.org/odihr/elections/14310>>.

6 *Ibid.* For more information on human rights and derogations, see: ODIHR, “OSCE Human Dimension Commitments and State Responses to the Covid-19 Pandemic”, 17 July 2020, <<https://www.osce.org/odihr/human-rights-states-of-emergency-covid19>>.

with provisions in law, and that the OSCE Office for Democratic Institutions and Human Rights (ODIHR), the UN and the Council of Europe are informed formally;

- That the derogating measures are made clear and accessible to the public;
- That there are safeguards and oversight mechanisms, including the constant review of the necessity of maintaining a state of emergency and any measures taken under it;
- That the derogating measures are strictly necessary and proportional to deal with the exigencies of the situation in terms of their temporal, geographical and material scope, while excluding certain non-derogable rights from their scope of application;
- That the measures are not inconsistent with other obligations arising under international law, including international humanitarian law and international refugee law; and
- That the derogating measures are non-discriminatory in law and in practice.

OSCE commitments specifically state that derogations cannot be sought for “rights from which there can be no derogation”. Under international human rights law, absolute rights cannot be suspended or restricted under any circumstances, even in a context of an emergency. Absolute rights include the right to be free from torture and other cruel, inhuman or degrading treatment or punishment, the right to be free from slavery and servitude,

the right to be free from imprisonment for the inability to fulfil a contractual obligation, and the right to recognition before the law. This also includes the prohibition of genocide, war crimes and crimes against humanity, the prohibition against the retrospective operation of criminal laws, the prohibition of arbitrary deprivation of liberty, and the related right of anyone deprived of their liberty to bring proceedings before a court in order to challenge the legality of the detention, and the principle of non-refoulement.⁷ In declaring and managing an emergency, governments are required to respect and adhere to these legal requirements and be accountable for doing so.⁸

OSCE commitments also provide further guidance specifically related to declarations of states of emergency. The Moscow Document introduces several requirements and conditions for the declaration of a state of emergency, which may be proclaimed “only by a constitutionally lawful body” mandated to do so and, when this is done by executive authorities, “that decision should be subject to approval in the shortest possible time or to control by the legislature.”⁹ It should also be proclaimed “officially, publicly, and in accordance with provisions laid down by law.”¹⁰

NHRIs are part of the accountability framework in OSCE participating States.¹¹ Because of their mandates, they are obliged to be even more vigilant in an emergency: General Observation 2.5 on the Principles Relating to the Status of National Institutions (Paris Principles) requires NHRIs in the situation of a coup d’état or a state of emergency to act with a “heightened level of vigilance and independence”.¹² This obligation is even more important if the crisis disrupts other oversight

7 *Ibid.*

8 See: UN Human Rights Committee, “Statement on Derogations from the Covenant in Connection with the COVID-19 Pandemic”, 24 April 2020, <<https://www.ohchr.org/Documents/HRBodies/CCPR/COVIDstatementEN.pdf>>.

9 OSCE, Moscow Document, para. 28.3, *op. cit.*, note 5.

10 *Ibid.* For more info, see ODIHR, “OSCE Human Dimension Commitments and State Responses to the Covid-19 Pandemic”, *op. cit.*, note 6.

11 In Copenhagen in 1990, OSCE participating States pledged to “facilitate the establishment and strengthening of independent national institutions in the area of human rights and the rule of law”. “The participating States further affirm that, where violations of human rights and fundamental freedoms are alleged to have occurred, the effective remedies available include (...) the right of the individual to seek and receive assistance from others in defending human rights and fundamental freedoms, and to assist others in defending human rights and fundamental freedoms”, OSCE Copenhagen Document, *op. cit.*, note 5.

12 Global Alliance of National Human Rights Institutions (GANHRI), “General Observations of the Sub-Committee on Accreditation”, 21 February 2018, <https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/General%20Observations%201/EN_GeneralObservations_Revisions_adopted_21.02.2018_vf.pdf>.

mechanisms, such as parliaments or judiciaries. Thus, in a situation of public emergency, NHRIs hold an ideal position to distinguish between lawful human rights restrictions and human rights violations.

At the same time, during emergencies the independence, legitimacy, credibility and efficacy of NHRIs according to the Paris Principles may be tested.¹³ Further, at such times the institutional capacity of an NHRI to perform its functions and discharge its responsibilities will be assessed against other key elements of the Paris Principles, such as pluralism and the possession of a broad mandate and set of functions, as well as against whether the NHRI has been provided with adequate powers and resources.

Although emergencies are temporary, they may have a longer impact on human rights and fundamental freedoms. This is certainly the case with the COVID-19 pandemic. Only months after its outbreak, the consequences already included unemployment rates at unprecedented levels, reductions in workers' wages, and an overall decrease in availability of health services. The impact has not been limited to economic and social rights. Civil and political rights have also been affected, as a result of curfews, quarantines and isolation regimes, closed borders, the postponement of elections and enhanced surveillance and other related measures. The negative position of those already living in situations of vulnerability, such as in conflict or post-conflict contexts, or of those experiencing prior marginalization and discrimination has been further exacerbated.¹⁴

The negative consequences of policies and measures adopted in response to a crisis should not, however, be regarded as inevitable, and their impact should be addressed. The cross-cutting human rights principles of non-discrimination, equality, participation, transparency

and accountability have a specific significance in responses to any crisis.¹⁵

Governments enjoy a margin of discretion in choosing the means for safeguarding rights in times of social constraint that best fit their circumstances. Nonetheless, human rights law provides operational red lines that the adoption and functioning of governments' policies must not cross, and NHRIs are responsible for overseeing whether such boundaries are overstepped.

Threats to democracy and human rights are as serious as threats to life, and all three require the highest protection. This tool, therefore, stresses the need for exceptional performance on the part of NHRIs, in order for the crisis to be overcome with the least possible damage inflicted on society and individuals.

For ease of use, this tool is organized in two sections. The first section explains the crucial role NHRIs have in times of public emergency and the preconditions needed for them to continue to operate effectively. The second offers practical advice to NHRIs on actions that can be taken during the unfolding of a public emergency, during the consolidation of emergency stage, when measures introduced remain and are consistently applied, and after the state of emergency has been ended. For each of these stages, the document offers ideas for concrete engagement by NHRIs, bearing in mind their role as watchdogs – both in relation to systemic issues and to individual cases – in protecting human rights and the rule of law, in challenging maladministration and in rendering other services, according to their remits.

13 UN General Assembly, "Principles Relating to the Status of National Institutions (the Paris Principles)", 20 December 1993, <<https://www.ohchr.org/en/professionalinterest/pages/statusofnationalinstitutions.aspx>>.

14 ODIHR, "OSCE Human Dimension Commitments and State Responses to the Covid-19 Pandemic", *op. cit.*, note 6.

15 ICCPR, Art. 2.1, 19, 21, 22.1 and 25, *op. cit.*, note 3; UN General Assembly, "International Covenant on Economic, Social and Cultural Rights" (ICESCR), 16 December 1966, Art. 2.2, <<https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>>; United Nations, "Charter of the United Nations", 26 June 1945, Preamble, <<https://www.un.org/en/charter-united-nations/>>, United Nations, "Universal Declaration of Human Rights" (UDHR), 10 December 1948, Preamble, <<https://www.un.org/en/universal-declaration-human-rights/>>.

SECTION 1 – THE CONTEXT:

STEPPING UP THE WORK OF NHRIS DURING EMERGENCIES – THE EXAMPLE OF THE COVID-19 HEALTH CRISIS

1.1. THE ROLE OF NHRIS AND PRECONDITIONS FOR THEM TO CONTINUE AND INTENSIFY THEIR WORK DURING EMERGENCIES

States of emergency pose various challenges to the exercise of NHRIs' roles, from minor practical disruptions to their everyday work to the systematic erosion of core elements of their prerogatives as enshrined in the Paris Principles, i.e., their mandates and competences, their autonomy from the government, their independence, pluralism, and that they have adequate resources and powers of investigation.¹⁶

During an emergency, much of the work done by NHRIs can be challenged in ways that hinder their role and contravene their independence, including with regard to their budgets (both the level of funding and the operational autonomy over its allocation); to the freedom of NHRI members and staff to move around in the discharge of their duties; to unrestricted access to information, officials and specific places, such as, for example, detention facilities; to the ability of various interlocutors to meet with them; and to access for citizens and non-citizens to NHRIs, including the opportunity to lodge complaints, where applicable.

While NHRIs share the burden of the crisis with the society and other institutions, it is up to NHRIs (and, if needed, countries' parliaments) to decide how exactly to address crises according to their mandates; there may be threats to their independence and operational capacity, which are at the core of the Paris Principles.

To prevent or counteract any threats to an its independence and capacity, while always making sure to base

relevant actions strictly on their respective mandates and applicable human rights standards, an NHRI might consider:

- Officially and publicly opposing any proposals or measures (including financial) undermining its independence or capacity to carry out its institutional mandate;
- Pro-actively developing and adopting rules and arrangements for duty travel by members and staff members throughout the country and for the necessary movement to perform their monitoring functions. In doing so, the NHRI should keep in mind general restrictions in place under the state of emergency and ensure that the police and other services tasked with enforcing these are notified in advance and are familiar with the certificates for official travel and movement issued by the NHRI;
- Submitting requests to relevant suppliers for protective equipment and training immediately for relevant NHRI staff, if protective equipment and/or training for any kind of duty-related movement in the new circumstances, including official travel, are required and not generally available;
- Ensuring, through contacts with the media and all other available information channels, that all people within the jurisdiction of the state are informed of the NHRI's activities and the ways to contact it;
- Strongly reacting officially and, if necessary, publicly if any agency subject to oversight by the NHRI fails to fully comply with an inquiry or preventive

¹⁶ The Paris Principles, *op.cit.*, note 13.

intervention, refuses to provide information or access, or fails to co-operate in any other way required by law;

- Sharing with relevant international organizations, institutions and associations, such as the Office of the United Nations High Commissioner for Human Rights (UNHCHR), the Commissioner for Human Rights of the Council of Europe, ODIHR, the Global Alliance of National Human Rights Institutions (GANHRI) and the European Network of Human Rights Institutions (ENNHRI), information on any serious attack on the NHRI's mandate, independence, capacity and/or operational ability;¹⁷ and
- Continuously developing its capacity and ensuring access to external experts in all areas, including in security, IT and health; and to its own means of transportation, protective equipment, etc.

1.2. THE INCREASINGLY IMPORTANT ROLE OF NHRIS DURING A PUBLIC EMERGENCY

In a democracy, laws and policies are legitimate to the extent to which they are publicly justified and generally accepted by the community. Public justification and trust in authorities is a result of free and reasoned debate, which may be missing or restricted during periods of emergency, which are often exactly when the process and its results are needed. In a state of emergency, time and effectiveness are of paramount importance. Executive authorities should be able to act quickly and efficiently in order to address a particular threat. This is often characterized by the adoption of simpler decision-making procedures, reduced transparency, decreased consultation and justification, and an overall strain on systems of checks and balances.

However, all extraordinary executive measures must be strictly time-limited and kept under regular parliamentary scrutiny, to ensure that they remain necessary and proportionate. Parliaments should oversee executive action at reasonable intervals and should intervene on an ad hoc basis to modify or annul decisions of the executive, when warranted.¹⁸

The emergency measures introduced to address the COVID-19 pandemic have disrupted parliamentary oversight in a number of countries. In some, parliaments have exercised only formal control over the executive, and in a few instances parliaments have ceased to function entirely. States of emergency, curfews and lockdown measures during the pandemic have created considerable challenges for the functioning of courts and for access to them. In most OSCE participating States, the pandemic resulted in (partial) closures of courts and the suspension of procedures, except for urgent cases. Even where courts remained open in principle, they often worked with only limited capacity.¹⁹

An emergency may lessen the ability of mechanisms other than NHRIs to ensure the protection of human rights, and also weaken the normal framework for oversight and accountability.²⁰ For example, holding elections and referenda may be problematic, as the possibility of campaigning is extremely limited in times of crisis.²¹ This may fuel mistrust among individuals whose lives are severely disrupted, especially after the immediate threat appears to have diminished or the impact of a government's actions during the emergency are increasingly felt.

The division and distribution of powers, as well as maintaining systems of checks and balances on executive action, will be a major challenge during the emergency and post-emergency periods. As has been seen during the COVID-19 pandemic, during and after lockdowns,

17 United Nations Development Programme & UN Office of the High Commissioner for Human Rights, *UNDP-OHCHR Toolkit for Collaboration with National Human Rights Institutions*, (New York, Geneva: United Nations, 2010), <<https://www.ohchr.org/Documents/Countries/NHRI/1950-UNDP-UHCHR-Toolkit-LR.pdf>>.

18 United Nations, "COVID-19 and Human Rights: We Are All in this Together", April 2020, <https://www.un.org/victimsofterrorism/sites/www.un.org.victimsofterrorism/files/un_-_human_rights_and_covid_april_2020.pdf>.

19 ODIHR, "OSCE Human Dimension Commitments and State Responses to the Covid-19 Pandemic", *op. cit.*, note 6.

20 See European Network of National Human Rights Organizations (ENNHRI), "COVID-19 and Human Rights", <<http://ennhri.org/covid-19/>>.

21 ODIHR, "OSCE Human Dimension Commitments and State Responses to the Covid-19 Pandemic", *op. cit.*, note 6.

the provision by NHRIs of a space for dialogue for civil society organizations (CSOs) and other relevant actors may prove vital to ensuring consultation and transparency. NHRIs can, within the context of their mandates, demand justification for the decisions of the executive in a period where other oversight bodies may be silent. Such action by NHRIs will reinforce the democratic texture of a state, by providing all individuals with the opportunity to learn about the grounds for executive decisions. This is a particular asset in times of national (and global) uncertainty.

While states of emergency are directly related to governance, they are also an issue in relation to human security.²² The array of arrangements that might be adopted in these circumstances is diverse, and can include concerted action by national and local government officials, for example, by those who provide social security and social welfare assistance; by the private sector, providing financial, accommodation and IT services; and by health, education and voluntary sector organizations. Any disruption in these areas may lead to gaps in provision through which the vulnerable can fall and which others may exploit.

These are some of the reasons why in emergencies, as the General Observation 2.5 of the Paris Principles requires,²³ NHRIs have a particularly significant role to play. This is a more proactive and vocal role than usual, sounding the alarm when necessary, filling gaps in oversight and ensuring the accountability of government bodies.

Due to their specific role, status and structure, during times of public emergency NHRIs can:

- Act as bridges between individuals and the state, by raising issues that concern citizens and non-citizens with the appropriate authorities;
- Act as bridges between civil society and the state, by creating platforms for civil society and government

to debate emergency measures or, if this is not possible, by raising issues that concern CSOs and by conveying their ideas, when appropriate;

- Engage with parliaments and governmental bodies in drafting legislation and policies, and in providing prompt feedback;
- Act preventively and protectively with regard to the respect for the human rights and fundamental freedoms of all individuals under a state's jurisdiction;
- Ensure protection from discriminatory measures;
- Oversee concrete actions (or inaction) by the executive, and act as systemic watchdogs to ensure that the rule of law is preserved; and
- Take an active role in assessing policies and budgets from the point of human rights standards.

In doing so, NHRIs may consider monitoring, requesting justification for and drawing public attention to:

- The number and content of legal acts that a government has issued that effectively replace laws in force, and the extent to which their content appears to conflict with human rights standards or other laws in force (affecting the consistency of the legal system and, therefore, the rule of law);
- New laws or decrees about which information has not been made available to all individuals in a timely and easily understandable way;
- Possible abuse of the crisis situation, for example, for political campaigning by ruling parties;
- The extent to which governments follow the proposals and advice from expert committees in crisis management bodies, and the existence of participatory mechanisms for handling crises;

22 As noted in UN General Assembly resolution 66/290, "human security is an approach to assist Member States in identifying and addressing widespread and cross-cutting challenges to the survival, livelihood and dignity of their people." It calls for "people-centred, comprehensive, context-specific and prevention-oriented responses that strengthen the protection and empowerment of all people.", <<https://www.un.org/humansecurity/what-is-human-security/>>.

23 GANHRI, "General Observations of the Sub-Committee on Accreditation", General Observation 2.5, *op. cit.*, note 12.

- The extent to which experts of all relevant specializations, and especially human rights experts, are being involved in or excluded from advisory committees;
- The extent to which membership of such committees reflects the diversity of a society, including in relation to gender, age and disability, for example, as well as ethnicity and religion or belief ;
- The extent to which media pluralism is upheld, the manner in which the executive responds to media requests, whether the media are being silenced or put under greater control, and whether the opposition has access to media in order to express their views;
- The extent to which parliamentary debates (including those carried out through digital technologies) have taken place with regard to major decisions with implications for the respect for human rights, including with regard to a possible lack of inclusiveness, accountability and consideration of the impact on vulnerable groups;
- Possible infringements on individual privacy without a proper legal basis and not in line with the requisite conditions of necessity, proportionality and prior judicial or other approval by the relevant authority;
- The political impartiality and neutrality of the police, security services and the military as they perform their functions in relation to the state of emergency;
- The use or misuse of power by the police, security services and the military, in contradiction of their statutory powers and functions;
- The legality and appropriateness of the methods the security sector uses to enforce the emergency regime (especially the use of force and the processing of personal data); and

- Whether state assistance is being distributed evenly, fairly and without discrimination, including without prejudice to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, as well as to the political affiliations of regional and local authorities.

1.3. FOCUS ON THE SECURITY SECTOR

A state of emergency interferes with the normal functioning of a society, particularly with regard to arrangements to ensure the safety and security of all persons within state jurisdiction. The public emergency linked to the COVID-19 health crisis has generated multiple challenges and exceptional tests for the security sectors of OSCE participating States, for example, with regard to:

- The release of persons deprived of liberty as a safeguard against contagion, while enforcing lockdown regimes;
- The increased engagement of police, and even the military, in enforcing quarantines, which in some countries have had soldiers armed with automatic weapons patrolling the streets or restricting movement between different regions in the country; and
- Exceptional duties being given to armed forces, e.g., to transport the deceased to relevant facilities, or intelligence services being engaged in obtaining ordinary medical equipment, such as ventilators.

Such situations elevate the risk of the disproportionate use of force, the overstepping of legally established powers and other wrongdoings and abuses by security sectors. This may lead to violations of human rights and/or the disruption of the role of security forces appropriate in a democracy.²⁴

During the COVID-19 crisis, the sharp rise in the use of new technologies, such as tracking applications, drones, face recognition and thermal imagery devices, large-scale personal data processing and artificial intelligence by security providers to conduct surveillance

24 OHCHR, "Guidance on the Use of Force by Law-Enforcement Personnel in Time of COVID-19 Emergency", 22 April 2020, p. 3, <<https://www.ohchr.org/Documents/Issues/Executions/HumanRightsDispatch1.pdf>>.

and ensure compliance with emergency measures has raised a number of concerns, such as:²⁵

- Whether the use of tracking applications should be mandatory or voluntary;
- How proper storage of personal data can be ensured, and to what extent government intelligence and internal security services should have access to such data; and
- Whether the use of such technologies to enforce individual or geographical quarantines is proportionate to the risk (in this case, of spreading the disease).

Concerns, on the part of both the general public and experts, range from obvious privacy issues to ethical – and even existential – questions about the futures of societies. The increased activities of security providers require increased assurances of democratic civilian control, accountability and respect for human rights by security forces personnel. NHRIs need to have the capacity to deal with these and other similar issues.

Emergencies may also lead to less obvious, but potentially detrimental, long-term effects, such as the securitization and creeping militarization of societies and public space. Emergencies will often require first-of-a-kind decisions in the engagement of security sector institutions. Maintaining democratic civilian oversight over security providers is important to ensure their return to regular tasks and responsibilities once the emergency is over, without holding on to additional powers gained

during the crisis – a temptation against which constant vigilance is required.²⁶

Further, it is often possible to hold multi-stakeholder consultations prior to making decisions on the engagement of security forces. This opens significant space for preventative and protective human rights work, as well as for NHRIs to play their mandated role in the democratic oversight of armed forces. When necessary, NHRIs will have to ensure security providers understand the necessity of continuous oversight and the benefits that this will bring to security sector institutions themselves.

THE HUMAN RIGHTS OF SECURITY SECTOR PERSONNEL

The human rights of citizens in uniform and of non-uniformed security sector personnel, including their safety and security, are at jeopardy during a state of emergency. Depending on the type of emergency, a wide range of security sector personnel, as well as medical personnel, will form the majority of the line of “first responders”. These can include members of the military, the police, the border guard, civil defence bodies, prison staff and intelligence services. Private sector personnel may also be increasingly involved.

The emergency will thus require both increased deployment and the assumption of roles outside of the ordinary duties of such personnel.²⁷ This situation may increase risks for the security personnel themselves, as well as for the people they serve and/or support. Thus, the protection of the human rights and fundamental freedoms of security personnel will also be a strong concern for NHRIs.

25 See: Organization for Economic Co-operation and Development (OECD), “Tracking and Tracing COVID: Protecting Privacy and Data while Using Apps and Biometrics, 23 April 2020, <<https://www.oecd.org/coronavirus/policy-responses/tracking-and-tracing-covid-protecting-privacy-and-data-while-using-apps-and-biometrics-8f394636/>>; United Nations, “COVID-19 and Human Rights: We Are All in this Together”, *op. cit.*, note 18, p. 16.

26 Geneva Centre for Security Sector Governance (DCAF), *Impact of COVID-19 on Security Sector Governance*, (Geneva: DCAF, 2020), <<https://www.dcaf.ch/impact-covid-19-security-sector-governance>>.

27 DCAF, “Security and Justice Reform Response to Covid-19 Crisis”, <<https://issat.dcaf.ch/Learn/SSR-in-Practice/Thematics-in-Practice/Security-and-Justice-Reform-Response-to-Covid-19-Crisis>>.

SECTION 2: PRACTICAL INPUT FOR THE WORK OF AN NHRI THROUGHOUT AN EMERGENCY

2.1. ENTERING A STATE OF EMERGENCY

The beginning of a state of emergency may take different forms and, in some cases, states of emergencies are *de facto* imposed.²⁸

As a crisis approaches, and to the extent that the introduction of a state of emergency appears probable, a consultative meeting between institution(s) empowered to declare a state of emergency and the respective NHRI fits well with the advisory and preventive role of an NHRI, in addition to its monitoring function.

During this stage, an NHRI should consider:

- Accepting an invitation from the competent authority to discuss the need to introduce a state of emergency and any related restriction on human rights being proposed or, preferably, initiating a meeting if the decision on a state of emergency appears to be in the making but the competent authority has not called such a meeting;
- Initiating such meeting if the state of emergency appears to have been informally or *de facto* imposed;
- Setting up the NHRI's own advisory committee for the emergency, possibly including independent experts and civil society representatives; and
- If there is no legal requirement for the body authorized to declare/introduce a state of emergency to obtain a prior opinion from the NHRI about intended derogations of human rights, making a note to self to take action towards legislative changes to that effect once the emergency is over.

With regards to their role in the upholding of the rule of law, NHRIs should consider:

- Analyzing whether the decision on the state of emergency was taken by a constitutionally competent authority, in a procedure prescribed by law and for a legitimate reason, in full accordance with the relevant national and international human rights guarantees and standards;
- Ensuring that, if the decision on the state of emergency contains details on the derogation of certain rights, those rights are eligible for derogation (they must not belong to any of the non-derogable rights and freedoms, as guaranteed by international human rights instruments and the country's constitution);
- Checking whether any derogations have been subject to the prescribed notification procedures, as required under relevant constitutional or treaty provisions; and
- Whether or not the state of emergency has been formally declared and, therefore, cannot be subject to the parliamentary scrutiny or judicial review to provide justification as to how the changed circumstances justify the increased powers of the government, its adoption of possible restrictive by-laws, and changes in the interpretation and/or limitation of certain rights and freedoms, leading to more restrictive regime than under normal circumstances.²⁹

If the consideration of the above gives grounds for concerns, NHRIs can:

28 ODIHR, "OSCE Human Dimension Commitments and State Responses to the Covid-19 Pandemic", *op. cit.*, note 6, p.25; see also: European Parliament Research Service (EPRS), "States of Emergency in Response to the Coronavirus Crisis: Situation in certain Member States", June 2020, <[https://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_BRI\(2020\)651972](https://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_BRI(2020)651972)>.

29 There are examples of countries whose governments have, within three months of the beginning of the COVID-19 crisis, adopted over 100 new ordinances or changes to the existing ones without formally declaring a state of emergency.

- Address the authority that made a questionable decision, asking for a justification for the decision and/or proposing means of correcting the situation;
- Challenge the decision before the constitutional court or other national mechanism with a mandate to protect constitutionality and legality, in countries where such action is allowed and within the NHRI's remit; and/or
- Submit *amicus curie* briefs in a case (action) already filed by a different party, challenging the constitutionality and/or legality of the decision.

Extra care should be taken when informing the public of the actions above, so as to ensure there is proper public understanding of the NHRI's position.

2.2. THE UNFOLDING OF THE PUBLIC EMERGENCY AND CONSOLIDATION

When the decision on how to address and whether to introduce restrictions related to fundamental freedoms and human rights due to a crisis becomes imminent or comes in force, NHRIs should focus on:

- Ensuring that they have the necessary capacity and resources to function independently and effectively during the emergency;
- Undertaking a risk assessment of the impact of the emergency and government actions on especially vulnerable groups; and
- Vigorously using their capacity and resources to fulfil their mandates with a heightened level of vigilance and independence.

Maintaining capacity and undertaking an assessment will enable NHRIs to decide what action they need to take to fulfil their remit in protecting human rights, and to ensure that they can act accordingly.

ENSURING AND USING THE NHRI'S CAPACITY FOR EFFECTIVE ACTION

Maintaining – and even boosting – capacity to readily meet increased challenges for human rights and fundamental freedoms, as required by the Paris Principles, is frequently a challenge. This challenge may even involve pressure internally or externally to downgrade resources, for example, if there are cuts in funding or if NHRI staff are affected by the emergency (as in the Covid-19 pandemic).

In a developing state of emergency, the role of NHRIs can be crucial for a number of reasons, including:

- Their unique and broad mandate, which includes roles such as the protection and promotion of human rights; democratic oversight of the security sector; advisory, quasi-judiciary, mediatory, regulatory and educational roles; strengthening the rule of law; and supporting victims, whistle-blowers and human rights defenders;³⁰
- They often have more diverse personnel, including women, persons with disabilities, members of ethnic and religious minorities, LGBTI and other under-represented groups, than in other official institutions or organizations;
- Their ability to gather, analyse and disseminate information from/to multiple governmental and non-governmental sources. In contrast, in an emergency, government sources of information may be focused and streamlined, and information tends to be sought from limited sources, often experts and mainly men at a senior level;
- They are well-placed to identify new vulnerable groups or unforeseen/disadvantageous impacts of restrictions and government actions on such groups and individuals;
- Their distance from urgent decision-making can contribute to greater objectivity. Authorities in

30 Not all NHRIs have all of the listed roles.

charge of managing a crisis may have limited time for analysis or reflection. It can also be difficult for the authorities to scrutinize and assess information being sent by myriad sources. The ability of NHRIs to analyse trends and present concrete evidence, particularly on the impact on known or emerging vulnerable groups, makes their interventions authoritative and credible;

- Their ability to fine-tune. NHRIs can make tactical interventions that aim to achieve redress in the short-term, i.e., to alleviate harm or injustice during the emergency;
- Their strategic ability. NHRIs can focus on the medium and long-term impacts of the crisis and responses, to minimize possible unintended effects;
- Their access to international networks. NHRIs can benefit from shared information across state borders, for example with NHRIs in neighbouring states or with international organizations working with human rights institutions; and
- Their wide-ranging and strong influence. NHRIs can reach every corner of a country, as well as being heard at international level. Because of their mandate, they have a fast track to the media and the special attention of the parliament. An NHRI has the tools to make an impact – with the proper capacity and the will to use it, an NHRI can make a difference.

NHRIs can prepare, and help key stakeholders better prepare, for handling a crisis by:

- Ensuring that two-way communication channels with key stakeholders, including governments, parliaments, mass media, civil society and legal communities, are in good shape and can be swiftly mobilized. For example, by:
 - Inviting them to regular consultation processes on the crisis and responses; and

- Anticipating how to organize communication during the emergency, including using new technologies, social media or activating informal networks between staff members under the supervision of the NHRI leadership;

- Reviewing their own databases and data collection and analytical capacities against identified key risks. They can ensure that the data are disaggregated by gender, age and ethnicity (if permitted under national law), so that proper analysis may be performed and remedial action taken;
- Building or enhancing any necessary data/information-collection and analysis capacity;
- Assessing the impact of the emergency on NHRI staff and staffing levels;
- Safeguarding the welfare and well-being of their own staff;
- Developing plans (and policies, if needed) to maintain the NHRI's own service to the public (bearing in mind likely additional demand and the potential impact of the emergency on the NHRI's own staff). Such policies may include arrangements for remote working or new arrangements to make reasonable adjustments to enable staff with disabilities to continue working in the changed circumstances; and
- Reviewing plans, policies and budgets from a gender perspective as part of gender mainstreaming efforts, and taking into consideration other intersectional elements, such as race, ethnicity, religion or belief, ability, age, occupation, immigration status, location and other factors.

CAPACITY FOR RECEIVING AND HANDLING COMPLAINTS

If an NHRI has a quasi-judicial capacity, it is vital to maintain availability to address individual complainants and to continue performing this function.³¹ In order to be accessible to potential complainants from under-privileged or

31 See: OHCHR, *National Human Rights Institutions: History, Principles, Roles and Responsibilities* (New York and Geneva: United Nations, 2010), p. 43, <https://www.ohchr.org/Documents/Publications/PTS-4Rev1-NHRI_en.pdf>. Some NHRIs may have

marginalized groups who might have difficulty reaching a central office in the capital or filing complaints using remote means, and those living in underdeveloped or peripheral areas, an NHRI needs to be increasingly present in the field including in remote areas. Field presence is needed also to learn of events that should be investigated ex-officio, if the NHRI's mandate allows for it.

UNDERTAKING AN ASSESSMENT EXERCISE

When it appears that emergency legislation is being considered or, at the latest, when a state of emergency has been declared or has *de facto* begun, NHRIs should consider undertaking a risk assessment to evaluate potential threats to human rights, including of known vulnerable groups, and to identify other groups who are or may become vulnerable because of the situation giving rise to the emergency and /or the government's response to the emergency.

An assessment of the risk of human rights violations, as well as of the possible impact of measures, is important because the policies introduced by the governing authority will, at least at the beginning of the crisis, almost inevitably focus on the general population, and the protection measures will likely be the same for all individuals at first. However, such an approach risks exacerbating existing inequalities. Further, a public emergency may also affect groups not normally perceived as vulnerable in ways that make them vulnerable. NHRIs have a role in ensuring that this does not happen or that, if this has occurred, that it does not continue. As emergency measures are developed, new vulnerable groups may emerge or new types of vulnerabilities among known vulnerable groups may be identified. These may be unexpected and counter-intuitive. For example, in the COVID-19 health crisis, although the elderly (who are disproportionately female) were more susceptible to the virus, COVID-19 caused more deaths among men than

women. In some countries there were also more deaths from the virus among members of minority communities. Long-standing systemic health and social inequities have put some members of racial and ethnic minority groups at increased risk of contracting COVID-19 or experiencing severe illness, regardless of their age.³²

A risk assessment exercise is an efficient tool by which NHRIs can gather information necessary to take stock of threats to human rights during an emergency situation, to make decisions as to whether action is needed and, if so, to determine priorities.

NHRIs add value by looking at risks through a human rights lens. In doing so, they are likely to spot risks that others may miss. For example, during the COVID-19 health crisis, as a result of monitoring, some NHRIs in the OSCE region managed to challenge proposals to prioritize intensive care treatment for those under the age of 70, absent any underlying medical condition or other factor linked to morbidity, such as obesity.

Deciding as a principle to refuse intensive care assistance to a group is different from making a clinical judgement on the balance of the success or harm of such treatment to an individual in light of their age, underlying health conditions, etc. Similar concerns have been raised during the COVID-19 pandemic on decisions being taken, without consulting the patient or family, on patients with learning disabilities.

The Moscow Document recognizes gender equality as a cornerstone of security and democracy in the OSCE region. In this regard, NHRIs should remain constantly alert to the risks and signs of an increase in gender-based violence.³³ Guidance on gender-based violence is provided in a separate section, below.

"quasi-judicial" powers, that is, functions allowing them to receive individual complaints.

32 ODIHR, "OSCE Human Dimension Commitments and State Responses to the Covid-19 Pandemic", *op. cit.*, note 6.

33 "Gender-based Violence" refers to harm that is perpetrated against a person (woman or man or) as a result of power inequalities that are themselves based on gender roles. It is not simply violence against women, although, because of gender inequalities, women are more often the target of such violence. The consequences of such violence can also often be more severe for women. Gender-based violence can occur in a family or domestic setting, in the community or be perpetrated or condoned by the state. Gender-based violence includes but is not limited to physical and sexual violence. It also includes actions that cause psychological harm, including threats of physical or sexual violence and emotional or financial abuse. Gender-based violence also includes violence on the grounds of sexuality. Members of the LGBTI community may be particularly vulnerable in the context of an emergency.

A risk assessment should also appraise risks arising from the deployment of the security services, both in the sense of risks to the broad enjoyment of human rights and to the rights of and risks to security personnel themselves. Guidance is provided on the security sector in a separate section, below.

In undertaking a risk assessment, NHRIs should consider:

- Identifying potential risks to individuals and groups that can find themselves in situations of vulnerability, e.g., those in places of deprivation of liberty, (prisons, migrant detention centres, compulsory secure units, juvenile detention centres, hotels and similar accommodation facilities designated for isolation),³⁴ persons with disabilities (physical, mental and learning), minority groups (racial, ethnic, religious, linguistic minorities and indigenous peoples), women, children, LGBTI people, elderly people, migrants, refugees, IDPs, asylum seekers or other groups at risk (the homeless, people with substance abuse problems, those in poverty and the unemployed, single-parent families, etc.);
- Consulting all relevant stakeholders, especially the national mechanism for the prevention of torture and other cruel, inhuman and degrading treatment or punishment, if this is not already a part of NHRI's mandate, when doing this;
- Conducting a gender-based analysis of the risks caused by the emergency and the government's response to the emergency to identify any particular risks to women, e.g., by reason of pregnancy, childbirth, gender-based violence (especially domestic violence, as was the case during the COVID-19 pandemic), income, occupational segregation, family responsibilities and age, as well as particular risks to men, e.g., as victims of gang or street violence, higher morbidity rates or lower rates of uptake of health services;
- Identifying any other vulnerable groups assessed at this stage to have been put at risk by this particular emergency, e.g., among COVID-19 "essential" workers (which have included those involved in the food-supply chain, transport, finance and public administration, as well as health and security workers); among those reliant on public transport, migrant workers living in hostels, those in fear of violence in their own homes including women, children or the elderly, those with special educational needs, and those with learning or other disabilities who may have difficulty accessing or understanding key government messages regarding the emergency measures;
- Determining particular risks to known and newly identified vulnerable groups as a result of the emergency and/or government responses to emergency. For example, in the COVID-19 crisis there was the risk, because of school closures, of authorities losing sight of children identified as being at risk of sexual or other abuse; prisoners or other detained people have been at risk of infection and potential abuse due to the prohibition of visits by family members, CSOs, lawyers, etc.; health and care workers in hospitals, community and retirement homes have been at risk because of a lack of adequate personal protective equipment;
- Considering any specific issues and risks related to the deployment and use of security personnel, especially members of the police and armed forces, e.g., excessive use of force, increased spread of infection to and from personnel engaged, and increased burdens on mental health. Other risks could include the increased actual or perceived securitization of society and public space and fears this may provoke, including being intimidated by the presence of security personnel on the streets; and
- Calling for a government action plan in order to provide support to the categories particularly affected

34 A relevant analysis could be made about the nature of so-called "self-isolation" (when certain governments during COVID-19 summarily ordered certain categories of citizens, e.g., those who have returned from abroad bearing no symptoms of infection, to remain isolated at their homes for a certain period of time, and then monitored whether they followed the order, prosecuting those who did not). On the face of it, their home may appear to be a "place of deprivation of liberty" and may need to satisfy relevant international standards, for which the state would be responsible.

or vulnerable to the state of emergency measures (for instance, in case of a lockdown), and providing NHRI advice on such measures.

GENDER-BASED VIOLENCE

Gender-based violence refers to harm that is perpetrated against a person as a result of power inequalities that are, themselves, based on gender roles. Because gender-based violence is about (perceived or real) imbalances of power, any situation that removes safeguards against abuse or otherwise increases the power of the potential abuser increases the risk or levels of such violence.³⁵ A state of emergency that disrupts normal ways of life may also disrupt the effective functioning of these safeguards.

Therefore, restrictions on access to family, friends and CSOs, as well as on face-to-face contact with legal representatives, put persons deprived of liberty and held in secure facilities, prisons, detention centres, psychiatric or mental health hospitals, or other institutions at increased risk of gender-based violence. This may be exacerbated for women if a shortage of female guards and/or attendants (e.g., because of health or caring responsibilities) leads to male substitutes without additional safeguards. Staff shortages can also increase the risk of abuse from other inmates. Similar risks may arise in *de facto* closed institutions, i.e., for those who are not legally deprived of liberty but are *de facto* not able to leave communal accommodation and are isolated from visitors. These may include those in residential care homes (for the elderly and those with physical or intellectual disabilities), migrant and refugee camps, hostels for the homeless or asylum seekers and staff on cruise ships.

Less obviously, a state of emergency also increases the risk of gender-based violence in the home or other domestic setting. In the Covid-19 pandemic, orders requiring people to stay in their homes were perceived as, and sometimes called, “place of safety” orders. For many people, however, and particularly women and children, home can be a place of danger, as safety comes from interaction with the outside world, family, friends, police and courts; with access to medical, community and social services; and from access to domestic violence shelters.

Across the OSCE region, a dramatic increase was reported in cases of domestic violence and demand for support services, including shelter.³⁶ In some cases, disruption to referral and protective measures, combined with lockdown measures, resulted in a documented rise in femicide.³⁷ The UN has referred to this dramatic increase in domestic violence against women as a “shadow pandemic”.³⁸ In the glare of the health pandemic, many governments failed to consider the impact of lockdown measures, and that lockdown regimes might result in an increase of violence in the home. Public announcements, coming later, that leaving one’s home to escape violence would not breach stay-at-home orders, were of limited use if those seeking to escape (predominantly women) had nowhere to go, could not rely on police or judicial protection or could not get medical – including gynaecological – health services, due to disruption caused by the pandemic. Violence against children or the elderly was less documented during the pandemic in comparison to violence against women at the hands of an intimate partner, however NHRIs have an important role in ensuring that, in any state of emergency, everyone is able to access a place of safety if their own home is not safe for them.

35 ODIHR, *Preventing and Addressing Sexual and Gender-Based Violence in Places of Deprivation of Liberty*, (ODIHR: Warsaw, 2019), p. 21, <<https://www.osce.org/odihr/427448>>.

36 ODIHR, “OSCE Human Dimension Commitments and State Responses to the Covid-19 Pandemic”, *op. cit.*, note 6, p.138. An increase in on-line violence, such as stalking, bullying, sexual harassment and sex trolling, was also reported, which in a lockdown situation increases one’s vulnerability in one’s own home.

37 OHCHR, “Statement by the UN Working Group on Discrimination against Women and Girls – Responses to the COVID-19 Pandemic Must Not Discount Women and Girls”, <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25808&LangID=E>>.

38 UN Women, “Violence against Women and Girls: The Shadow Pandemic”, Statement by Phumzile Mlambo-Ngcuka, Executive Director of UN Women, April 6 2020, <<https://www.unwomen.org/en/news/stories/2020/4/statement-ed-phumzile-violence-against-women-during-pandemic>>.

NHRIs should include gender-based violence as part of a risk assessment exercise, considering the following factors:

- The risk of gender-based violence rises significantly if there are restrictions on leaving one's home, limiting or preventing physical contact with family, friends, community health providers, employers, teachers, etc. Home is not a safe space for everyone;
- Isolation increases an abuser's power and control, e.g., by controlling access to mobile phones or the Internet, or by removing those who might otherwise act to deter incidents of abuse;
- Restrictions on movement; confined living conditions due to lockdown or self-isolation, financial and other worries; and/or the loss of outside employment may also increase an abuser's anger, frustration and need to exercise control, exacerbating the risk of violence against those within the abuser's control at home;
- Restrictions on movement, especially the closure of schools, may also increase the risks of sexual violence and exploitation of children and young people, including on-line abuse;
- A state of emergency may disrupt or limit the availability of legal, medical, community and charitable support services, further exacerbating the vulnerability and powerlessness of those at risk of domestic violence and other gender-based violence;
- A state of emergency may increase the risk of gender-based violence by state actors, including security personnel, who may be given increased powers and have an increased presence or interaction with members of the public;
- The emergency may also make it more difficult for victims or witnesses to report abuse and to access the normal protective services, including medical and policing services and judicial action;
- The increased risks of gender-based violence in places of deprivation of liberty. Restrictions on visitors increases the isolation and vulnerability of those at risk. Even where remote access to legal representatives or the NHRI is in place, those at risk of gender-based violence may not be able to report the abuse because of the unseen presence of the abuser, threats, practical obstacles or other factors specific to the victim, e.g., age, language or learning disabilities;³⁹ and
- A state of emergency may exacerbate existing inequalities, including in employment, financial security, health and access to services, which will have a long-lasting impact and potentially increase vulnerability to gender-based violence.

Similar attention should be paid to those potentially at risk of other forms of hate crime, e.g., on the grounds of ethnicity, (ethnic and national) origin, religion and/or disability. In an emergency situation, there may be an increased pressure to find someone to blame for the restrictions on everyday life, with a consequent increase of hate speech.⁴⁰

RISK ASSESSMENT IN THE SECURITY SECTOR

A risk assessment should include any particular issues and risks emerging from the emergency or the government's response related to the deployment and use of security personnel, especially members of the police and armed forces.

NHRIs should consider monitoring and raising the following issues:

39 A number of NHRIs have identified vulnerabilities and/or made recommendations in this respect; e.g.: older people not familiar with social media/new technologies lack of access to mobile phones, IT, etc.; prisoners with learning disabilities – a disproportionately high percentage of the prison population – might lack the ability to understand legal proceedings using remote/IT access.

40 Human Rights Pulse, "A Tsunami of Hate": The Covid-19 Hate Speech Pandemic", Human Rights Pulse website, June 20, 2020, <<https://www.humanrightspulse.com/mastercontentblog/a-tsunami-of-hate-the-covid-19-hate-speech-pandemic>>.

- Whether security personnel have the training, equipment or other resources they need to fulfill their functions during an emergency, such as whether military units are trained in performing civilian missions;
- Whether there are practical difficulties for security personnel, e.g., in relation to access to personal protective equipment, health services, food, child-care, etc.;⁴¹
- Whether there are any gender-specific risks or risks to security personnel from a minority group background, e.g., treatment of pregnant soldiers during the COVID-19 emergency or risk of hate incidents in relation to soldiers belonging to religious or ethnic minority groups, due to their being targeted on social media;
- Whether the usual disciplinary arrangements have been suspended or replaced. If so, whether alternatives meet human rights obligations, in accordance with the state's derogations from the European Convention on Human Rights⁴² or from other human rights treaties, if any; and
- Whether normal arrangements for members of the security services to raise concerns and submit complaints need to be reviewed in the context of the emergency, including complaints related to any changes to their deployment and the chain of command and on of human rights violations or other risks. Such a review should consider known obstacles to reporting in normal times and any new obstacles due to the emergency.

In considering risks to the human rights of individuals in the security sector, human rights, NHRIs should consider:

- Reviewing the proposed governance arrangements to determine whether military personnel are being

deployed on duties normally carried out by civilian personnel and whether the military is ultimately accountable to a civilian chain of command;

- Whether the accountability and the adherence to the rule of law of the security providers is being maintained in the new circumstances;
- If the military is deployed, whether the modes of deployment are appropriate to the mission, e.g., which units are being used; with what orders, weapons and gear; and whether these correspond to the purpose of deployment;
- What reasons have been given to prove that the civilian authorities need assistance from the military to perform civilian missions;
- Whether any relevant voice, such as the parliament or the media, has warned of the abuse of security services in political or other purposes under the cover of crisis;
- Whether the budget of security services has been increased significantly without sound explanation, and whether there was a proportional increase of budget for control and oversight mechanisms;
- Whether the judiciary and independent bodies tasked with authorizing special measures of security/intelligence services are in a position to perform their control function effectively and thoroughly or there are barriers in this regard, including as related to accessing premises and classified information of security services;
- Whether the internal control mechanisms within various security institutions are still dedicated to their primary mandate or have been reassigned to assist the first responders;

41 E.g., During the COVID-19 pandemic, military personnel were not isolated in their own homes, as most citizens were, but were still living and working in communal spaces where social distancing is difficult; police and military personnel were at risk from members of the public spitting on them or being used to supplement health workers without adequate personal protection equipment.

42 European Court of Human Rights, "Guide on Article 15 of the European Convention on Human Rights: Derogation in Time of Emergency", updated 31 December 2019, <https://www.echr.coe.int/Documents/Guide_Art_15_ENG.pdf>.

- Whether the new security measures are gender-sensitive and protect all individuals equally;
- Whether the use of advanced technologies by the security sector is sufficiently regulated by law; whether the operators are trained in its use; and whether they are aware of legal requirements, standards and safeguards in the use of monitoring software and hardware, especially those of special purpose used in relation to the general population;
- How the crisis is being handled in places of deprivation of liberty, what the emergency procedures are, and how exactly are the protective measures being applied in places of deprivation of liberty, including detention facilities or prisons; and
- Whether civilians are organized or self-organized to assist professional security providers (civilian defence, citizen's patrols, police volunteers and similar), and how they have been trained, tasked and held responsible for their actions.
- Providing assistance to individuals in receiving proper information and helping them to understand the nature and significance of measures, as well as to understand the changed procedures for realizing certain rights or receiving services;⁴³
- Producing and disseminating advice for the public, including vulnerable groups and civil society. This should include specific advice on gender-based violence and hate crime, which could include encouraging third-party reporting, including whistle-blowing, and also providing information on confidential reporting mechanisms (if available);
- Producing the information above in majority and minority language(s), if appropriate, and in accessible formats for everyone (persons with hearing or seeing impairments or intellectual disabilities);
- Verifying information and statistics published by governments, ensuring that they are correct and lending them additional credibility and relevance, if deserved, or requesting that more accurate information is provided to the general public;
- Raising awareness of risks, vulnerabilities and concerns within governments, service providers (in the public, private and voluntary sectors) and the public;
- Reminding governments and service providers of the need to gender-proof their responses to the emergency and, in particular, raising awareness about domestic violence;
- Verifying and (through co-operation, advice, oversight and pressure, both non-public and public) ensuring that economic and social rights are given due protection and, if appropriate, placed at the centre of a state's response to a non-military threat, such as in the case of COVID-19;
- Raising awareness of the NHRI's role and how to contact it for protection and support;

INTERVENTIONS TO PROTECT HUMAN RIGHTS FOLLOWING A RISK ASSESSMENT EXERCISE

The results of the risk assessment exercise will indicate the type and timing of any intervention. The following list of suggestions is, therefore, only indicative.

Interventions during the consolidation of an emergency may include:

- Providing information on the new measures and their effects on corresponding rights and responsibilities. This should include not only the sharing of decisions and instructions from the executive (posting on the relevant website, through social media and through other means of distribution), but also explaining these (often bureaucratic) texts in common language;

43 It should be acknowledged that information is helpful only if it is complete, accurate, relevant and timely; that measures and instructions issued by the crisis-management bodies may change rapidly; and that the decision to start sharing and explaining them, once made, is not a courtesy, but a responsibility that requires significant IT and human resources capacity.

- Raising any concerns identified at this stage with government and any advisory or steering group established to support the government during the emergency and, in particular, advising on the need to balance measures according to the principles of proportionality, necessity and legality;
 - Providing decision-making bodies with valuable inputs from the public and private sector and from civil society stakeholders. This will ensure and strengthen participation and pluralism;
 - Monitoring new areas of concern and developing recommendations for action, e.g., monitoring reported incidences of hate crimes and social media trends as part of ongoing information gathering and data analysis, and working with the authorities to ensure appropriate action is taken to protect people and freedom of speech;
 - Instigating or supporting litigation (in accordance with NHRI's remit) to challenge violations of human rights;
 - Monitoring governments' use of emergency powers to check compliance with emergency legislation. Particular attention will be needed to ensure compliance with the principles of necessity and proportionality if the terms of the declaration of emergency do not include an end date or provision for regular review;
 - In relation to concerns about gender-based violence, seeking an assurance that:
 - Those fleeing gender-based violence (including domestic violence) are included as an exception to restrictions on movement in emergency legislation or are not penalized for breaking emergency restrictions;
 - This message is broadcast widely, using traditional and social media;
 - Obstacles to reporting are identified;
 - Novel options are explored to fill any gaps left by emergency restrictions and to enable those who are subject to violence to escape and report;⁴⁴
 - The normal legal restrictions on abusers, including criminal and legal action, continue to provide protection for victims of gender-based violence, while still respecting the rights of the alleged abuser; and
 - Those tackling this “shadow pandemic” receive resources as part of the emergency package.
- In relation to the security sector, NHRIs should consider:
- Checking for any unnecessary broadening of the mandates of security forces and giving them additional powers, e.g., to enforce lockdown measures, and reacting to this, if necessary, by:
 - Opposing any such legislative change in the parliament, by providing opinions and amendments to draft laws;⁴⁵
 - Should the parliament reject a negative opinion or an amendment to the proposed legislative change described above, challenging the change before the constitutional court or an analogous authority;⁴⁶
 - Challenging sub-legislative normative measures (e.g., governmental decrees) that indirectly achieve the same goal as legislative normative changes, and challenging such regulations at a constitutional court or an analogous authority, should the challenge be disregarded;

44 For more information on measures taken in the OSCE region to address violence, see: ODIHR, “OSCE Human Dimension Commitments and State Responses to the Covid-19 Pandemic”, *op. cit.*, note 6, page 139.

45 Applicable to NHRIs that have this power within their mandate.

46 In countries that have entrusted the function of control of constitutionality and legality to another institution (i.e., that do not have a constitutional court, e.g., the United Kingdom).

- Discussing the issue and options for action with CSOs; and
- Informing the public of all of the above activities;
- Promoting transparency in relation to budget, governance and accountability issues, by whatever means appropriate and within their remits;
- Contesting any use of privacy-invading technology without proper legal basis, and providing sufficient information to all individuals and promoting effective safeguards against such abuse;
- Stepping-up oversight over the work of internal intelligence services, especially if the judiciary is not fully functional;
- Monitoring the development and implementation of legislation on the use of tracking and/or contact-tracing applications (including on mobile phones), as well as monitoring how personal information and data needed to enforce emergency measures are gathered, used, protected, shared and disposed of;⁴⁷
- Insisting that any mobile tracking and contact-tracing application is developed in an accountable way: that it is written in an open source code, used on a voluntary basis and always in public interest, contains only features that are strictly necessary, is maintained by qualified personnel, includes protections on the information on infection of an individual and guarantees for the accuracy of that information. It should not include the location-tracking of individual users;
- Monitoring the rate of crime and abuse against women, children, LGBTI, refugees and other vulnerable groups, and reacting if the response of the law enforcement agencies is not adequate due to an exclusive focus on the threat that caused the emergency, or for any other reason
- Ensuring that the activities of human rights defenders are not disproportionately restricted;
- Monitoring the deployment of security forces and their engagement with individuals on the streets and other public places, such as any (peaceful) assemblies or other security interventions, intervening both preventively and by opening inquiries upon questionable actions;
- Checking whether military units, if engaged, are using firearms and other gear not necessary for the task that a civilian authority would otherwise be called on to carry out. Similarly, conducting inquiries on the necessity and proportionality of the use of chemical agents (tear gas), rubber bullets, tasers, specially trained dogs and other special means to disperse people or for other purposes;
- Monitoring whether all security forces (including private companies) comply with international standards on the use of force;
- Checking to ensure that law enforcement officials always remain identifiable and accountable.⁴⁸ This means that if law enforcement officials wear masks, helmets or other face coverings (due to health measures or in any other exceptional circumstances), especially when apprehending persons, using physical coercion, exercising riot control or similar activities, appropriate measures are in place to ensure that the officials concerned are identifiable and can be held personally accountable for their actions

47 For more details, see: European Data Protection Board, “Guidelines 04/2020 on the Use of Location Data and Contact Tracing Tools in the Context of the COVID-19 Outbreak”, 21 April 2020, <https://edpb.europa.eu/our-work-tools/our-documents/linee-guida/guidelines-042020-use-location-data-and-contact-tracing_en>.

48 See: OHCHR, “Basic Principles on the Use of Force and Firearms by Law Enforcement Officials”, 27 August 1990, Principle 10, <<https://www.ohchr.org/en/professionalinterest/pages/useofforceandfirearms.aspx>>; see also, UN General Assembly, “Code of Conduct for Law Enforcement Officials”, 17 December 1979, preambular para. 8(a), <<https://digitallibrary.un.org/record/10639?ln=en#record-files-collapse-header>>.

(e.g., by means of a clearly visible number on the uniform or gear);⁴⁹

- Verifying that military personnel, if engaged in managing the crisis by assisting the police and other civilian authorities on the streets, have clear and appropriate rules of engagement, are trained for the designated tasks and are under civilian command and/or co-ordination;
- Verifying that the police and armed forces are not used to target a community that is stigmatized (e.g., Roma and Sinti), with the emergency and public safety considerations used as a pretext;
- Ensuring that emergency measures are not used by the police to arbitrarily restrict the right to freedom of expression;
- Investigating any information or complaint about torture;
- Verifying that, during an epidemic or pandemic, the transportation of individuals deprived of liberty is conducted with protective measures against infection;
- If an emergency is caused by the spread of a contagious disease, checking whether stop-and-search and other such measures that require close contact are conducted by police officers wearing protective gear, to prevent the spread of infection;
- Monitoring and investigating any reports of abuses in the issuance of special permissions for movement during curfews;
- Challenging any deficiencies in protective arrangements and abuses in institutions of deprivation of liberty, including by taking or supporting legal action, as appropriate;
- Monitoring the situation in refugee/migrant/asylum-seeker facilities and how the emergency regime is enforced in them (ensuring there is no discrimination);
- Monitoring the situation in Roma and Sinti settlements and how the emergency regime is enforced within them (ensuring there is no discrimination);
- In the case of curfews, ensuring that there is an effective accommodation solution for homeless people and that, until this is done, they are not sanctioned for staying in public places;
- Monitoring the situation in major centres for health care and protection, such as COVID-19 special hospitals, and how discipline and safety and protection measures are enforced there;
- Monitoring for the rise or spread within the military and police of any ideology condoning violence, and reacting strongly if detected; and
- Publicly opposing any tendencies towards the militarization and securitization of society and public space as a consequence of the public emergency.

With specific regard to the rights and well-being of security sector personnel, NHRIs should consider:

- Monitoring the role and treatment of security personnel during the crisis, (bearing in mind how difficult it can be for such personnel to raise concerns even under normal circumstances). Where security personnel (military or civilian) are exempted from emergency restrictions, monitoring their safety and welfare, including any arrangements put in place for their protection;
- Consulting professional associations of security or armed forces personnel (where they exist), government and service leaders on identified risks,

49 See: Council of Europe, "Report to the Estonian Government on the Visit to Estonia Carried Out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)", 19 April 2011, para. 15, <<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680695768>>.

governance arrangements and acceptable standards of care in an emergency context;

- Disseminating information to security personnel on standards of care, their rights and routes to contacting an NHRI during the emergency. The information should include specific reference to gender-based violence and hate crime; and
- If appropriate, drafting a memorandum of understanding to be agreed with key parties to formalize arrangements for security personnel to contact the NHRI during the emergency. In doing so:
 - Including the right to contact the NHRI in cases of refusal to follow illegitimate or disproportionate orders, and in relation to actions by the chain of command on the ground in such circumstances;
 - Ensuring special protection for whistle-blowers; and
 - Also including actions following complaints from individuals about the conduct of security personnel during the emergency, including alleged abuses of power/illegitimate or disproportionate action in enforcing emergency legislation and restrictions.

2.3. DE-ESCALATION, TRANSITION AND THE AFTERMATH OF AN EMERGENCY

Any state of emergency is likely to have consequences that last beyond the immediate crisis. The longer the crisis lasts, and the more governments' responses have an effect and potentially disrupt normal life and freedoms, the more severe these consequences are likely to be.

Restrictions or changes to a legal framework detrimental to the enjoyment of human rights and fundamental freedoms may tend to survive the end of the emergency and, as such, prolong its existence, permanently degrading the achieved level of rights and freedoms.

Towards the end of the declared term of emergency (or as the immediate crisis appears to be diminishing), governments will start to develop proposals for coming

out of a state of emergency. Such proposals may include new measures that pose risks to human rights and fundamental freedoms of the general public, or of specific vulnerable groups.

In the case of pandemics, concerns include measures such as the continuance of differential quarantining, e.g., for members of especially vulnerable groups such as the elderly or those with underlying medical conditions, or of the differential return to work (with risk of future unemployment or downgrading) for those deemed vulnerable, including pregnant workers or members of ethnic minorities.

The post-pandemic economic and social crisis may be significant. Should that be the case, NHRIs should be prepared to face situations where an economic crisis will have a significant impact on citizens' lives. The measures introduced in response to the emergency may have exacerbated existing patterns of disadvantage and inequality. Since such patterns may have been hidden before the pandemic, there is the risk that the worsening conditions for these vulnerable groups may be overlooked. The post-emergency social, economic and political crisis may also create new situations of vulnerability.

The post-emergency crisis may also have a significant impact on the functioning of the state. Uncertainty may be fueled if states fail to deliver tangible results quickly, and such circumstances could create fertile soil for anti-democratic ideologies.

Because exiting a state of emergency is likely to be phased (and, indeed, may involve a flare-up of the crisis and the restoration of restrictions), much of an NHRIs' activities will continue throughout this transitional stage.

However, NHRIs can add value at this third stage, when a state of emergency has ended, by using two tools:

- Carrying out a strategic stocktaking of the situation; and
- Preparing and regularly updating an on-line rights guide, keeping the public informed of their rights and obligations during the period of uncertainty.

Both measures aim to promote trust and public confidence, as well as to ensure government actions do not cross legal red lines.

NHRI STOCKTAKING

The third stage of an emergency may entail additional tasks for an NHRI for several reasons. For example, any national consensus over restrictions may begin to dissolve as the immediate threat is reduced and the deleterious impacts of emergency restrictions are felt and understood. Fragilities in social, economic or democratic structures may have been exposed or exacerbated by the emergency.⁵⁰ A stocktaking exercise as a review of measures implemented is useful for three reasons: First, it enables NHRIs to evaluate whether any strategic interventions need to be taken, for example, by challenging any elements of a government exit strategy that would contravene human rights and fundamental freedoms; it will also enable NHRIs to make strategic plans for their own work going forward; and, finally, a stocktaking exercise will prepare NHRIs to contribute substantively to any government or independent review of the handling of the emergency and the development of improved national plans for tackling any future crisis. For example, a key lesson identified across governments during the COVID-19 pandemic was that there was a need to include arrangements for the protection of victims of domestic and family violence in mandatory lockdown measures.⁵¹ NHRIs have a role to play in ensuring that the issue of gender-based violence, including domestic violence, is an automatic and essential part of governments' emergency planning in future.

During this period of transition and uncertainty, there is a vital need to use all available channels to enhance dialogue and citizens' participation, or to set these up if they are not already in place, in order to take civil society's views into account in policy-making on new emergency or post-emergency measures. Information gathered through these channels will inform the stocktaking exercise, and should include:

- Assessments of the systematic human rights and equality impacts of social and economic policies and budgets introduced due to the emergency. Such assessments should gauge the present and future impacts of emergency measures and budgets on the enjoyment of liberties;
- Information on any signs of a new crisis, either linked directly to or as a consequence of the original state of emergency;
- An assessment of the level of public trust, confidence and support for the government and democratic structures;
- An assessment of the risks arising from a continuation of emergency restrictions (or the imposition of new restrictions), as well as from any likely proposed strategy to transition back to normality;
- A review of the NHRI's actions and likely demands moving forward, together with an assessment of staffing and other resources; and
- The identification of any other learning points to improve government action and/or NHRI performance in the next stage of the current emergency, or during any future state of emergency.

For the stocktaking exercise, conducting a comparative assessment of the level of the protection of human rights and fundamental freedoms before and after the emergency (normatively and in practice) will provide valuable information to form a base for strong policy arguments.

Specific aspects to consider as part of the assessment include a potential increase in complaints and other types of contacts or actions, as people return to public life again. These may involve issues that arose during the emergency, problems with the exit/transition strategy (e.g., a continuation of restrictions on the right to family life, such as wedding bans or restrictions, that are longer than necessary) or problems arising from

50 United Nations, "COVID-19 and Human Rights: We Are All in this Together", *op. cit.*, note 18, p. 16.

51 ODIHR, "OSCE Human Dimension Commitments and State Responses to the Covid-19 Pandemic", *op. cit.*, note 6.

the concentration of national attention and resources on dealing with the emergency.

In an effort to limit damage caused by the emergency, governments may have taken actions that are not typically in line with human rights obligations, e.g., the deportation of migrants or indigent foreign nationals without due process, conscription into agricultural or other work as a condition of social security, to limit demands on public resources and not because such labour is needed to provide food during the emergency, or the postponement of elections for political reasons.

There may also be threats to an NHRI's independence if it is perceived not to have fully supported the government's measures during the emergency. In this regard, co-operation with regional and global mechanisms that support the work of NHRIs, such as the ENNHRI, the GANHRI, ODIHR, the Council of Europe, the UNHCHR, the Geneva Centre for Security Sector Governance (DCAF) and others, as well as with national and international media and with CSOs can prove crucial to successfully defending an institution. The Paris Principles and the corresponding General Observations,⁵² as well as the 2012 Belgrade Principles,⁵³ which define the relationship between the NHRIs and parliaments, with a view to strengthening and better describing the "effective cooperation" stipulated in the <https://www.forum-asia.org/?p=22707&nhri=1>, provide strong basis in international standards for safeguarding the mandates of NHRIs. An NHRI needs first, however, to strongly defend its own position, using the findings of the stocktaking exercise, including information about public confidence in the NHRI, as fundamental arguments.

Within this framework, NHRIs need to intensify their public interventions – to build stronger connections with the public, to find persuasive ways to highlight the obstacles, concerns and challenges individuals and groups face in realizing their rights, and to provide practical help to state bodies, including recommendations and

expertise on how to improve performance in this regard. In other words, NHRIs should:

- Find ways to reach out to the public to find out what problems people are experiencing;
- Make it easy for people to contact them with information, and encourage them to do so;
- Address any procedural constraints that might stand in the way of assisting individuals approaching NHRIs for help; and
- Identify and implement solutions that will address the cause(s) of the problem.

INFORMATION GAPS TO BE FILLED: A RIGHTS GUIDE IN AN EMERGENCY/SOCIAL CRISIS

The aftermath of a state of emergency will be a time of transition and, possibly, of other kinds of crises. The example of the COVID-19 pandemic is a case not only of a health crisis. It may lead to a major economic, social and, potentially, humanitarian crisis, which should always prompt action on the part of NHRIs.

In order to ensure the effective and equal enjoyment of all human rights and fundamental freedoms in these times of uncertainty, NHRIs should do their best to help all individuals within their jurisdiction to know their rights and entitlements. They should do their best to ensure that governments provide timely access to the information NHRIs need to provide public oversight of crisis responses.

The most vulnerable individuals in society will be the ones with the least access to the institutions and services that provide remedies and assistance in times of public emergencies. Priority should be given to promoting a fair distribution of financial burdens and support for initiatives to protect the most vulnerable. NHRIs must

52 International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, "ICC SCA General Observations as adopted in Geneva in May 2013" <<https://nhri.ohchr.org/EN/AboutUs/Governance/Documents/ICC%20SCA%20General%20Observations.pdf>>.

53 See: "Belgrade Principles on the Relationship Between National Human Rights Institutions and Parliaments", 22–23 February 2012, <<https://www.forum-asia.org/uploads/wp/2017/01/Belgrade-Principles-Final.pdf>>.

do their best in order to detect the undetected. If people cannot come to them, they should reach out to people.

New legislation, in different forms, will almost certainly be introduced as a result of circumstances related to the emergency that legislators are not in a position to predict. This legal uncertainty during this period, therefore, requires NHRIs to take a two-track approach: on the one hand, informing the public – particularly marginalized and vulnerable groups – by intensifying messaging and diversifying information methods; and, on the other, systematically monitoring the conformity of any new legislation to rule of law standards.

A RIGHTS GUIDE IN EMERGENCY/SOCIAL CRISIS

One way NHRIs can address these is by preparing, in co-operation with all relevant state services and civil society representatives, a “Rights Guide in Emergency/Social Crisis”. The guide should be updated on a regular basis to reflect ongoing legislative and broader normative developments.

The information should be made available in a user-friendly manner, accessible to all persons with disabilities, particularly keeping in mind those who are disproportionately affected by the emergency crisis or post-emergency measures. It should include all necessary information about all measures implemented. The tool may be used to support workers for social services, self-government structures and all other collective efforts established to help address the needs of vulnerable groups.

The contents of the guide might be presented thematically, by date (starting with the most recent measures and covering back to the earliest that are still in force) and/or by relevance to the competent service or body that individuals should contact to address an issue of concern.

The measures identified could include changes to legislation or regulations on:

- Taxation – tax breaks and exemptions;
- Housing – mortgages and leases, as well as measures addressing the situation of the homeless; new construction codes and the reduction of fines for informal, unregistered construction for vulnerable groups; house rental allowances and accommodation;
- Employment and unemployment;
- Social benefits, including for the long-term unemployed and for new entrants to the labour market, availability allowances, free or subsidized public transport, social assistance for housing costs, and possible relief from administrative fines;
- Public utilities – social tariffs for the relief of the poor and instructions for lifting the suspension of benefits and services;
- Benefits due to disability;
- School or other family allowances;
- Access to day care centres;
- Support services for victims of gender-based violence, including domestic violence and violence against children;
- Provisions for undocumented persons;
- Health care, including mental health services and access to medication and vaccination;
- Broader assistance measures to address the humanitarian crisis, e.g., pensions for uninsured seniors or free reconnection of electricity supply; and
- Legal assistance and free legal aid.

3. CONCLUSION

A state of emergency is an extraordinary and temporary mode that states adopt to provide a more efficient response to a particular threat (or threats) seriously challenging their capacity to protect life, security, liberty and other fundamental rights and values. NHRIs have a role in helping societies overcome such threats while ensuring the least possible damage to human rights and rule of law, which are at the core of NHRI mandates. The extraordinary threat leading to a state of emergency adds to and further exacerbates the layer of challenges to human rights that already exist in a society. This is why NHRIs need not only to continue, but to intensify their efforts to protect human rights, both during and after the state of emergency period. The post-emergency period is, from an institutional viewpoint, just as important as the emergency period itself, as this is when major decisions on the continuation or the modification of emergency measures will be taken. It is also when a second emergency may arise, either as a renewal or as a consequence of the original emergency.

Actions taken during a state of emergency can have impacts similar to the side effects that can come with a cure for disease. While combating the originating threat(s), a state of emergency may unwind in such a way that begins to compromise the structure of a democracy, by disrupting its institutional arrangements, particularly systems of checks and balances. NHRIs are independent oversight bodies with mandates based in law and (usually) in their respective national constitutions. Their important position is confirmed, strengthened and supported by international standards. NHRIs have not only the power but also an obligation to work to ensure that executives are kept accountable even in extraordinary times. This is especially the case if other forms of oversight, such as by parliaments, have somehow been inhibited.

If the period of emergency and post-emergency period creates or exposes gaps in an overall institutional set-up that creates threats for individuals, society or democracy, NHRIs should act promptly, within their mandates,

to identify and expose such structural problems and provide practical proposals to address them. At the same time, however serious the situation, they should not try to fill that gap themselves by acting beyond their mandates. Doing so would threaten some of the fundamental democratic values NHRIs exist to defend.

NHRIs are, thus, ideally placed to speak up – not simply to denounce ill-founded or poorly justified decisions, but also to propose procedures of inclusion and civic participation in decision-making, especially in times of a shrinking democratic space.⁵⁴

NHRIs can ensure that all voices, concerns and needs are heard, considered and addressed in times of emergency. As the circle of decision makers and their focuses narrows to deal effectively with an emergency, the risk of the marginalization of minority groups and a society's most vulnerable individuals increases. Even where women make up half of the population in any given society, they are usually in the minority in positions of power and influence. Again, an emergency increases the risks that its impacts on women and their particular needs may be overlooked or not prioritized. This document underlines the important leadership role of NHRIs in applying a gender lens to all aspects of their work. It also provides examples demonstrating how thinking outside of usual patterns can help to identify the needs of other minority and vulnerable groups.

This reference tool has emphasized the need for NHRIs to step up their work in order to help overcome a crisis as promptly as possible and with the least possible damage to society and individuals, including to the enjoyment of human rights. While NHRIs shoulder this responsibility independently, they should aim to share the overall burden of the crisis with other democratic institutions and society in general. This will buttress their resilience, but will enhance their effectiveness and strengthen trust in democracy at a time when such trust may be tested significantly.

54 For reference, see: GANHRI, "The Marrakech Declaration "Expanding the Civic Space and Promoting and Protecting Human Rights Defenders, with a Specific Focus on Women: The Role of National Human Rights Institutions", 10–12 October 2018, <https://nhri.ohchr.org/EN/ICC/InternationalConference/13IC/Background%20Information/Marrakech%20Declaration_EN_%2012102018%20-%20FINAL.pdf>.