

OSCE Human Dimension Commitments and State Responses to the Covid-19 Pandemic



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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FOREWORD

The Covid-19 pandemic has been a formative experience of all humanity, perhaps the biggest since the era of globalization began. For the OSCE region, which saw infections and fatalities grow across countries and continents in the first half of 2020, it continues to be both disruptive and destabilizing. For some time, the pain of losing lives that could not be mourned in person took precedence. However, the effects of the pandemic and their implications for our societies are more far-reaching than anticipated and will last well into the coming decade. Indeed, we are only just beginning to make sense of the magnitude of the crisis, as we move beyond mitigating the impact to developing concepts and models for the time “after the pandemic.”

The OSCE was established at a time of global transformation to support and strengthen human security across the Northern Hemisphere. The 57 countries of the OSCE region now number more than 1.2 billion people, and in our interconnected world, policies and practices developed and applied here have global significance.

In its founding documents, OSCE participating States recognized the essential role of human rights, the rule of law and democratic institutions for our common security and the prosperity of our peoples. The pandemic has put these commitments to the test in a short space of time. As scientists worked to collect data and get a better understanding of this new common threat facing humanity, governments had to act quickly. For elected officials across the region, and indeed worldwide, this was an unprecedented challenge of leadership, co-ordination and communication.

Within a matter of weeks, the majority of states across the OSCE region declared various kinds of emergency regimes, ordering lockdowns, shutting down transport links, closing borders and imposing states of emergency. This action was taken to protect people and halt the exponential growth of the new threat, whose nature we still do not fully understand. Some countries enforced strict stay-at-home orders, while others decided on a more consensual approach, but all depended on the

understanding and solidarity of citizens as they struggled to adapt to the new reality.

The sudden changes to our lives affected people differently, but as so often, those already vulnerable have been harmed disproportionately. This refers to people in greater danger of becoming seriously ill with the disease, such as the elderly, the poor, or those with pre-existing medical conditions. But it also includes those who have suffered from the secondary effects of the pandemic as millions lost their jobs, were isolated from friends and families, trapped with abusive partners, or became victims of hate crime as prejudices tipped over into discrimination and sometimes violence.

While much of this has been recognized by states and a great deal has been done to counter this negative impact, the challenges across the region will last for years, if not decades, and will have to be guided by the global goals of “leaving no one behind and reaching those furthest behind first.”

This report aims to help states learn lessons from the current pandemic in order to strengthen their institutions ahead of future challenges – not only potential health emergencies, but also the growing threat of climate change, as well as human-made conflicts. It begins with an overview of obligations when declaring a state of emergency and any attendant restrictions on fundamental freedoms and human rights, and goes on to describe the impact of the emergency measures implemented around the OSCE region on democratic institutions and human rights. It is hoped that the detailed recommendations contained in the report will be adapted for use in the different countries across the region, now and in the time to come.

The effectiveness of the response to the pandemic has been determined above all by the level of trust in the society, the commitment of political leaders to learn, collaborate, consult, and take principled decisions in times of uncertainty. This openness and commitment to the common good often decided the degree of public trust in leaders and institutions, which in turn affected

citizens' willingness to comply with the major restrictions to their daily lives. The pandemic can therefore be seen not only as a misfortune, but also as an opportunity. An opportunity to rebuild confidence within our societies, renew the social contract within our nations, and to foster collaboration between states and citizens, while restoring the faltering trust between states

at a time when international co-operation, integrity and commitment to common values is so sorely needed. This is our common responsibility, for the benefit of us, the people.

Ingibjörg Sólrún Gísladóttir

INTRODUCTION

On 30 January 2020, the World Health Organization (WHO) declared a Public Health Emergency of International Concern (PHEIC) as the novel coronavirus SARS-Cov-2 spread across the world. It quickly became a global crisis, threatening human security, endangering international trade and co-operation, and affecting human rights, fundamental freedoms and the stability of democratic institutions worldwide.

The virus was first detected in the OSCE in January, and quickly spread to countries across the region.¹ By early June 2020, when around 400,000 patients had died from Covid-19 around three quarters were from OSCE participating States.² Faced with the rapid expansion of the disease in February and March, participating States found themselves having to take quick decisions to protect the health and safety of the population.

This enormous responsibility to take all necessary measures to prevent and mitigate the health emergency stems from states' obligations to guarantee the human rights to life and health of the population. At the same time, states needed to balance the emergency measures with their impact on fundamental freedoms, human rights, and economic well-being all while avoiding excessive collateral damage and secondary harm.

Ever since the PHEIC was declared, the WHO has been providing recommendations on how to best limit the spread of the disease, and these have supported the justification for the restrictive measures introduced in many places. While all states received the same information and recommendations from the WHO, their public health responses have differed significantly. However, it gradually became clear that overcoming

the pandemic and maintaining the confidence of the general public required a fast and consistent response that was above all based on effective co-operation. At the national level, governments needed to work together with scientists, health agencies, local authorities and civil society, while at international level, consultation with other governments and trustful collaboration within the framework of international organizations was vital to protect the health, security, and rights of all citizens.

The OSCE's comprehensive security approach rests on the three pillars of the political and military, the economic and environmental, and the human dimension. ODIHR is the largest of the OSCE's institutions responsible for the human dimension, and the OSCE commitments in this area give it a special responsibility to serve as a clearing house for information on states of emergency and other aspects relevant to the Covid-19 response. However, ODIHR's role since the outbreak of the pandemic has been far more extensive, as it has also been called upon to provide a broader overview of the human dimension challenges that present a threat to comprehensive security.

30 years ago in Copenhagen, the OSCE's participating States expressed their conviction that the protection and promotion of human rights and fundamental freedoms is one of the basic purposes of government, and reaffirmed that the recognition of these rights and freedoms constitutes the foundation of freedom, justice and peace. They also emphasized the fact that the rule of law does not only refer to a formal legal framework, but also to the concept of justice based on the full acceptance of human dignity.

The implementation of human dimension commitments has presented an increasing challenge for many years now. The anniversaries of the Charter of Paris and the Copenhagen Document this year offer an opportunity to recall the roots of the human dimension commitments and renew the optimism of that period of global transformation three decades ago. Taken together with the context of the current pandemic and linking the crisis management that has evolved in recent months to

1 The first cases of Covid-19 were initially confirmed in **Italy** and **Spain** on 31 January. Later, it emerged that it had spread to **France** and the United States even earlier.

2 Within the OSCE region, by early June 2020, roughly half of the people officially recorded as having died with Covid-19 were in the **United States** and the **United Kingdom**, with the combined number of casualties in **Italy, France, Spain, Belgium** and **Germany** making up another third. Source: WHO.

the human dimension of comprehensive security, there are clearly valuable lessons to be learned that can help prepare the OSCE well for the coming years.

The detailed overview of measures taken to manage the public health crisis that are provided in this report aims to help states compare and learn from each other concerning the difficult choices they have been making to balance human rights and fundamental freedoms with the exigencies of the pandemic. This report builds upon and complements the work undertaken within the framework of other international organisations, first and foremost the United Nations, but also other regional bodies such as the Council of Europe, the EU, and others, as well as the work undertaken by civil society throughout the OSCE region.

This report highlights the relevance of the OSCE's human dimension commitments to addressing the current crisis. However, while some emergency measures may still be in place at the time of publication, many of them will have been lifted. An effort has therefore been made to identify ways in which ODIHR and the OSCE as a whole can increase their ability to support participating States in the future.

ODIHR is mandated to gather and analyse factual information on the state of implementation and to conduct programmes that assist States to develop and uphold a democratic culture that respects and promotes the ideals expressed in the OSCE human dimension commitments. The ODIHR's assistance to states generally falls into four categories: (i) disseminating knowledge of the commitments; (ii) monitoring and reporting on implementation of commitments; (iii) providing technical assistance to enhance their implementation; and (iv) organizing and holding human dimension meetings to allow for collective review of implementation.³

The general monitoring mandate of the Office encompasses the entirety of the human dimension, although it focuses on areas not covered by the mandates of either the High Commissioner on National Minorities or the Representative on Freedom of the Media. There are

also large OSCE field operations in some places with a human rights monitoring mandate. The institutions of the OSCE alone, however, cannot substitute a broad understanding that implementing human dimension commitments is the collective responsibility of all participating States.⁴

ODIHR was designated by the Concluding Document of Helsinki (1992) as the OSCE's clearing house for information on states of public emergency. After SARS-Cov-2 was designated a pandemic, ODIHR issued *notes verbales*⁵ to participating States recalling their specific obligations, in particular to paragraphs 24 and 25 of the Copenhagen Document (1990) and paragraph 28 of the Moscow Document (1991), which stipulate that participating States must notify ODIHR when a state of emergency is declared or lifted, as well as of any derogation made from the state's international human rights obligations resulting from the state of emergency.

When OSCE participating States introduced various kinds of emergency regimes in response to the pandemic, ODIHR was on hand to remind them of their commitments. At the same time, it started to collect relevant information to be shared between states and used in the development of national responses. ODIHR also offered all possible support within its mandate in dealing with related human dimension issues, including the review of legislation or policies related to declaring a state of emergency, as well as legislation impacting human dimension commitments.

The present report contains information received from participating States, as well as other pertinent information collected by ODIHR using a variety of sources. This includes personal first-hand testimonies, primarily through personal (online) interaction with partners, including governments, international organizations, academic bodies and analytical centres, civil society and people living in OSCE states. Media reports from credible sources were also drawn upon, and information received was corroborated to the extent possible. The examples and specific incidents mentioned in this report serve to illustrate the broader trends impacting

3 See, **Common Responsibility, Commitments and Implementation**, ODIHR Report to the Ministerial Council in Brussels, 2006

4 *Ibid.*

5 Notes Verbales to all participating States were issued on 20 March, 9 April, 30 April, 22 May and 16 June 2020.

the human dimension across the OSCE region, and are not intended to single out specific participating States for violations of their commitments or their obligations in international human rights law.⁶ Likewise, specific challenges highlighted with examples from participating States do not represent an exhaustive list, but rather serve to provide an illustration in cases where ODIHR has received relevant information. It is understood that states will report to the respective treaty bodies and other mechanisms according to their specific legal obligations, and will thus account for how they have upheld human rights and fundamental freedoms during the pandemic.

While the report does address in detail particular challenges in conflict affected regions in the OSCE area, reliable information has been limited. Obtaining information about these regions from other credible sources such as independent civil society has also been challenging. Consequently, further efforts in this regard need to be taken as many people living in these areas are likely to have been disproportionately affected by the pandemic and its aftermath.

The report contains references to sources wherever public material was referred to, and they can be directly accessed through the hyperlinks included in the electronic version of this report. Where country examples are mentioned without a specific event or source due to space constraints, ODIHR is in possession of more detailed information and documentation.

The report is organized into two parts, which are further divided into sections and subsections. **Part I** presents an overview of state obligations when declaring a state of emergency and derogating or otherwise restricting fundamental freedoms and human rights, and related questions of oversight and transparency. **Part II** describes the various impacts of these measures on democratic institutions and human rights. The first

section addresses the implications on democratic institutions and processes, for example the functioning of parliaments, democratic law-making, justice institutions, elections and election observation, the role of human rights defenders, and national human rights institutions. Next it analyses how specific fundamental rights and freedoms have been affected (freedom of movement, freedom from arbitrary detention and torture, the freedoms of assembly, association, religion and belief, as well as the right to a fair trial). Finally, it examines the disproportionate impact of the pandemic on some groups and segments of the population more closely, focusing particularly on hate crime and discrimination, discrimination and violence against women, and groups such as Roma and Sinti, migrants and refugees, and victims of trafficking in human beings. Although addressed in a larger context throughout the report, the right to education and the right to health are not specifically addressed under the thematic chapters.

This structure follows and corresponds with the ODIHR's programmatic strategy, which comprises (i) democratic institutions that are based on human rights and the rule of law, participatory and representative, accountable and trusted; (ii) the advancement of human rights and democracy through civil society; and (iii) the promotion of societies that are equal, inclusive, resilient and free from all forms of discrimination and marginalization.

Recommendations are generally addressed to participating States, or to specific institutions or authorities as mentioned, for instance courts or national human rights institutions. The recommendations should be understood within the context of each given country. Some are for immediate action in countries in a state of emergency, lockdown or other restrictions. Others are intended for states emerging from a state of emergency and help them prepare for future emergencies. Since the impact and emergency measures taken by participating States differ significantly, no distinction is made between short-, medium- and long-term recommendations. It is therefore advised to read the recommendations with flexibility, allowing them to be adapted to the different situations states find themselves in. ODIHR is pleased to offer its assistance to support individual states further should it be requested.

6 Examples are provided from most participating States. Where the European Union is referred to as an entity it is with the understanding of its sui generis nature in international law and the fact that its institutions exercise legislative, executive and judicial powers that may affect the enjoyment of human rights in the OSCE region, albeit without the EU being formally obliged to adhere to the OSCE commitments as such.

A note on the terminology:

The terminology used in this report follows general usage, although no formal standard has been developed in all instances. Wherever possible, the official terminology of the WHO is used, although nothing should be inferred or interpreted as being in contradiction with any official health authorities. It is noted that the novel coronavirus itself is referred to as SARS-Cov-2, whereas the disease it causes in people infected is referred to as Covid-19. When reference is made to “lockdown”,

“stay-at-home-orders”, “quarantine”, “social/physical distancing”, “PPE/masks/face covering”, “testing and tracing”, this is always intended to be understood in accordance with official WHO terminology. Since the terminology used in different languages in different participating States varies and is not always consistent, and since colloquial terms do not always correspond to scientific definitions, an understanding is assumed that the meaning of such terms must be sufficiently contextualized to use them in referring to specific country situations.

EXECUTIVE SUMMARY

OSCE participating States faced an unprecedented challenge when trying to protect the health and safety of the population and prevent the spread of the coronavirus. In response, more than third of participating States declared an official “state of public emergency” and almost all others adopted emergency regimes of different intensity, or other restrictive measures. While not all states that declared a state of emergency sought derogations from international human rights standards, derogations were made to the freedom of assembly and association, freedom of movement, right to liberty and a fair trial as well as rights to privacy, education and property. However, the pandemic has shown that whether or not a state has declared a state of emergency and chosen to derogate is not necessarily an indicator of the severity of the emergency powers in effect. Still, formally declaring a state of emergency or equivalent status generally triggers greater safeguards, oversight and necessary limitations in the duration of exceptional powers.

In the Moscow Document (1991), participating States committed to notifying ODIHR when a state of emergency is declared, as well as of any derogation made from the state’s international human rights obligations. In line with this commitment, 28 states informed ODIHR of emergency measures taken in the context of the pandemic. In fulfilment of its mandate as the OSCE’s clearing house for information on states of public emergency, ODIHR notified participating States on four occasions of the information received and, in this vein, prepared this report. Though adopting relatively similar restrictive measures, states came to different conclusions regarding the need to declare a state of emergency and to derogate from international treaties, indicating a lack of common understanding with respect to the scope of the requirements under international law.

International standards provide that derogations and restrictive measures that similarly interfere with the exercise of human rights and fundamental freedoms should be temporary and proportionate to the aim of such measures, and necessary and limited in duration to that which is strictly required by the exigencies of the

situation. While the pandemic has shown how difficult it is to draw the exact line between what is necessary and proportionate and what is not, states generally adopted very stringent emergency measures and extended them over several weeks or months. More efforts could have been made to weigh and balance other interests and consider less restrictive measures, if not at the outset, at least at a later stage. The proportionality of the emergency measures needs to be ensured over time and can shift as circumstances evolve and knowledge about the pandemic develops. ODIHR noted that many states made efforts to amend measures that had become unnecessary or disproportionate. Further, several courts held that the continued application of certain emergency measures to be disproportionate, for example the continued ban of assemblies with more than 10 people, or the continued absolute prohibition of gatherings in places of worships when gatherings were otherwise eased.

In line with the commitment to lift a state of public emergency as soon as possible and ensure it will not remain in force longer than strictly required by the exigencies of the situation, the legal frameworks of most of the participating States that declared a state of emergency or equivalent status generally provide for a maximum duration of the exceptional legal regime. Most of legal frameworks also contain sunset clauses ensuring that all legal acts and measures taken during that period cease to have effect at the end of the emergency. In the few instances where safeguards to ensure emergency measures are limited in duration were not in place, concerns arose about the prolongation of restrictions to human rights and fundamental freedoms after the exigencies of the emergency necessitate such limitations.

In many states, the response to the pandemic has involved the adoption of numerous pieces of complex legislation, regulations and administrative decisions, at times both at the central and local levels. These acts were often quickly drafted, adopted with little or no public debate, and in a short period of time repeatedly amended, resulting in a large degree of uncertainty that affected the implementation of the measures and

prevented a clear legal understanding of the relationship between the different measures. On several occasions, further confusion was brought by the executive announcing additional rules or exceptions not necessarily reflected in legal texts. In some cases, especially at the initial stages of the crisis, restrictive and other measures were adopted without legal basis or not in accordance with procedural requirements set in the constitution or law.

A state of public emergency or other measures adopted to respond to the Covid-19 outbreak should be guided by the principle of non-discrimination. While there may not be many cases of direct discrimination on such grounds in the emergency legislation or administrative orders, emergency legal frameworks and restrictive measures have often resulted in indirect discrimination, causing unequal treatment or a particular negative impact on certain groups when put into practice. Because Covid-19 disproportionately affects older people, and because a large majority of fatal victims of the disease are of advanced age, many countries introduced special regimes with varying success to protect them, some of which may have prevented their equal treatment. States also generally failed to introduce measures or promote policies and programmes to address the specific needs of women, however, while the initial emergency legislation or measures may have been gender and diversity-blind, later amendments or extension have at times introduced more gender and diversity-sensitive provisions.

OVERSIGHT OF EMERGENCY MEASURES

States of emergency and emergency powers can also impact constitutional norms pertaining to the separation of powers, invariably consolidating power in the executive. In line with the commitment to ensure effective oversight, in most participating States, parliaments must be immediately notified of declarations of state of emergency (or the equivalent) made by the executive. Parliaments may revoke or may need to approve the declaration, or parliament's authorization may be required for an extension of the emergency status. At times, there is also a mechanism to ensure that the parliament reviews or approves implementing measures adopted by the executive. However, where emergency measures, even those of the same magnitude, were

introduced outside of the framework of a state of emergency, parliamentary oversight was not guaranteed to the same degree. Further, some parliaments may not have been fully able to exercise effective oversight of the state of emergency or related measures because their activities were suspended or considerably reduced due to the pandemic. Courts also provide essential judicial oversight, however, the partial or complete closure of courts in certain states impeded access to an effective remedy, be it for challenging restrictive measures or for other matters, especially those to protect the exercise of non-derogable and absolute rights.

TRANSPARENCY AND ACCESS TO INFORMATION

States have committed, in the context of a state of emergency, to inform their citizens, without delay, about which measures have been taken. However, during the pandemic, the right to seek information has been affected by legal or *de facto* limitations because states suspended or extended deadlines for the processing of requests or prioritized certain requests for logistical reasons, and effective access has not always been consistently upheld. While public trust in the institutions adopting measures and readiness to follow guidelines is dependent on the level of transparency and public access to information on relevant data and statistics, as well as the decision-making processes, almost all states needed to make further efforts to ensure transparency. In particular, concerns about access to information for persons with disabilities were noted when information is provided on platforms and formats to which persons with disabilities may have limited access. States have also committed to maintain freedom of expression and freedom of information, and not to adopt measures aimed at barring journalists from the legitimate exercise of their profession other than those strictly required by the exigencies of the situation. Still, some states imposed restrictions to access to public information, on the dissemination of information about the pandemic and monopolized the flow of public health information. There have also been cases when participating States adopted or amended legislation to criminalize the dissemination of so-called "false information" about the pandemic. While public authorities may have a genuine need to combat information that threatens public health, such a goal is best achieved by

ensuring access to independent and pluralistic sources of information.

DIGITAL TECHNOLOGIES AND ELECTRONIC SURVEILLANCE

Data collection, statistical analysis and surveillance are effective instruments of epidemiological control, and in the OSCE region, 38 states introduced some form of enhanced electronic surveillance measures in the context of the emergency. In 28 states mobile applications aimed at collecting and analysing individuals' private information, geographic location, or related health data of those under epidemiological supervision were developed and are already in use. However, the use of technological solutions for outbreak analysis, proximity or contact tracing, and as symptom tracking tools, carries significant risks for the right to privacy and personal data protection and the exercise of other fundamental freedoms, especially for individuals in vulnerable situations or marginalized groups. This risk is even greater when the use of such technologies is not temporary, transparent, voluntary at each step, reliable, free of commercial interest and proportionate to their primary purpose. To address this risk there have been state and intergovernmental efforts to ensure the transparency of all technology and surveillance measures. Likewise, data protection agencies in some states have been proactive in raising awareness and providing guidance on appropriate use.

FUNCTIONING OF PARLIAMENTS

In most OSCE participating States, parliaments were able to continue functioning or resumed functions after a short interruption and, as a result, played a crucial role in shaping states' responses to the crisis, by guaranteeing the proper representation, effective oversight, and the inclusive and transparent adoption of legislative measures. To continue functioning in the face of the challenges posed by the pandemic, many national parliaments took some or all of the following steps: amended rules of procedures to allow for certain alternative arrangements in their work; limited the number of plenary sessions and committee meetings revising the calendar and streamlining the work of the parliament; adopted measures to limit the thematic span of their work; reduced the number of deputies having to physically

attend plenary sessions and committee meetings; and introduced innovations and technological solutions allowing legislatures to operate remotely and virtually. Only a few legislatures were properly equipped prior to the crisis, and many others had legal or constitutional barriers to prevent such practices, but still many parliaments provided for much of their work to be carried out online. While this is anticipated to have a lasting impact on how parliaments function in the future, remote debates still fall short of replacing in-person practices. States must ensure meaningful discussions, inclusive law-making, space for reaching political compromises and safeguard the voice of the parliamentary oppositions. A limited number of parliaments have been severely impacted – directly or indirectly – by the pandemic, ultimately undermining their regular functioning. Despite differences in context and measures being adopted, these cases have raised concerns regarding the rule of law and the balance of powers, depriving decision-making processes of parliamentary checks or oversight.

DEMOCRATIC LAW-MAKING

Many states made use of expedited procedures, through which legislation was swiftly proposed and adopted in order to respond to imminent or pressing societal needs, to adopt emergency measures. Although expedited procedures are often intended for situations such as those faced in the context of the pandemic, the widespread use of such procedures decreased the transparency, inclusiveness and accountability that should guide the overall process to ensure that laws are legitimate and accessible. ODIHR noted that expedited processes to adopt pandemic related legislation often lacked consultations, and sometimes a complete absence of meaningful parliamentary debate on the proposed legislation, which further distorted allocations of legislative power between the executive and legislature. There were instances during the pandemic when states applied accelerated procedures, fast-tracking legislation for purposes other than emergency response or proposing contentious legislation, with only cursory reference to the emergency context, for example on pensions, migration and media freedom. Accelerated law-making procedures also resulted in omitting other aspects of regular legislative processes, such as public consultations and impact assessments and did not sufficiently consider the differentiated impact of emergency

rules on different parts of society. However, ODIHR has noted instances where parliaments took on an effective oversight function in scrutinizing proposed legislation where governments would otherwise be granted far-reaching authority on matters that require parliamentary control and adding safeguards to proposed legislation and necessary temporal and other limitations.

JUSTICE INSTITUTIONS

The pandemic posed particular challenges for states to uphold their commitments to guarantee the rule of law remains in force at all times, even during a state of public emergency, as courts partially or fully closed in most participating States. For courts to fulfil key functions related to the right to a fair trial by an independent and impartial court, the right to judicial control of deprivation of liberty and the right to an effective remedy, many participating States suspended, interrupted or expanded procedural deadlines and statutes of limitation and courts had to prioritize certain matters. In general, states were not prepared for widespread court closures and did not have regulations in place to govern access to justice in such circumstances and in many places, courts dealt with overlapping and contradictory regulations. The pandemic demonstrated the limitations faced by judges and court officials to work remotely using digital technology for communication, to file motions and conduct proceedings. Concerns also arose in a number of states regarding the use of videoconference hearings where not all trial parties had adequate access to and familiarity with the respective technology. Still, courts had to provide uninterrupted access in urgent legal matters, in particular for vulnerable people in cases of domestic violence, trafficking in human beings, detention and torture related situations, and remedy for cases emerging from excessive or discriminatory emergency measures. Even where courts remained open in principle, they worked with limited capacity and physical access to court buildings was restricted significantly in many places. Consequently, individuals faced considerable challenges in access to justice in civil, criminal and administrative procedures.

ELECTIONS AND ELECTION OBSERVATION

Most elements of an electoral process come under pressure in the conditions of states of emergency or

similar measures, and they have been significantly affected during the pandemic. This included the predictability of election dates, fulfilling conditions for registering as candidates, full opportunities for political actors to campaign in a meaningful way, the preparedness of election administrations, and the provision of unimpeded access for voters. On the whole, the normal conduct of elections in compliance with OSCE commitments has been put at risk by the pandemic and, in particular, the measures taken in response. Further, the effects of the limitations imposed on the exercise of a number of fundamental rights reconfirmed that elections do not take place in the vacuum and freedoms of assembly, expression and movement are essential for genuine democratic elections. Some of the decisions to either postpone elections, suspend the conduct of an already ongoing process, or to hold elections in a challenging environment, raised questions as to whether a reasonable assessment was made vis-à-vis other state obligations, including safeguarding the right to health. This put an additional spotlight on the importance of genuine public debate and inclusive and transparent decision-making processes on matters of public concern. In some cases steps have been taken to amend the rules for elections in an expedited manner, which has increased risks to the fulfilment of OSCE commitments and may disproportionately affect politically disadvantaged groups, such as women, persons with disabilities and national minorities. Regarding observation, while certain temporary adaptations to the way observers work might be necessary, the principle of transparency that the observers serve to uphold might also be challenged if full access to all stages of the process is not guaranteed. New trends that emerged in the public discussion are, greater attention to the constitutional and legal frameworks governing the principle of periodic elections in crisis situations, a heightened interest in alternative voting methods, an increase in understanding that the ability to effectively enjoy fundamental rights is key for genuine elections, and the reaffirmation of the crucial role that election observers – citizen and international – play in the process.

NATIONAL HUMAN RIGHTS INSTITUTIONS AND HUMAN RIGHTS DEFENDERS

The pandemic highlighted the essential role of National Human Rights Institutions, as independent statutory

bodies protecting and promoting human rights and integrity and providing oversight, as well as human rights defenders, whether they advocate for transparency, justice or the rights of marginalized or vulnerable groups. During the pandemic, human rights defenders have raised public awareness about human rights issues, have challenged reprisals and retaliation targeting activists and whistle-blowers; and have exposed gaps in states' responses to the health emergency. However, ODIHR has received a number of reports of threats and attacks targeting human rights defenders, including allegations of physical and verbal attacks, along with death threats, for reporting on the pandemic or for requesting information of public interest related to the pandemic. Judicial harassment and detention of human rights defenders, including journalists, in retaliation for expressing critical views or reporting on irregularities concerning a government's response to the pandemic was also noted. Individuals of diverse professional backgrounds acted as whistle-blowers to uncover information about human rights abuses and the mismanagement of public resources. In a number of cases these whistle-blowers are facing criminal investigations or have been detained as a result. NHRIs continued monitoring the implementation of human rights obligations, informing the public about their rights and holding governments to account when violations occur. However, emergency measures in many states have significantly impacted the ability of NHRIs to carry out their mandate and preserve their independence.

FREEDOM OF MOVEMENT

Restrictions on the freedom of movement included the closing of land borders, airports and ports; restrictions of movement between cities and/or regions; quarantining of cities or regions; imposition of quarantines at borders or in one's home; permission for internal movement only for specific purposes; and curfews. There have also been specific restrictions for certain categories of people, in particular older people. The speed in which international movement restrictions were introduced across the region left some people, including migrants, tourists and other travelers stranded at airports and land borders. Further, many states provided unclear guidelines or insufficient information about border restrictions, often impacting non-citizen residence permit holders. Most participating States introduced

enforcement measures to discourage breaking of lockdowns, curfews or quarantines, some with extreme punitive measures, including imprisonment of up to five years or extremely high fines. While the aim of internal restrictions on movement was generally to protect the health and safety of the population, including those most vulnerable, excessive restrictions may have led to violations of other rights, which may not be proportional to the aim nor necessary, as other less intrusive measures could have achieved the same result. For example, complete curfews for certain groups such as older people, pregnant women or youth, in several states, left them completely reliant on state or volunteer services to obtain medicine, food and other essential items, or socially isolated, even when they are healthy and able.

FREEDOM FROM TORTURE AND ILL-TREATMENT

The pandemic not only brought to light the pre-existing shortcomings in penitentiary systems or other places of deprivation of liberty, such as overcrowding, lack of or insufficient access to healthcare or unsanitary conditions of detention, it also posed additional challenges to the fight against torture. Persons deprived of their liberty are particularly vulnerable to infectious diseases and reports from across the OSCE region indicate that overcrowded prisons severely limit the ability of prisoners to physically distance themselves from one another. Further, a lack of personal protective equipment for prisoners, as well as staff, but also access to testing, water and hand sanitizer has been noted in many states. There are already numerous legal challenges in the OSCE region, arguing that states are failing to protect the health and safety of prisoners because of conditions of detention, coupled with the heightened risks that the disease poses to often overcrowded prison populations, which could amount to inhuman or degrading treatment. In addition, many states have implemented restrictive measures in prisons, temporarily suspending physical visits from family, friends and sometimes even lawyers, despite the fact that the denial of family visits can be considered ill-treatment in itself. The prevention of torture, in particular in settings where people are deprived of their liberty, but also the investigation, prosecution and punishment of such acts has suffered a setback during the current pandemic. This is in part because independent monitoring and

oversight of places of detention, one of the key safeguards against torture and other ill-treatment, has been either completely suspended or is only partially functional in the majority of states. Still, cases of excessive use of force by state officials to enforce emergency measures were reported in a number of participating States, which is incompatible with the absolute prohibition of cruel, inhuman or degrading treatment.

FREEDOM OF ASSEMBLY

The freedom of peaceful assembly is instrumental in enabling the full and effective exercise of other civil and political rights. The pandemic posed particular challenges to states in this regard, as large gatherings and crowds have been identified as particularly prone to facilitate transmission of the virus. During the pandemic, freedom of assembly was restricted in most participating States for generally around three months. In some, all public assemblies were banned. In others, assemblies were restricted to a certain number of participants, or with an obligation for participants to adhere to hygiene measures. The right to effective remedy to challenge bans or restrictions on assemblies is an important safeguard against unjustified restrictions and on several occasions, courts struck down emergency regulations or individual orders. During the pandemic, ODIHR has noted instances of unnecessary or excessive use of force by law enforcement in several participating States, contrary to the principles of legality, necessity and proportionality in use of force. While online forms of mobilization and protest cannot be considered a full substitute to the freedom of assembly as is guaranteed by human rights norms and standards, it is crucial that “new or alternative” ways to gather are respected to allow for debate and the joint expression of opinions. Assembly monitoring has a crucial role in ensuring stronger respect for this fundamental right, however, across the region, all major actors in this regard have faced difficulties and limitations to their monitoring activities during the pandemic, except for assemblies happening online.

FREEDOM OF ASSOCIATION

Restrictions on the freedom of expression and access to information imposed by number of states during the pandemic undermined the watchdog function of civil

society, sidelined critical voices and limited their capacity to reach decision-makers and impact policies. In several OSCE participating States prior to the pandemic, associations already faced constraints that included legal and administrative barriers hindering certain types of organizations to receive funds, both domestic and foreign, blanket restrictions on foreign funding or the introduction of new more stringent reporting and disclosure obligations. A few states sought to tighten legislation regulating associations in the midst of the pandemic. The role of civil society as partners of governments when developing emergency policy and legislative responses, disseminating information accessible to all, and providing support and services to marginalized communities was reinforced during the pandemic. This key role would have been better protected had associations, particularly those serving marginalized communities and vulnerable persons, been considered essential in all states and therefore exempt from some restrictions that prevented them from continuing operations and new associations forming during the pandemic.

FREEDOM OF RELIGION OR BELIEF

Since religious activities typically involve the gathering of larger groups of people, the imposition of preventive measures related to Covid-19 has had a profound impact on the ability of individuals and communities to manifest their religion or belief across the OSCE region. Most religious or belief communities have complied with restrictive measures or have adopted voluntary restrictions on their activities and many have contributed to educating their communities about the virus and providing social assistance to vulnerable people. Still some communities refused to comply and challenged physical distancing guidelines or insisted that religious activities continue in person. ODIHR noted examples of co-operation between state authorities and religious or belief communities to undergo careful legal assessments of initial bans on public worship and review guidelines. Unfortunately, toxic narratives espoused by state and non-state actors in certain participating States emerged, blaming religious communities for the spread of the virus. Further, in a few participating States there were incidents of law enforcement raiding the homes of individuals belonging to non-registered religious or belief communities; actions that were considered by some to amount to harassment.

THE RIGHT TO A FAIR TRIAL

All participating States have made significant commitments to respecting and protecting the right to a fair trial. Even in times of emergency this includes the prohibition of retroactive criminalization; the right of detained persons to be brought promptly before a judge; the presumption of innocence; the right to a fair and public hearing by a competent, independent and impartial tribunal established by law; and the right to a hearing within a reasonable time. Participating states have faced challenges upholding the fundamental principles of a fair trial in the context of the current pandemic, in particular in guaranteeing the public nature of hearings; in ensuring that defendants have the facilities and ability to communicate confidentially with their lawyer to properly prepare their case; and be present at the hearing and examine witnesses. These are all difficult through the use of information and communication technologies during remote hearings while courts were partially or fully closed. While some states broadcasted hearings, ODIHR received reports about substantial limitations of the right to a public hearing, impacting transparency and the ability of trial monitors and the media to observe the process. Further, emergency legislation generally lacked sufficient clarity for court officials to ensure the observance of the right to a fair trial.

HATE CRIMES AND DISCRIMINATION

OSCE participating States have committed to addressing discrimination and hate crime but the pandemic added new layers of complexity to this already difficult task by exacerbating intolerant discourse and the racist scapegoating of minorities. The proliferation of reports from across the region highlight pandemic related hate-motivated attacks and various forms of online intolerance and discrimination that was fueled by movement restrictions. In this period, a significant amount of intolerance and discrimination was directed towards persons perceived to be of Asian descent, while migrants were also frequently singled out. Ageist discourse also appeared, which referred to older people as less deserving of societal solidarity and state protection. The pandemic also had a disproportionate impact on persons with disabilities who faced difficulties in accessing healthcare in some states and feared discrimination. Organized hate groups whose activities

consistently display hostility towards protected groups, appeared to exploit the public emergency by spreading intolerant discourse and conspiracy theories, assigning blame to different minority communities. The work of civil society organizations addressing hate crime and discrimination was further hampered by physical distancing and other state-imposed restrictions due to the pandemic. Some states, however, recognized the need for special support to minority communities and announced new health-care support for indigenous communities amid the pandemic or carried out other symbolically important acts to signal inclusiveness and tolerance.

GENDER EQUALITY AND DOMESTIC VIOLENCE

In the majority of participating States across the OSCE region, women have not been sufficiently engaged in shaping states' responses to the pandemic. Women have been under represented in Covid-19 related decision-making bodies and limited gender analysis was conducted within crisis response and recovery planning, resulting in policies that exacerbated existing gender inequalities and discrimination. The emergency measures have often led to adverse social and economic consequences, including unemployment of part-time, low-income and informal workers, which along with the shut-down of schools and institutions, largely disproportionately affected women. Further, the risk to healthcare workers disproportionately affected women, as women constitute a majority of employees in healthcare and frontline services sectors. Confined living conditions due to lockdowns and self-isolation regimes, coupled with increased financial stress, unemployment and strained community resources, have compounded pre-existing violence against women, and intensified exposure to abuse at the hands of an intimate partner or family member. At the same time, opportunities to seek and receive vital support were reduced as public services normally available to victims of violence, including health services, police interventions, judicial remedies and sheltering services have been affected by disruptions. In some cases, pressure on referral mechanisms available to victims of violence, in addition to restrictions of movement, has been lethal for women, with a documented rise in reported cases of domestic violence.

ROMA AND SINTI

States have not taken sufficient measures in line with the commitments they made in the Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area and subsequent Roma-focused Ministerial Council Decisions to prevent surges in racism and discrimination against Roma and Sinti people during the pandemic. Since the outbreak, ODIHR has received reports of a number of measures adopted by States and local authorities that can be considered discriminatory towards Roma and Sinti communities, including targeted community-wide testing administered by the military, discriminatory lockdown and quarantine measures and full lockdowns of entire large communities where only a handful of individuals were infected. Many Roma live in informal settlements, in overcrowded and substandard conditions. This, combined with widespread poverty and linguistic challenges, make this population particularly vulnerable and hard to reach. Discriminatory and disproportionate lockdown measures have also severely affected economic opportunities for Roma, who often depend on informal and unsteady work. Emergency measure that included the closing of schools, moving all education online, and expecting students to study and participate in classes from home, excluded tens of thousands of Roma students from educational processes as they generally lack the minimum requirements for such learning. Some states and municipalities with the help of Council of Europe provided special assistance packages to Roma communities.

MIGRATION

The unprecedented restriction on movement that states imposed in response to the pandemic had a significant impact on migrants. The closure of international borders impacted international mobility and, as such, migrants' ability to return home or to take up employment. Several states automatically extended the residence permits of migrants in their territory for the duration of the health emergency, including regularization for migrants working in the agriculture and domestic work sectors, or relaxations of employment restrictions in the healthcare sector. Border crossing points that are already risk areas for migrants in normal times, emerged

as particularly vulnerable flashpoints for many migrants during the pandemic. Reports from civil society highlighted the continued use of illegal pushbacks and incidents of violence during the pandemic. Immediately following border closures, access to asylum procedures was limited in many countries. However, after an initial period of suspension and halting of asylum procedures, many countries found ways to resume processing applications. The pandemic has also brought to light challenges in terms of physical distancing and hygienic measures present at collective centres that are often subject to overcrowding. While in a few states, entire reception centres were locked down and the movements of residents curtailed, a number of states put in place measures to address the risk of transmission in collective centre settings and other states opted for the release of detainees.

VICTIMS AND SURVIVORS OF TRAFFICKING IN HUMAN BEINGS

The pandemic increased the vulnerability of at-risk groups to trafficking in human beings and impacted the ability of states to prevent and address the crime of trafficking in human beings, from the identification of victims, their access to services, protections and redress. Victims of trafficking were at increased risk of control, violence and isolation by their exploiters and had reduced access to assistance. Survivors of trafficking were also profoundly impacted by the psychological effect of lockdown and self-isolation measures and some survivors reported an increase in domestic violence, economic insecurity, and fear of traffickers being released from prison due to Covid-19. Law enforcement agencies in the OSCE region reported increased grooming and exploitation of children through the Internet, as well as an exponential growth of child sexual exploitation material shared online showing that emergency measures contributed to the vulnerability of children to trafficking. ODIHR and UN Women conducted a survey of non-governmental anti-trafficking stakeholders and survivors of trafficking that revealed the vulnerabilities of at-risk groups, victims and survivors and difficulties National Referral Mechanisms faced to function effectively during the pandemic.