

CIVIC SPACE AND COVID-19: GUIDANCE

WHY DOES CIVIC SPACE MATTER DURING A PANDEMIC?

Now, more than ever, the voices of people need to be heard.

- Civil society is instrumental in building and maintaining trust in the health system.
- Civil society can help identify flexible and smart solutions that respond to the most urgent needs.
- Open and vibrant civic space helps ensure targeted and candid feedback on COVID-19 measures to improve responses.

WHAT CONCERNS ARE THERE ABOUT CLOSING CIVIC SPACE IN THE PANDEMIC?

While measures to protect public health during the pandemic are necessary, there are risks that they may be overbroad or discriminatory. There is also a risk that there will be abuses in the way that even appropriately-crafted measures are implemented.

Exceptional measures and states of emergency based on public health requirements must:

- Be necessary and proportionate to the public health need
- Be the least intrusive means of accomplishing the public health objective
- Be non-discriminatory
- Be limited in duration
- Not infringe on certain rights (“non-derogable”), including the right to life, the prohibition against torture and other ill-treatment, and the right not to be arbitrarily detained.

ENCOURAGE PARTICIPATION IN COVID-19 RESPONSE

Participation in the design of responses to the crisis is a right, and is the smart thing to do

- States should create **avenues for participation and feed-back** and reach out to those most at risk and those most likely to be excluded, including women, older persons, persons with disabilities, and ensure that they are engaged and able to participate in policy-making on an equal basis.
- States and other stakeholders should ensure that **existing channels of civil society participation, at local, national and international levels are maintained** – and possibly expanded – when shifting to remote meetings and video-conferencing in the COVID-19 context. They should collectively explore more flexible channels for remote

participation through privacy-respecting, cost effective and accessible online platforms, which can facilitate more systematic out-reach to grass roots organisations and civil society organisations.

MAXIMISE ACCESS TO INFORMATION

Timely sharing of information, access to information and the free exchange of ideas online and offline enable effective and credible responses

- **Ensure that relevant and reliable information on the crisis** including gender specific and responsive information **reaches all people**, without exception. Make information available in readily understandable formats and languages, adapt information for people with specific needs, including people with disabilities, and ensure that it reaches those with limited or no ability to read.
- **Facilitate access to the internet.** When other means of communications are restricted, online information is particularly crucial. Restrictions on access to the internet, including shutdowns, cannot be justified on public order or national security grounds. Whenever possible, States and other relevant actors should take measures to expand access to internet services for older persons, those living in poverty and most at risk, women and girls, and marginalized communities.
- **Harmful disinformation should be countered by coordinated efforts to provide credible, accurate information.** Rather than eliminating large amounts of information, which often results in arbitrary censorship, states and companies should focus on giving prominence to reliable information from authoritative sources and promote social media literacy.
- **Decisions to take down disinformation on COVID- 19 must be based on clear and publicly accessible criteria and subject to appeal.** As companies moderate content and are forced to use artificial intelligence due to staff being in confinement, they must increase transparency on these measures, ensure full compliance with the proportionality requirement under international law and create opportunities for remedy and redress. Decisions to take down “disinformation” must not infringe on the right to debate measures imposed by authorities to combat the spread of the virus and other measures taken in that context.

RESPECT FREEDOM OF EXPRESSION

Limiting stakeholder involvement and critical feedback, including debates involving experts, medical professionals, journalists and other influencers undermine an effective response to COVID-19

- **Limitations on access to relevant data**, censorship, restrictions or criminalizing journalistic activity not only violate human rights, but also **erode trust in health measures** taken by authorities, aggravating potential threats to human health and human life. More than ever, we need information to flow and people to have access to it and we need to ensure it can happen in a safe environment.
- **States and the media should provide a space for medical professionals and experts, including scientists, to speak freely** and share information with each other and the public, without threats of disciplinary action and reprisals.

Safe procedures for whistleblowing in the health sector are critical for them to carry out their work without fear of retaliatory lawsuits and intimidation.

- **Laws penalizing expressions** based on vague concepts such as “fake news” or disinformation in relation to the COVID-19 pandemic, **are not compatible with the requirements of legality and proportionality**. Silencing critical or dissenting voices or imposing criminal sanctions for inaccurate COVID-19 related statements will undermine trust and any effective health response.

PROTECT CIVIL SOCIETY

Human rights defenders are doing critical work to support efforts to stem the spread of the virus, protect vulnerable people, and address impacts of the pandemic on lives and livelihoods

- **States and other stakeholders should publicly recognize the contributions of civil society**, including of human rights defenders, media workers, national human rights institutions, in sharing good practices, shedding light on gaps response, and in public health education. Continued funding for this critical work is essential.
- **States should ensure that restrictions on freedom of movement and assembly are not discriminatory** and do not target or unnecessarily hinder human rights defenders, including journalists. Steps should be taken to help ensure that civil society remains able to reach affected communities for advocacy, monitoring and service provision. Restrictions to freedom of expression, association, movement or peaceful assembly should never be used as a pretext to criminalize human rights defenders, journalists and others.
- **States should release defenders detained in connection with their human rights work, and any persons unlawfully held**. People in prisons or other detention facilities are particularly at risk for COVID-19, given limited physical distancing possibilities and healthcare options.

UPHOLD FREEDOM OF ASSEMBLY

While exceptional restrictions to physical gatherings may be necessary during health emergencies, they must be based on law, necessary and proportionate to the aim

- Restrictions of movement from residences may be necessary for legitimate health reasons and will impact the ability to conduct physical gatherings. **States should ensure that the right to hold assemblies and protests can be realized, and only limit the exercise of that right as strictly required to protect public health**. Accordingly, States are encouraged to consider how protests may be held consistent with public health needs, for example by incorporating physical distancing. Restrictions on public gatherings should be constantly assessed to determine whether they continue to be necessary and proportionate.

MANAGE IMPACTS ON PRIVACY

Effective responses to health crises require the collection and management of sensitive data. Such efforts should be strictly limited to meet the public health need and should be closely monitored

- **Adequate management of health related data**: Systems for health related data should adhere to established international data protection principles, including processing only the data required to fulfil the specific purpose

of managing the COVID-19 pandemic and ensuring transparency by advising concerned individuals of the use of their data.

- **Ensure adequate safeguards and accountability:** Ensure accountability by establishing transparent mechanisms for rectifying inaccurate data; for remedy for data breaches or other misuses, and prohibiting data processed in the pandemic from being used by other governmental agencies unless absolutely necessary.
- **Any surveillance must be proportional, lawful and necessary:** Surveillance measures should be the least intrusive means available to meet public health needs, and as such include clear sunset clauses. Individual surveillance, contact tracing and individual movement tracking should be tightly regulated, with data being used only as strictly necessary to address the public health emergency. Expanded monitoring efforts related to COVID-19 should not fall under the domain of national security and intelligence entities and must be subject to effective oversight by appropriate independent bodies.