

EMERGENCY MEASURES AND COVID-19: GUIDANCE

The situation presented by the COVID-19 pandemic requires many countries worldwide to take extraordinary measures to protect the health and well-being of the population. Even in a public emergency, these steps need to be based on the rule of law.

Emergency powers should be used within the parameters provided by international human rights law, particularly the International Covenant on Civil and Political Rights (ICCPR), which acknowledges that States may need additional powers to address exceptional situations. Such powers should be time-bound and only exercised on a temporary basis with the aim to restore a state of normalcy as soon as possible.

Even without formally declaring states of emergency, States can adopt exceptional measures to protect public health that may restrict certain human rights. These restrictions must meet the requirements of legality, necessity and proportionality, and be non-discriminatory.

The suspension or derogation of certain civil and political rights is only allowed under specific situations of emergency that “threaten the life of the nation”. Some safeguards must be put in place including the respect of some fundamental rights that cannot be suspended under any circumstances.

The International Covenant on Economic, Social and Cultural Rights does not include a provision on derogations. State obligations associated with the core content of the rights to food, health, housing, social protection, water and sanitation, education and an adequate standard of living remain in effect even during situations of emergency.

RESTRICTIONS ON HUMAN RIGHTS AS A RESULT OF EMERGENCY MEASURES

Some rights, such as freedom of movement, freedom of expression or freedom of peaceful assembly may be subject to restrictions for public health reasons, even in the absence of a state of emergency. These restrictions, however, must meet the following requirements:

- *Legality*: The restriction must be “provided by law”. This means that the limitation must be contained in a national law of general application, which is in force at the time the limitation is applied. The law must not be arbitrary or unreasonable, and it must be clear and accessible to the public.
- *Necessity*: The restriction must be *necessary* for the protection of one of the permissible grounds stated in the ICCPR, which include public health, and must respond to a pressing social need.
- *Proportionality*: The restriction must be *proportionate* to the interest at stake, i.e. it must be appropriate to achieve its protective function; and it must be the least intrusive option among those that might achieve the desired result.
- *Non-discrimination*: No restriction shall discriminate contrary to the provisions of international human rights law.

- All limitations should be interpreted strictly and in favour of the right at issue. No limitation can be applied in an arbitrary manner.
- The authorities have the burden of justifying restrictions upon rights.

STATES OF EMERGENCY

- States of emergency are specifically regulated under human rights law. Although derogation or suspension of certain rights is permitted when such emergencies are declared, measures suspending rights should be avoided when the situation can be adequately dealt with by establishing proportionate restrictions or limitations on certain rights, as described above.
- If derogations from a State's human rights obligations are needed to prevent the spread of COVID-19, all measures taken should be proportionate and limited to those strictly required by the exigencies of the situation. This requirement relates to the duration, geographical coverage and substantive basis of the state of emergency.
- Accordingly, state of emergency legislation and measures should be:
 - Strictly temporary in scope,
 - The least intrusive to achieve the stated public health goals, and
 - Include safeguards such as sunset or review clauses, in order to ensure return to ordinary laws as soon as the emergency situation is over.
- Some rights, such as the right to life, the prohibition from torture and the principle of legality in criminal law,¹ cannot be derogated from even during states of emergency and continue to apply in all situations. Ordinary courts should maintain their jurisdiction to adjudicate complaints for violations of non-derogable rights.
- States should take measures to prevent human rights violations and abuses associated with the state of emergency perpetrated by state and non-state actors. Allegations of such violations and abuses should be effectively and promptly investigated with a view to putting an end to the violation or abuse, bringing perpetrators to justice and providing victims with protection and effective remedies.
- The principles of legality and the rule of law require that fundamental requirements of fair trial must be respected during a state of emergency. Only a court of law may try and convict a person for a criminal offence. The presumption of innocence must be respected.
- Emergency declarations based on the COVID-19 outbreak should not be used as a basis to target particular individuals or groups, including minorities. Measures taken must not involve prohibited discrimination on any grounds such as race, colour, sex, sexual orientation and gender identity, disability, language, religion, political or other opinion, national or social origin, property, birth or other status.

¹ For a full list of non-derogable rights, please refer to article 4 of the [ICCPR](#) and General Comment 29 of the Human Rights Committee. Regional human rights instruments may provide for a different set of non-derogable rights.

- States should provide timely and effective measures to support the enjoyment of core economic and social rights of people affected by emergency restrictions, including through support for employment and livelihoods, housing, food, education, social protection and health, in order to enable them to comply with the emergency measures.
- For a state of emergency to be lawfully declared, it must be publicly and officially proclaimed. An official proclamation is essential for the maintenance of the principles of legality and rule of law. Proclamations must be in line with relevant constitutional and other provisions of national law that govern such proclamations and the exercise of emergency powers. In addition, States Parties to the International Covenant on Civil and Political Rights are required to notify the UN Secretary-General under article 4.3 of the Covenant.
- States must inform the affected population of the exact substantive, territorial and temporal scope of the application of the state of emergency and its related measures. Sufficient information about emergency legislation and measures should be communicated swiftly and in all official languages of the State, as well as in as many other languages widely spoken in the country as possible, and in an accessible manner so the public at large is aware of the new legal rules and can conduct themselves accordingly.
- A state of emergency should be guided by human rights principles, including transparency. A state of emergency should not be used for any purpose other than the public necessity for which it is declared, in this case to respond to the COVID-19 pandemic. It should not be used to stifle dissent. Transparency and the right to information during a state of emergency require that media freedom is protected, as journalism serves a crucial function during the emergency.
- Supervision of the exercise of emergency powers is essential to give substance to democracy and the rule of law. Emergency measures, including derogation or suspension of certain rights, should be subject to periodic and independent review by the legislature. Any emergency legislation introduced under a state of emergency should be subjected to adequate legislative scrutiny. There should also be meaningful judicial oversight of exceptional measures or a state of emergency to ensure that they comply with the limitations described above.

For additional guidance on states of emergency, see [General Comment 29](#) of the Human Rights Committee, and the

ARTICLE 4 OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

[Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights.](#)

PENALTIES FOR VIOLATIONS OF EXTRAORDINARY MEASURES

- States must enforce any exceptional measures humanely, respecting the principle of proportionality when imposing penalties for violations and ensure that penalties are not imposed in an arbitrary or discriminatory way. For example, persons with disabilities or victims of domestic violence, should not be subjected to penalties should they violate COVID-19 emergency measures to protect themselves.
- States should only deprive persons of their liberty as a last resort, on grounds that are established by law, and with appropriate procedural safeguards. Deprivation of liberty must be reasonable, necessary and proportionate in the circumstances, even in a state of emergency.
- States should pay specific attention to the public health implications of overcrowding in places of detention and to the particular risks to detainees created by the COVID-19 emergency, in assessing appropriateness of detaining someone.
- Fines should be commensurate to the seriousness of the offence committed. In assessing the appropriate sum of a fine, consideration should be given to the individual circumstances, including gender-specific impacts. This is particularly relevant for jobless people or those not generating income because of the emergency measures.
- Measures to regulate misinformation on COVID-19 should be crafted with care, as they may lead to censorship of unpopular or minority opinions. Criminal penalties for information offenses should be avoided. States should employ less intrusive means of combating the spread of misinformation, such as promoting independent fact-checking, education and media literacy. It is essential that governments and internet companies address this issue misinformation in the first instance by themselves providing clear, reliable, fact-based information.

For additional guidance on the right to liberty and security of the person, see [General Comment 35](#) of the Human Rights Committee.

LAW ENFORCEMENT AND EXTRAORDINARY MEASURES

- Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty and only when less harmful measures have proven to be clearly ineffective.
- Law enforcement operations, including when carried out during extraordinary measures or a state of emergency, should comply with relevant international norms and standards, including the Code of Conduct for Law Enforcement Officials, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and U.N. Human Rights Guidance on the Use of Less-Lethal Weapons by Law Enforcement.
- As a general rule, the military should not conduct policing functions. Exceptional situations, however, may require that the military be deployed in a law enforcement context for limited periods and specifically defined circumstances.
- Whenever members of military forces conduct law enforcement functions, they should be subordinate to civilian authority and accountable under civilian law, and are subject to standards applied to law enforcement officials under international human rights law.

- Any allegations of human rights violations, including abuse of power, arbitrary detention, and sexual and gender-based violence by law enforcement and military personnel, must be effectively and promptly investigated and perpetrators brought to justice. This is particularly important in light of the extensive powers given to law enforcement and military personnel in many areas during the COVID-19 pandemic.

For additional guidance on use of force and the conduct of law enforcement officials, please refer to [Code of Conduct for Law Enforcement Officials](#), [Basic Principles on the Use of Force and Firearms by Law Enforcement Officials](#) and [U.N. Human Rights Guidance on the Use of Less-Lethal Weapons by Law Enforcement](#).