

GUIDANCE ON THE USE OF EMERGENCY POWERS IN TIMES OF A PANDEMIC

Since the start of the outbreak, governments across Southeast Asia have taken a range of measures, including declaring states of emergency, to combat the spread of the coronavirus. As parliamentarians play a crucial role in monitoring the implementation of these measures, in particular their compliance with human rights, this document aims to explain the key international standards relating to emergency situations and steps which lawmakers can take in protecting human rights.

CAN EMERGENCY POWERS BE USED DURING A PANDEMIC?

States can declare a state of emergency when facing exceptional circumstances which threatens the life of the nation. In the context of COVID-19, public health is recognized as a basis for governments to take emergency measures aimed at preventing disease and providing care for the ill.

However, emergency powers should be used within the limitations set out by international human rights law:

- They should not be used for any other purposes than to address the threats it is meant to mitigate, in this case to respond to the COVID-19 pandemic;
- They should be strictly temporary and be reviewed regularly;
- They should also be subject to legislative and judicial oversight.

WHAT IS THE PROCESS FOR DECLARING AND ENDING AN EMERGENCY?

An official proclamation must be made of the existence of the public emergency that threatens the life of the nation. This procedure, which is often found in the Constitution, must be clearly stated in law ahead of the declaration. States should take special effort to inform the affected population about the details of the emergency measures adopted, and ensure related information is updated regularly and made widely available. States who have ratified the International Covenant on Civil and Political Rights (ICCPR) must also notify other parties to the Covenant.

ARE THERE RIGHTS THAT CANNOT BE DEROGATED IN TIMES OF AN EMERGENCY?

Under international law, there are human rights that can never be suspended, even in times of an emergency. These are known as non-derogable rights. They are:

- The right to life; Freedom from torture, cruel, inhuman or degrading treatment or punishment, and from medical or scientific experimentation without free consent;
- Freedom from slavery or involuntary servitude;
- The right not to be imprisoned for contractual debt;
- The right not to be convicted or sentenced to a heavier penalty by virtue of retroactive criminal legislation;
- The right to recognition as a person before the law;
- and Freedom of thought, conscience and religion.

WHAT ARE THE PERMISSIBLE RESTRICTIONS TO HUMAN RIGHTS DURING AN EMERGENCY?

Some human rights, such as freedom of movement, freedom of expression or peaceful assembly can be restricted for public health reasons. However, the measures adopted to restrict these rights must meet the following criteria:

- Measures adopted must be provided by law.
- Measures adopted should only be strictly necessary to address the threats they are meant to mitigate, in this case to respond to the COVID-19 pandemic; Any limitations imposed for a different purpose could amount to an abuse of power;
- Measures adopted should be proportionate (appropriate to achieve the need for public health), and the least intrusive possible.
- Measures adopted should also not be discriminatory and be used to target particular individuals or groups, including minorities.

For example, when imposing penalties for violations of emergency measures, States should only deprive persons of their liberty as a last resort, and penalties should be commensurate with the seriousness of the offence. Penalties should also not be imposed arbitrarily or in a discriminatory manner.

WHAT IS THE ROLE OF THE COURTS DURING AN EMERGENCY?

Even in times of emergency, both the declaration of a state of emergency and measures adopted under it are subject to judicial review. This is an important safeguard to ensure that exceptional powers are being used only to respond to the said threat. Courts should also continue to adjudicate complaints of violations of the rights that cannot be restricted in a time of emergency. In addition, fair trial rights such as the presumption of innocence, the fact that only a court of law can convict a person of a criminal offence, the prohibition of detention incommunicado or for an indefinite period, etc. continue to apply in times of emergencies.

WHAT ARE THE POWERS OF THE POLICE DURING AN EMERGENCY?

Police and all law enforcement officers should use force only when strictly necessary and only when other less harmful measures have not been effective. Even in times of emergencies, international norms and standards - such as 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](#) - should be complied with. In addition, in general, the military should not conduct policing functions and all allegations of human rights violations by law enforcement and military personnel must be independently investigated and those found responsible brought to justice.

WHAT ROLE DO LAWMAKERS PLAY DURING A STATE OF EMERGENCY?

As directly-elected representatives, lawmakers play a crucial role in supporting government efforts to combat the coronavirus and ensuring these measures are in line with human rights and democratic principles. To this end, it is essential that parliaments continue to operate during times of emergency and allow lawmakers to fully exercise their mandate.

In particular, lawmakers should be able to provide prompt and periodic independent review of the necessity for the use of emergency powers to protect public health as well as of the measures and legislation adopted under it. Importantly, parliamentarians also have a role to ensure that States take a human rights approach when responding to COVID-19. This includes urging governments to take into account the impact of such measures on persons at risk, including women, ethnic or religious minorities, indigenous peoples, migrants and refugees, older persons, persons with disabilities, and LGBTI people.

For more information please see:

- [UN Office of the High Commission for Human Rights, Emergency Powers and Covid19: Guidance](#)
- [The Siracusa Principles on the limitation and derogation provisions in the International Covenant on Civil and Political Rights](#)
- [UN Human Rights Committee, General Comment No. 29, Derogations during a State of Emergency.](#)
- [APHR, MPs warn against authoritarian turn of COVID-19 responses](#)
- [APHR, Essential parliamentary work must resume at the earliest, regional lawmakers say.](#)