
Advance unedited versionDistr.: General
24 April 2020

Original: English

Human Rights Committee**Statement on derogations from the Covenant in connection with the COVID-19 pandemic**

1. A number of States parties to the International Covenant on Civil and Political Rights have notified in recent weeks the Secretary General of the UN pursuant to article 4 of the Covenant about emergency measures they have taken or are planning to take with a view to curb the spread of the Coronavirus pandemic (COVID-19), in derogation from their Covenant obligations. It has been brought, however, to the attention of the Committee that several other States parties have resorted to emergency measures in response to COVID-19 in a manner seriously affecting the implementation of their obligations under the Covenant, without formally submitting a notification of derogation from the Covenant. The Committee calls on all State parties which have taken emergency measures in connection with the COVID-19 pandemic that derogate from Covenant obligations, to comply without delay with their duty to provide immediate notification to the Secretary General of the UN, if they have not done so yet.

2. The Committee is of the view that in the face of the COVID-19 pandemic, States parties must take effective measures to protect the right to life and health of all individuals within their territory and all those subject to their jurisdiction, and it recognizes that such measures may result in certain circumstances in restrictions on the enjoyment of individual rights guaranteed by the Covenant. Furthermore, the Committee acknowledges that States parties confronting the threat of widespread contagion may resort, on a temporary basis, to exceptional emergency powers and invoke their right of derogation from the Covenant under article 4, provided this is required to protect the life of the nation. Still, the Committee wishes to remind States parties of the requirements and conditions laid down in article 4 of the Covenant and explained in the Committee's General Comments, most notably in General Comment 29 on States of Emergency (2001), which provides guidance on the following aspects of derogations: (1) official proclamation of a state of emergency; (2) formal notification to the Secretary General of the UN; (3) strict necessity and proportionality of any derogating measure taken; (4) conformity of measures taken with other international obligations; (5) non-discrimination; and (6) the prohibition on derogating from certain non-derogable rights. In particular, States parties must observe the following requirements and conditions when exercising emergency powers in connection with the COVID-19 pandemic:

(a) Where measures derogating from the obligations of States parties under the Covenant are taken, the provisions derogated from and the reasons for the derogation must be communicated immediately to the other States parties through the Secretary-General of the UN. Notifications by States parties need to include full information about the derogating measures taken and a clear explanation of the reasons for taking them, with complete documentation of any laws adopted. Additional notifications are required if the State party subsequently takes further measures under article 4, for instance by extending the duration of a state of emergency. The requirement of immediate notification applies equally to the termination of the derogation. The Committee considers the implementation of the obligation of immediate notification essential for the discharge of its functions, as well for the monitoring of the situation by other States parties and other stakeholders.

(b) Derogating measures can deviate from the obligations set out by the Covenant only to the extent strictly required by the exigencies of the public health situation. Their predominant objective must be the restoration of a state of normalcy, where full respect for the Covenant can again be secured. Derogations must be limited, as much as possible, in respect of their duration, geographical coverage and material scope, and all measures taken, including sanctions imposed in connection with them, must be proportional in nature. Where possible, and with a view of the need to protect the life and health of others, States parties should replace COVID-19-related measures that prohibit activities relevant to the enjoyment of rights under the Covenant with less restrictive measures that allow such activities to take place, while subjecting them to necessary public health requirements such as physical distancing.

(c) States parties should not derogate from Covenant rights or rely on a derogation made when they can attain their public health or other public policy objectives through invoking the possibility to restrict certain rights, such as article 12 (freedom of movement), article 19 (freedom of expression) or article 21 (the right to peaceful assembly), in conformity with the provisions for such restrictions set out in the Covenant, or through invoking the possibility of introducing reasonable limitations on certain rights, such as article 9 (right to personal liberty) and article 17 (right to privacy), in accordance with their provisions.

(d) States parties cannot resort to emergency powers or implement derogating measures in a manner that is discriminatory, or which violates other obligations they have undertaken under international law, including under other international human rights treaties from which no derogation is allowed. Nor can States parties deviate from the non-derogable provisions of the Covenant - i.e., article 6 (right to life), article 7 (prohibition of torture or cruel, inhuman or degrading punishment, or of medical or scientific experimentation without consent), article 8, paragraphs 1 and 2 (prohibition of slavery, slave-trade and servitude), article 11 (prohibition of imprisonment because of inability to fulfil a contractual obligation), article 15 (the principle of legality in the field of criminal law), article 16 (the recognition of everyone as a person before the law), and article 18 (freedom of thought, conscience and religion) - or from other rights which are essential for upholding the non-derogable rights found in the aforementioned provisions and for ensuring respect for the rule of law and the principle of legality even in times of public

emergency, including the right of access to court, due process guarantees and the right of victims to obtain an effective remedy.

(e) In addition, States parties cannot derogate from their duty to treat all persons, including persons deprived of their liberty, with humanity and respect for their human dignity, and they must pay special attention to the adequacy of health conditions and health services in places of incarceration, as well as to the rights of individuals in situations of confinement, and to the aggravated threat of domestic violence arising in such situations. Nor can States parties tolerate, even in situations of emergency, the advocacy of national, racial or religious hatred that would constitute incitement to discrimination, hostility or violence, and they must take steps to ensure that public discourse in connection with the COVID-19 pandemic does not constitute advocacy and incitement against specific marginalized or vulnerable groups, including minorities and foreign nationals.

(f) Freedom of expression, access to information and a civic space where a public debate can be held constitute important safeguards for ensuring that States parties resorting to emergency powers in connection with the COVID-19 pandemic comply with their obligations under the Covenant.
