

# COVID-19

Toolkit for Civil Society Partners

Emergency Powers  
and Crisis Responses:  
Human Rights Risks



# INTERNATIONAL PARTNERS

This toolkit was produced, and is published, in partnership with the following civil society organisations from across the world



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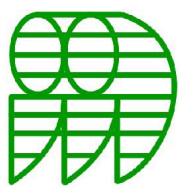
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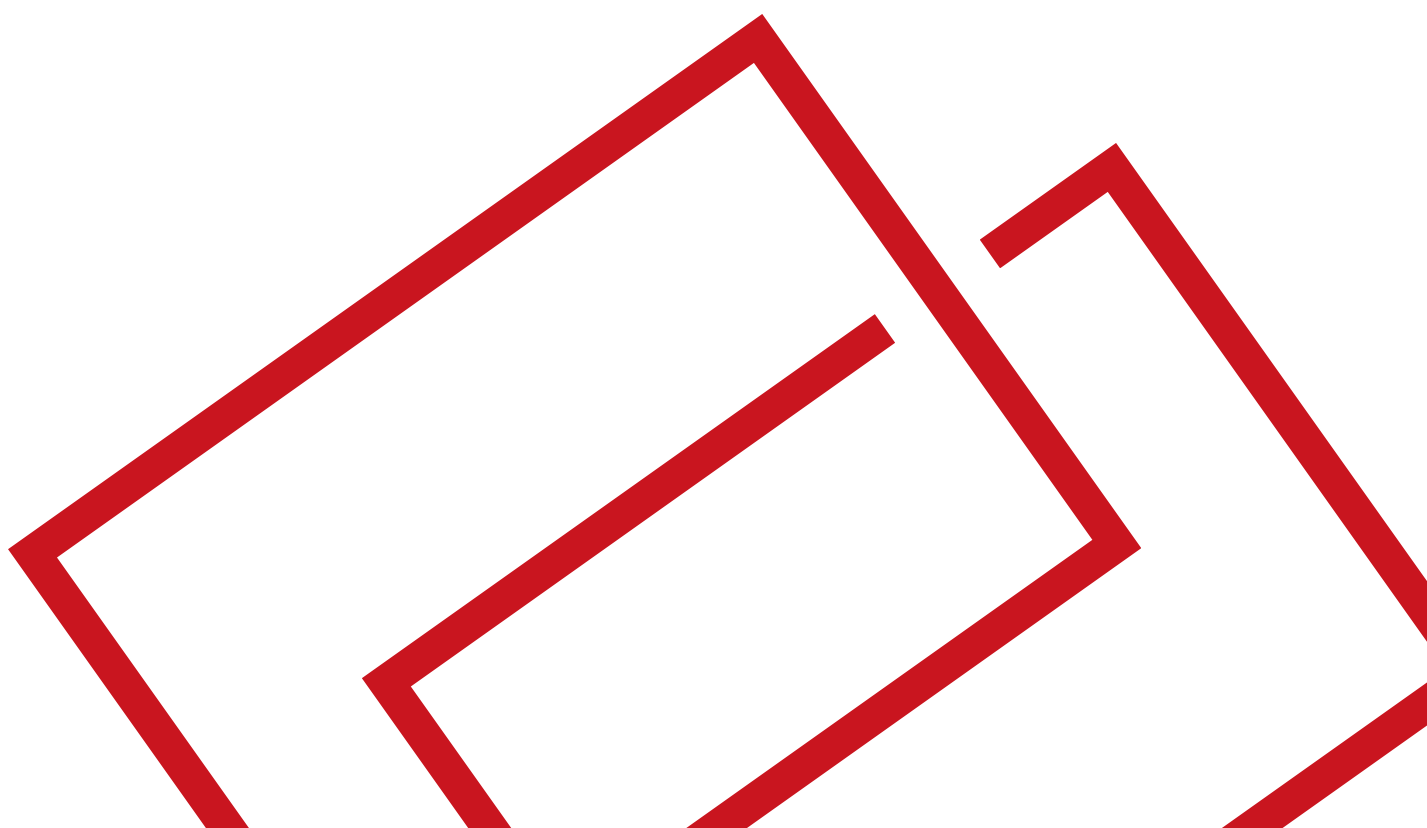
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# 1 Introduction

- 1.1.** This COVID-19 civil society toolkit is designed to **provide a guide for civil society organisations** to anticipate emergency laws and policies; scrutinise, from a rights based perspective, the process by which these laws and policies are passed and their content; and identify and respond to emergency measures—particularly those that are having a disproportionate impact on marginalised and vulnerable groups.
- 1.2.** The toolkit is set around the three specific areas of risk that arise in respect of the emergency measures taken in response to the pandemic:
- Risks arising from the **procedure** by which emergency laws and policies are implemented;
  - Risks arising from the **substance** of the emergency laws and policies themselves;
  - Risks arising from the **implementation** of the laws, policies and practices on specific vulnerable communities.
- 1.3.** To address these areas of risk, the toolkit is divided into six sections. Each section has a list of proposed questions for civil society organisations (CSOs) and human rights defenders (HRDs) as well as a discussion of the questions. (the full list of questions, without the discussion, is annexed). The six sections are:
- 1.** Introduction
  - 2.** Human rights risks arising from the process by which emergency measures are implemented
  - 3.** Human rights risks arising from the emergency laws and policies
  - 4.** Impact of emergency laws and policies on vulnerable or marginalised groups
  - 5.** The importance of context-specific measures
  - 6.** Advocacy recommendations



**1.4.** The contents of this toolkit are drawn from our partner organisations' and our analysis of the current responses of Governments to the pandemic, as well as Rights and Security International's 30 years of experience of analysing and responding to the use of emergency and exceptional powers in the context of counter-terrorism law and policy. Our experience in emergency contexts tells us that civil society plays a crucial role in making sure:

- Emergency measures have a basis in law, are passed in a lawful way and are publically available, and challenging those that are not;
- Emergency laws and policies are time-bound, as limited as possible, and only in force as long as absolutely necessary, and challenging those that are not;
- There is reasonable oversight and review of the emergency laws and policies with civil society and broader democratic involvement, and challenging when this does not happen;
- Emergency laws and policies are strictly necessary to deal with the emergency (in the current situation, they must be justified by legitimate public health objectives) and proportionate to those needs, and challenging those that are not;
- Emergency measures are not abusive and/or do not have a discriminatory impact including on the vulnerable and marginalised, and working with affected communities to challenge, abusive, disproportionate and/or discriminatory measures, and
- There is accountability for human rights abuses that are carried out in the context of the emergency.

**1.5.** In the context of the current pandemic, some Governments are implementing emergency measures in good faith that have unforeseen or unintended consequences for people's rights, while others are weaponising the pandemic and using emergency measures to deliberately target certain groups and to consolidate their power. In both instances, we are seeing these emergency measures disproportionately impacting, and in some instances specifically targeting, marginalised and vulnerable groups. There are countless and growing examples of minority groups, migrant workers, detainees, asylum-seekers, refugees, women, children, the elderly and low socio-economic segments of society (particularly the un-housed) who are disproportionately suffering as a result of Government actions.



**1.6.** There is a corresponding shrinking of civic and democratic space as measures of social distancing, nation-wide lockdown and restrictions on freedom of expression limit the ability of civil society to operate. In some countries Governments have also restricted or entirely closed down political opposition and democratic events, like elections, as well as courts and other judicial institutions. These steps are impacting the ability of civil society groups to organise and respond, and limiting oversight and scrutiny of these emergency measures.

**1.7.** Rights and Security International, along with our civil society partners, are tracking patterns and themes that are arising from COVID-19 responses in different regions and countries. In so doing, we are looking to continue to draw on our experience of emergencies in the counter terrorism context and work with civil society to better equip them to respond to the challenges they face as well as those they are assisting. In order do this please provide us with updates to [covid19@rightsandsecurity.org](mailto:covid19@rightsandsecurity.org) about:

- Any emergency laws or policies in your region and/or country, and the specific duration of these measures
- Whether there is any effective oversight of, and accountability for, these measures by Parliaments, Courts and other bodies, and any challenges you have faced in terms of scrutinising and/or challenging these measures
- The impact of these emergency laws and policies including on specific groups that are being targeted or disproportionately impacted. If possible, please provide specific case studies
- The challenges you are facing as a civil society organisation in light of these measures
- The responses from any regional or domestic bodies (including oversight bodies such as national human rights commissions, Ombudsman etc) as well any comments or decisions by courts or other administrative bodies in relation to the emergency measures.

**Rights and Security International** (formerly Rights Watch (UK)) promotes just and effective security. In particular, we promote a responsible and rights based approach to national security and countering terrorism, and have been doing so for the last 30 years.

Please visit us at [www.rwuk.org](http://www.rwuk.org) or [www.rightsandsecurity.org](http://www.rightsandsecurity.org) (the latter will be operational in the coming weeks) and follow our work on twitter on [@rightssecurity](https://twitter.com/rightssecurity)



## 2 Human rights risks arising from the procedure by which emergency measures are implemented

### 2.1. Questions: Emergency law procedures

- Q1:** Has there been a state of emergency declared? Have any emergency-related laws, measures and policies been published and are they available for the public to access?
- Q2:** What is the legal basis for the State to declare a state of emergency (constitutional, legislative, executive discretion)?
- Q3:** Has the appropriate procedure been adopted to invoke the state of emergency? Has this process been public? If not, why not?
- Q4:** If there is a fixed process to declare an emergency, has that been used? Or has the emergency been “named” as such, but ordinary laws have been used?
- Q5:** If ordinary laws have been used in preference to existing emergency procedures (particularly constitutional), why has that been the case? Has that process been justified by the Government?
- Q6:** If ordinary measures have been used, are the restrictions on rights they create *lawful*?<sup>1</sup>
- Q7:** If a state of emergency has been declared, has the Government also entered a derogation from its international human rights treaty obligations to the extent permissible? If not, why not?

### ***Discussion: Emergency Law Procedures***

- 2.2.** First, in most countries, there is a specific way that emergency powers might be activated or drawn upon. These are usually provided for in the constitutional, executive and legislative arrangements, and may, for example, enable access to certain powers when an “emergency” is declared. These emergency powers tend to be implemented through urgent procedures. This can override or curtail normal procedures for passing laws (for example they can be done in much quicker time with less scrutiny). While these emergency procedures exist to allow Governments to deal with extraordinary events, they can only be used when a situation rises to the level of an emergency, and create requirements for a Government to show the emergency laws and policies are reasonable and justified to achieve their goals. An emergency should not relieve the Government of this burden to prove it meets these standards. Civil society organisations have a role in ensuring this takes place.



**2.3.** Second, even though States have constitutional or legal provisions that provide for how an emergency is to be declared, these steps may not be followed. Sometimes, the emergency is never legally acknowledged by this process, yet extraordinary legal steps are taken through ordinary legal processes (sometimes called a “de facto” emergency - an emergency in fact but not law).<sup>2</sup> As highlighted by the Special Rapporteur on the protection and promotion of human rights and fundamental freedoms while countering terrorism, Fionnuala Ní Aoláin, laws passed in the context of an undeclared de facto emergency create a greater risk that emergency measures will seep into the legal system, lasting well beyond their lifespan.

**2.4.** Third, it is not only domestic law that regulates what Governments can and can not do in emergencies, international law is also relevant. Human rights treaties recognise explicitly that, for some of rights, national emergencies **may justify “derogation”** - which is a process where a State declares that, because of an emergency or very serious threat, it cannot uphold some of its human rights obligations. But in order to do this, just like in domestic law, there are specific steps that a State must take - including explaining carefully *what obligations* it is not going to be upholding, *why*, and for *how long*.<sup>3</sup> It is concerning where States declare an emergency domestically, but then do not go on to derogate from its human rights obligations in international law.<sup>4</sup> A derogation provides an important process for oversight and international scrutiny, requiring the State to give clear and specific reasons about the necessity of its derogation and providing an opportunity for civil society organisations (and international organisations like the UN as well as the bodies created to monitor compliance with treaty obligations, and other states that are signatories to the treaty) to scrutinise those reasons.<sup>5</sup> It should also be noted that certain powers cannot be derogated from even in times of emergency, such as the prohibition on deprivation of life and the prohibition against cruel inhumane and degrading treatment. These protections can never be derogated from, no matter what the emergency is.

## DEROGATIONS

Why should states derogate?

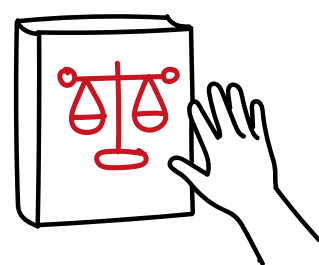
### RESPECT HUMAN RIGHTS

Derogations ensure respect for human rights, and human rights instruments, by making sure that non-compliance is set out in advance and limited to treaty rules.



### CLEARER RESTRICTIONS

In order to derogate, states must provide clear explanations of what obligations they are derogating from, why they are derogating, and for how long.



### BETTER SCRUTINY

Provides civil society organisations with clearer parameters to scrutinise emergency powers and more effectively hold governments to account.

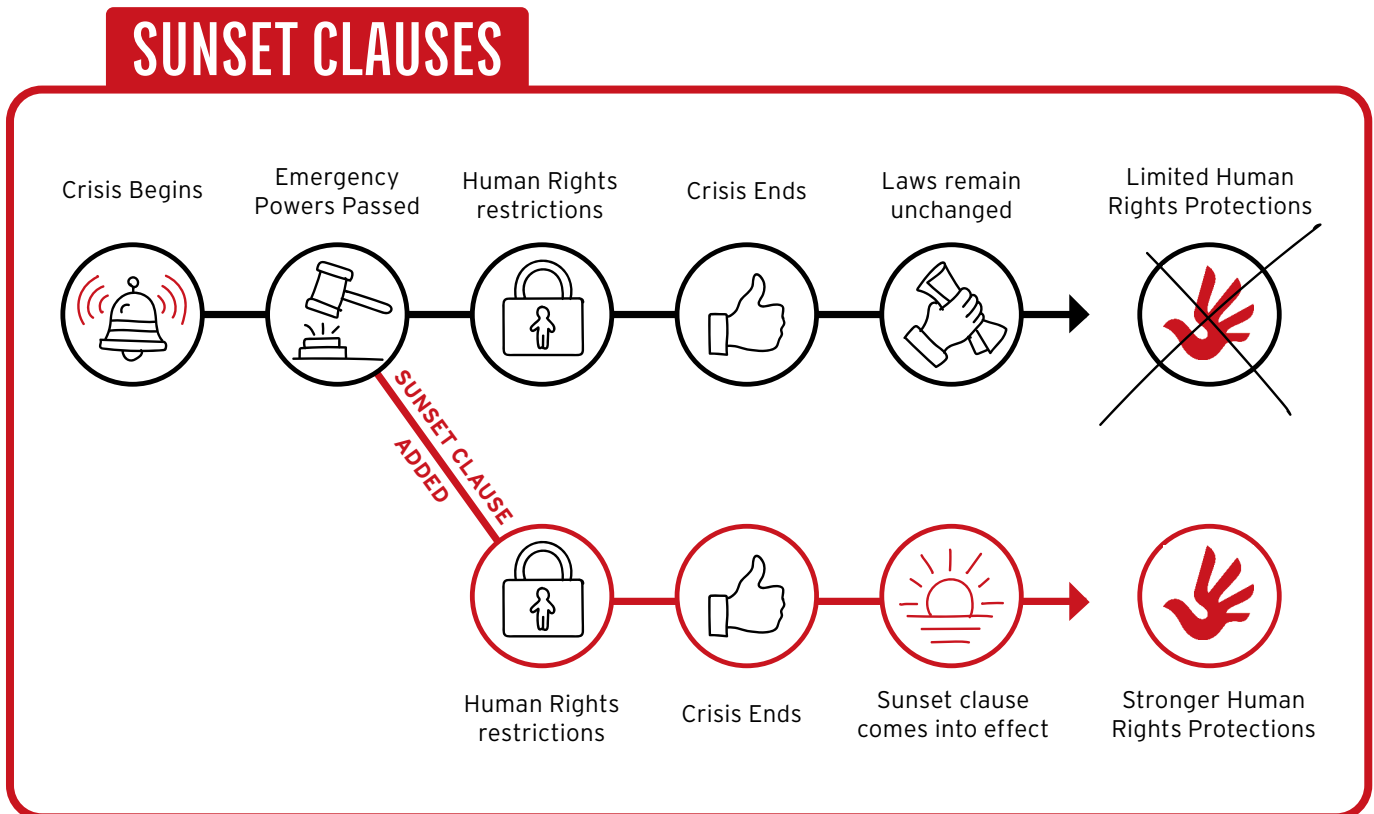




## 2.5. Questions: ongoing oversight of emergency laws and policies

- Q8:** Have the emergency laws and policies been published? Are there continued mechanisms for oversight of the emergency law or powers that have been created? Are they adequate? Do they permit civil society and democratic engagement?
- Q9:** If there are no oversight mechanisms, why have they not been provided? Are alternatives available (online procedures)?
- Q10:** Is there a time-limit to the laws in question? Is there a provision in the law itself that brings it to an end automatically at a certain date?
- Q11:** Are the emergency laws and policies open to judicial scrutiny? Is access to courts being provided on a continuing basis?
- Q12:** Is there provision for interim review or parliamentary oversight at a reasonable point in the near future? Is there provision to remove the law by agreement when the emergency is over?

### *Discussion: ongoing oversight of laws and policies*



- 2.6.** Emergency laws often pass by irregular processes and with limited debate. This means that extended analysis about whether laws and policies are absolutely necessary to deal with the situation, proportionate given the threat that is faced, and evidence based, does not occur. Even where this oversight cannot happen immediately, it is important for this analysis to occur when possible, particularly to ensure that unnecessary, disproportionate and abusive measures can be brought to an end. Even analysis at a later point in time can ensure that the reasons for and evidence to support the measures can be tested and challenged as soon as possible. This oversight can come from a range of different bodies including parliament, national human rights institutions, CSOs or other independent entities such as Ombudsman, and civil society organisations have a role in checking that these bodies are performing their duties to the extent possible, and are not unnecessarily restricted.
- 2.7.** Second, our experience is that emergency laws tend to continue in law for long periods beyond the initial emergency event. It is important that Governments respect the exceptional and time-limited nature of these provisions. Emergency laws should include procedural protections in the laws themselves to bring the measures to an end after a specific period of time; or at least some process for review should be triggered. This is an important step to ensure these powers do not become “normalised” into the legal system and that any justification for continuing the exceptional powers is carefully scrutinised.<sup>6</sup>



# 3 Human rights risks arising from the emergency measures

## 3.1. Questions: Common human rights infringing measures

### Power to forcibly confine individuals



**Q13:** Why has this power been created? How can it be used, and on the basis of what evidence?

**Q14:** Is there evidence that supports that this measure is based on a law, necessary and proportionate in the circumstance?

**Q15:** Is this measure being carried out in a manner that is necessary, proportionate and is it being applied in a non-discriminatory way?

**Q16:** Related to the above, is the power being used *legitimately*, or is there evidence to suggest it is used excessively and/or abusively?

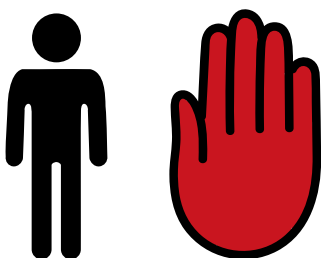
**Q17:** Who has this power? Against whom can it be used?

**Q18:** How long is confinement permitted for? Is this reasonable, in light of the justification of the confinement (preventing further infection)?

**Q19:** If forced confinement or quarantine is implemented, how are dependents and co-habitants cared for? What about people with children who are forcibly detained?

**Q20:** Can the power itself and its implementation be challenged, and when? Is access to judicial and other remedies available?

### Power to restrict freedom of movement



**Q21:** How long will widespread restrictions on movement be in place for? Is there evidence to support these restrictions?

**Q22:** How restrictive are the measures? Have alternatives been considered?  
Are the restrictions subject to revision when appropriate?

**Q23:** If national lockdown measures are announced, who has the power to enforce the measures?



**Q24:** What is the level of power they are equipped with to conduct this enforcement?  
What are the limits and restrictions on that power?

**Q25:** Can the power be challenged?

### Power to restrict freedom of expression



**Q26:** Where there are prohibitions on gatherings, are these enforced in a fair and non-discriminatory manner? Is there evidence that specific gatherings are being targeted?

**Q27:** Are there rules prohibiting the spreading fake news, disinformation, or rumour-spreading? How is this enforced? What standards are there to indicate when information meets this standard, and are those standards public? Are instances of enforcement of these laws made public and subject to scrutiny?

### Power to restrict democratic events



**Q28:** Where democratic events have been postponed, what is the justification and evidence for that? Has another date in a reasonable time-period been provided? Have reasonable alternatives been considered?

**Q29:** Is Parliament suspended, or prevented from being able to convene? For how long and subject to what conditions?

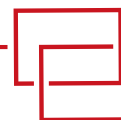
### Powers that infringe upon the right to privacy

**Q30:** Are any surveillance and data collection measures/powers that are adopted in response to the pandemic set out in law and are they necessary and proportionate? Are they justified by legitimate and evidence based public health objectives and are they proportionate to those needs?

**Q31:** Are the surveillance and data collection measures time bound?

**Q32:** Are there clear measures to regulate the collation, storage and sharing of personal information or information collated in the context of the pandemic?

**Q33:** Has the Government been transparent about what any additional surveillance and data collection measures/powers will be or have been adopted?



- Q34:** Are the surveillance and data protection measures/powers only used strictly to respond to COVID-19? Are they as limited and confined as possible?
- Q35:** Is there oversight of the use of surveillance powers and the collation, use and storage of personal data?
- Q36:** Are there measures in place to protect people's data?
- Q37:** Are marginalised, vulnerable and minority communities adversely affected by the use of digital surveillance technologies?
- Q38:** Is the data shared with public or private sector entities? Are these agreements set out in law, are they publically available, are they time bound and is there any oversight in place?

***Discussion: Human rights risks arising from the emergency measures***

- 3.2.** Initial responses by Governments to the pandemic have been quick and imposed significant restrictions on people's rights and freedoms. Although some human rights-restricting responses may be necessary and proportionate in the circumstances, this does not mean all will be. As we have seen, Governments have restricted some rights via measures that are simply not necessary and in ways that are not legally justifiable.
- 3.3.** All emergency measures that are deployed in the context of COVID-19 must be strictly necessary and proportionate to achieve the objective they are created for (in this instance, evidence based public health objectives to stop the spread, and respond to the health-based impact of the pandemic). However, even laws that on their face appear necessary and proportionate may nevertheless go further than less rights-restricting legitimate alternatives. In some instances new emergency laws will not be necessary, as there are laws and policies that already exist that can be used to deal with emergency. Civil society organisations have an important role in reviewing and scrutinising measures to ensure they are necessary and proportionate in the circumstances, including that they are the least human rights restrictive measures capable of dealing with the emergency, and that there are not ordinary laws that are already in force and capable of dealing with the emergency.
- 3.4.** Another key issue for CSOs and HRDs is whether the laws and policies are set out in such vague terms, without clear limits, that they give too much discretion to the authorities that are implementing them, which can give rise to abuse. For example, excessive force may be used in enforcing the imposition of a curfew, even if the purpose of the law is valid. CSOs and human rights defenders must ensure that emergency laws



are clear and confined and that Governments and in particular, those implementing the laws, respect the limits of their powers. There should be steps in place to review the powers themselves as well as how they are being implemented, and review and challenge them on an ongoing basis.

**3.5.** Finally, a number of countries have implemented measures to facilitate surveillance and the collection of personal data to monitor the spread of COVID-19.<sup>7</sup> While technology is an important tool in addressing the public health crisis, an increase in digital surveillance and the collection of personal data can have a negative effective on privacy, freedom of expression and freedom of association.<sup>8</sup> It is important that measures adopted to address the pandemic are transparent, lawful, necessary and proportionate. Any surveillance and data collection measures/powers that are adopted in response to COVID-19 must be set out in law and be necessary for, and proportionate to, legitimate public health objectives. In summary, emergency measures must be transparent, so as to be able to be scrutinised, limited in scope, so as not to allow for abuse, justified by legitimate and evidence based public health objectives and proportionate to those needs.

**3.6.** It is also imperative that these measures are time-bound and do not become permanent. Persons' personal data must be protected, and any discriminatory impact, including against ethnic and religious minorities and other marginalised groups must be addressed and mitigated. The experiences of such groups are often not accurately represented in large data sets. There are human rights risks if Governments enter into data sharing agreements with public and private sector entities, and to address this risk, it is key that these agreements are publically disclosed in writing and are time bound and reviewed. There must be effective oversight and accountability with respect to surveillance and data protection measures.

### **3.7. Questions: Common human rights infringing measures**

#### **Enforcement of restrictive powers:**

**Q39:** Where new powers are created, is the enforcement of the powers subject to clear guidance? Is that guidance made public?

**Q40:** Is there evidence that powers are being abused, or exceeded? Is there evidence that excessive force is used, or that those who ought not to be targeted by the powers are being targeted?

**Q41:** Are the powers implemented fairly, and with respect for the dignity of those they are being used against? Is there evidence of the powers being used to belittle or degrade people?



- Q42:** What kind of penalties for violating the laws are there? Are they criminal or civil? What are the fines? Are they reasonable? Are they proportionate to the violation at hand?
- Q43:** Where violations are fines, are these responsive to the context they may be issued in? For example, communities that may be unable to self-isolate/socially distance for socio-economic reasons, or lockdown in contexts where many individuals reside together.
- Q44:** Will these be strict liability, or will there be a requirement to prove fault and/or mental elements of criminal offences, such that reasonable defences may be available?
- Q45:** Is the military being used to assist in implementing emergency measures? And if so, what specific duties are they carrying out and are these impacting civilian life and how?

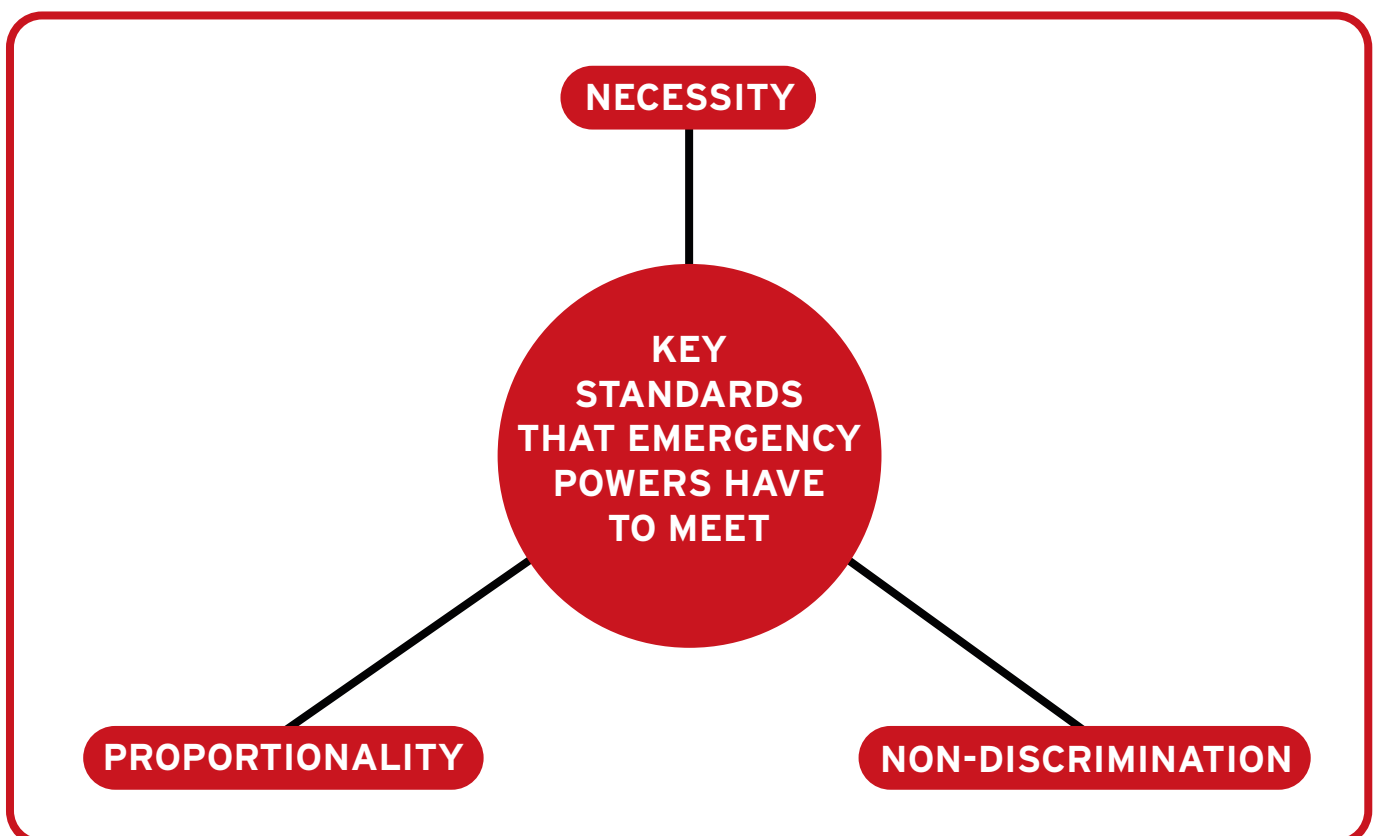
***Discussion: enforcement of laws and policies***

- 3.8.** Given that emergency situations evolve quickly and in unforeseen ways, emergency powers are usually expressed broadly so they can respond to diverse and unforeseen situations. However, wide powers create serious risk for abuse. For example physical powers may be enforced with excessive force, powers may be used against people that they should not be applied to, or utilised in discriminatory or degrading ways. It is important that the powers are strictly controlled, used only for their relevant purpose, that there is clear guidance for **how and when they are used**,<sup>9</sup> and that there is adequate review and possibility for challenge.
- 3.9.** CSOs and HRDs have an important role in monitoring how the powers are used against the marginalised and vulnerable groups. As we have routinely seen when emergency powers are used, there is great scope for excessive use of power and/or brutality in how the powers are used against certain groups in terms of physical harassment and abuse, as well as the use of other non-physical powers such as surveillance.
- 3.10.** In the context of the current pandemic, there are increasing reports of police using excessive force. It is important to remember that the use of force including the use of firearms continues to be governed by the principles of legality, necessity, proportionality, precaution and non-discrimination.<sup>10</sup> As has been noted by the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Agnes Callamard,<sup>11</sup> the breaking of a curfew, or of any restriction on freedom of movement should not constitute grounds for excessive use of force by the police and under no circumstances should it lead to the use of lethal force. There are a number of international legal documents that set out in how and in what manner force can be used by law enforcement officials.<sup>12</sup> At the extreme end, it is clear that a policy or practice that leads to the immediate resort to lethal force is never lawful but there are also steps in terms of the permissible escalation of violence.



In a state of emergency police may be granted more powers than they ordinarily have but they should only use force that is strictly necessary and only to the extent required for the performance of their duties.

- 3.11. As Callamard has noted,<sup>13</sup> police must take appropriate and heightened precautionary measures, and conduct context-based assessment of whether the use of force is necessary and proportionate. And discussion, instruction, consultation and community engagement should be the operating principles for the police.
- 3.12. There is also the risk that laws are used to pursue political goals (including the suppression of opposition political parties or CSO and HRDs) that **do not relate to the pandemic**. This is particularly concerning in the current context, given that there is limited oversight of the use of these measures by Parliament or the judiciary (as noted above a number of countries have been either partially or wholly suspended Parliament and judicial institutions).
- 3.13. Finally it is worth noting that a number of Governments have called on the military to provide logistical and other support during times of emergency. However, in the context of counter terrorism emergencies we have seen the encroachment of the military into civilian life; this is starting to emerge in the context of COVID-19 too.<sup>14</sup>





## Examples of abuse of emergency powers already recorded:

### Where powers related to COVID-19 have been used excessively or in a way that undermines human dignity:

- Disproportionate penalties for violating quarantine measures - with curfew violators being placed in animal cages<sup>15</sup> and a shoot to kill policy announced in the Philippines<sup>16</sup> and migrant workers being deported in Singapore;<sup>17</sup>
- Excessive police force used in virus prevention measures in South Africa<sup>18</sup> and Kenya;<sup>19</sup>
- Numerous deaths as a result of police use of force in the enforcement of curfews in Kenya;<sup>20</sup>
- Workers sprayed with chemicals on the side of the road in an attempt to disinfect them in India;<sup>21</sup>
- Humiliating enforcement tactics of curfews in both India and Paraguay;<sup>22</sup>
- Police and soldiers slapping, whipping, kicking and shooting lockdown violators in South Africa, discharging water cannons and forcing people into humiliating positions;<sup>23</sup>
- Threats to shoot dead those violating curfew during protests over lack of food in the Philippines.<sup>24</sup>

### Where powers related to COVID-19 have been used to target and undermine legitimate political dissent or to target political critics or dissidents:

- Dispersal of anti-governmental protesters in Lebanon,<sup>25</sup> Algeria,<sup>26</sup> India,<sup>27</sup> Hong Kong,<sup>28</sup> and Chile<sup>29</sup> and in some instances claims of excessive use of force;
- The use of public order management legislation to clamp down on political freedoms in Uganda;<sup>30</sup>
- The introduction of “anti-fake news” legislation to muzzle groups critical of the government’s response to the pandemic under the guise of combatting misinformation - prominent examples include Thailand<sup>31</sup>, Indonesia<sup>32</sup> and Morocco,<sup>33</sup> and Hungary;<sup>34</sup>
- Political leaders in Israel<sup>35</sup> and Romania<sup>36</sup> evading accountability for previous political misconduct;
- Revocation of press freedoms in light of challenges to public disseminated information in Jordan,<sup>37</sup> Egypt<sup>38</sup> and China.<sup>39</sup>



**Examples of nations using COVID-19 as an excuse to consolidate power or pursue existing prejudicial agendas:**

- The United States' pursuit of a regressive immigration agenda,<sup>40</sup> rollback on reproductive rights,<sup>41</sup> and suspension of environmental regulations all putatively as a result of COVID-19 necessity;<sup>42</sup>
- Hungary's executive power grab curbing the influence of the judiciary and the ability of civil society to hold the government accountable;<sup>43</sup>
- In Colombia, the state has used the pandemic as a pretext to withdraw protection for Human Rights Defenders;<sup>44</sup>
- In Indonesia the government is monitoring social media and penalising those who criticise the President's approach to its handling of COVID-19 cases.->



# 4 Impact of emergency laws and policies on vulnerable or marginalised groups

## 4.1. Impact of emergency laws and policies on vulnerable or marginalised groups

- Q46:** What are the ways in which particular marginalised or vulnerable groups are impacted by emergency powers and measures?
- Q47:** Do any of the measures exacerbate discrimination against already marginalised groups such as digital surveillance measures?
- Q48:** Have there been any gender or other equality impact assessments of the emergency measures undertaken? Does the emergency law or policy require such assessment to be carried out/monitored?
- Q49:** Is there any evidence of discrimination against or in favour of particular groups/communities in the provision/distribution of medical test or access to medical care?
- Q50:** Is there any evidence of discrimination against or in favour of particular groups/communities in the provision/distribution of state aid or support?
- Q51:** Have politicians or policy makers identified particular groups/communities as responsible for the spread of COVID-19?

### *Discussion: impact on vulnerable/marginalised groups*

- 4.2.** Emergency responses to this pandemic need to be particularly responsive to the way that law and policies can result in different and particularly harmful effects for marginalised and vulnerable groups. As noted above, we are already seeing such groups being disproportionately impacted by emergency measures.
- 4.3.** It should also be noted that measures that are adopted and prove effective in some countries will have a very different impact when translated to other countries with different economic and political contexts. Responses to the pandemic that impact social support and medical resources must be particularly sensitive - decisions to prioritise resources towards certain goals or policies in the “fight” against COVID-19 can themselves cause different or additional suffering for some, particularly those already suffering in poverty or from other disadvantages.



**4.4.** Finally, even where States have “turned off” some of their human rights obligations, certain fundamental human rights obligations cannot ever be turned off.<sup>45</sup> Specifically, emergency measures must not be implemented in a discriminatory fashion. Any Government responses must not have the consequence (intended or otherwise) of discriminating against specific communities and/or causing them additional suffering, particularly where they have existing vulnerabilities. Governments must address and seek to lessen the impact of the state of emergency on vulnerable groups including taking specific steps to mitigate any disproportionate impacts on them.

**Examples of risks that are posed to specifically vulnerable communities that have emerged so far include:**

**4.5. Homeless or extremely poor populations**

Lockdown measures can be acutely harmful effects on homeless and poor, who are also uniquely susceptible to infection:

- Traditional means of managing homeless populations may come under pressure, or may be inconsistent with mandated COVID-19 social distancing measures;<sup>46</sup>
- Where lack of access to regular income precludes access to (or simply de facto renders one unable to access) healthcare, those individuals can be uniquely susceptible to infection;<sup>47</sup>
- Where, as a result of these factors, homeless individuals suffer from greater rates of other serious immuno-compromising diseases (such as HIV) particular risks are posed.<sup>48</sup>

**4.6. Those without permanent migration status:**

Measures taken to respond to COVID-19 can have the result of causing further suffering to migrant populations, and can have counter-intuitive consequences:

- Lockdown measures can lead to mass exodus of migrant workers, which creates additional stress for the migrant workers, as well as increasing the risk of spread of infection as a response to the lockdown;<sup>49</sup>
- Many migrants not designated as key workers under the United Kingdom’s National Health Service are barred from access to state support under the Home Office’s “Hostile Environment”;<sup>50</sup>
- Tying access to testing to the necessary documentation leads to prohibitively high costs for migrant workers in Lebanon;<sup>51</sup>
- It is notable, by comparison, that measures that result in significant suffering for migrant communities are not necessary, and other options are available, such as the approach taken in Portugal, where all migrants and asylum seekers have been granted full rights of permanent residents, ensuring them access to healthcare, welfare benefits, bank accounts, employment and rental contracts.<sup>52</sup>



#### 4.7. COVID-19 measures can have gender-specific consequences:

- Women are more likely to be employed in social care and nursing - roles which are generally both less well paid and at higher risk of exposure to infection;<sup>53</sup>
- Lockdowns and national quarantines can create an excessive burden of care placed on women as primary caregivers and single parents;<sup>54</sup>
- Many women are forced to remain at home with violent partners, resulting in a rise in cases of domestic violence during lockdown<sup>55</sup> as women's shelters are simultaneously forced to adapt operations in line with social distancing measures;<sup>56</sup>
- Sex workers, who are predominantly female, are more likely to face exploitation as they are pushed into riskier conditions,<sup>57</sup> and lack similar representation as other industries to influence public health policy.<sup>58</sup>

#### 4.8. Disabled communities:

Restrictions imposed as a result of COVID-19, including reallocations of resources within healthcare systems can mean those most vulnerable receive care to a lesser standard than what is needed to protect them and keep them safe:

- Safeguards and services available for the mentally and physically disabled could be scrapped in light of the UK's new emergency powers;<sup>59</sup>
- Many refugees who have disabilities or complex health conditions in Greece are incapable of practicing social distancing measures;<sup>60</sup>
- Government responses in the UK<sup>61</sup> and US<sup>62</sup> have been criticized for not adequately taking into account the impact of coronavirus on disabled communities.

#### 4.9. Refugees and those in extreme humanitarian crisis zones:

The interdependence of rights is demonstrated most squarely in this context, where those facing extreme hardship and existing humanitarian crises (including shortage of food, water and healthcare) are at grave risk of excessive suffering under COVID-19, while their situation of deprivation makes them unable to practice preventive measures:

- Coronavirus poses an extreme risk to those in war-zones where food and health security is already poor, such as in Syria<sup>63</sup>, Yemen<sup>64</sup> and South Sudan;<sup>65</sup>
- Displaced refugee populations, based all over the globe, are especially at risk due to lack of ties to host health systems.<sup>66</sup>



#### 4.10. **Communities under Detention:**

Prisoners and those under detention across the globe face real risk of infection and lack of access to appropriate healthcare measures as a result of their detention:

- Immigration detainees in ICE centres across the United States as well as those detention centres across the United Kingdom<sup>67</sup> are exposed to greater infection due to administrative confinement;<sup>68</sup>
- Fears over coronavirus infection have triggered prison riots in Iran<sup>69</sup>, Brazil,<sup>70</sup> Venezuela<sup>71</sup>, and Italy<sup>72</sup> among other places.



## 5 The importance of context-specific measures

- 5.1.** The effects of COVID-19 responses are going to be specific to the country and region in which they are implemented. Those impacted by a lockdown on countries where large proportions of the economy are made up of informal workers (such as in India<sup>73</sup> and in Latin America<sup>74</sup>) will be very different from their European counterparts. Thousands of migrant workers, estranged from their families, across the gulf are trapped in squalid and overcrowded conditions due to lockdown measures imposed.<sup>75</sup>
  
- 5.2.** Disproportionate measures can undermine social cohesion and may result in more serious human rights violations as states are required to take increasingly draconian measures to quell discontent in the future. Similarly, existing policies restricting rights - such as the ongoing internet shutdowns and slowdowns imposed in Bangladesh, Ethiopia, India and Myanmar<sup>76</sup> - work to inhibit community resilience by blocking access to essential information and services.
  
- 5.3.** Moving forward, what is needed are nuanced and locally responsive policies which are evidence based and take into consideration the impact on different sectors of the community, in particular the most vulnerable and marginalised. This is where the input of civil society organizations is instrumental. Civil society organisations must be involved in the development and review of appropriate policy, and have the capacity to continue to be able to identify and assist those most vulnerable to the impact of the measures. It is critical that civil society is not restricted at a time when they are a crucial partner in responding to the situation. Moreover, the value of civic space has to be respected so as to ensure that the vast powers afforded to the executive at this time are not abused.



# 6 Suggested Advocacy Targets

Set out below are a list of international, regional and domestic advocacy targets. This is not designed to be an exhaustive list but an illustration of some of the institutions/bodies/office holders that CSOs and HRDs could target in some of the affected countries. Obviously, Covid 19 is a global issue and there will be countries beyond those listed below and targets not captured but as noted it is designed as a guide that we hope will be helpful.

If you need help accessing the international mechanisms please contact Rights and Security International at [covid19@rightsandsecurity.org](mailto:covid19@rightsandsecurity.org)

## International

### UN Treaty Bodies **Complaints Procedures**

To address a complaint to a Committee<sup>1</sup>, [this procedure should be followed](#) and at [this address](#).

Committees which can receive direct individual complaints:

Committee against Torture ([CAT](#));<sup>2</sup>

Committee on the Elimination of Discrimination against Women ([CEDAW](#));<sup>3</sup>

Committee on the Elimination of Racial Discrimination ([CERD](#));<sup>4</sup>

Committee on the Rights of Persons with Disabilities ([CRPD](#));<sup>5</sup>

Committee on the Rights of the Child ([UNCROC](#));<sup>6</sup>

Human Rights Committee ([ICCPR](#));<sup>7</sup>

### UN Special Procedures of the Human Rights Council with Thematic Focus

#### Special Rapporteurs:

[Special Rapporteur on the adequate housing as a component of the right to an adequate standard of living:](#)

Leilani Farha: [srhousing@ohchr.org](mailto:srhousing@ohchr.org);

[Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerances:](#)

Tendayi Achiume: [racism@ohchr.org](mailto:racism@ohchr.org);

[Special Rapporteur on extreme poverty and human rights:](#)

Philip Alston: [srextremepoverty@ohchr.org](mailto:srextremepoverty@ohchr.org);

[Special Rapporteur on freedom of religion or belief:](#)

Ahmed Shaheed: [freedomofreligion@ohchr.org](mailto:freedomofreligion@ohchr.org);

[Special Rapporteur on the human right to safe drinking water and sanitation:](#)

Léo Heller: [srwatsan@ohchr.org](mailto:srwatsan@ohchr.org);

[Special Rapporteur on the human rights of internally displaced persons:](#)

Cecilia Jimenez Damary: [idp@ohchr.org](mailto:idp@ohchr.org);

[Special Rapporteur on the human rights of migrants:](#)

Felipe Gonzáles Morales: [migrant@ohchr.org](mailto:migrant@ohchr.org);

[Special Rapporteur on the independence of judges and lawyers:](#)

Diego García-Sayán: [RindependenceJL@ohchr.org](mailto:RindependenceJL@ohchr.org);

[Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression:](#)

David Kaye: [freedex@ohchr.org](mailto:freedex@ohchr.org);

[Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health:](#)

David R. Boyd: [ieenvironment@ohchr.org](mailto:ieenvironment@ohchr.org);





Special Rapporteur on the right to food:

Hilal Elver: [srfood@ohchr.org](mailto:srfood@ohchr.org);

Special Rapporteur on the rights of indigenous peoples:

Victoria Lucia Tauli-Corpuz: [indigenous@ohchr.org](mailto:indigenous@ohchr.org);

Special Rapporteur of the rights to freedom of peaceful assembly and association:

Clement Nyaletsossi Voule: [freeassembly@ohchr.org](mailto:freeassembly@ohchr.org);

Special Rapporteur on the rights of persons with disabilities:

Catalina Devandas Aguilar: [sr.disability@ohchr.org](mailto:sr.disability@ohchr.org);

Special Rapporteur on torture and other form cruel, inhuman or degrading treatment of punishment:

Nils Melzer: [sr-torture@ohchr.org](mailto:sr-torture@ohchr.org);

Special Rapporteur on violence against women, its causes and consequences:

Dubravka Šimonovic: [vaw@ohchr.org](mailto:vaw@ohchr.org)

**Independent Experts:**

Independent Expert on the enjoyment of all human rights by older persons (Rosa Kornfeld-Matte: [olderpersons@ohchr.org](mailto:olderpersons@ohchr.org));

**Working Groups:**

Working Group on arbitrary detention: accepts individual complaints as to issues related to arbitrary detention (see Draft Basic Principles and Guidelines of the Working Group [here](#)) (Model questionnaire to be sent to: [gad@ohchr.org](mailto:gad@ohchr.org));

Working Group on discrimination against women and girls ([wgdiscriminationwomen@ohchr.org](mailto:wgdiscriminationwomen@ohchr.org))

**Global Alliance of National Human Rights Institutions**

**Regional**

African Commission on Human and Peoples' Rights: (Special Rapporteurs, Working Groups, Advisory Committees)

Contact: [achpr@achpr.org](mailto:achpr@achpr.org)

Special Rapporteur on prisons, conditions of detention and policing in Africa

Special Rapporteur on rights of women

Special Rapporteur on Freedom of Expression and access to information

Special Rapporteur on refugees, asylum seekers, internally displaced persons and migrants in Africa

Working Group on rights of older people and people with disabilities

Arab Human Rights Committee

ASEAN Intergovernmental Commission on Human Rights (AICHR) ([public@asean.org](mailto:public@asean.org))

ASEAN Commission on the Promotion and Protection of the Rights of Women (ACWC) ([public@asean.org](mailto:public@asean.org))

European Court of Human Rights ([application instructions](#))

Inter-American Court of Human Rights (information on [how to file a petition](#) (English/Espagnol/Portugués))

Organization of Islamic Countries Independent Permanent Human Rights Commissions

South Asian Association for Regional Cooperation, Human Rights Foundation: <http://saarchumanrights.org/contact-us/>

**National**

**Algeria**

Conseil National des Droits de l'Homme

**Bahrain**

National Institution for Human Rights

**Bangladesh**

Bangladesh Human Rights Commission

**Comores**

Commission Nationale des Droits de l'Homme et des Libertés



**Djibouti**

[Commission Nationale des Droits de l'Homme](#)

**Egypt**

[National Council for Human Rights](#)

**El Salvador**

[National Human Rights Commission](#)

**Ethiopia**

[Ethiopian Human Rights Commission](#)

**Honduras**

[Human Rights Commission](#)

**Hungary**

[Hungarian Helsinki Committee](#)

[Office of the Commissioner for Fundamental Rights](#)

**India**

[National Human Rights Commission](#)

**Iraq**

[Independent High Commission for Human Rights](#)

**Jordan**

[National Centre for Human Rights](#)

**Kenya**

[Kenya Human Rights Commission](#)

**Kuwait**

National Council for Human Rights

**Lebanon**

The National Human Rights Commission

**Libya**

[Libyan National Council for Civil Liberties and Human Rights](#)

**Mauritania**

[Commission Nationale des Droits de l'Homme](#)

**Morocco**

[Conseil national des droits de l'Homme](#)

**Myanmar**

[Myanmar National Human Rights Commission \(MNHRC\)](#)

[UN Special Rapporteur on the situation of human rights in Myanmar: Yanghee Lee: \[sr-myanmar@ohchr.org\]\(mailto:sr-myanmar@ohchr.org\)](#)

**Nepal**

[National Human Rights Commission](#)

**Indonesia**

[National Human Rights Commission](#)

[National Commission on Anti Violence against Women](#)

National Ombudsman

National Parliament

**Oman**

[Oman Human Rights Commission](#)

**Pakistan**

[Federal Ombudsman](#)

[National Commission for Human Rights](#)



**Palestine**

[The Independent Commission for Human Rights](#)

[UN Special Rapporteur on the situation of human rights in the Palestinian Territories occupied since 1967:](#)

Stanley Michael Lynk: [sropt@ohchr.org](mailto:sropt@ohchr.org)

B'tselem, [The Israeli Information Center for Human Rights in the Occupied Territories](#)

**Philippines**

[Commission of Human Rights of the Philippines](#)

[Ombudsman of the Philippines](#)

[Philippine Commission on Women](#)

[Senate Committee on Justice and Human Rights](#)

[House of Representatives Committee on Human Rights](#)

**Qatar**

[National Human Rights Committee](#)

**Regional government of the Bangsamoro Autonomous Region of Muslim Mindanao (BARMM)**

[Regional Human Rights Commission](#)

**Saudi Arabia**

[National Society for Human Rights](#)

[Saudi Human Rights Commission](#)

**Sudan**

The National Human Rights Commission

**Syrian Arab Republic**

[Syrian Human Rights Committee](#)

[UN Special Rapporteur on the situation of human rights in the Syrian Arab Republic:](#)

Aristidi Nononsi: [iesudan@ohchr.org](mailto:iesudan@ohchr.org)

**Thailand**

[National Human Rights Commission of Thailand \(NHRCT\)](#)

[National Ombudsman](#)

**Timor Leste**

[Provedoria dos Direitos Humanos e Justiça \(PDHJ\) of Timor Leste](#)

**Tunisia**

[Comité Supérieur des Droits de l'Homme et des Libertés Fondamentales](#)

**United Kingdom**

[Equality and Human Rights Commission](#)

[Parliamentary and Health Service Ombudsman](#)

[Joint Select Committee on Human Rights](#)

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# APPENDIX

## Emergency law procedures

- Q1:** Has there been a state of emergency declared? Have any emergency-related laws, measures and policies been published and are they available for the public to access?
- Q2:** What is the legal basis for the State to declare a state of emergency (constitutional, legislative, executive discretion)?
- Q3:** Has the appropriate procedure been adopted to invoke the state of emergency? Has this process been public? If not, why not?
- Q4:** If there is a fixed process to declare an emergency, has that been used? Or has the emergency been “named” as such, but ordinary laws have been used?
- Q5:** If ordinary laws have been used in preference to existing emergency procedures (particularly constitutional), why has that been the case? Has that process been justified by the Government?
- Q6:** If ordinary measures have been used, are the restrictions on rights they create *lawful*?<sup>1</sup>
- Q7:** If a state of emergency has been declared, has the Government also entered a derogation from its international human rights treaty obligations to the extent permissible? If not, why not?

## Ongoing oversight of emergency laws and policies

- Q8:** Have the emergency laws and policies been published? Are there continued mechanisms for oversight of the emergency law or powers that have been created? Are they adequate? Do they permit civil society and democratic engagement?
- Q9:** If there are no oversight mechanisms, why have they not been provided? Are alternatives available (online procedures)?
- Q10:** Is there a time-limit to the laws in question? Is there a provision in the law itself that brings it to an end automatically at a certain date?
- Q11:** Are the emergency laws and policies open to judicial scrutiny? Is access to courts being provided on a continuing basis?
- Q12:** Is there provision for interim review or parliamentary oversight at a reasonable point in the near future? Is there provision to remove the law by agreement when the emergency is over?

## Common human rights infringing measures

### Power to forcible confine

- Q13:** Why has this power been created? How can it be used, and on the basis of what evidence?
- Q14:** Is there evidence that supports that this measure is based on a law, necessary and proportionate in the circumstance?
- Q15:** Is this measure being carried out in a manner that is necessary, proportionate and is it being applied in a non-discriminatory way?
- Q16:** Related to the above, is the power being used *legitimately*, or is there evidence to suggest it is used excessively and/or abusively?
- Q17:** Who has this power? Against whom can it be used?



- Q18:** How long is confinement permitted for? Is this reasonable, in light of the justification of the confinement (preventing further infection)?
- Q19:** If forced confinement or quarantine is implemented, how are dependents and co-habitants cared for? What about people with children who are forcibly detained?
- Q20:** Can the power itself and its implementation be challenged, and when? Is access to judicial and other remedies available?

#### Power to restrict freedom of movement

- Q21:** How long will widespread restrictions on movement be in place for? Is there evidence to support these restrictions?
- Q22:** How restrictive are the measures? Have alternatives been considered? Are the restrictions subject to revision when appropriate?
- Q23:** If national lockdown measures are announced, who has the power to enforce the measures?
- Q24:** What is the level of power they are equipped with to conduct this enforcement? What are the limits and restrictions on that power?
- Q25:** Can the power be challenged?

#### Power to restrict freedom of expression

- Q26:** Where there are prohibitions on gatherings, are these enforced in a fair and non-discriminatory manner? Is there evidence that specific gatherings are being targeted?
- Q27:** Are there rules prohibiting the spreading fake news, disinformation, or rumour-spreading? How is this enforced? What standards are there to indicate when information meets this standard, and are those standards public? Are instances of enforcement of these laws made public and subject to scrutiny?

#### Power to restrict democratic events

- Q28:** Where democratic events have been postponed, what is the justification and evidence for that? Has another date in a reasonable time-period been provided? Have reasonable alternatives been considered?
- Q29:** Is Parliament suspended, or prevented from being able to convene? For how long and subject to what conditions?

#### Powers that infringe upon the right to privacy

- Q30:** Are any surveillance and data collection measures/powers that are adopted in response to the pandemic set out in law and are they necessary and proportionate? Are they justified by legitimate and evidence based public health objectives and are they proportionate to those needs?
- Q31:** Are the surveillance and data collection measures time bound?
- Q32:** Are there clear measures to regulate the collation, storage and sharing of personal information or information collated in the context of the pandemic?
- Q33:** Has the Government been transparent about what any additional surveillance and data collection measures/powers will be or have been adopted?
- Q34:** Are the surveillance and data protection measures/powers only used strictly to respond to COVID-19? Are they as limited and confined as possible?



- Q35:** Is there oversight of the use of surveillance powers and the collation, use and storage of personal data?
- Q36:** Are there measures in place to protect people's data?
- Q37:** Are marginalised, vulnerable and minority communities adversely affected by the use of digital surveillance technologies?
- Q38:** Is the data shared with public or private sector entities? Are these agreements set out in law, are they publically available, are they time bound and is there any oversight in place?

### Enforcement of laws and policies

- Q39:** Where new powers are created, is the enforcement of the powers subject to clear guidance? Is that guidance made public?
- Q40:** Is there evidence that powers are being abused, or exceeded? Is there evidence that excessive force is used, or that those who ought not to be targeted by the powers are being targeted?
- Q41:** Are the powers implemented fairly, and with respect for the dignity of those they are being used against? Is there evidence of the powers being used to belittle or degrade people?
- Q42:** What kind of penalties for violating the laws are there? Are they criminal or civil? What are the fines? Are they reasonable? Are they proportionate to the violation at hand?
- Q43:** Where violations are fines, are these responsive to the context they may be issued in? For example, communities that may be unable to self-isolate/socially distance for socio-economic reasons, or lockdown in contexts where many individuals reside together.
- Q44:** Will these be strict liability, or will there be a requirement to prove fault and/or mental elements of criminal offences, such that reasonable defences may be available?
- Q45:** Is the military being used to assist in implementing emergency measures? And if so, what specific duties are they carrying out and are these impacting civilian life and how?

### The impact of emergency laws and policies on vulnerable or marginalised groups

- Q46:** What are the ways in which particular marginalised or vulnerable groups are impacted by emergency powers and measures?
- Q47:** Do any of the measures exacerbate discrimination against already marginalised groups such as digital surveillance measures?
- Q48:** Have there been any gender or other equality impact assessment of the emergency measures undertaken? Does the emergency law or policy require such assessments to be carried out/monitored?
- Q49:** Is there any evidence of discrimination against or in favour of particular groups/communities in the provision/distribution of medical test or access to medical care?
- Q50:** Is there any evidence of discrimination against or in favour of particular groups/communities in the provision/distribution of state aid or support?
- Q51:** Have politicians or policy makers identified particular groups/communities as responsible for the spread of COVID-19?





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