



KEEPING CIVIC SPACE HEALTHY: SAVING LIVES & HUMAN RIGHTS



European Center for
Not-for-Profit Law

ICNL
INTERNATIONAL CENTER
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Covid-19 response is at present an all-consuming effort for governments and people in countries around the world. In this time of urgency, ICNL and ECNL offer this **quick guide for authorities striving to protect lives in line with their duty to uphold human rights and protect human dignity**, based on international human rights obligations. This brief is part of a broader ECNL/ICNL initiative to support human rights based approaches to overcoming the Covid-19 pandemic while also protecting our freedoms to association, assembly, expression and participation.

WHAT STATES MUST DO

- 1. Expressly identify the precise nature of the threat.** While Covid-19 is a challenge, not all aspects of the challenge will necessitate an emergency response. When declaring a Covid-19 emergency, states should clearly articulate the specific threats – both in scope and nature – that the emergency is intended to address.
- 2. Narrowly tailor restrictions and ensure all limitations on rights and freedoms are necessary and proportionate.** Covid-19 response measures should be designed in a way that minimizes limitations on rights and freedoms. Where such limitations are necessary, a fundamental requirement is that all such measures be limited to the extent strictly required by the urgent demand of the situation and necessary to respond to an actual, clear, present, or imminent danger.
- 3. Publicly announce a state of emergency and any measures restricting rights and freedoms.** Proclamation must be made by a clear and accessible source and be available and understandable to the public at large. All people in the society should be able to understand the measures, the reasons for their adoption, and to be able to comply or challenge the State's decisions and actions.
- 4. Adopt short term measures with a possibility for a review.** Extended states of emergency and prolonged emergency measures correlate with higher incidence of human rights infringement. The longer or more entrenched the emergency, the narrower the margin of deference ceded to a State. States should, when possible, adopt short term, renewable measures and include automatic sunset clauses.
- 5. Always respect principles of legality and the rule of law.** Fundamental requirements of fair trial, presumption of innocence and due process must remain and be respected during a state of emergency for all people. Introduction of new criminal offences or enforcement through criminal prosecution should be used only as last resort.
- 6. Formally derogate from human rights treaty obligations.** When restricting human rights and freedoms, a State must send official notification of derogations to relevant treaty bodies to ensure transparency and accountability of its actions before international organizations.

"COVID-19 is a test for our societies, and we are all learning and adapting as we respond to the virus. Human dignity and rights need to be front and centre in that effort, not an afterthought. Lockdowns, quarantines and other such measures to contain and combat the spread of COVID-19 should always be carried out in strict accordance with human rights standards and in a way that is necessary and proportionate to the evaluated risk – but even when they are, they may have serious repercussions on people's lives."

UN High Commissioner for
Human Rights

Human rights protections within the International Health Regulations requires States to implement Regulations with full respect for the dignity, human rights and fundamental freedoms of persons, and to exercise their health powers in a transparent and non-discriminatory manner. World Health Organization declares that core principles of human rights and health include **accountability, equality, non-discrimination and participation**. Meaningful participation, as a feature of rights based approach, means ensuring that national stakeholders – including non-state actors such as non-governmental organizations – are meaningfully involved in all phases of programming: assessment, analysis, planning, implementation, monitoring and evaluation. Participation is important to accountability as it provides checks and balances which do not allow unitary leadership to exercise power in an arbitrary manner.

WHO Human Rights Principles

WHAT STATES MUST NOT DO

1. **Do not use emergency measures to target particular groups – such as migrants or refugees, civil society organizations or human rights defenders.** States must ensure that measures taken do not have an adverse impact on minorities and vulnerable groups (including women and children) or religious, ethnic or identified social groups in selective or discriminatory ways. Such measures should not target particular group of civil society organizations or human rights defenders.
2. **Do not adopt excessive or repressive measures that will quash dissent.** All measures must be strictly required by the specific urgent demands arising from the pandemic and respond proportionately to that demands.
3. **Do not restrict treaty-based rights that cannot be limited or suspended.** Regardless of the extent or the source of the crisis, the following State treaty obligations are non-derogable even in a state of emergency: the right to life, freedom of thought, conscience and religion, and freedom from torture, inhuman and degrading treatment, slavery and servitude, imprisonment for the inability to fulfil contractual obligations, and application of ex post facto laws.
4. **Do not restrict rights clearly established as absolute under international law.** The UN Human Rights Committee states that some limitations on State behavior are absolute even in times of emergency, such as the obligations of humanitarian law and the prohibitions on taking hostages, imposing collective punishments, arbitrarily depriving people of liberty, and deviating from fundamental principles of fair trial, including the presumption of innocence.
5. **Do not design and adopt long term measures.** Any emergency measures taken must be the least intrusive possible to achieve their objective, including in duration. Where the duration of exigent circumstances is unknown, measures should be short term with the possibility of renewal.
6. **Do not restrict remedies for violations of rights and freedoms.** Even if a State introduces adjustments to the functioning of its procedures during emergency, it must provide an effective remedy for violations of rights and freedoms, such as access to judicial procedure.

Resources and legal basis:

[UN International Covenant on Civil and Political Rights, Article 4;](#)

[UN Human Rights Committee general comment No. 29;](#)

[UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, The human rights challenge of states of emergency in the context of countering terrorism, A/HRC/37/52;](#)

[International Health Regulations 2005. 2nd ed. World Health Organization; 2008.](#)



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This report is partially financed by the Government of Sweden. The Government of Sweden does not necessarily share the opinions here within expressed. The author bears the sole responsibility for the content.