

CIVIC SPACE IN THE ERA OF SECURITISED COVID-19 RESPONSES



European Center for
Not-for-Profit Law

“Covid-19 has reinforced two fundamental truths about human rights. First, human rights violations harm us all. Second, human rights are universal and protect us all.”

- A. Guterres, Secretary General of the UN¹

I. Introduction

The global SARS-CoV-2 virus (Covid-19) brought on a simultaneous threat to human and national security in a world already facing persistent risks of violent extremism and terrorist attacks. The necessity to combat this new threat, seen by a member state as “very intertwined with counter-terrorism”,² quickly triggered more securitised responses from States, to the detriment of human rights and further restricted the space for civil society engagement.

In the Spring of 2020, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism³ warned against the risks of applying the same measures to this new threat as those adopted by States in when countering terrorism. Indeed, in some countries, including in Western democracies, the Covid-19 crisis expedited the passage of new or repurposed an existing national security and counter-terrorism legislation. In addition, many emergency measures adopted during the pandemic were in practice “over broad and reach beyond the health emergency at hand”⁴ and beyond what international human rights standards ask for, which resulted in additional and unnecessary burdens on freedoms, civil society and further undermined humanitarian operations.⁵ This is a serious concern in a global environment where human rights and civic space are already increasingly closed, repressed or obstructed. The virus is also infecting political and civil rights, and further shrinking civic space.

¹ The world faces a pandemic of human rights abuses in the wake of Covid-19, António Guterres, February 2021 <https://www.theguardian.com/global-development/2021/feb/22/world-faces-pandemic-human-rights-abuses-covid-19-antonio-guterres>

² Statement by the Permanent Representative of Egypt, during the UN virtual CT week organized by the Office of Counter-Terrorism in July 2020: <https://www.un.org/counterterrorism/2020-counter-terrorism-week>

³ Fionnuala Ni'Aolain in <https://www.justsecurity.org/71305/under-cover-of-covid-at-the-un-why-counterterrorism-is-not-the-answer-to-a-pandemic/>

⁴ Idem

⁵ Many of those measures were litigated in national courts. See for example: <https://ecnl.org/publications/covid-19-and-civic-freedoms-europe-2020>

Most recently, in February 2020, the UN Secretary General concluded that:

“The virus is also infecting political and civil rights, and further shrinking civic space. Using the pandemic as a pretext, authorities in some countries have deployed heavy-handed security responses and emergency measures to crush dissent, criminalise basic freedoms, silence independent reporting and restrict the activities of nongovernmental organisations.”⁶

ECNL, together with its alliance partner the International Center for Not-for-Profit Law (ICNL) has been monitoring and analysing state responses to the Covid-19 pandemic through a series of trackers.⁷ Our research found that many of the measures adopted and implemented were limiting and violating our civic freedoms of association, assembly, participation, expression and right to privacy.

With this paper, ECNL⁸ seeks to provide a broader overview of the restrictive measures adopted by states, in order to increase understanding of the new developments and contribute to the analysis of the intersection between securitisation and civic freedoms. The paper explores how have governments introduced new security-related legislations and/or used existing counter-terrorism and national security measures to further restrict fundamental freedoms and human rights, as well as civic space.

Our objective is to also support civil society organizations to raise concerns about an over-securitized response to the pandemic and the risk of authoritarian drift in democratic states that are moving away from the rule of law. Ultimately, the aim is to work towards recommendations for a greater protection of fundamental freedoms and civic freedoms in combating the Covid-19.

A SECURITISED RESPONSE TO THE COVID-19 IN FRANCE

“We are at war”, “Coronavirus is an enemy”, “doctors and nurses are on the frontline” and “citizens are mobilized”. Such was the wartime rhetoric used by the President of France, “homeland of human rights” to justify the first state of health emergency he declared in March 2020 in response to the Covid-19 crisis and all the inherent measures of restriction on civic freedoms that would come with it.

In a country already hit hard by terrorist attacks committed on its soil over the last five years, it didn’t take much effort from President Macron and his government, to impose the first drastic measures, among which one of the most stringent lockdowns in Europe, and for the citizens to welcome and accept, with almost no dispute, their speedy adoption and the undemocratic process of their renewal, trusting that these measures will be limited in time.

6 The world faces a pandemic of human rights abuses in the wake of Covid-19, António Guterres, February 2021 <https://www.theguardian.com/global-development/2021/feb/22/world-faces-pandemic-human-rights-abuses-covid-19-antonio-guterres>

7 <https://ecnl.org/focus-areas/covid-19-and-civic-freedoms>

8 Paper prepared by Stephanie David, ECNL Counter-Terrorism Consultant and expert on UN counter-terrorism and security architecture.

During October 2020, as a second wave of Covid-19 was spreading throughout Europe and already overwhelming half of the country, members of the French Parliament were asked, for the 5th time in a span of 7 months, to quickly examine a new law proposal that would set a new state of health emergency (imposing lockdowns and partial curfews), thus resorting to exceptional security measures to face the resurgence of the disease. Some deputies questioned the relevance of this renewal of health emergency when, they argued, “partial curfews on the national territory could have been decided under the health emergency exit regime (already a restrictive measure in itself)”. The same deputies worried that this exceptional period grants wide prerogatives to the Executive Branch to legislate by decree in order to impose measures ranging from closing establishments open to the public, regulating or even prohibiting gatherings and movements, to total confinement.

A new law passed in November 2020 extended the state of health emergency until February 2021⁹. For a year, France will have been living under a permanent state of health emergency that came in addition to exceptional security measures previously adopted in the context of countering terrorism since 2015¹⁰. Exception is becoming the norm and decisions relevant to the pandemic are increasingly being made by the President, in consultation with the Defense and National Security Council¹¹ that has slowly taken over the Council of Ministers role. New binding measures in response to Covid-19 are decided with military and intelligence officers under classified rules and outside of any accountability or public discussion, within a Council whose mandate usually covers only military external operations, intelligence matters and counter-terrorism.

Furthermore, the National Human Rights Institution was not consulted by the government or the Parliament prior to the adoption of the first law declaring the state of emergency, nor was it along the process of renewals. According to their president¹² :

“The problem with states of emergency, anti-terrorism or health, is that they tend to be renewed ... With these new containment and curfew measures, three fundamental freedoms are threatened: the freedom to come and go. It is so basic and natural that people forget it is. Then, the freedom of assembly and the freedom of peaceful protest.

... The choice was made to concentrate powers in the hands of the executive. In peacetime, the Republic has never known such restriction of freedoms...

9 On February 9th, 2021, a new law proposal extending the state of health emergency until the 1st of June 2021, was adopted by the parliament: <https://www.vie-publique.fr/loi/278070-loi-prolongation-etat-durgence-sanitaire-jusqua-juin-2021>

10 Following the unprecedented terrorist attacks in Paris in November 2015, a state of emergency was declared by President Hollande. The state of emergency ended on November 1, 2017 but its main provisions were then enshrined in common law by a new anti-terrorist law signed by newly-elected President Macron in 2017. This new law is one of the toughest security-based and most liberticide legislation in Europe.

11 The Defense and National Security Council is composed of the President of the Republic, the Prime Minister, the Minister of Defense, the Minister of Interior, the Minister of Foreign Affairs and the National Intelligence Council. Other relevant ministers can be invited according to the issues at stake; in this case, the Minister of Health and Minister of Finance are involved. The Defense and National Security Council went from 2 or 3 annual meetings to weekly meetings this year.

12 https://www.lemonde.fr/societe/article/2020/10/23/etat-durgence-sanitaire-la-banalisation-de-mesures-restrictives-des-libertes-n-est-pas-admissible_6057097_3224.html

The French Ombudsman is also concerned by the risk of perpetuating a state of exception and warned, in a letter¹³ addressed to the French Parliament, that the extension of the state of emergency is likely to disproportionately infringe privacy and the principle of equality, any measures taken in view of the current health crisis must meet three fundamental principles of the rule of law: predictability, necessity and proportionality.

Finally, in November 2020, the French Government took advantage of this particular context to present a new Bill on “Global National Security” that would, if adopted¹⁴ in an accelerated procedure, prohibit broadcasting images of police officers during law enforcement operations, operate a transfer of sovereign powers to municipal police and private security agents and open up very wide possibilities for the use of video/CCTV and drones for the surveillance of the population (including by private security), posing an immediate threat to the right to privacy and to freedom of assembly and protest. Once again, the national human rights institution was not consulted and is alarmed by *“the trivialization of the exception that has been underway for several years”*, affirming that *“We no longer count the bills and proposals adopted under the accelerated procedure. By concentrating ever more power in the hands of the executive, France is an exception among its European neighbours.”*¹⁵

Throughout these developments, France faced a situation of democratic apathy where the parliament has not been performing due diligence on the legislative response to Covid-19 with respect to fundamental freedoms and where only a minority of intellectuals, civil society activists and academics voice concerns that checks and balances mechanisms are being disregarded and alert on the weakening of the rule of law and the protection of basic human rights. Renown Professor of criminal law, Mireille Delmas-Marty, recently wrote in an Op-Ed¹⁶ that:

“Democracy presupposes the resistance of human rights and the rule of law... The permanence of crises (terrorism, pandemic ...) could quickly overwhelm us if we do not manage to unite our efforts to avoid the great enslavement prefigured by the Chinese.

Although a symbolic illustration of new security dynamics, France is not the only problematic example of potentially over-securitised response to human security threats.

13 <https://www.defenseurdesdroits.fr/fr/a-la-une/2020/09/la-defenseure-des-droits-attire-lattention-de-lassemblee-nationale-en-vue-de?fbclid=IwAR2AV28XBRzdud9obOwpoilAnNSgvjCSFRC6GtzCzSSE1hfmEU-gIHWEzxE>

14 The bill has been adopted by the National Assembly on November 23, 2020- It is now in the upper chamber, the Senate, but article 24 of the bill will be re-written entirely, after massive public protests took place in the country.

15 <https://www.cncdh.fr/node/2154>

16 In Le Monde, Op-Ed, October 24, 2020

II. Worldwide snapshot - restrictive security measures adopted in response to Covid-19

ECNL and partners mapped a massive accumulation of power adopted through the laws and measures in response to the pandemic. Most of the time such laws were adopted with little or no consultation (of experts let alone the public) and no oversight. This trend labelled by some as a “coronavirus coups”¹⁷. We also saw parliaments being dissolved, military patrols being deployed on the streets to enforce curfews, extra-judicial killings of and disproportionate sanctions against citizens violating lockdowns. In extreme developments, the rhetoric and actions around the pandemic aimed to turn it into:

- **A rhetoric of war** identifying the coronavirus as a new enemy to combat so to justify the imposition of inherent security-based measures. The UK Prime Minister labelled its action like no other “wartime government”.¹⁸ We saw mention of coronavirus coalitions” as in war time coalitions – that bring together opposition (e.g., Israel) and in the Philippines, the president told security forces that if anyone violates the lockdown they should “shoot them dead”. The head of police said the President’s order to shoot lockdown violators was a sign of his seriousness rather than indicating people would be shot.¹⁹
- **A campaign against rights:** *“I am more and more convinced the greatest battle of our time is against the ‘religion of privacy’. It literally could get us all killed,”*²⁰ declared Bruno Macaes, a former Portuguese Minister, to explain how people’s obsession with privacy had made it harder to **combat threats** like pandemics.
- **A campaign against a new form of terrorist threat - the “corona terrorism”:** In India for instance, states news channels affirmed that the virus was being spread by “corona-jihadis” in an act of terrorism, and other media reported a terrorist operation meant to infect the entire country.²¹

The rhetoric created fertilised field for restrictive measures. We observe a similarity of measures adopted worldwide: states have quickly resorted to de facto states of emergency, often under the name of “health emergency” with restrictive practical measures ranging from lockdowns and curfews to increased digital surveillance and tracking, CCTV, online monitoring, often enforced with the support of police and military forces. Most of the actions taken by governments were widely tolerated by the populations, at least in the beginning of the pandemic, because they were taking place in an auspicious environment of fear and fatalistic approaches allowing a space for disproportionate measures.

17 <https://www.theglobeandmail.com/world/article-how-the-coronavirus-pandemic-is-making-strongmen-stronger-from/>

18 <https://www.theguardian.com/world/2020/mar/17/enemy-deadly-boris-johnson-invokes-wartime-language-coronavirus>

19 <https://www.reuters.com/article/us-health-coronavirus-rights-idUSKCN21S1CZ>

20 <https://www.reuters.com/article/us-health-coronavirus-rights-idUSKCN21S1CZ>

21 <http://www.socialsciencecollective.org/under-the-scanner-part-6/> and <https://www.buzzfeednews.com/article/nishitajha/coronavirus-india-muslims-tablighi-jamaat>

However, the renewed extension of exceptional measures, as well as different levels of implementation and sanctions, in some instances abusive and disproportionate, raise growing concerns. The extensive use of those measures significantly affect freedom of movement, freedom of peaceful assembly and protest and the ability for civil society, essential to any democracy, to participate in policy and decision-making processes and ultimately to function.

III. Manifestations of security measures

In countries where violence is already normalized, dissent criminalized, civic freedoms already limited and human rights defenders demonized, the Covid-19 crisis and inherent draconian measures prescribed to control the spread of the pandemic came as a renewed opportunity for authorities to increase the repression, in the name of security, including by the repurposing the existing or adopting a new counter-terrorism or national security legislations.

In the report COVID-19 and Human Rights: We Are All In This Together, the UN Secretary-General highlighted that

“the pandemic has led to countries imposing emergency and security measures. While in most cases these are needed to fight the virus, they can also be politically driven and may be easily abused. The pandemic could provide a pretext to undermine democratic institutions, quash legitimate dissent or disfavored people or groups, with far-reaching consequences that we will live with far beyond the immediate crisis. Although coercive measures may be justified in certain situations, they can backfire if applied in a heavy-handed, disproportionate way, undermining the whole pandemic response itself.” He further noted that in “their Covid-19 response, some States may seek to use counter-terrorism legislation and security measures in ways that infringe on human rights. Such abuses could fuel the conditions conducive to the spread of terrorism. Those wishing to roll back human rights protections to take advantage of the crisis should think twice; it can only undermine the effectiveness of the global and national pandemic response.”²²

The UN Special Rapporteur on the Promotion and Protection of Human Rights While Countering Terrorism identified²³ **four layers of exceptional responses** which are inter-related and need to be understood: (1) the classic use of emergency and security powers through declaring formal state(s) of emergency; (2) using de facto emergency powers without formal proclamations or legal framework for emergency where measures are embedded in a framework on protection of public health; (3) expanded use of executive powers and distinguished lack or lower level of parliamentary oversight; and finally, (4) repurposing and adaptation of existing security or counter-terrorism measures to address Covid-19.

22 COVID-19 and Human Rights: We Are All In This Together, <https://unsdg.un.org/sites/default/files/2020-04/COVID-19-and-Human-Rights.pdf>

23 Presentation by the Special Rapporteur in a workshop on the securitized response to the Covid-19 crisis organized by ECNL on December 16, 2020

The later was enabled by broadly and vaguely drafted security legal frameworks with high capacity to be re-purposed without adding new legislation or ensuring oversight.

Since the outburst of the pandemic, we have observed a nearly generalized state of emergency around the world. According to the Covid-19 Civic Freedom Tracker²⁴, developed by ICNL/ECNL to monitor the deployment of emergency powers across the globe, at least 103 countries have declared a state of emergency in response to the current crisis (among which 25 western countries compared to 28 in Africa); furthermore, irrespective of the states of health emergency, a total of 136²⁵ countries have adopted exceptional measures, such as lockdowns and curfews, that affect a large spectrum of fundamental freedoms.

As recalled by UN Special Procedures²⁶ *“even during states of emergency, the use of force remains guided by the principles of legality, necessity, proportionality and precaution. They demand that the use of force and of firearms must be avoided, and that all possible non-violent means must be exhausted before resorting to violent ones.”* However, an overview of the measures taken by most States shows a worrying trend of excessive legislation, disproportionate sanctions and often abusive enforcement, by police and military forces, often primarily and timely used to further repress political dissent and crackdown on civil society.

1. Excessive emergency and security laws with coercive power to silent dissent

In addition to the declaration of state of emergency or public health emergency, states have also been rushing through new or expanded national security legislations with vague or over broad definitions of who can be labelled a terrorist or an extremist, to shut down criticism over the response to the pandemic or silence dissent over their policies. There are also cases where the new legislation provides the military and the police with excessive powers in the context of the pandemic.

In **Egypt** for example, in April 2020, a presidential decree declared a “state of emergency” for three months. Egypt has been in a near-continuous state of emergency since April 2017 to counter terrorism, however this declaration cited the “critical security and health situation” as grounds for extension and reinforced the authority of the armed forces and police to maintain security and save the lives of citizens, and provided that the state may impose restrictions on individuals’ movement. The decree also stated that violations of emergency orders will be punished with imprisonment. Further amendments to the emergency law expanded the powers of the president and military prosecution, which now include the power to: ban private and public gatherings in addition to protests; shut down schools and universities; suspend operations in the private and public sector; and subject anyone returning from outside the country to quarantine. The amendments also allow the president to give military prosecutors preliminary investigation authority over any crimes. The UN special procedures reacted to these by stating “Tougher new regulations under Egypt’s sweeping anti-terrorism law further erode fundamental human rights and could

24 <https://www.icnl.org/covid19tracker/>

25 ICNL Covid-19 Tracker, February 15, 2021:<https://www.icnl.org/covid19tracker/>

26 <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25802&LangID=E>

result in more arbitrary detentions, enforced disappearances and allegations of torture, and a wider crackdown on freedom of expression, thought, association and of peaceful assembly “²⁷.

In the **Philippines**²⁸, from the very beginning of the Covid-19 crisis, President Duterte declared a state of public health emergency and ordered the police to shoot lockdown violators and do house-to-house searches for “non-self-isolating” Covid-19-positive people. According to a director of a local CSO, “instead of strengthening the capacities of hospitals, the government relied on institutional measures aiming at neutralizing all forms of dissent and criticism against it as well as accelerating the landing of its authoritarian agenda”²⁹.

Then, as the disease was spreading fast, Duterte urgently pushed the adoption of the new national security law. The President and his political allies, now armed with unprecedented emergency powers to combat Covid-19, are said to quickly intensify their authoritarian grip through increasingly draconian measures. Human rights groups expressed their fear that the new law may adopt an overly broad definition of terrorism, providing ample room for abuse by security forces, including to suppress voices of dissent. In March 2020, Human Rights Watch (HRW) warned that the new emergency measures could “easily be misused by Philippine authorities to crack down on online criticism of government efforts.”³⁰

As a matter of fact, the adoption of the text was immediately followed by the conviction of CEO of the daily Rappler, one of the most critical voices in the war on drugs, and by the shutdown of the country’s main television network. A clear signal sent to the national media, but also to the population to describe “the criticisms against Duterte as more dangerous than the pandemic”³¹. This law also provides for the creation of an “Anti-Terror Council”, composed of unelected members of the executive, determining who the terrorists are and ordering their arrest and detention, without court orders.

In **Hungary**, in November 2020, the Government passed a Decree on the second phase of emergency measures which gives more power to the military to take part in public patrols, as well as in monitoring compliance with security measures. Serbia also deployed the military to patrol streets.³² Furthermore, Hungary went so far to deploy special military task forces to monitor the operations of 140 mostly state-owned companies providing critical services during the coronavirus pandemic, to ensure the operation and safety of these Hungarian companies.³³

27 <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25787&LangID=E>

28 <https://www.rappler.com/voices/thought-leaders/opinion-why-duterte-regime-coronavirus-main-victim>

29 Idem.

30 <https://asiatimes.com/2020/06/dutertes-new-security-law-harsher-than-hks/>

31 <https://ccfd-terresolidaire.org/nos-publications/fdm/2020/314-septembre-2020/philippines-covid19-autoritarisme-duterte>

32 <https://www.theglobeandmail.com/world/article-how-the-coronavirus-pandemic-is-making-strongmen-stronger-from/>

33 <https://www.euractiv.com/section/justice-home-affairs/news/hungarys-state-of-emergency-law-is-a-blank-check-to-orban-critics-say/>

2. Harsh punishment, excessive use of force and police brutality

We also observe that in a significant number of states, emergency laws provide for excessive measures (such as suspending fundamental freedoms for an indefinite period of time), harsh punishments and give the military and the police extra powers in enforcing emergency measures adopted to combat the COVID-19. In too many instances, this has resulted in severe sentences police brutality and excessive use of force by the military, including violence against protesters. The ICNL/ECNL Covid-19 Tracker shows the following:

- **countries where violation of lockdown and curfew is punishable by prison** at least 20 (e.g., Bahamas, Belize, Bolivia, Botswana, Cambodia, Egypt, Ethiopia, Georgia, Hungary, India, Kuwait, Morocco, Myanmar, Namibia, Samoa, Singapore, Tanzania, Thailand, Zambia, Zimbabwe)
- **countries where gatherings were prohibited** “indefinitely” at least 6 (e.g., Benin, Botswana, Cameroon, Eritrea, Mali, Nigeria)
- **countries whose law foresees the involvement of military and police** in enforcing lockdowns and curfews/ and where police brutality and use of lethal force during protest has been reported so far at least 11 (e.g., Angola, Chad, Egypt, Kenya, Nigeria, South Africa, Uganda, Zimbabwe, Indonesia, Kazakhstan and Romania).

Use of force

Coercion and display of security or police forces brutality severely infringes on rights and freedoms. Since April 2020, UN Human rights experts³⁴ expressed grave concern at the multiplication of accounts of police killings and other acts of violence within the context of Covid-19 emergency measures, saying they were “alarmed at the rise of reports of killings and other instances of excessive use of force targeting in particular people living in vulnerable situations”. The independent experts reminded governments and law enforcement agencies that the prohibition against arbitrary deprivation of life, torture and other ill-treatment, was absolute and non-derogable at all times: *“Breaking a curfew, or any restriction on freedom of movement, cannot justify resorting to excessive use of force by the police; under no circumstances should it lead to the use of lethal force.”*

According to recent Human Rights Watch report, “military or police forces in at least 18 countries physically assaulted journalists, bloggers, and protesters, including some who criticized government responses to Covid-19. Abuses include firing live ammunition at peaceful protesters, beating them at checkpoints, and assaulting them in detention, with apparent impunity. In most cases, these forces said they were enforcing Covid-19-related regulations. In Uganda, security forces also killed dozens of protesters.”³⁵

³⁴ Including Special Rapporteurs on Human Rights Defenders, Freedom of Association and Peaceful Assembly and Counter-Terrorism and Human Rights, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25802&LangID=E>

³⁵ Covid-19 Triggers Wave of Free Speech Abuse, Human Rights Watch, February 2021 <https://www.hrw.org/news/2021/02/11/covid-19-triggers-wave-free-speech-abuse>

For example, in **Peru**, authorities may have taken advantage of the decree declaring a state of health emergency where police use of force is considered reasonable until proven otherwise. Some regions increased their repression and violence against the local communities of Cajamarca, Hualgayoc and Celendín provinces for their widespread rejection of the mining projects that a number of multinationals wish to carry out on their territory. During the large-scale protests that took place in November 2020, five protestors were killed and over thirty were injured³⁶.

In **Nigeria**, Africa's most populous country with one of the largest youth populations in the world, the National Human Rights Commission found that in the first two weeks of the country's coronavirus lockdown in March, more people died at the hands of the security forces than from COVID-19. The report documents 18 extrajudicial killings during those two weeks, a period during which Nigeria had just 11 Covid-19-related deaths, and in total during the country's five-week lockdown, 29 extrajudicial killings were documented. The Rule of Law and Accountability Advocacy Centre says that although it has always stood against the breach or violation of government directives and orders aimed at the containment of the Covid-19 pandemic, "it is safe to assert that, in the pretext of enforcing government laws and directives regarding Covid-19, law enforcement agents engage in harassment and extortion of bribe from hapless citizens"³⁷.

In **Kenya**, numerous reports indicate that dozens of civilians were killed by Kenyan police during early stages of the Covid-19 lockdown. There are also reports that police used teargas and gunshots without warning at the start of lockdown hours. By mid-April 2020, at least 12 deaths had been reported as resulting from police brutality in lockdown enforcement.

Harsh punishments

Albania modified the penal code to provide a legal basis for punishing violations of quarantine orders with prison sentences of up to 15 years.

In **Botswana**, the Emergency Power Regulations declared a nationwide lockdown and curfew from 8pm to 8am and state that violations are punishable by a fine and up to six months' imprisonment. Furthermore, according to the same regulations, the directions of the Ministry of Health prohibit gatherings of more than 10 people indefinitely.

Moldova introduced severe sanctions for violations of the state of emergency measures - 1,150 EUR for individuals for first-time violations, whilst **Georgia** introduced up to 3 years in prison for a repeated offence.³⁸

In **Cambodia**, the law provides the government with broad new powers during a state of emergency. These include banning meetings and gatherings; restricting people from leaving their homes; mobilizing military forces; surveilling telecommunications "by any means"; banning or restricting news media that may harm "national security" or

36 https://www.europarl.europa.eu/doceo/document/E-7-2012-006840_EN.html?redirect

37 <https://bit.ly/3eZgVxL>

38 <https://csometer.info/reports>

create confusion about the state of emergency; and other measures that are “suitable and necessary” to respond to the emergency. “Obstructing” the state’s response to the emergency, or noncompliance with the response in a way that creates “public chaos,” is punishable by up to 5 years in jail and a fine of up to 5 million riels (\$1,200). Organizations found culpable of these offenses may be fined up to 1 billion riels (\$247,000). In November 2020, the UN Special Rapporteur on the situation of Human Rights Defenders³⁹ said she was “alarmed” by credible reports that at least 21 human rights defenders have been subjected to threats, arbitrary arrests and detentions in the past three months.

3. Security measures restricting freedom of expression and attacking media⁴⁰

According to the ECNL/ICNL Covid-19 Tracker, countries with an already poor record on the protection of freedom of expression, attacks on journalists and independent media, censorship and closing civic space were mostly those that have seized opportunity of the Covid-19 crisis to further close the space for freedom of expression.

In some instances, states have resorted to measures and sanctions that may resonate with many governments’ responses to the threat of terrorism and violent extremism: “false information on Covid-19” or information that is not in line with the authorities’ official discourse were deemed cybercrime or prosecuted as extremist or labelled as terrorist contents online.

In **Egypt**, the Government has moved to quash criticism on social media and silence the work of human rights defenders and journalists focused on the Covid-19 pandemic. In the recent illustration, four staff members of the human rights organization in the country, the Egyptian Initiative on Personal rights (EIPR), have been arrested in relation to EIPR’s work on death penalty and Covid-19 and put in prison over the last two weeks of November 2020, on charges that include “joining a terrorist organization “. The Head of EIPR’s criminal justice unit, Karim Ennarah, is being detained over charges of “joining a terrorist group”, “using a social media account to spread false news” and “spreading false news”. The prosecutor said that this is based on security investigations showing that Karim “agreed with a group inside prisons to spread false rumours that could undermine public peace and public safety”⁴¹, after he worked on the need to ensure equitable access to Covid-19 vaccines including for prison inmates. EIPR leaders are all being held in remand detention pending investigations on charges that include joining a terrorist organization⁴².

During the early months of the crisis, 15 individuals had been arrested for spreading alleged “false news” about coronavirus. New-York Times reporters wrote⁴³ that they received

39 <https://news.un.org/en/story/2020/11/1077702>

40 See also Human Rights Watch’s Special Feature on Covid-19 Free Speech Abuses: <https://www.hrw.org/news/2021/02/11/covid-19-triggers-wave-free-speech-abuse>

41 <https://eipr.org/en/press/2020/11/over-50-organisations-across-world-stand-solidarity-eipr-and-urge-immediate-and>

42 <https://eipr.org/en/press/2020/12/freeze-eipr-s-assets-and-multiple-legal-violations-court>

43 <https://www.nytimes.com/2020/11/11/world/in-egypt-the-government-prioritizes-its-military-over-the-pandemic.html>

information of a doctor and a pharmaceutical worker arrested for a Facebook video and posts complaining about the lack of masks. “Egypt’s public health system was straining badly”, one doctor warned in a message posted online. “Any doctor in the current situation is not safe,” he said. Days after the post, he was detained and now faces terrorism-related charges.

In **Serbia and Montenegro**, “authorities fined and arrested people for social media posts that could allegedly cause panic and compromise public safety. Although governments have the right to take measures to prevent the spread of panic, requiring citizens to check the veracity of news stories they share on social media seems to be a draconian measure that encroaches on freedom of speech.”⁴⁴

In **Tanzania**⁴⁵, according to public authorities, “nobody has been contaminated by the virus “. The topic is such a taboo that no journalist dares to speak about it publicly. The impossibility to access information from the authorities has been coupled with a particularly repressive policy affecting voices that called into question the management of the pandemic by the authorities.

In **Russia**, according to a European Commission report, “Pro-Kremlin media outlets have been prominent in spreading disinformation about the coronavirus, with the aim to aggravate the public health crisis in western countries, specifically by undermining public trust in national healthcare systems”⁴⁶; meanwhile, a court in Russia’s Volga Federal District has just fined journalist Aleksandr Pichugin for spreading “false” information about the coronavirus after he criticized a church’s religious gatherings for being super-spreader events⁴⁷. The court convicted Pichugin of “posing a threat to citizens’ lives and health” and ordered him to pay a fine of 300,000 rubles (\$3,920). Prosecutors had asked the court to sentence the journalist to 2 1/2 years in prison.

4. Repurposing surveillance apparatus for public health responses

As of July 2020, of the 193 States Members of the United Nations, only a tiny minority (less than 10%)⁴⁸ was anywhere close to meeting the standards necessary for a Government to ensure that the privacy of citizens is properly protected and respected when it comes to State-led surveillance. The picture is complicated further when surveillance apparatus traditionally used for security purposes is proposed or hurriedly deployed for a public health purpose such as combating Covid-19.

44 Viral vulnerability: How the pandemic is making democracy sick in the Western Balkans, European Council on Foreign Relations, December 2020 <https://ecfr.eu/publication/viral-vulnerability-how-the-pandemic-is-making-democracy-sick-in-the-western-balkans>

45 <https://rsf.org/en/news/tanzanian-media-unable-cover-covid-19-epidemic>

46 <https://www.theguardian.com/world/2020/mar/18/russian-media-spreading-covid-19-disinformation>

47 <https://www.rferl.org/a/russian-journalist-faces-sentencing-over-satire-of-orthodox-church-s-covid-19-policies/30941886.html>

48 Annual report of the UN Special Rapporteur on the right to privacy, October 2020 <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26446&LangID=E>

In his latest annual report⁴⁹, the UN Special Rapporteur on the Right to Privacy recalled that “if a State decides that technological surveillance is necessary as a response to the global Covid-19 pandemic, it must make sure that, after proving both the necessity and proportionality of the specific measure, it has a law that explicitly provides for such surveillance measures. The law must include safeguards, which, if not spelled out in sufficient detail, cannot be considered adequate under international law “.

According to the ECNL/ICNL tracker, since the beginning of the health crisis, 50 countries have adopted measures that are likely to affect privacy, from tracing contact app, use of cell-phone data to “cyber patrols of social media” by the ministry of security, geolocation to enforce lockdown measures or electronic bracelets for those in quarantine.⁵⁰

In **Argentina** for example, the Security Minister, Sabina Frederic, stated in a video conference that security forces are carrying out “cyber patrols” on social networks. In an effort to monitor “social humour” and curb misinformation about the coronavirus, the cyber patrols have resulted in at least 12 criminal cases against individuals accused of “public intimidation,” a crime punishable by up to six years in prison.

In **Australia**, the Emergency Management Amendment Act (Covid-19 response) allows the government to install surveillance devices in homes and direct people to wear monitoring devices, in order to ensure that those required to isolate during the coronavirus crisis do not interact with the community. Persons who fail to comply are subject to a \$12,000 fine or up to a year of imprisonment.

In **Bahrain**, the BeAware app captures users’ movements in real time and uploads those movements to a centralized government database. The app requires that users register with their national ID. It pairs with a Bluetooth bracelet that is mandatory for all individuals under quarantine and that will notify a monitoring station when those individuals are 15 metres away from their phone. Additionally, the Ministry of Health may randomly request pictures from self-isolating individuals, who must send back a photo proving they are wearing the bracelet. Violators will face legal penalties, including prison sentences.

In **Hong-Kong**, the government is using electronic wristbands to enforce quarantines. The wristbands are connected to a smartphone app and are used to ensure that individuals remain at home. Violations are subject to a \$5,000 HKD fine (\$644) and six months in prison.

In **India**, the Karnataka state government directs all persons in quarantine to send a “selfie” of themselves every hour from their home. The directive mentions that the selfie image shall include location coordinates to inform the government of the sender’s location, and that every selfie sent by a home-quarantined person will be verified by the government. The mobile app for tracking of quarantined patients has also been adopted by the Delhi, Gujarat, Tamil Nadu, and Maharashtra governments.

49 <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26446&LangID=E>

50 See also: Can civil society survive COVID-19? ECNL/ICNL, OECD Blog, January 2021 <https://oecd-development-matters.org/2021/01/13/can-civil-society-survive-covid-19/#more-13908>

IV. Challenges at the multilateral level

The Covid-19 pandemic offers a very fertile ground for member states to use the international and regional bodies as platforms for exchange of policies and practices on how to further address the pandemic by relying on measures that they have taken to counter terrorism over the last two decades. Indeed, the Special Rapporteur on the Protection and Promotion of Human Rights while Countering Terrorism expressed her concerns that during the UN virtual Counter-Terrorism week held in June, no discussions were planned on “the misuse and appropriation of the coronavirus to suppress rights, to leverage greater executive power, to limit democratic and independent oversight, and to engage the coercive power of the police and security sector.” On the contrary, discussion solely focused on multilateral collaboration between U.N. counterterrorism structures and those responding to the coronavirus to “address the crisis, human security and the threat of bioterrorism in the COVID-19 environment,” and assessing where “... public health and security systems meet.”⁵¹

In the face of the scale of the health crisis and long before the UN Security Council officially convened on this matter in July, 2020⁵², global institutions with a responsibility for supporting States in managing genuine terrorist threats have designated obligations to assess, brief, and offer advice on how to best leverage the multilateral system to protect and advance national and human security.⁵³

To a certain extent, such priorities were already put forward during the UN Counter-Terrorism virtual week in July 2020: *“Concerning the synergies and complementarities between response and recovery from Covid-19 and the counter-terrorism agenda, we find them to be very intertwined. The Onset of the Covid-19 pandemic has clearly highlighted the need to update and develop the counter-terrorism agenda to respond to the emerging Covid-19 challenges, proving once again the essentiality of engaging into an extensive substantive discussion during the upcoming Seventh Biannual GCTS Review.”*⁵⁴

The upcoming review of the Global Counter-Terrorism Strategy (GCTS) by the UN General Assembly in Spring 2021, member states may want to include broad segments on Covid-19 as a new security threat to humankind and interlink it with terrorism and extreme violence.

At the European level, in December 2020, the European Commission presented a new Counter-Terrorism Agenda for “the EU to step up the fight against terrorism and violent extremism and boost the EU’s resilience to terrorist threats.” It seeks to support Member States in better anticipating, preventing, protecting and responding to the terrorist threat.

51 <https://www.justsecurity.org/71305/under-cover-of-covid-at-the-un-why-counterterrorism-is-not-the-answer-to-a-pandemic/>

52 The Security Council adopted a resolution supporting the “efforts and measures proposed by the Secretary-General concerning the response to the potential impact of the COVID-19 pandemic to conflict-affected countries, in particular his appeal for an immediate global ceasefire”, https://onu.delegfrance.org/IMG/pdf/covid-19_resolution_blue_en_.pdf

53 For example, the U.N. Counter-Terrorism Committee Executive Directorate (UNCTED) and the Security Council’s [1267 committee](#) that oversees sanctions related to ISIS and al-Qaeda have issued preliminary [assessments](#) of such threats, and they have acknowledged the methodological challenges in gauging security and measuring the differential impacts of terrorism across States and regions.

54 https://www.un.org/counterterrorism/sites/www.un.org.counterterrorism/files/200710_vctwk_closing_remarks_by_amb_mohamed_edrees.pdf

Europol, the EU Agency for law enforcement cooperation, will deliver better operational support to Member States' investigations under the revised mandate⁵⁵". As at the UN, the EU's enhanced security strategy will certainly be affected by the response to the Covid-19 pandemic and the measures that were deemed necessary to promote security and protect cities and people. Human rights groups, such as Amnesty International, have already reacted to this new plan and warned that: *"The premise of this proposal is flawed. It falsely posits that more surveillance and more restrictions on our freedom of expression are the price we have to pay for our safety, but our human rights become more important in times of crisis, not less. The agenda takes a wrecking ball to our rights, proudly targeting encryption and expanding surveillance"*⁵⁶.

V. Strategizing the way forward

During 2020, we have already seen several attempts by national civil society actors to address challenges related to securitisation in the context of the Covid-19 pandemic. For example, judicial oversight and litigation were considered extremely important, as in some instances, local, national or regional courts have played a role in overturning legislation or decisions that were deemed disproportionate and detrimental to rights and freedoms. The second example of civil society mobilization had to do with engaging global and regional human rights bodies which contributed to raising awareness among decision-makers about the necessity to frame responses from a human rights perspective, including economic, social and cultural rights and civic space. Urging states and international institutions to adopt and implement adjusted public policies that incorporate respect for inviolable human rights across the spectrum is the way forward to « leave no one behind », especially the marginalized, vulnerable and economic disadvantaged groups.

As part of its monitoring and action program, ECNL held discussions with local partners in countries and organized a workshop in December 2020 in order to discuss possible ways forward. The following recommendations were drawn for:

1. Monitoring, coordinating and public awareness raising

- Continue to monitor and report, in a comprehensive and reliable manner, on exceptional legislations and practical measures adopted by governments.
- Prepare detailed and reliable reports to counter official security narratives and address failed official strategies.
- Provide information and data to the public, investigations, media and collective appeals to the authorities for mitigation measures that are proportionate.
- Strengthen the capacities of local civil society in monitoring, investigating and reporting on the securitised response to the pandemic. Specifically, training and education on the issues of new restrictions are needed so that CSOs can understand, unpack the measures and exchange on strategies and legal arguments.

55 https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2326

56 <https://www.amnesty.eu/news/eu-counter-terrorism-agenda-takes-a-wrecking-ball-to-rights/>

- Increase awareness and strengthen the capacities of local civil society to engage in the UN and European counter-terrorism agendas and support the establishment of national coalitions that can work in coordination with international partners already engaged in UN and EU advocacy efforts.

2. Advocating for meaningful engagement

- Call upon public authorities to consult with civil society organizations, national human rights institutions and ombudsperson in the process of crafting and adopting measures in response to the pandemic.
- Enhance cooperation with the private sector, including the tech companies on how to address responsible behaviour during emergencies without overregulation and overreach also by the sector itself.
- Research and collection of arguments to bring in advocacy for reform.
- Bring more local voices to UN counter-terrorism bodies and engage them actively in the next review process of the Global Counter-Terrorism Strategy in Spring 2021.

3. Countering security narratives

- Make better use of media and social networks to counter or deny misleading narratives about Covid-19.
- Map out evidence, studies, and impact, if possible, from collecting own national data or surveys on existing restrictive measures, and frame them in a way public understands its cost/benefit ratio.

4. Strategic litigation and interventions at global, regional and national level

- Strengthen civil society litigation strategy and challenge the constitutionality of exceptional measures before national courts (including at local levels).
- Include constitutional and legal experts in public debates.
- Submit information to and file complaints before (when relevant) United Nations Human Rights Treaty Bodies and Special Procedures as well as other regional Human Rights quasi-judicial mechanisms when legislation and measures adopted in the context of Covid-19 may or effectively impact basic human rights and fundamental freedoms.