



European Center for
Not-for-Profit Law

COVID-19, Emergency Powers and Civic Space:

*Recommendations to UN Human Rights
Committee on Framework List of Issues for
ICCPR country reviews*

Coronavirus
quarantine
emergency measures



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Table of Contents

Introduction - Why this paper?	4
Albania	5
Armenia.....	10
France	15
Georgia.....	18
Ireland	22
Turkey	25
Framework List of Issues (LOIs) on emergency powers and civic space: Recommendations to the Human Rights Committee	28

Introduction – Why this paper?

The global health crisis triggered by the outbreak of the COVID-19 pandemic is approaching its second anniversary.¹ Worldwide, governments' recourse to emergency powers to tackle the pandemic's devastating consequences has put a considerable strain on the exercise of people's fundamental rights and freedoms. In this respect on 24 April 2020, the United Nations Human Rights Committee – a body of independent experts tasked with monitoring the State Parties' implementation of the rights and freedoms enshrined in the International Covenant on Civil and Political Rights ("ICCPR") – adopted a Statement on derogations from the Covenant in connection with the COVID-19 pandemic,² in which it reminds State Parties of the existing norms and guidance on notification of derogations and recalls that any derogating measures must be strictly necessary, proportionate, non-discriminatory and conform with certain non-derogable rights and with other international obligations.

The Human Rights Committee has also started adding questions on the measures taken to tackle the pandemic – including the adoption and implementation of special emergency powers – in the so-called "List of Issues" ("LOIs") addressed to State Parties when they are bound to submit their periodic reports and explain how they enforce the ICCPR rights and freedoms in their country.³

In this paper, ECNL has reviewed the LOIs that the Human Rights Committee has published with regard to a selection of six States (Albania, Armenia, France, Georgia, Ireland and Turkey) that were due for review of their ICCPR commitment in 2021. Within the LOIs published for each of this country, we have identified in particular those that address derogations to ICCPR obligations in time of public emergency (Article 4, ICCPR) and the impact of emergency powers on the "civic space" components protected by the ICCPR, i.e.:

- Freedoms of opinion and expression (Article 19)
- Right of peaceful assembly (Article 21)
- Freedom of association (Article 22)
- Right to participate in public affairs and equal access to public services (Article 25).

¹ World Health Organisation ("WHO")'s official declaration of the Covid-19 outbreak as a pandemic (11 March 2020) is available here: <https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19--11-march-2020>

² <https://digitallibrary.un.org/record/3863948>

³ The State Parties' reporting procedure to the Human Rights Committee is integrated in a "Predictable Review Cycle", with deadlines for the adoption of LOIs for each State under review, the submission of States' to reports (as well as for "shadow reports" by other stakeholders, including civil society organisations), the Committee's review of the States' reports and their Concluding Observations. For an overview of the States Parties' ordinary or simplified reporting procedures to the Human Rights Committee, see <https://www.ohchr.org/EN/HRBodies/CCPR/Pages/CCPRIntro.aspx> and <https://www.ohchr.org/EN/HRBodies/CCPR/Pages/PredictableReviewCycle.aspx>

We have also looked into the Human Rights Committee's coverage of other ICCPR rights that are instrumental pre-conditions of the enabling of civic space, such as freedom of movement and residence (Article 12), the right to privacy (Article 17) and the right to equal protection without discrimination (Article 26).

Our review shows that, while the Human Rights Committee is committed to gathering comprehensive information on the way the State Parties struck a balance between tackling a state of emergency and safeguarding civic space, **some questions included in the LOIs miss the opportunity to gather contextualised information based on the pre-existing situation in the country or do not cover all relevant aspects of civic space affected by the States' measures.**

Therefore, in this paper we aim to provide:

- ✓ *ad hoc* recommendations to the Human Rights Committee on how to follow up with the selected States when reviewing their reports, formulating Concluding Observations and following up on their implementation;
- ✓ **final recommendations to the Human Rights Committee to adopt a more homogeneous framework of LOIs addressing how the ICCPR States Parties' recourse to special powers affected civic space** – which hopefully would allow obtaining a truly comprehensive picture of the situation in all countries – and **elaborate Concluding Observations on how to handle similar crises in the future.**

Last but not least, we also include recommendations to civil society organisations (“CSOs”) and urge them to integrate their States' reports to the Human Rights Committee with their own evidence and information by making their own submissions (“shadow reports”) to the Committee. It is crucial that the Committee receives as much detailed information as possible from the very rightsholders affected by the States' handling of this crisis – and as always, ECNL is happy to provide support and technical assistance for them to do so.

Albania

Background – response to the pandemic

On 24 March 2020, following the outbreak of COVID-19, the Council of Ministers in Albania issued a Decision declaring a “State of Natural Disaster” for 30 days – then extended until 23 June 2020 – presenting the public health crisis as a threat to national security and thereby justifying exceptional powers to the government and temporary restrictions of human rights⁴. The legal basis for the Decision was

⁴ Council of Ministers, Decision no. 243 of 24 March 2020 “On the declaration of the state of natural disaster”.

attributed to Article 101 of the Constitution⁵ as well as to Article 21(1) of the Law no. 15/2016, “On the Prevention and Combating Infections and Infection Diseases”.

By virtue of this Decision, which was approved by the Albanian parliament on 16 April 2020, the Inter-Ministerial Committee on Civil Emergencies (KNEC), chaired by the Prime Minister, was empowered for up to 30 days (subject to renewal) to be the highest body for coordinating the actions of state institutions – including ministries issuing Orders – and of private entities, as well as for providing the financial and material resources to cope with the natural disaster caused by COVID-19.⁶

On 16 April 2020, the Assembly also introduced by urgent procedure two new Articles in the Criminal Code, which included sanctions of up to 8 years’ imprisonment for the new crimes of “*Non-compliance with the measures of the state authorities during the state of emergency or during the state of the epidemic*” (Art. 242/a) and “*Spread of infectious diseases*” (Art. 89/b).

After declaring the state of natural disaster, the Albanian government did not notify the United Nations Secretary General of any derogations to its obligations under the ICCPR, as it would be required by Article 4 of the ICCPR “in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed.” However, it did notify the Council of Europe of its intention to derogate from:

- Article 8 (right to privacy) and Article 11 (right of assembly and association) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (“ECHR”)
- Article 1 (protection of property) and Article 2 (right to education of Protocol 1 to the ECHR;
- Article 2 (freedom of movement) of Protocol 4 to the ECHR.⁷

On 24 June 2020, following the expiry of the state of natural disaster, the Albanian government communicated to the Council of Europe the withdrawal of its derogations.⁸

ICCPR country review

The LOIs on which the Albanian State Party is asked to provide information to the Human Rights Committee was adopted by the Human Rights Committee at its 132nd session (28 June–23 July 2021) and was published on 19 August 2021.

⁵ Article 101 provides that the Council of Ministers, in cases of necessity and emergency, may take temporary measures through normative acts having the force of law and such acts must be approved by the Assembly within 45 days otherwise they expire retroactively.

⁶ <https://verfassungsblog.de/albania-some-exceptional-extraordinary-measures>

⁷ <https://rm.coe.int/09000016809e0fe6>

⁸ <https://rm.coe.int/09000016809ed2cd>

According to the Committee's simplified procedure for reporting – to which Albania has subscribed – the Albanian State Party is expected to reply in writing by July 2022.

List of Issues (LOIs) on pandemic and civic space

We have identified the following LOIs as relevant to assess the impact of the pandemic and the adoption of emergency powers on civic space and its fundamental rights and freedoms⁹:

State of emergency (art 4)

5. Please report on the State Party's legal framework concerning states of emergency, including information on its provisions, sanctions for violating the law, the possibility of judicial oversight of its application, and its compatibility with the Covenant. Please explain whether there have been derogations from any rights under the Covenant during the states of emergency declared in response to the coronavirus disease (COVID-19) pandemic. Bearing in mind the Committee's Statement on derogations from the Covenant in connection with the COVID-19 pandemic, please indicate whether any such derogations met the strict requirements of proportionality to the exigencies of the situation, relating to duration, geographical coverage and material scope. Please indicate the measures taken by the State party to respect and ensure the Covenant rights of vulnerable and marginalized groups during the COVID-19 pandemic.

Freedom of expression (Art.19-20)

21. Please report on the legislative and other measures taken by the State Party to promote and protect the right to freedom of opinion and expression, including online expression and within the context of the COVID-19 pandemic. Please discuss the measures taken to protect human rights defenders and journalists against harassment, intimidation and verbal and physical attacks, to effectively investigate all allegations of such violence and to provide victims with effective remedies. Please respond to reports of restrictions on media freedom, including due to: (a) the concentration of media ownership in a few family groups; and (b) criminal charges brought and threats of litigation against journalists, leading to their self-censorship.

Right of peaceful assembly (Art. 21)

22. Please provide information on all the measures taken by the State Party to promote the right of peaceful assembly. Please outline the State party's existing legislation on the right of peaceful assembly, including the law on demonstrations (No. 8773/2001) and its compatibility with article 21 of the Covenant and the Committee's general comment No. 37 (2020) on the right of peaceful assembly. Please provide information on the investigations conducted into the cases of excessive use of force during the demonstrations in December 2020 and their outcomes, including any redress provided to the victims.

⁹ The full List of Issues is available here: [Treaty bodies Download \(ohchr.org\)](https://www.ohchr.org/Treaty_bodies/Download)

Review of LOIs – strengths and gaps

Under the review of Albania's compliance with Article 4, ICCPR (State of emergency), the Human Rights Committee asked a comprehensive question, requesting the State Party to provide information on the legal framework adopted during the states of emergency declared in response to the COVID-19 pandemic, including sanctions, judicial oversight, derogations to the ICCPR and necessity and proportionality of such derogations as outlined by the Committee's Statement on derogations from the Covenant in connection with the COVID-19 pandemic.

The question about "the possibility of judicial oversight" of the state of emergency's application is especially relevant in the case of Albania, since both the Constitutional Court and the Supreme Court have not been functioning since early 2018, due to lack of quorum: as a result, neither of these courts can take positions on the merits of claims before them¹⁰. Therefore, one of the main guarantees for respect of rule of law, also in an emergency situation, as indicated by the Venice Commission rule of law checklist¹¹, is not accessible in Albania.

We also praise the special attention dedicated to the Human Rights Committee taken by the State party to respect and ensure the rights of vulnerable and marginalized groups during the pandemic.

On the other hand, in the question on Albania's compliance with Article 20-21, ICCPR (freedom of expression), we note that **when the Human Rights Committee addresses restrictions to media freedoms, it does not recall anti-defamation laws and regulations adopted shortly before the pandemic, which pose serious threats to freedom of expression and even grant powers to the government to block online media.**

In December 2019, the Albanian Parliament adopted amendments to the Law on Audiovisual Media and the Law on Electronic Communications of 2013¹², creating an anti-defamation law to regulate online media and granting government bodies, the Albanian Media Authority (AMA) and Albanian Communication and Postal Authorities (AKEP), the power to instantly block media websites and impose excessive fines for any violations of dignity and privacy. The government was authorized to block such online media citing misinformation during the pandemic.

Furthermore, in the question on Albania's compliance with Article 21 (right of peaceful assembly), we note that **the Human Rights Committee does not make any reference to the measures taken by Albania in the context of the pandemic restricting the right of peaceful assembly and whether they met the strict requirements of necessity and proportionality outlined by the Committee's Statement on derogations.**

¹⁰ <https://verfassungsblog.de/albania-some-exceptional-extraordinary-measures/>

¹¹ https://www.venice.coe.int/images/SITE%20IMAGES/Publications/Rule_of_Law_Check_List.pdf

¹² <https://europeanjournalists.org/blog/2019/12/10/albania-efj-ifj-urge-parliament-to-reject-online-media-law/>

In March 2020, the Albanian government issued Normative Act N°3 “On special administrative measures taken during the period of infection caused by COVID-19”, without parliamentary approval per Article 101 of Albania's Constitution the Act provides for fines to be levied on anyone who violates measures to contain the coronavirus. As a consequence, participating in or organizing a political, social, or cultural gathering was subject to a fine of 5 million lek (40,000 Euros).¹³

In November 2020, the Ministry of Health and Social Protection issued Order No. 633 which banned gatherings of more than 10 people in open and closed spaces, including political gatherings, holiday parties, wedding ceremonies, or funerals¹⁴.

In December 2020, street clashes erupted in several cities after the fatal shooting of a young man by a police officer who was enforcing a COVID-19 curfew. Two journalists covering the protests were detained and assaulted and further peaceful protests faded away after the police warned to avoid illegal gatherings, in application of Order N°633.¹⁵

Also, the LOIs do not include a question on Albania’s compliance with Article 12, ICCPR (freedom of movement), which would have been most relevant, bearing in mind that under the new criminal reform introduced by the Albanian Assembly by urgent procedure, violation of quarantine or isolation rules imposed by the relevant state authorities, are punishable by 2–3 years imprisonment.¹⁶

Recommendations to the Human Rights Committee when reviewing Albania’s state report

When reviewing Albania’s report, the Human Rights Committee should pay particular attention to the level of details (or lack thereof) provided with particular regard to the following elements:

- necessity and proportionality of restrictions to fundamental freedoms during the pandemic, including those affecting freedom of movement and freedom of peaceful assembly;
- justification of the urgent procedure adopted to reform the criminal code and of the necessity and proportionality of the criminal sanctions imposed for the violation of state of emergencies.

¹³ ICNL/ECNL Covid-19 Tracker

¹⁴ ICNL/ECNL Covid-19 Tracker

¹⁵ <https://www.ifj.org/media-centre/news/detail/category/press-releases/article/albania-police-attack-and-arrest-journalists-covering-protests.html>

¹⁶ <https://verfassungsblog.de/albania-some-exceptional-extraordinary-measures/>

Recommendations to CSOs

CSOs should integrate the perspective provided by the LOIs by preparing and submitting their own replies (aka “shadow reports”) to the Human Rights Committee, corroborating it with fact-based findings.

Armenia

Background - response to the pandemic

To fight the spread of COVID-19, on 16 March 2020, the government declared a state of emergency for the first time by adopting the Government Decree N 298-N on the State of Emergency.¹⁷ The Decree provided various restrictions to the exercise of constitutional rights and freedoms, in particular the right to personal liberty and freedom of movement.

On 20 March 2020, Armenia officially notified the UN Secretary General about its derogation from the ICCPR as per Art. 4(3). More specifically, Armenia derogated from the obligations under Articles 9, 12 and 21 of the ICCPR.¹⁸ On 16 September 2020, Armenia withdrew all derogations and returned to full implementation of the ICCPR.¹⁹ However, this changed shortly after when Armenia declared the martial law due to the conflict with Azerbaijan.²⁰ On 6 October 2020, Armenia notified the derogations from the obligations under Articles 12, 17, 19 and 21 of the ICCPR under the martial law.²¹ According to this notification, Armenia was supposed to inform the UN Secretary General about the future developments and termination of the martial law and connected derogations. However, to this date, there is no notification available in the UN Depository for Notifications.²²

ICCPR country review

The Human Rights Committee published its LOIs on 26 August 2020. Armenia provided its written responses to the LOIs on 16 March 2021. At its 133rd session, the Human Rights Committee scheduled an oral questioning with the party and published the Summary Record. After the end of the 133rd session, the Human Rights Committee should adopt Concluding Recommendations, including the recommendations for the State party to ensure compliance with the Covenant. At the time of writing this paper, the Concluding Recommendations were not published; however, they typically also include a request for the State party to

¹⁷ RA Government Decree N 298-N on the State of Emergency, 16.03.2020 (amended 19.03.2020), available at: <https://www.arlis.am/DocumentView.aspx?DocID=140392>.

¹⁸ Note Verbale UN/3101/067/2020, available at: [CN.114.2020-Eng.pdf \(un.org\)](https://www.unhcr.org/refugees/3101/067/2020).

¹⁹ Note Verbale UN/3101/241/2020, available at: [CN.399.2020-Eng.pdf \(un.org\)](https://www.unhcr.org/refugees/3101/241/2020).

²⁰ Decision of the Government of the Republic of Armenia No. 1586-N of 27 September 2020 on Declaration of Martial Law in the Republic of Armenia: <https://rm.coe.int/16809f8e8c>

²¹ Note Verbale UN/3101/299/2020, available at: [CN.431.2020-Eng.pdf \(un.org\)](https://www.unhcr.org/refugees/3101/299/2020).

²² Available at: [UNTC](https://www.unhcr.org/refugees/3101/299/2020).

submit information on the measures taken to implement the recommendations within one year of the review.

List of Issues (LOIs) on pandemic and civic space

We have identified the following LOIs as relevant to assess the impact of the pandemic and the adoption of emergency powers on civic space and its fundamental rights and freedom.²³

Right to privacy (art. 17)

18. Please respond to concerns that the amendments to the laws on the legal regime on a state of emergency and electronic communication, which were introduced in March 2020 in response to the coronavirus disease (COVID-19) pandemic, interfere with the right to privacy. Please comment on the compatibility of these laws with the Covenant. In this regard, please provide further information on the articles of the Covenant from which the State party has derogated during the COVID-19 pandemic and the measures taken to ensure compliance with the requirements set out in the Committee's general comment No. 29 (2001) on derogations from provisions of the Covenant during a state of emergency and its Statement on derogations from the Covenant in connection with the COVID-19 pandemic (CCPR/C/128/2).

Freedom of expression (arts. 19 and 20)

20. With reference to the previous Concluding Observations (para. 26), please respond to continued reports of harassment and intimidation of and attacks against journalists, including online journalists, human rights defenders, particularly women, and lesbian, gay, bisexual and transgender human rights defenders and environmental activists, including those working on issues concerning gold mining operations. Please explain the measures in place to ensure that all allegations of such acts are investigated and perpetrators are prosecuted and punished. Please provide statistical information in that regard for the period under review. Please also comment on reports of: (a) an increase in the number of defamation lawsuits being brought against journalists and media outlets; and (b) censorship imposed by the Government on media outlets with regard to the COVID-19 pandemic.

Freedom of peaceful assembly (art. 21)

With reference to the information provided in the State party's report (CCPR/C/ARM/3, para. 214), please provide further information on the amendments made to the law on freedom of assembly and comment on their compatibility with the Covenant. Please respond to reports of: (a) unjustifiable police interference in and disproportionate police presence at peaceful demonstrations; (b) arbitrary and prolonged detention of assembly participants

²³ The full List of Issues is available here: [Treaty bodies Download \(ohchr.org\)](https://www.ohchr.org/Treaty_bodies/Download)

without ensuring respect of their fundamental legal safeguards, including the right to legal assistance; (c) criminal proceedings initiated against assembly participants; and (d) the continued failure of the competent authorities to promptly investigate violations by police officers of the right to peaceful assembly and to bring the perpetrators to justice.

Review of LOIs – strengths and gaps

The Human Rights Committee included in the LOIs a question related to the measures adopted to address coronavirus disease and its impact on the State party's obligations under the Covenant. This question is quite comprehensive and covers restrictions to the Right to privacy (Art. 17) before and after State Party's official derogation from this Article. On the other hand, **we regret that the LOIs did not include a similarly comprehensive question that would examine the proportionality and necessity of derogations from other rights (including Art. 12 – right to liberty of movement and residence and Art. 21 – right of peaceful assembly) under Art. 4, ICCPR, like it was the case in Albania.** This gap was not mitigated during the oral questioning.

In addition, during the oral questioning, the discussion around the right to privacy (Art. 17) largely focused on the period between March to September 2020 and did not question the necessity of the derogation from the right to privacy beyond September 2020.

The right to privacy was further restricted in September 2020, when the Decree No. N 1514–N on establishing quarantine regime established the Health Information Data System that aims to collect a wide range of data on infected persons and their contacts and share it with law enforcement bodies.²⁴

As to the right to liberty of movement and residence (Art.12), the LOIs did not contain a specific question related to the restrictions of movement adopted under the Decree on the state of emergency and related amendments to the Criminal Code punishing violations of certain rules in a state of emergency with imprisonment. This is despite the fact that the amendments to the Criminal Code were widely discussed during the oral questioning with the Human Rights Committee.

On March 23, 2020 the National Assembly adopted the draft amendments to the Criminal Code of RA proposed by the government. According to the amendments, criminal liability is established for violation of isolation or self-isolation requirements in a state of emergency, which inadvertently caused mass diseases of people. (art. 277.1 of RA CC), and is punished by arrest or imprisonment for up to two years. Simultaneously, amendments to the RA Code on Administrative Offenses have been adopted. Article 182.3 of the RA Code of Administrative Offenses has been supplemented by provisions on violation of the

²⁴ ECNL/ICNL COVID-19 Civic Freedom Tracker, [DocumentView \(arlis.am\)](https://documentview.arlis.am)

requirements of isolation or self-isolation during a state of emergency, which imposes a fine of ranging from three hundred up to five hundred minimum wages (part 10 of art. 182.3) and provisions on violation of restrictions on the publication or dissemination of information by physical and legal persons during an emergency which imposes a fine ranging from fifty to three hundred minimum wages.²⁵

We praise the Human Rights Committee for asking a question related to the Government's censorship practices targeting media outlets during COVID-19 pandemic under Art. 19 (freedom of expression). However, we would like to note that **besides media outlets, all physical and legal persons were banned to disseminate information on the current and new cases of new coronavirus infections in the Republic of Armenia.** Such regulation negatively affected the possibility to exercise the freedom of expression for everyone and should have been examined by the Human Rights Committee during the periodic review. This gap was not further addressed during the oral questioning.

According to the paragraph 23 of the Decree on the state of emergency, any publication or dissemination of publications, interviews, broadcasts by physical, legal persons or mass media on the current and new cases of new coronavirus infections in the Republic of Armenia, as well as outside the Republic of Armenia, health status of persons, sources of infection, scope of contact with existing or potential infectious persons, number of persons undergoing checking (infection testing) and isolation, activities carried out by the health authorities and the related data, as well as information bringing panic or containing a real danger of panic, including through publications on websites and social networks, should be only through reference to the information provided by the commandant's office (hereinafter referred to as official information) [Commandant's office is established to implement a unified command of forces and resources ensuring the legal state of emergency and is led by the deputy prime minister]. Exceptions are allowed only for reports by state officials and publications with references to their reports. Later (on March 19) the relevant provisions were revised extending exceptions for publications with references to websites and social media pages of international organisations and officials of foreign countries.²⁶

We praise the Human Rights Committee for asking a comprehensive question on the restrictions to the right of peaceful assembly (Art. 21). Such flexible question can be useful if new restrictions occur in the course of periodic review between the publication of the LOIs and oral questioning. However, in this case, the flexibility of the question allowed the State Party to omit information on the necessity and proportionality of the derogation from this right in its written responses. As mentioned above, **there was no specific question on the necessity and**

²⁵ ECNL/ICNL COVID-19 Civic Freedom Tracker, [DocumentView \(arlis.am\)](https://documentview.arlis.am).

²⁶ ECNL/ICNL COVID-19 Civic Freedom Tracker, [DocumentView \(arlis.am\)](https://documentview.arlis.am)

[ACCESS TO INFORMATION DURING COVID 19 - Articles - Publications - Freedom of Information Center of Armenia. \(foi.am\)](https://documentview.arlis.am)

proportionality of the derogation from this right included under Art.4, ICCPR. Unfortunately, this gap was not mitigated during the oral questioning.

In the situation of emergency, public assemblies as well as any gatherings of more than 20 persons were prohibited since March 16, 2020, including events such as concerts, sport or leisure events, education classes, celebrations or funerals. In the decision on extending the state of emergency on May 14, the maximal number of persons in public gathering was reduced to 5 persons, while the ban on public assemblies remained. At the same time, there were several incidents of spontaneous assemblies during this period, which have been often dispersed by the police. One of the main challenges in regard to the assemblies in the period of emergency was the prohibition of protest actions regardless of the number of participants (even though in case of public gatherings up to five persons were allowed to gather). Moreover, even one-person protest actions were sometimes treated as assembly and dispersed by police. In general, the police demonstrated an inconsistent approach in regard to the interpretation of the law, as some demonstrations were hardly interfered while others were forcefully dispersed.²⁷

We would also like to note that **LOIs did not contain a question on the opportunities of CSOs to participate in public matters (Art. 25) during the state of emergency.** This is despite the fact that legislation was adopted in an expedited manner without proper consultations.

The state of emergency introduced in March 2020 significantly reduced the opportunities for CSO consultations, and a number of decisions and legal acts adopted in an expedited and hasty manner. Many of these decisions were related to the pandemic issues, but there were also regulations relevant to CSO environment, such as the amendments to the CSO legislation and to the Criminal Code criminalising calls to violence.²⁸

Recommendations for the Human Rights Committee's follow-up on Armenia's state report

In its Concluding Observations, the Human Rights Committee **should ask Armenia to refrain from the use of emergency powers that negatively impact all rights and freedoms that are essential components of civic space.**

The Human Rights Committee should also monitor the implementation of the Concluding Observations and request the State Party to provide evidence their proper implementation.

With respect to the articles from which Armenia officially derogated, the Human Rights Committee should request further information to examine its compliance with Art. 4, ICCPR on the basis of the requirements set out in the Committee's

²⁷ CSO Meter Country Report on Armenia– Update 2020, available at: [CSO Meter Armenia Country Update ENG final.pdf](#)

²⁸ Ibid.

General Comment No. 29 (2001) on derogations from provisions of the Covenant during a state of emergency, the Committee's Statement on derogations from the Covenant in connection with the COVID-19 pandemic and as required by section II. (F) of the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights.²⁹

Recommendations to CSOs

At this stage of the periodic review, CSOs may help the Human Rights Committee with monitoring implementation of the Concluding Observations. Based on the final formulation of the Concluding Observations, CSOs can prepare a shadow report that will include information requested by the Committee from the State Party.

France

Background – Responses to the pandemic

On 23 March 2020, following the outbreak of the COVID-19 pandemic, the French Parliament adopted a law granting the government the power to declare by decree a "state of health emergency" in the event of a "health catastrophe capable of jeopardizing, by its nature and severity, the health of the population."³⁰ The state of health emergency has been renewed several times since then and a recent law, adopted via fast-track procedure like the previous ones, has extended the governments' powers to manage the health crisis at least until 31 July 2022.³¹ The government has used its special powers to impose restrictions on freedom of movement and freedom of peaceful assembly. However, the government did not notify the UN Secretary General of any derogations to the ICCPR articles, unlike what happened when a state of emergency was declared following the 2015 terrorist attacks. In this regard, the government appeared to rely on a strict interpretation of General Comment No. 29 of Article 4, ICCPR (State of emergency), which provides that, "the possibility of restricting certain Covenant rights under the terms of freedom of movement, freedom of assembly, is generally sufficient during such situation and no derogation from the provisions in question would be justified by the exigencies of the situation."³²

Neither the French Ombudsman nor the National Human Rights Institution were consulted by the government or the Parliament prior to the adoption of the first law declaring the state of emergency and its subsequent renewals, despite them warning against emergency powers that go beyond the strict necessity to combat

²⁹ UN Commission on Human Rights, *The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*, 28 September 1984, E/CN.4/1985/4, available at: <https://www.refworld.org/docid/4672bc122.html>

³⁰ <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000041746313/#>

³¹ <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000044315202>

³² CCPR General Comment No. 29 on Article 4: Derogations during a State of Emergency (2001): <https://www.refworld.org/pdfid/453883fd1f.pdf>

the pandemic and recalling that containments and curfew measures threaten “the freedom to come and go, the freedom of assembly and the freedom of peaceful protest”.³³

ICCPR country review

The List of Issues prior to reporting for France was adopted by the Human Rights Committee at its 132nd session (28 June–23 July 2021) and published on 24 September, 2021.

According to the Committee's simplified procedure, to which France has subscribed, the government of France is expected to reply to the LOIs by July 2022.

List of Issues (LOIs) on pandemic and civic space

We have identified the following LOI as relevant to assess the impact of the pandemic and the adoption of emergency powers on civic space and its fundamental rights and freedom³⁴:

State of emergency (Art. 4)

6. Please provide information about the measures taken by the State party to address the coronavirus disease (COVID-19) pandemic and about the legal basis for any such measures. Please specify whether any such measures derogate from the State party's obligations under the Covenant. If so, please specify whether the measures were strictly required by and proportional to the exigencies of the situation and were limited in duration, geographical coverage and material scope (see CCPR/C/128/2 – the Committee's statement on derogations from the Covenant in connection with the COVID-19 pandemic).

Review of LOIs – strengths and gaps

Under the review of compliance with Article 4, ICCPR (State of emergency), the Human Rights Committee asked a comprehensive question, requesting the government to provide information on the legal framework adopted during the states of emergency declared in response to the coronavirus disease (COVID-19) pandemic and to justify potential derogations to the Covenant as well as their necessity and proportionality in light of the Human Rights Committee's Statement.

Whilst we welcome the breadth of this question, we note that **in this case the Human Rights Committee does not address any of the sweeping restrictions that were imposed on specific ICCPR fundamental freedoms by the government, such**

³³ www.cncd.fr/fr/publications/avis-prorogation-de-letat-durgence-sanitaires-et-libertes-2020-6

³⁴ The full List of Issues is available here: [Treaty bodies Download \(ohchr.org\)](https://treaty.bodies/download/ohchr.org)

as restrictions and even bans on demonstrations, travelling on public transport, movement of people and access to publicly accessible venues.

In May and June 2021, as the level of contamination of individuals was decreasing significantly together with the increasing level of vaccination, a series of legislative texts were adopted with a view to “transitioning” towards the end of the state of health emergency and subsequently ease the regime of exceptions in place since March 2020.³⁵ However, these provisions retain the possibility to order restrictions and/or bans on demonstrations, travelling on public transport, movement of people and access to publicly accessible venues.

In particular, the so-called “Passe Sanitaire” (Health Pass) introduced in July 2021 – which aims to limit the spreading of COVID-19 by allowing access to a certain number of places, events or services, only after presentation of a vaccination certificate, of a negative screening test or a certificate of reinstatement following infection, has raised criticism from the National Commission for Informatics and Freedoms (CNIL), who called, *inter alia*, for the Parliament to review the conditions under which employers process their employees’ medical data to avoid long-term storage of employees’ vaccination certificates, since employers should only keep track of the status of the vaccine.³⁶

The French Ombudsman had already warned in a letter addressed to the French Parliament in May 2020 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.

Furthermore, the LOIs do not take into account other restrictions to the right to privacy and right of peaceful assembly that the French government surreptitiously tabled in the context of the emergency state and pushed through parliament in fast-track procedure even though they were not related to the pandemic.

In November 2020, the French government tabled a new bill on “Global National Security” which became law in May 2021.³⁷ The law delegates powers to municipal police and private security agents and opens 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 in the process and expressed its concern (“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 neighbors.”)³⁸

³⁵ See e.g., Law n. 2021-689 of 31 May 2021 (<https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000043567200>) and Law n. 2021-1465 of 10 November 2021 (<https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000044315202>)

³⁶ <https://www.cnil.fr/fr/les-mises-en-garde-de-la-cnil-sur-lextension-du-passe-sanitaire>

³⁷ <https://www.legifrance.gouv.fr/dossierlegislatif/JORFDOLE000042563668/>

³⁸ <https://www.defenseurdesdroits.fr/fr/covid-19-et-urgence-sanitaire-le-role-du-defenseur-des-droits>

Recommendations to the Human Rights Committee when reviewing France's state report

When considering France's report and its replies to the question on compliance with Article 4, ICCPR, **the Human Rights Committee should pay particular attention to the level of detailed information provided (or lack thereof) on the "transitory regime" of exit from COVID-19 crisis and the ongoing exceptional measures still impacting civic space and especially freedom of movement (Article 12, ICCPR) and freedom of peaceful assembly (Article 21, ICCPR).**

Still in relation to the context of pandemic, when reviewing France's report the Human Rights Committee **should explicitly address the state's excessive recourse to the fast-track procedure – without consulting with relevant institutions and CSOs – to adopt legislation that is there to stay even when the state of emergency is over.**

Recommendations to CSOs

French CSOs should integrate the perspective provided by the LOIs by preparing and submitting their own replies (aka "shadow reports") to the Human Rights Committee, corroborating it with fact-based findings.

Georgia

Background - response to the pandemic

Georgia first declared a state of emergency due to the COVID-19 on 21 March 2020 and since then, the state of emergency has been extended several times. Within this period, the government introduced various limitations to the fundamental freedoms protected under the Covenant, in particular to the freedom of assembly, right to privacy and freedom of movement.

On 21 March 2020, Georgia officially notified the UN Secretary General about its derogation from the ICCPR as per Art. 4(3). More specifically, Georgia derogated from the obligations under Articles 9, 12, 17 and 21 of the ICCPR.³⁹ On 23 May 2020, Georgia extended the derogations from Articles 9, 12, 17 and 21 and in addition, it notified the UN Secretary General also about derogations from Article 14 of the ICCPR.⁴⁰ Last notification on derogations was submitted by Georgia on 30 June 2021, extending the derogations from above Articles of the ICCPR to 1st January, 2022.

³⁹ Note Verbale No. 19/9860, available at: [CN.125.2020-Eng.pdf \(un.org\)](#).

⁴⁰ Note Verbale No. 19/13537, available at: [CN.183.2020-Eng.pdf \(un.org\)](#).

ICCPR country review

Georgia submitted its fifth periodic report on 14 February, 2020. The Human Rights Committee published its LOIs on 19 January 2021. Georgia has already submitted its replies to the LOIs, however, its report is not yet scheduled for review and oral questioning. CSOs have time to prepare their own submission until the announced date of the oral questioning.

List of Issues (LOIs) on pandemic and civic space

We have identified the following LOI as relevant to assess the impact of the pandemic and the adoption of emergency powers on civic space and its fundamental rights and freedom⁴¹:

Coronavirus disease (COVID-19) pandemic (arts. 4, 6 and 12)

11. Please describe the main restrictions on the exercise of rights protected under the Covenant that have been imposed in connection with the COVID-19 pandemic, the legal basis for the restrictions and their compatibility with the Covenant. Please respond to concerns that lockdown measures did not consistently correlate with relevant data on infection numbers.

Internally displaced persons (arts. 2-3, 12 and 24)

14. With reference to the Committee's previous Concluding Observations (para. 17) and the information provided in the State party's report (CCPR/C/GEO/5, paras. 135–138), please comment on reports of the continued need for durable housing solutions, improved living conditions and adequate employment opportunities for internally displaced persons. Please describe the impact that the government programmes and initiatives, including those implemented by the Livelihood Agency, have had on the situation of internally displaced persons. Please also report on the steps taken to mitigate the negative effect of the fencing measures around the administrative boundary lines on the situation of internally displaced persons, particularly in terms of their access to essential services. Please provide information on the impact of the COVID-19 pandemic on conditions for internally displaced persons.

Freedom of expression (arts. 19-20)

21. Please report on the measures taken to ensure the safety of journalists and protect them from attacks and intimidation, including arrests, detentions and criminal charges, and on the progress made in effectively investigating cases of violence against journalists during the reporting period, including the alleged abduction of Azerbaijani journalist Afgan Mukhtarli. Please comment on reports of: (a) political influence on media outlets; (b) criminal investigations conducted against journalists covering the State party's response to the COVID-19 pandemic and into the financial records of directors and owners of media outlets; and (c) use by political parties of inauthentic accounts on social

⁴¹ The full List of Issues is available here: [Treaty bodies Download \(ohchr.org\)](https://www.ohchr.org/Treaty_bodies/Download)

media to spread misinformation on political and public health matters. Please clarify whether the State party plans to amend its defamation law and describe the ongoing or planned consultation process in this respect. Please also provide information on the status of amendments to the Law on Electronic Communications and its compatibility with the Covenant.

Review of LOIs - strengths and gaps

It is commendable that the Human Rights Committee included a comprehensive question in its LOIs covering restrictions to rights and freedoms under Art. 4, 6 and 12, ICCPR during the COVID-19 pandemic. On the other hand, **despite the fact that Georgia derogated from Art. 9, 12, 17 and 21 of the ICCPR, the LOIs do not go in-depth with the requests for information regarding the necessity and proportionality of these derogations, like in the case of Albania.**

In addition, **the LOIs do not contain a specific question related to the restrictions to the right of peaceful assembly (Art. 21).** This is despite a concern with regards to potential misuse of the Code of Administrative Offences against peaceful protestors and other unlawful restrictions to the right of peaceful assembly. The standardized question mentioned above does not cover the right to a peaceful assembly either.

The Parliament adopted amendments to the Code of administrative offences⁴², increasing sanctions for the offenses of the petty hooliganism and police disobedience, and prolonging terms of administrative detention – charges most frequently used against participants of assemblies and manifestations in Georgia. The Code of Administrative Offences of Georgia was adopted in 1984, during the Soviet period and has never gone through a comprehensive reform. The Code includes substantive flaws, such as lack of due process and fair trial guarantees and standard of proof required for holding the person responsible. This is especially problematic in relation to the above underlined offenses of petty hooliganism and police disobedience, considering that the protestors are arrested under these charges, while having no guarantees of fair trial and right to reasoned decision.⁴³

The law enforcement authorities fined the protestors (including activists) that were protesting regarding various issues and requested release of political prisoners, new elections, and demanded the resolution of other acute social issues for violating the curfew as the protest actions continued during the hours when the movement was banned (between 21:00 pm and 05:00 am). Sanctioning protestors for violating the rules of curfew must be assessed as unlawful

⁴² Amendments to the Code of Administrative Offences, available at: [საქართველოს ადმინისტრაციულ სამართალდარღვევათა კოდექსი | სსიპ "საქართველოს საკანონმდებლო მაცნე" \(matsne.gov.ge\)](https://matsne.gov.ge/s/123456789)

⁴³ CSO Meter updates: Georgia: Amendments have intimidating impact on freedom of expression and protest movements, available at: [Georgia: Amendments have intimidating impact on freedom of expression and protest movements | CSOMETER](https://www.cso-meter.org/en/updates/georgia-amendments-have-intimidating-impact-on-freedom-of-expression-and-protest-movements).

interference into the right to peaceful assembly and manifestation, considering that the Law on Public Health of Georgia which authorizes government to enact measures for fighting coronavirus, does not allow restriction of freedom of peaceful assembly. It grants government the right to restrict freedom of movement and gatherings of individuals for conducting social events, but does not refer to assemblies and manifestations. Therefore, the movement of the participants of the protest actions should have been protected under the right of assembly and manifestation.⁴⁴

We also note that the LOIs do not contain a question on the opportunities of CSOs to participate in public matters (Art. 25) during the state of emergency, including the access to public information.

As a result of the emergency situation, the Government in Georgia adopted an ordinance implementing the Presidential Decree N1. The ordinance further articulates restrictions and governmental powers in place for the duration of the emergency. Among other things, the ordinance suspends the timeframe for issuing public information, which means that during the state of emergency the public institutions are not obliged to comply with the deadlines set by the legislation.⁴⁵

Recommendations to the Human Rights Committee when reviewing Georgia's state report

During the oral questioning, the Human Rights Committee should request further information on the articles that Georgia derogated from and ask about the measures taken to ensure compliance with the requirements set out in the Committee's general comment No. 29 (2001) on derogations from provisions of the Covenant during a state of emergency, the Committee's statement on derogations from the Covenant in connection with the COVID-19 pandemic (CCPR/C/128/2) and also as required by section II. (F) of the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights.⁴⁶

During the oral questioning, the Human Rights Committee should ask the State Party to explain why it was necessary to limit access to information and public participation during the state of emergency and how did they ensure compliance with Article 25, ICCPR when adopting the Ordinance on the approval of measures to be implemented in connection with the prevention of the novel coronavirus (COVID-19) in Georgia.

⁴⁴ Quarterly update: COVID-19 & civic freedoms in Georgia, Emergency measures (December 2020- February 2021), available at: [Microsoft Word - Formatted quarterly 2 COVID March 15.docx \(ecnl.org\)](#)

⁴⁵ ECNL/ICNL COVID-19 Civic Freedom Tracker, Ordinance on the approval of measures to be implemented in connection with the prevention of the novel coronavirus (COVID-19) in Georgia, available at: [On the Approval of Measures to be Implemented in connection with the Prevention of the Spread of the Novel Coronavirus \(COVID-19\) in Georgia | სსიპ "საქართველოს საკანონმდებლო მაცნე" \(matsne.gov.ge\)](#)

⁴⁶ UN Commission on Human Rights, *The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*, 28 September 1984, E/CN.4/1985/4, available at: <https://www.refworld.org/docid/4672bc122.html>

Recommendations to the CSOs

With respect to the published LOIs, CSOs should prepare a shadow report that will respond to the issues raised in the LOIs from their own perspective. In its responses, CSOs may want to focus on the issues that could be potentially neglected by the government in its written responses.

In the shadow report, CSOs should respond to the questions asked under Art. 4, ICCPR, on the derogations from the Covenant and whether these were adopted in a participatory process. CSOs should also provide further information that would help the Human Rights Committee to assess whether these derogations were necessary, proportional to the exigencies of the situation and limited in duration.

Ireland

Background – response to the pandemic

In Ireland, the constitutional framework for emergency situations was not activated in response to the COVID-19 pandemic, as the related provisions are limited to situations of war and internal unrest. To address the pandemic, instead, the government adopted several other legislations: in mid-March 2020, Ireland passed the Health Preservation and Protection and Other Emergency Measures in the Public Interest Act 2020 and the Emergency Measures in the Public Interest (COVID-19) Act 2020. Based on the former Act, the government adopted official guidelines that became legally binding regulations in April 2020. Among others, such regulations imposed a travel ban, a curfew, the closure of schools, universities, cultural institutions etc.

ICCPR country review

Following the submission and review of the state party's report on the basis of the standard reporting procedure, the Human Rights Committee published its LOIs for Ireland on 14 January 2021. The State party now has one year from the publication of LOIs to provide its written answers.

List of Issues (LOIs) on pandemic and civic space

We have identified the following LOIs as relevant to assess the impact of the pandemic and the adoption of emergency powers on civic space and its fundamental rights and freedom⁴⁷:

⁴⁷ The full List of Issues is available here: [Treaty bodies Download \(ohchr.org\)](https://www.ohchr.org/Treaty_bodies/Download)

Derogations (arts. 4, 9, 12 and 21-22)

Please provide information about the measures taken by the State party to address the coronavirus disease (COVID-19) pandemic. In particular, please discuss the Health (Preservation and Protection and other Emergency Measures in the Public Interest) Bill 2020 and specify whether its provisions and/or any other measures taken to address COVID-19 derogate from the State party's obligations under the Covenant, including with respect to the rights to freedom of assembly, freedom of movement, liberty and due process. If they do, please specify whether the measures were strictly required by and proportional to the exigencies of the situation and limited in duration, geographical coverage and material scope, as outlined by the Committee in its statement on derogations from the Covenant in connection with the COVID-19 pandemic (CCPR/C/128/2), and whether other States parties were informed of the measures through the Secretary-General of the United Nations.

Non-discrimination (arts. 2-3, 14, 20, 23 and 26-27)

Bearing in mind the Committee's previous recommendations (CCPR/C/IRL/CO/4, para. 23), please indicate the legislative and other measures taken within the reporting period to combat laws and social practices which are discriminatory on the basis of sex, Roma and Traveller status, race, sexual orientation, religion, disability and/or nationality status. Please include information on: (a) how the effective application of the Equal Status Act 2000 is ensured, including a summary of complaints brought under this legislation during the reporting period and their outcomes; (b) the outcomes of equality-related strategies, such as the National Traveller and Roma Integration Strategy 2017–2021, the LGBTI+ National Youth Strategy 2018–2020 and the Migrant Integration Strategy 2017–2020, as well as when the National LGBTI+ Inclusion Strategy will be in place; (c) any measures taken by the State party to ensure that the COVID-19 pandemic does not exacerbate inequality, discrimination and exclusion, including among older persons, women, persons living in poverty, persons with disabilities and persons experiencing homelessness.

Please provide information about the prevalence of hate speech and hate crime, including against religious and racial minorities, Roma and Traveller individuals and/or migrants, and the measures taken to address this within the State party. Please indicate whether there has been any increase in such crimes related to the COVID-19 pandemic and, if so, what specific measures have been taken in response. Finally, please indicate whether the State party intends to enact legislative reform to update the Prohibition of the Incitement to Hatred Act 1989.

Review of LOIs – strengths and gaps

We would like to praise the Human Rights Committee for including a comprehensive question in the LOIs for Ireland on the legal grounds for adopting restrictions to fundamental freedoms during the COVID-19 pandemic. The

question requests information on whether the provisions of the main piece of legislation addressing COVID-19 pandemic, Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act, *de facto* derogated from Ireland's obligations under the ICCPR. On the other hand, the broad formulation of the question provides the State Party ample discretion in deciding how much detailed information to provide in its written responses.

We would also like to point out that **some restrictions to fundamental freedoms (including the right to liberty of movement – Art. 12) were adopted under the second emergency legislation package called Emergency Measures in the Public Interest (COVID-19) Act 2020. This Act is, however, not listed and examined under the above mentioned question in the LOIs.** This is despite the fact that the amendments provide for easier and potentially arbitrary detention of persons under mental health grounds. **Such provision may have potential implications also on the right to equal protection without discrimination (Art. 26, ICCPR).**

In March 2020, the Mental Health Act 2001 was amended through the emergency measures legislative package in response to COVID-19 pandemic. The amendments provided for easier detention of persons under the mental health grounds, e.g. by bypassing the obligation to review detention by the Mental Health Tribunal and removing under key procedural safeguards.⁴⁸

In addition, the Human Rights Committee did not address all recommendations provided by the CSOs in the consultation process prior the adoption of LOIs. CSOs, among other things, raised concerns related to the expansion of powers of Gardai (police), with the adoption of the emergency legislation that also affected the right of peaceful assembly (Art. 21).

Due to the huge expansion of powers for the gardaí (police) by the emergency legislation, cases of inspections, closure orders for various establishments and fines for the exercise of fundamental rights were observed. These included restrictions to the freedom of assembly. The restrictions were not clearly communicated and there were no guidelines on how to enforce them.⁴⁹

Recommendations to the Human Rights Committee when reviewing Ireland's report

During the oral questioning, the Human Rights Committee should ask about necessity and proportionality of the provision of the Emergency Measures in the Public Interest (COVID-19) Act 2020. The question can be similarly formulated as for the Health Act; however, it should also specifically ask about the necessity of the amendments to the Mental Health Act and how these are justifiable and proportionate in the context of COVID-19 pandemic.

⁴⁸ [Human-Rights-in-a-Pandemic.pdf \(iccl.ie\)](#)

⁴⁹ [Rights group calls for analysis of coronavirus restrictions \(irishtimes.com\)](#)

During the oral questioning, the Human Rights Committee should ask about the necessity and proportionality of the expansion of Gardai's powers and whether any independent and transparent oversight processes were established to guarantee the protection of fundamental freedoms, including a right of peaceful assembly.

Recommendations to the CSOs

CSOs in Ireland should submit written responses to the LOIs, providing their own perspective on the issues raised therein, prior to the oral questioning of the State Party. While preparing their responses, CSOs should consider whether some of the issues that are not expressly raised in the LOIs cannot be examined in connection with some of the rights that are included in the LOIs and are therefore in scope of Human Rights Committee's review.

Turkey

Background – response to the pandemic

Turkey did not declare a state of emergency at the outset of the COVID-19 pandemic but nevertheless relied on extraordinary administrative measures to justify a wide range of executive measures restricting fundamental rights. As of March 2020 throughout the year, the government adopted “circulars” that introduced a complex set of restrictions, including weekday and weekend curfews, travel restrictions, suspension of the operation of certain businesses and postponement of all collective meetings and activities of non-governmental organisations. Based on these provisions, officials could also determine the number of people who may enter crowded streets or squares, if necessary.⁵⁰ Such circulars did not include limits of time to their validity or delimitations of their geographic scope and were rather applied broadly on the entire territory until decided otherwise. In April 2021, the government declared a national 17-day lockdown, with only emergency travels allowed subject to permits released by Travel Permit Board of the Ministry of the Interiors.⁵¹ However, at the of the lockdown period, restrictions were only gradually lifted over periods of 15 days and removed in June.⁵²

⁵⁰ See ICNL/ECNL Covid-19 Freedom Tracker – Turkey:

<https://www.icnl.org/covid19tracker/?location=128&issue=&date=&type=>

⁵¹ <https://www.reuters.com/world/middle-east/turkeys-erdogan-adopts-full-closure-until-may-17-over-covid-19-2021-04-26/>

⁵² <https://www.aa.com.tr/en/latest-on-coronavirus-outbreak/lockdown-ends-gradual-normalization-starts-in-turkey/2243890>; and <https://www.hurriyetdailynews.com/turkey-ends-nationwide-31-hour-coronavirus-curfew-165329>

ICCPR country review

The List of Issues prior to reporting for Turkey was adopted by the Human Rights Committee at its 132nd session (28 June–23 July 2021) and published on 25 August, 2021.

According to the Human Rights Committee's simplified procedure, to which Turkey has subscribed, the government of Turkey is expected to reply by July 2022.

List of Issues (LOIs) on pandemic and civic space

We have identified the following LOIs as relevant to assess the impact of the pandemic and the adoption of emergency powers on civic space and its fundamental rights and freedom⁵³:

State of emergency (Art.4)

5. Please provide information about the measures taken by the State party to address the coronavirus disease (COVID-19) pandemic and about the legal basis for any such measures. Please specify whether any such measures derogate from the State party's obligations under the Covenant. If so, please specify whether the measures were strictly required by and proportional to the exigencies of the situation and were limited in duration, geographical coverage and material scope (see CCPR/C/128/2 – the Committee's statement on derogations from the Covenant in connection with the COVID-19 pandemic).

Freedom of expression, peaceful assembly and association (Art. 19, 21 and 22)

24. Recalling the previous recommendation of the Committee (para. 24), please: (a) provide updated information about whether steps have been taken to decriminalize all offences relating to free expression, including defamation and insulting the President, and to bring all parts of the Criminal Code into line with article 19 of the Covenant; (b) describe the provisions in Law No. 5651 and discuss their compatibility with the Covenant and the Constitution; and (c) respond to reports of systematic restrictions on online expression, including the blocking of websites, government requests that social media companies take down content, network shutdowns, and social media users facing criminal proceedings for posts related to the COVID-19 pandemic.

Review of LOIs – strengths and gaps

We welcome the comprehensive question that the Human Rights Committee asked to review Turkey's compliance with Article 4, ICCPR (State of emergency), requesting the government to provide information on the legal framework adopted during the states of emergency declared in response to the coronavirus disease

⁵³ The full List of Issues is available here: [Treaty bodies Download \(ohchr.org\)](https://www.ohchr.org/Treaty_bodies/Download)

(COVID-19) pandemic and to justify potential derogations to the Covenant as well as their necessity and proportionality in light of the Human Rights Committee's statement.

We also praise the formulation of a specific question on Turkey's compliance with the ICCPR standards on freedom of expression, peaceful assembly and association. However, we note that **with regard to "systematic restrictions" in the context of the pandemic, the Human Rights Committee is asking to respond only on those on online freedom of expression, whereas there are many other examples of severe limitations to freedom of expression** (e.g., arrests of journalists accused of "sowing panic and fear" under article 213 of the penal code for publishing information on the virus not officially confirmed by local health authorities⁵⁴) **and on freedom of peaceful assembly**: we draw the Committee's attention, e.g., to the Ministry of the Interiors' circular of March 2020⁵⁵ – which postponed indefinitely "general assemblies of Non-Governmental Organizations (Associations, foundations) and all kinds of meetings and activities of Non-Governmental Organizations, including trainings, that bring people together collectively – as well as the Ministry of Tourism and Culture's circular of April 2020⁵⁶, which prohibited CSOs from conducting general assembly meetings online.

We also regret that the LOIs does not include a specific question on Turkey's compliance with Article 12, ICCPR (freedom of movement) in the context of the pandemic, since we note that one of the above-mentioned government's circulars restricted people over the age of 65 as well as the chronically ill, from leaving their residence, using public transport and walking in in public areas such as parks and roads.⁵⁷

Furthermore, we regret that the LOIs does not include a specific question on Article 17, ICCPR (right to privacy) in the context of the pandemic, since we note that in April 2020, the Health Ministry launched the "Pandemic Isolation Tracking Project" to ensure COVID-19 patients were following quarantine measures. According to these provisions. All confirmed COVID-19 patients were mandated to download the government's app and geo-tracked during their quarantine at home. If they were found to be leaving their homes, they would first receive a warning via SMS, then contacted instantly through the automatic call technology and asked to return to their place of isolation. Failure to comply would be notified to law enforcement bodies to impose administrative sanctions. On top of that, control security teams were set up and tasked with checking individuals' information and location.⁵⁸

⁵⁴ <https://rsf.org/en/news/turkish-journalists-arrested-reporting-covid-19-cases>

⁵⁵ ICNL-ECNL Covid-19 Freedom Tracker - Turkey and <https://www.icisleri.gov.tr/81-il-valiligine-koronavirus-tedbirleri-konulu-ek-genelge-gonderildi>

⁵⁶ ICNL-ECNL Covid-19 Freedom Tracker - Turkey and <https://www.tusev.org.tr/usrfiles/images/E.48829.pdf>

⁵⁷ ICNL-ECNL Covid-19 Freedom Tracker – Turkey and <https://www.icisleri.gov.tr/65-yas-ve-ustu-ile-kronik-rahatsızligi-olanlara-sokaga-cikma-yasagi-genelgesi>

⁵⁸ ICNL-ECNL Covid-19 Freedom Tracker - Turkey and <https://www.iletisim.gov.tr/english/haberler/detay/director-of-communications-altun-shares-a-post-on-pandemic-isolation-tracking-project>

Recommendations to the Human Rights Committee when reviewing Turkey's report

When reviewing Turkey's report on the measures taken to tackle the pandemic, the Human Rights Committee should pay particular attention to the level of detailed information (or lack thereof) provided on measures affecting freedom of movement, freedom of expression, freedom of peaceful assembly and the right to privacy of the people. In particular, the Human Rights Committee should point the State to such measures and challenge them to provide justifications of their strict necessity and proportionality.

Recommendations to CSOs

Civil society organizations – and human rights defenders in particular – should submit substantive responses to the LOIs and provide additional documented information on violations of rights under the ICCPR in the context of the COVID-19 pandemic.

Framework List of Issues (LOIs) on emergency powers and civic space: Recommendations to the Human Rights Committee

ECNL encourages the Human Rights Committee to continue including framework questions in their LOIs related to the use of emergency powers to tackle the COVID-19 pandemic and their impact on civic space for each State Party under ICCPR review in the current and upcoming Cycle. In particular, the Human Rights Committee should always ask the State Party whether a state of emergency was declared – and if so, under which legitimate grounds (e.g., public health, “natural disaster” like in the Albanian example, etc.) – as well as the type of new legislative or regulatory measures adopted to tackle the emergency and to what extent they relied on existing measures instead.

Furthermore, the Human Rights Committee should ask each State Party under review to clarify if there were derogations from any rights under the ICCPR during the response to the COVID-19 pandemic, if such derogations were notified or not and explain why. The Human Rights Committee should also always refer to its Statement on derogations from the ICCPR to ask the country to justify the necessity and proportionality of each measure taken and implemented during the response to the pandemic.

However, it is critical that in the LOIs the Committee always address specific contexts in order to ensure detailed answers that would not be necessarily delivered in response to the framework question on how the country responded to COVID-19 pandemic. Therefore, we encourage the Human Rights Committee to

include in each LOIs specific questions on the impact of the measures taken and implemented in response to the COVID-19 pandemic on civic space-related rights and freedoms, namely the following rights:

- Freedoms of opinion and Expression (Article 19)
- Right of peaceful assembly (Article 21)
- Freedom of association (Article 22)
- Right to participate in public affairs and equal access to public services (Article 25).

We also welcome recurring questions related to the impact of emergency powers during the pandemic on freedom of movement and residence (Article 12), the right to privacy (Article 17) and the right to equal protection without discrimination (Article 26), since they are instrumental pre-conditions of an enabled civic space.

We respectfully propose here an example of framework LOIs related to the use of emergency powers to tackle the COVID-19 pandemic and their impact on civic space for the Human Rights Committee to include in each country review:

State of emergency (Art. 4)

Please report on the State party's legal framework concerning states of emergency, including information on its provisions, sanctions for violations and access to independent judicial oversight of their implementation. In particular, please provide information about the new and/or existing measures taken or implemented by the State party to address the coronavirus disease (COVID-19) pandemic and explain if they included the declaration of a state of emergency, clarifying the legal basis for such declaration. Please also describe the restrictions that the implementation of such measures entailed on the exercise of the rights protected by the Covenant, clarifying which rights were specifically affected, which people or groups were affected, the duration and geographical scope of such restrictions, their legitimate grounds and how they met the requirements of necessity and proportionality of the situation. Bearing in mind the Committee's Statement on derogations from the Covenant in connection with the COVID-19 pandemic, please indicate whether there were any formal derogations from any rights under the Covenant and if so, please explain how they met all the strict requirements outlined by the Statement as well as those outlined by the Committee's General Comment No. 29 (2001) on derogations from provisions of the Covenant during a state of emergency and by section II. (F) of the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights.

Freedoms of opinion and expression (Art. 19)

Please provide information on the legislative framework and any other measures taken by the State party to promote and protect the right to freedom of opinion and expression, including online expression and particularly in the context of the response to the pandemic. Please explain if any such measures entailed restrictions, describe the type of restrictions, including potential

blocking of websites, internet disruptions, government requests that social media companies take down content and social media users facing criminal proceedings for posts related to the COVID-19 pandemic and justify how such restrictions were compatible with the Covenant. Please also clarify if there was a formal derogation to this right under the Covenant: if so, please explain how such derogation met all the strict requirements outlined by the Committee's Statement on derogations from the Covenant in connection with the COVID-19 pandemic.

Right of peaceful assembly (Art. 21)

Please provide information on all the measures taken by the State party to promote and safeguard the right of peaceful assembly, including online. In particular, please describe the specific measures taken or otherwise implemented in response to the COVID-19 pandemic that had an impact on this right and clarify if there was a formal derogation to this right under the Covenant: if so, please explain how such derogation met all the strict requirements outlined by the Committee's Statement on derogations from the Covenant in connection with the COVID-19 pandemic. If there was no such derogation, please clarify which people or groups were affected, the duration and geographical scope of such restrictions, their legitimate grounds and how they met the requirements of necessity and proportionality of the situation.

Freedom of association (Art. 22)

Please provide information on all the measures taken by the State party to promote and safeguard the right of association. In particular, please describe the specific measures taken or otherwise implemented in response to the COVID-19 pandemic that had an impact on this right and clarify if there was a formal derogation to this right under the Covenant: if so, please explain how such derogation met all the strict requirements outlined by the Committee's Statement on derogations from the Covenant in connection with the COVID-19 pandemic. If there was no such derogation, please clarify which people or groups were affected, the duration and geographical scope of such restrictions, their legitimate grounds and how they met the requirements of necessity and proportionality of the situation.

Right to participate in public affairs and equal access to public services (Article 25)

Please indicate whether the State party resorted to special fast-track procedures to adopt legislative or regulatory measures during the state of emergency due to the pandemic and if so, please clarify the legal basis, to what extent the measures adopted related to the response to the health emergency and what safeguards were adopted to ensure meaningful participation in the discussion of the groups affected by such measures, including marginalized and vulnerable groups.

Other suggested framework questions for the LOIs:

Freedom of movement and residence (Art. 12)

Please provide information on all the measures taken and implemented by the State party in the context of the COVID-19 pandemic that restricted the freedom of movement and residence of the people and clarify if there was a formal derogation to this right under the Covenant: if so, please explain how such derogation met all the strict requirements outlined by the Committee's Statement on derogations from the Covenant in connection with the COVID-19 pandemic. If there was no such derogation, please clarify which people or groups were affected, the duration and geographical scope of such restrictions, their legitimate grounds and how they met the requirements of necessity and proportionality of the situation.

Right to privacy (Art. 17)

Please provide information on all the measures taken and implemented by the State party in the context of the COVID-19 pandemic that interfered with the protection of the right to privacy and clarify if there was a formal derogation to this right under the Covenant: if so, please explain how such derogation met all the strict requirements outlined by the Committee's Statement on derogations from the Covenant in connection with the COVID-19 pandemic. If there was no such derogation, please clarify which people or groups were affected, the duration and geographical scope of such restrictions, their legitimate grounds and how they met the requirements of necessity and proportionality of the situation.

Right to equal protection without discrimination (Art. 26)

Please indicate the measures taken by the State party to respect and ensure the right to equal protection and access to public services without discrimination of marginalized and vulnerable groups during the COVID-19 pandemic. Please also indicate whether there has been any increase in hate speech and hate crimes related to COVID-19 pandemic and if so, what specific measures have been taken in response.

Recommendations to civil society organisations (CSOs)

CSOs may engage and submit their input in different stages of the Human Rights Committee's cycle review of their compliance with the ICCPR. Depending on the stage of the review, CSOs can do following:

- **Prior publication of the LOIs**, CSOs could prepare a written submission for the Human Rights Committee, where they elaborate on the compliance of the State Party with commitments included under the Covenant. The submission should be complemented with fact-based findings and examples of specific examples of (potential) breaches of the rights guaranteed by the Covenant.

- **After the publication of LOIs**, CSOs should integrate the perspective provided by the LOIs by preparing and submitting their own replies (aka “shadow reports”) to the Human Rights Committee, corroborating it with fact-based findings. These will serve as a basis for oral questioning of the State Party by the Human Rights Committee.
- **Following the oral questioning of the State Party and publication of Human Rights Committee’s Concluding Observations**, CSOs may help the Human Rights Committee with monitoring implementation of the Concluding Observations. Based on the formulation of the Concluding Observations, CSOs can prepare a shadow report that will include information requested by the Committee from the State Party.



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