

Derogations by States Parties from Article 21 ICCPR, Article 11 ECHR, and Article 15 ACHR on the Basis of the COVID-19 Pandemic

(Information believed correct as of 1 August 2020)

Derogations from Article 21 ICCPR

On 9 March 2020, **Guatemala** became the first state to seek formally to derogate from Article 21 of the 1966 International Covenant on Civil and Political Rights (ICCPR) on the basis of the COVID-19 pandemic. Guatemala's derogation lasts for 30 days.¹ (It subsequently derogated from Article 15 of the American Convention on Human Rights (ACHR.)) On 6 April 2020, Guatemala informed the depository of the ICCPR that it had extended the restrictions by a further 30 days. On 7 May 2020, Guatemala extended the derogation from Article 21 for a further 30 days from 3 April. Further extension were added through to late June 2020. A state of siege was declared throughout the municipalities of Nahualá, Santa Catarina Ixtahuacán and Santa Lucía Utatlán, in the Department of Sololá, for a period of thirty days from late May 2020. Derogation was again extended as of 3 July 2020 and subsequently on 22 July 2020.

A week later, on 16 March 2020, **Latvia** formally derogated from Article 21 ICCPR (as well as Article 12 on freedom of movement and Article 17 on freedom from interference in privacy and family life) on the basis of the COVID-19 pandemic. In its notification, Latvia stated that the emergency situation began on 13 March 2020, and would remain in force until 14 April 2020. Among the measures adopted by the Government of Latvia, all public events, meetings and gatherings have been cancelled and prohibited. (Latvia has made a similar declaration of derogation with respect to Article 11 of the 1950 European Convention on Human Rights (ECHR).) On 21 April 2020, the depository published an extension by Latvia of its derogation under Article 21 ICCPR until 12 May 2020. On 21 May, Latvia announced that it was easing the restrictions and withdrawing its derogation from Article 21.

On 20 March 2020, **Armenia** and **Estonia** both derogated from Article 21 ICCPR (and Article 11 ECHR). In its notification of derogation, Armenia noted that a 30-day state of emergency throughout the country had started on 16 March 2020 and that it was exercising its right of derogation from the obligations under Article 21 of the Covenant (among others). It later extended the derogation to 13 June 2020, later to 13 July 2020, and subsequently to 12 August 2020. Estonia stated that all public gatherings had been prohibited.² (As noted below, both states made similar declarations of derogation with respect to the ECHR.) Estonia subsequently withdrew its derogation effective as of 18 May 2020.

On 23 March 2020, **Ecuador** informed the Secretary-General that it had declared a state of emergency throughout its territory for a period of 60 days by Executive Decree 1017 of 16 March 2020 and that thereby it had derogated from the right of peaceful assembly.³ It extended the state

¹ Guatemala subsequently informed the UN Secretary-General that it was restricting the right of assembly from 22 to 29 March 2020 and that the restrictions might be extended. Text available at: bit.ly/2UBBV6n.

² Text available at: bit.ly/3axy2Vo.

³ Text available at: bit.ly/3dPcyWc.

of emergency for a further sixty days in mid-June 2020. (Ecuador had previously derogated from certain provisions in the ACHR; see below.)

On 3 April 2020, the UN Secretary-General published a notification from **Romania** dated 20 March 2020 in which the Government of Romania informed the depository that it had decreed a state of emergency on the national territory in order to ensure the containment of the spread of SARS-CoV-2 virus. “Some of the measures taken or which will be taken in the context, on the basis of the Decree, may involve derogations from the obligations” under Article 21 ICCPR. (Romania had previously made a similar declaration of derogation with respect to the ECHR.) On 1 May 2020, the depository published an extension of the derogation until 14 May 2020.

On 3 April 2020, the UN Secretary-General published a notification from **Peru** dated 20 March 2020 in which the Government of Peru informed the depository that it had derogated from “the rights related to liberty and security of person, inviolability of the home and freedom of assembly and movement in the territory” and imposed a daily curfew outside the home from 8pm to 5am. (Peru derogated from Article 15 ACHR on 30 April 2020.) On 7 April 2020, the depository published a further notification from Peru whereby the government had extended the state of emergency for a further thirteen days from 31 March 2020, which included the continued suspension of the right of assembly. On 21 April 2020, the depository published Peru’s extension of its derogation for a further 14 days until 26 April 2020. On 27 April 2020, the derogation was further extended until 10 May 2020. It was later extended to 24 May 2020 and subsequently to the end of June. It then further extended at the beginning of July.

On 6 April 2020, the UN Secretary-General published a notification from **Georgia** to the depository regarding the declaration of a state of emergency in the entire territory of Georgia from 21 March 2020 to 21 April 2020 by Decree N1 of the President of Georgia dated 21 March 2020. The decree restricts “assembly, manifestation and gathering” until 21 April 2020. On 27 April 2020, the UN Secretary-General published a further notification from Georgia extending the derogation but without stipulating an end date. It later announced a derogation until 15 July 2020, though noted a gradual easing of the restrictions was underway. Georgia has also derogated from Article 11 ECHR. In July 2020, Georgia announced that despite easing some restrictions it was maintaining its derogation from Article 21 until 1 January 2021.

On 8 April 2020, the UN Secretary-General published a notification from **Palestine** to the depository that measures adopted during the state of emergency may derogate from the obligations of the State of Palestine under the Covenant, including as they pertain to the right to liberty under Article 9, the right to liberty of movement under Article 12 and the right of peaceful assembly under Article 21, “to the extent strictly required to contain and combat the spread of the virus”. The measures adopted by the Government of Palestine are “not inconsistent with other obligations under international law and do not involve discrimination on the grounds of race, colour, sex, religion or social origin”.

On 9 April 2020, **Chile** informed the depository that in order to protect the life, health and safety of the population, and in the context of the declaration of a state of emergency, the competent authorities, in accordance with the instructions given by the President of the Republic, have restricted the exercise of two rights set out in the ICCPR: liberty of movement (article 12) and freedom of assembly (article 21)”. It extended the state of emergency for 90 days by notification to the depository in mid-June 2020. Chile has also derogated under the ACHR (see below).

On 14 April 2020, the depository published a notification of derogation from Article 21 by **Kyrgyzstan** in which it declared that it had, on the basis of a presidential decree, “forbidden to conduct spectacular, sports and other public events, as well as strikes, meetings, rallies, street processions, demonstrations and pickets” from 25 March to 15 April 2020. This was later extended until 10 May 2020.

On 14 April 2020, the depository published a notification of derogation from Article 21 by **Colombia**, which has also derogated from Article 15 ACHR. On 24 April 2020, the depository published a notification from Colombia that the state of emergency and associated derogation had come to an end on 16 April 2020. (Its derogation from Article 15 ACHR was subsequently renewed.) Colombia later declared a new derogation until 4 June 2020 whereby it was temporarily suspending Articles 12, 13, 19 and 21 of the Covenant. It subsequently extended the derogation at the beginning of June 2020 but later appear to have withdrawn its derogation by letter to the depository of 5 June 2020.

On 21 April 2020, the depository published a notification of derogation of 14 April from **El Salvador**, whose measures during a 30-day state of emergency included the prohibition of crowd gatherings. On 27 April 2020, the depository published a further notification of derogation from the right of peaceful assembly until the end of April. This was later extended until 16 May 2020 and subsequently to 29 May 2020.

On 23 April 2020, the depository published a notification of derogation from Article 21 ICCPR from **San Marino** until 4 May 2020. Mass gatherings are prohibited in parks, squares, and public gardens while all organised events, congresses, meetings, assemblies, as well as events in public or private places, including social, cultural, recreational, sporting and religious events and fairs, even if held in closed places but open to the public, are suspended. San Marino had previously derogated from Article 11 ECHR. On 13 May 2020, the depository published a notification by San Marino of a “partial reduction of the restrictive measures adopted to deal with Covid-19 health emergency with regard to freedom of movement, assembly and association.” On 1 July 2020, the

On 4 May 2020, **Moldova’s** derogation from the ICCPR until 15 May 2020, in particular Articles 12 and 21, was published by the depository. It subsequently informed the depository that on expiry of the derogation the state of emergency was not renewed and therefore the derogation was formally withdrawn.

On 5 May, **Ethiopia** announced to the depository that it was partially derogating from a series of rights, including of peaceful assembly, seemingly for five months from 8 April 2020.

On 25 June 2020, the **Dominican Republic** informed the depository that it was derogating from various obligations under the ICCPR, including the right of assembly.

On 6 July, **Senegal** informed the depository that during its period of state of emergency (23 March–30 June 2020), Senegal exercised its right to derogate from its obligations under articles 12 and 21 of the Covenant. It had ceased derogating as of 30 June 2020.

In July 2020, **Namibia** formally derogated from the ICCPR, including Article 21, initially for a period of several months during a national state of emergency resulting from COVID-19.

The Human Rights Committee has previously stated in its General Comment 29 on Article 4 that states of emergency must be limited to the extent strictly required by the exigencies of the situation, “relating to the duration, geographical coverage and material scope, and any measures of

derogation resorted to because of the emergency”.⁴ In its latest General Comment, No. 37, specifically on the right of peaceful assembly, issued in July 2020, the Committee stated that: “State parties must not rely on derogation from the right of peaceful assembly if they can attain their objectives by imposing restrictions in terms of article 21.”⁵

Some states have imposed restrictions on the right to freedom of assembly while others have derogated from the right on the basis of the extent of the global public health crisis. Other states have taken far-reaching measures restricting assemblies on their territory but have not sought to either formally restrict or derogate from the right of peaceful assembly under international law.

Derogations from Article 11 ECHR

On 17 March 2020, **Romania** also derogated under the 1950 European Convention on Human Rights. It declared a national 30-day state of emergency as a result of COVID-19. The decree determined that the exercise of the right to freedom of assembly protected in Article 11 (and other derogable rights) is restricted, “proportionally” with the degree of spread of the virus. On 2 April 2020, Romania informed the Council of Europe of further measures it had taken under a series of military ordinances in relation with the state of emergency. On 14 April 2020, Romania informed the Council of Europe it had quarantined the city of Tândărei in Ialomița county by military ordinance. On 21 April 2020, Romania declared that it extended the national state of emergency for a further 30 days from 15 April. On 12 May 2020, Romania informed the Council it was taking additional measures in accordance with Military Ordinance 11 of 11 May 2020, on measures to prevent the spread of COVID-19. Measures to lift the lockdown of the city of Suceava and eight neighbouring localities were taken under Military Ordinance 12 of 13 May 2020.

On 19 March 2020, **Armenia** informed the Council of Europe that it had declared a state of emergency across the country’s whole territory from 16 March 2020, 18:30, to 14 April 2020, 17:00. The state of emergency included restrictions and prohibitions on assemblies and public events, which in fact comprised a prohibition on organising and holding assemblies and strikes as well as participating therein. On 17 April 2020, Armenia declared it had extended the restrictions for a further 30 days until 14 May 2020. On 14 May 2020, Armenia declared that it had further extended the state of emergency for 30 additional days to 13 June 2020. This was later extended to 13 July 2020 and subsequently to 12 August 2020.

Also on 19 March 2020, the Council of Europe received a note verbale from **Moldova**, dated the previous day, by which it informed the Council about the decision of the Parliament of the Republic of Moldova to declare a state of emergency on 17 March 2020 as a critical measure to stop the spread of COVID-19. The state of emergency has been instituted for a period of 60 days, from 17 March to 15 May 2020 throughout the territory of Moldova. The state of emergency included a prohibition on public meetings and gatherings and other mass events.

On 20 March 2020, **Estonia** informed the Council of Europe that it had decreed a national state of emergency until 1 May 2020. Under subsection 32(1) of the Emergency Act, from 13 March to 1 May 2020 all public gatherings are prohibited. On 16 May 2020, the Government of Estonia decided to end the emergency situation in Estonia as of 18 May 2020.

⁴ Human Rights Committee, “General Comment No. 29: States of Emergency (Article 4)”, UN doc. CCPR/C/21/Rev.1/Add.11 (2001), para. 4.

⁵ Human Rights Committee, “General Comment No. 37: Article 21: right of peaceful assembly”, UN doc. CCPR/C/GC/37, 27 July 2020, para. 96.

On 21 March 2020, the President of **Georgia** declared a state of emergency throughout Georgia, a decision that was approved by the Georgian Parliament the same day. The current epidemic situation in Georgia, the authorities informed the Council of Europe, “has reached the point of public emergency threatening the life of the nation under Article 15(1) of the Convention necessitating further and now exceptional measures to ensure safety and protection of public health”. Presidential Decree N1 of 21 March 2020 restricted certain fundamental human rights and freedoms enshrined in the Constitution of Georgia leading to, among others, “restrictions of assembly, manifestation and gathering”. Accordingly, Georgia derogated from the rights of liberty and security, to family life, and the right of peaceful assembly under the ECHR. On 23 April 2020, Georgia informed the Council of Europe that its state of emergency had been extended until 22 May 2020. On 25 May 2020, Georgia announced that it was extending “certain” derogations from the ECHR, including with respect to Article 11, but that the Government “has already started gradual lifting of certain restrictions since 27 April 2020”. It subsequently informed the depository that it was maintaining its derogation through to 1 January 2021.

On 31 March 2020, **Albania** informed the Secretary-General of the Council of Europe that it had restricted “assembly, manifestation and gathering” among other rights and that it was derogating from “certain obligations” of Albania under Article 11 of the Convention. On 12 May 2020, Albania informed the Council of Europe it was continuing its restrictions until 23 June 2020. It withdrew its derogation from Article 11 on 24 June 2020.

On 1 April 2020, **North Macedonia** informed the Secretary-General of the Council of Europe that it had restricted public assemblies, cancelling all public events, meetings and gatherings, and stated that the application of these measures “may influence the exercise of certain rights and freedoms under the Convention and in some instances give reason for the necessity to derogate from certain obligations of the Republic of North Macedonia” under Article 11 ECHR. North Macedonia extended the derogation for a further 30 days, giving notice on 29 April 2020. It later extended the derogation for a further 14 days from 16 May by note verbale of 22 May 2020. It again extended the derogation for a further 14 days from the end of May. In mid-June, North Macedonia derogated for a period of 8 days with a view to preparing elections. It withdrew its derogation from Article 11 on 29 June 2020.

On 6 April 2020, **Serbia** informed the Secretary-General of the Council of Europe that the decree of a state of emergency issued on 15 March 2020 contained measures that “have derogated from certain obligations provided for in the European Convention on Human Rights to the extent strictly required by the exigencies of the epidemiological situation and medical necessity”. Serbia did not detail in its notification which rights were being derogated from but stated that their action was consistent with Article 15 ECHR, which exempts certain fundamental rights from the possibility of derogation.

On 10 April 2020, **San Marino** informed the Council of Europe that Decree-Law 59 of 4 April 2020 involved action that implied derogations from certain articles under the European Convention. The measures adopted thus far remained in force until 20 April 2020. On 22 April 2020, San Marino extended its derogation for a further 30 days. On 13 May 2020, the Council of Europe registered the loosening of restrictions by San Marino. It withdrew the derogations on 1 July 2020.

On 16 April 2020, **Latvia** informed the Council of Europe that it had prolonged the state of emergency in the entire territory of the Republic of Latvia, including its derogation from Article 11 ECHR, until 12 May 2020. On 14 May 2020, the Government of Latvia declared that it had prolonged the emergency situation in its entire territory until 9 June 2020. On 2 June, Latvia declared it was withdrawing its derogation from Article 11 effective 9 June 2020.

Other states have taken similar measures but have not sought to either formally restrict or derogate from the right of peaceful assembly under international law. For instance Italy, which has now seen a higher number of deaths from COVID-19 than those reported by China, prohibited by law all gatherings of people from 11 March 2020 across the entire country. Violations of the law are a criminal offence. Similar provisions were in place in France, which ordered people to stay at home unless they have one of a limited series of grounds to be outside. On 14 March 2020, Spain also declared a state of emergency, imposing strict limitations on movement with exceptions for primary needs or professional requirements. As of late May 2020, the lockdown in these countries was being progressively eased.

Derogations from Article 15 ACHR

On 17 March 2020, **Ecuador** informed the Secretary-General of the Organization of American States (OAS) that it had derogated from the right of assembly for a period of 60 days and annexed a copy of Executive Decree No. 1017, issued on 16 March, in which the President had suspended the right of assembly. This was later extended in mid-May and again in mid-June 2020.

On 19 March 2020, **Colombia** sent the OAS a copy of a Decree 417 of 17 March 2020 in which it suspended all events of more than 500 persons. A week later, Colombia wrote to the OAS with a list of decrees, which included the suspension of all public assemblies. On 3 April 2020, Colombia informed the OAS that it had taken budgetary and other measures on the basis of further decrees, including action in favour of the vulnerable. On 13 April 2020, Colombia informed the OAS that it had prolonged the suspension of certain human rights until 27 April 2020. On 27 April 2020, Colombia informed the OAS that it had adopted a new decree mandating isolation for everyone in Colombia until 11 May 2020. It subsequently extended the restrictions until the end of May 2020.

On 23 March 2020, **Guatemala** informed the OAS that it had declared a state of national health disaster across its territory. In an annexed letter to the Secretary-General of the OAS, it announced limitations on the exercise of the right of peaceful assembly although it did not declare formally that it was derogating from Article 15 ACHR. In a letter of 25 March to the Secretary-General of the OAS, Guatemala observed that the state of emergency had been prolonged for a further 30 days. On 29 March 2020, the derogation was further extended until 3 May. This was further extended as of mid-May 2020 and then for the whole of June. It was further extended in July 2020.

On 25 March 2020, **Panama** informed the OAS that two government decrees had outlawed all but essential movement on its territory, including the imposition of a curfew. It subsequently extended the restrictions on movement by notice of 8 June 2020, attaching a new resolution from the Ministry of Health dated 6 June. It was further extended in July 2020.

On 26 March 2020, **Honduras** informed the OAS that the President had issued Executive Decree PCM/022/2020 of 21 March derogating from certain constitutionally guaranteed rights, including of assembly. On 8 April 2020, the OAS General Secretariat received a Note Verbale on the suspension of guaranties from Honduras attaching Executive Decree PCM-028-2020, which prolonged the derogation of the right of assembly (and other rights) for a further period of seven days beginning on 5 April 2020. In May 2020, the restrictions were further extended until 24 May 2020. They were further extended in July 2020.

Also on 26 March 2020, **Bolivia** informed the OAS that Supreme Decree 4196 of 17 March had prohibited all gatherings across the territory. The same day, **Chile** informed the OAS that it was limiting the right of assembly under Article 15 ACHR. On 20 April 2020, Bolivia informed the OAS that

it had extended its derogation from the ACHR until 30 April 2020. On 4 May 2020, Bolivia informed the OAS that it had extended its derogation from the ACHR for the whole of May. It later extended until end July 2020.

On 27 March 2020, **Argentina** informed the OAS that it had closed its external borders. On 1 April 2020, informed the OAS that Decree 325/2020 had extended the application of public health measures previously taken until 12 April 2020. It subsequently prolonged the strict measures by information to the OAS on 29 May 2020 consonant with Decree 493/2020 and again by Decree 576/2020 on 29 June 2020. Derogation was extended in July 2020.

On 30 March 2020, **Peru** informed the OAS that it further derogated from its application of Article 15 ACHR for a period of 13 days beginning on 31 March 2020. It subsequently extended the derogation until 10 May 2020.

On 1 April 2020, **El Salvador** informed the OAS that it had derogated from the application of certain constitutional rights as of 29 March for a period of 15 days, including the right of peaceful assembly.⁶

On 20 April 2020, the **Dominican Republic** informed the OAS that it was derogating from obligations under the ACHR in accordance with Decree 151-20 of 17 April 2020 that imposed a curfew from 5pm to 6am nationwide until 30 April 2020. On 30 April, the OAS were informed of a further derogation until 17 May 2020. This was further extended for 15 days from 18 May 2020 and again for 12 days from the beginning of June. A further extension was announced until 29 June 2020. On 28 June, the Dominican Republic informed the OAS that it was ending its derogation. It confirmed this occurred on 1 July 2020. In July 2020, the Dominican Republic informed the OAS that social distancing measures would restrict the application of Article 15 on right of assembly.

On 4 May 2020, **Suriname** informed the OAS that it had declared a state of civil emergency for three months beginning on 9 April 2020.

On 8 May 2020, the OAS General Secretariat received a Note Verbal on the suspension of guaranties by **Paraguay**. A further note extending the derogation was received on 29 May 2020. This occurred again in mid-June and again in July 2020.

On 16 July 2020, the OAS General Secretariat received a Note Verbal on the suspension of guaranties by **Jamaica**.

⁶ Text available at: bit.ly/345k7Uk.