



International Covenant on Civil and Political Rights

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Human Rights Committee

Statement on derogations from the Covenant in connection with the COVID-19 pandemic*

1. A number of States parties to the International Covenant on Civil and Political Rights have in recent weeks notified the Secretary-General, pursuant to article 4 of the Covenant, of emergency measures that they have taken or are planning to take with a view to curb the spread of the coronavirus (COVID-19) pandemic, in derogation from their obligations under the Covenant. It has been brought to the attention of the Committee, however, that several other States parties have resorted to emergency measures in response to the COVID-19 pandemic in a manner seriously affecting the implementation of their obligations under the Covenant, without formally submitting any notification of derogation from the Covenant. The Committee calls upon all State parties that have taken emergency measures in connection with the COVID-19 pandemic that derogate from their obligations under the Covenant to comply without delay with their duty to notify the Secretary-General thereof immediately, if they have not already done so.

2. The Committee is of the view that, in the face of the COVID-19 pandemic, States parties must take effective measures to protect the right to life and health of all individuals within their territory and all those subject to their jurisdiction. It also recognizes that such measures may, in certain circumstances, result in restrictions on the enjoyment of individual rights guaranteed by the Covenant. Furthermore, the Committee acknowledges that States parties confronting the threat of widespread contagion may, on a temporary basis, resort to exceptional emergency powers and invoke their right of derogation from the Covenant under article 4 provided that it is required to protect the life of the nation. The Committee wishes nonetheless to remind States parties of the requirements and conditions laid down in article 4 of the Covenant and explained by the Committee in its general comments, particularly in general comment No. 29 (2001) on states of emergency, in which it provided guidance on the following aspects of derogations: the official proclamation of a state of emergency; formal notification to the Secretary-General; the strict necessity and proportionality of any derogating measure taken; the conformity of measures taken with other international obligations; non-discrimination; and the prohibition on derogating from certain non-derogable rights. In particular, States parties must observe the following requirements and conditions when exercising emergency powers in connection with the COVID-19 pandemic:

(a) Where measures derogating from the obligations of States parties under the Covenant are taken, the provisions derogated from and the reasons for the derogation must be communicated immediately to the other States parties through the Secretary-General. Notification by a State party must include full information about the derogating measures taken and a clear explanation of the reasons for taking them, with complete documentation of any laws adopted. Further notification is required if the State party subsequently takes additional measures under article 4, for instance by extending the duration of a state of emergency. The requirement of immediate notification applies equally to the termination of

* Adopted by the Committee on 24 April 2020.



the derogation. The Committee considers the implementation of the obligation of immediate notification essential for the discharge of its functions, as well as for the monitoring of the situation by other States parties and other stakeholders;

(b) Derogating measures may deviate from the obligations set out by the Covenant only to the extent strictly required by the exigencies of the public health situation. Their predominant objective must be the restoration of a state of normalcy, where full respect for the Covenant can again be secured. Derogations must, as far as possible, be limited in duration, geographical coverage and material scope, and any measures taken, including sanctions imposed in connection with them, must be proportional in nature. Where possible, and in view of the need to protect the life and health of others, States parties should replace COVID-19-related measures that prohibit activities relevant to the enjoyment of rights under the Covenant with less restrictive measures that allow such activities to be conducted, while subjecting them as necessary to public health requirements, such as physical distancing;

(c) States parties should not derogate from Covenant rights or rely on a derogation made when they are able to attain their public health or other public policy objectives by invoking the possibility to restrict certain rights, such as article 12 (freedom of movement), article 19 (freedom of expression) or article 21(right to peaceful assembly), in conformity with the provisions for such restrictions set out in the Covenant, or by invoking the possibility of introducing reasonable limitations on certain rights, such as article 9 (right to personal liberty) and article 17 (right to privacy), in accordance with their provisions;

(d) States parties may not resort to emergency powers or implement derogating measures in a manner that is discriminatory, or that violates other obligations that they have undertaken under international law, including under other international human rights treaties from which no derogation is allowed. Nor can States parties deviate from the non-derogable provisions of the Covenant – article 6 (right to life), article 7 (prohibition of torture or cruel, inhuman or degrading treatment or punishment, or of medical or scientific experimentation without consent), article 8, paragraphs 1 and 2 (prohibition of slavery, the slave trade and servitude), article 11 (prohibition of imprisonment because of inability to fulfil a contractual obligation), article 15 (principle of legality in the field of criminal law), article 16 (recognition of everyone as a person before the law) and article 18 (freedom of thought, conscience and religion) – or from other rights that are essential for upholding the non-derogable rights found in the aforementioned provisions and for ensuring respect for the rule of law and the principle of legality even in times of public emergency, including the right of access to court, due process guarantees and the right of victims to obtain an effective remedy;

(e) Furthermore, States parties may not derogate from their duty to treat all persons, including persons deprived of their liberty, with humanity and respect for their human dignity, and must pay special attention to the adequacy of health conditions and health services in places of incarceration, and also to the rights of individuals in situations of confinement, and to the aggravated threat of domestic violence arising in such situations. Nor can States parties tolerate, even in situations of emergency, the advocacy of national, racial or religious hatred that would constitute incitement to discrimination, hostility or violence, and they must take steps to ensure that public discourse in connection with the COVID-19 pandemic does not constitute advocacy or incitement against specific marginalized or vulnerable groups, including minorities and foreign nationals;

(f) Freedom of expression and access to information and a civic space where a public debate can be held constitute important safeguards for ensuring that States parties resorting to emergency powers in connection with the COVID-19 pandemic comply with their obligations under the Covenant.