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Human Rights and COVID-19: A guidance note for parliaments

This note offers guidance on how parliaments can ensure that State interventions in the COVID-19 crisis are fully consonant with international human rights standards. It includes specific examples of action taken by parliaments across the globe to promote a human rights approach to national health responses.

At the outbreak of an unprecedented crisis due to an external threat, the political establishment and population often present a united front on the national level. As a result, early on, the Government is given extensive leeway to take steps to respond to the crisis.

In the wake of COVID-19, many countries have taken sweeping steps – even declared states of emergency – to slow down or stop its spread in a bid to protect the public health of their populations. Most of these steps have important consequences for the enjoyment of human rights.

It is crucial that basic human rights standards and principles guide States' efforts in response to the health crisis and that parliaments exercise their legislative and oversight functions fully to see to it that States' actions are compatible with their human rights obligations. This applies to States' efforts to limit the enjoyment of certain human rights, to promote the implementation of other rights – in particular the right to health, and to offset the undesirable indirect effects of their crisis response on social and economic rights.

Permissible restrictions to human rights

Under international human rights law, the exercise of certain fundamental rights can never be curtailed, even during states of emergency. These “absolute” human rights include the prohibitions on torture, on slavery and on retroactive criminal laws. Most rights, however, are not absolute in character. States can limit the exercise of these rights for valid reasons as long as they respect a number of conditions. This includes the rights to freedom of expression, freedom of association, freedom of assembly and of movement, and the right to privacy.

However, limitations to these rights are lawful only if certain conditions are met. One such requirement under international human rights law is that the restrictions pursue – what is called – a “legitimate aim”, which includes the protection of public health, as is the case in the fight against COVID-19. However, the following questions also have to be answered affirmatively for the health measures to pass the human rights test:

- Is there a legal basis in national law for the measure limiting the right?
- Does the restriction respect the principle of equality? Is it non-discriminatory?
- Is the limitation necessary and proportionate to protecting public health? This means that the limitation must be appropriate (i.e. will reasonably lead) to the protection of public health in the face of COVID-19 and must be the least intrusive instrument amongst those which might achieve this objective. The

requirement of proportionality also means that the benefits of the limitation must outweigh its harm.

It is important that restrictions are seen as temporary. For instance, on 21 March 2020, the Norwegian Parliament adopted the Enabling Act authorizing the Government to make decisions which, according to the Constitution, must be taken in Parliament. The aim is to enable the Government to take measures to limit the disruption of the normal functioning of society and mitigate the negative consequences of the pandemic for the population and on the economy. The Act is valid for a month but can also be repealed by the Norwegian Parliament at any time.

In response to COVID-19, several States are using tools that track and monitor the behaviour and movements of individuals. In order to stand the necessity and proportionality tests, such surveillance and monitoring should be specifically related to and used for public-health-specific aims and should be limited in both duration and scope as required in this particular situation. In Israel, the Supreme Court has ruled that a parliamentary committee must be set up to oversee emergency powers given to the Israeli Security Agency that allow it to use surveillance technology to track the movements of people with COVID-19.

Although restrictions to freedom of movement may be warranted to halt the spread of the virus, limitations to the right to freedom of expression may be very difficult to justify and may be considered unnecessary or disproportionate. Of course, any stigma, discrimination, racism and xenophobia against certain national and ethnic groups following the outbreak of the COVID-19 pandemic should be addressed and concerted efforts should be made at the international and national levels to counter false or misleading information that fuels fear and prejudice. At the same time, in the face of the current health crisis, respect for freedom of expression, including the right to freedom of information, is all the more crucial. It is therefore important that governments ensure that information reaches those affected by the virus and that people have the broadest possible access to internet. They should also do everything possible to enable medical professionals and relevant experts, including scientists, to speak freely and share accurate and vital information with each other and the public.

States of emergency and respect for human rights

The principles of “legality”, “necessity”, “proportionality” and “non-discrimination” also apply when States proclaim a state of emergency. In addition, given its far-reaching nature, States also need to comply with the following for states of emergency to be lawful:

- The principle of proclamation, which refers to the need for the state of emergency to be announced publicly. Most legal systems provide for parliament to be actively involved either in the proclamation of a state of emergency or in its ratification once the executive has decreed it.
- The principle of communication, which refers to the obligation to duly inform the other States parties to the relevant United Nations human rights treaties, often the International Covenant on Civil and Political Rights, through their respective depositaries.
- The principle of temporality, which refers to the exceptional nature of the declaration of a state of emergency and its necessarily limited duration in time.

- The principle of exceptional threat, which requires the crisis to present a real, current or at least imminent danger to the community.

The case of Switzerland: In order to deal with the coronavirus crisis, the Swiss Government or Parliament may issue emergency ordinances or take emergency decisions. The emergency ordinances of the Government need to be approved by Parliament or they will cease to be in force after six months. The emergency ordinances of Parliament are preferred over those of the Government since they have greater democratic legitimacy and can also guarantee to Parliament the possibility of monitoring and correcting the measures taken by the Government.

Ensuring a human rights dimension in the public health response

While it may seem relatively obvious that widespread and far-reaching restrictive measures have an immediate impact on the enjoyment of human rights, government action or inaction in response to a health crisis can also reveal other negative human rights effects. It is therefore important that parliaments assess the situation and propose concrete steps to address any shortcomings in this regard.

For instance, in the United Kingdom, the Parliament's Joint Committee on Human Rights announced an inquiry into the human rights implications of the Government's response to the coronavirus crisis.

Another example of dedicated scrutiny is New Zealand where Parliament agreed on 25 March to establish an Epidemic Response Committee with government and opposition members of parliament to scrutinize government actions.

In Timor-Leste, Parliament debated a resolution on 23 March tabled by the three biggest parliamentary groups setting out urgent measures to respond to the impact of COVID-19 and protect citizens' rights, essential services and the supply of goods, and outlining proportionate responses to various specific scenarios.

Similarly, in Ecuador, during a seven-hour remote meeting, the National Assembly agreed on a draft resolution setting out political and social commitments to deal with the COVID-19 crisis. During the debate, MPs insisted on the importance of continuing to exercise parliamentary oversight over the executive and of ensuring transparency and access to information.

One area in which it is crucial that States take the human rights dimension into account is in making available medical treatment. Indeed, such treatment should be available to everyone without discrimination: no one should be denied treatment because they lack the means to pay for it or suffer stigma. States also need to make an additional effort to identify people who may be at risk of being missed or excluded from treatment or information campaigns, such as national, ethnic or religious minorities, indigenous peoples, migrants and refugees, older persons, persons with disabilities, or LGBTI people.

As people are being called upon to stay at home, it is also important that governments take urgent measures to help people without adequate housing.

Good practices are emerging in a few countries, including: moratoriums on evictions due to rental and mortgage arrears; deferrals of mortgage payments for those affected by the virus; extension of winter moratoriums on forced evictions of informal settlements; and increased access to sanitation and emergency shelter spaces for homeless people.

The response to COVID-19 also has enormous economic consequences and often directly jeopardizes the human right to a decent standard of living.

Several parliaments, including those of Canada, Denmark, Ecuador, Latvia, New Zealand, Norway, Republic of Korea, Switzerland and Timor-Leste, have put in place legislation or taken other steps to alleviate the negative socio-economic effects of the crisis, for instance by ensuring guaranteed paid sick leave, extended unemployment benefits and/or income support to businesses.

In addition, the Parliament of Singapore passed three bills to ensure the realization of economic and social rights amid the crisis, including a bill to assist all those who are unable to fulfil their contractual obligations – including tenants, but also people at risk of falling into poverty who have made deposits or other financial commitments.

The Parliaments of Luxembourg and Slovenia adopted large stimulus packages to support employees' leave, provided wage subsidies, and introduced a form of temporary basic income for the self-employed, while also deferring or easing tax and social security payments.

The Parliament of Palau adopted an increased budget to ensure public services remain operational amidst the shortfall in tourism. In Ukraine, the Parliament adopted measures to protect medical personnel, while also raising their wages threefold and allowing medical costs to be deducted from income tax.

The Parliament of Australia adopted additional allowances for unemployed youth, parents and farmers, and introduced a waiver on waiting periods for social benefits while also removing or simplifying certain social security claim procedures.

Additional relevant background information on parliaments, human rights and COVID-19 can be found at:

- *Guidance on COVID-19 and human rights (2019, Office of the UN High Commissioner for Human Rights (OHCHR):*
<https://www.ohchr.org/EN/NewsEvents/Pages/COVID19Guidance.aspx>
- *Handbook for parliamentarians on human rights (2016, IPU/OHCHR):*
<https://www.ipu.org/resources/publications/handbooks/2016-10/human-rights>
- *Handbook for parliamentarians on freedom of expression (2018, IPU):*
<https://www.ipu.org/resources/publications/handbooks/2018-10/freedom-expression-parliaments-and-their-members-importance-and-scope-protection>

The IPU would appreciate hearing of examples of such parliamentary engagement in the area of human rights which it would make available. You are therefore kindly requested to share such examples with hrteam@ipu.org.