

VIEWPOINT

Applying Siracusa: A Call for a General Comment on Public Health Emergencies

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The COVID-19 pandemic is a public health emergency—as of 23 April 2020 there were over 2.7 million cases, with over 190,000 deaths globally.¹ Under the International Covenant on Civil and Political Rights (ICCPR), states may restrict certain rights during public emergencies that threaten the life of the nation to the extent that they are “strictly required by the exigencies of the situation.”² COVID-19 can be a fatal disease without known methods of prevention and treatment. Given this situation, the question is not *if*, but *how* states may restrict rights to try to control the pandemic.

The Siracusa Principles are a foundation on which to build. The principles outline the limits on rights restrictions that states may take during emergencies. Under Siracusa, restrictions are only justified when they support a legitimate aim and are: provided for by law, strictly necessary, proportionate, of limited duration, and subject to review against abusive applications.³ States’ measures must also be evidence-based and neither arbitrary nor discriminatory. Any curtailment of rights must consider the disproportionate impact on specific populations or marginalized groups. However, because these principles are meant to apply broadly to all public emergencies, they are difficult to operationalize in public health crises. This is especially true because public health crises are diverse: the dynamics of transmission, the severity of illness, the availability of treatment, and control measures all vary immensely. For new disease outbreaks, uncertainty around all these factors make assessing the degree to which responses are evidence-based or arbitrary extremely challenging.

Recognizing this gap, some global institutions—including UNAIDS and the Global Fund—have issued guidance on human rights and COVID-19.⁴ While these documents are useful in highlighting key human rights concerns, overall legal guidance on human rights is needed from the authoritative body on the interpretation of the ICCPR: the Human Rights Committee.

Through its General Comments, the Human Rights Committee provides useful guidance on how states can craft rights-aligned laws, policies, and practices. To date, however, its General Comments have not specifically addressed rights restrictions in public health emergencies.⁵ The COVID-19 pandemic highlights a longstanding need for specific guidance on rights derogations related to public health issues.⁶ Key topics for this General Comment may include the necessity and proportionality of state responses and the misuse of emergency powers during the pandemic.

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State responses: Quarantines, isolation, and lockdowns

In attempts to slow the spread of COVID-19, over one third of the world's population—an estimated 2.6 billion people—is experiencing some form of broad quarantine and social distancing measures, colloquially known as “lockdowns.”⁷ These range from measures that cover specific regions or provinces to those that apply to entire countries. The measures also range in severity, with some countries allowing for essential activities regardless of distance or time, while others dictate specific travel limits and apply curfews. In addition to general social distancing measures, if a person is diagnosed with COVID-19, they may be ordered to stay in isolation. Alarming, many countries are turning to criminal penalties to enforce compliance with public health measures, including criminalization of COVID-19 exposure and transmission.⁸

When states enact public health measures that restrict rights, they must nevertheless meet certain core human rights obligations. They must ensure that people's basic needs are met, including for food, water, sanitation, and shelter. They must also guard against disproportionately harsh impacts on, or application to, marginalized communities. In addition, people who suffer economic losses due to public health measures are entitled to fair compensation.⁹ Importantly, all these measures should be subject to remedy and review. During and after the acute phase of a crisis, there should be analysis and discussion to ensure that public health measures were evidence-based, necessary, and proportionate based on the available science, public health concerns, and human rights norms.

Misuse of emergency powers and political opportunism

Even prior to the emergence of COVID-19, the lack of specific human rights guidance on public health threats, and the lack of definition on what constitutes a public health emergency more generally, has given states the opportunity to restrict rights under the guise of responding to public health crises.¹⁰ Under the COVID-19 pandemic,

some states are now openly committing grave human rights violations in the name of controlling the disease.¹¹ There have been reports of arbitrary arrests, assaults, and even killings related to the enforcement of COVID-19-related lockdowns and curfews.¹² There have been censorship and severe restrictions on freedom of speech—this hinders access to essential health information and quashes the ability of the media and individuals to hold governments accountable for their statements and actions.¹³ Moreover, emergency powers, combined with pre-existing societal stigma, exacerbates discrimination against marginalized groups. For example, there have been reports of states and their enforcement mechanisms specifically targeting LGBT individuals, sex workers, as well as ethnic minorities such as the Roma.¹⁴

Governments are also using the COVID-19 crisis to justify rolling back human rights protections. Laws restricting access to abortion and other reproductive rights have been proposed in Poland and in multiple states within the United States. At least seven US states have categorized abortion as a “non-essential” medical procedure, effectively trying to prohibit the service during the crisis.¹⁵ In Poland, the parliament discussed a bill in mid-April to ban abortion in cases of fatal fetal anomalies, reviving the debate on abortion restrictions which was abandoned due to large public protests in 2016.¹⁶ It also discussed a bill to ban comprehensive sexuality education.¹⁷ In Hungary, the government proposed a bill that ends the possibility of transgender individuals legally changing their gender.¹⁸ As the COVID-19 pandemic continues, the UN human rights mechanisms should call out countries that use the outbreak as a pretext to retrogress on their human rights obligations.

A General Comment on rights restrictions in public health crises

Once the initial COVID-19 crisis subsides, there will be an opportunity for reflection. Have countries responded to COVID-19 in a manner that aligns with human rights and the Siracusa Principles? Looking forward, how can states be more

effective and rights-based in responding to similar situations?

A General Comment solidifies the Human Rights Committee's relevant precedents into concrete guidance. But more than that, a General Comment with human rights standards specifying how rights-limiting steps may be operationalized could guide the development and reform of laws, policies and practices related to pandemic preparedness. It could, for example, clarify core and priority state obligations, as well as outline key considerations for areas where rights may be restricted (such as movement, free speech, peaceful assembly).

COVID-19 is not the first pandemic, nor will it be the last. Understanding how to respect, protect, and fulfill human rights during outbreaks and other public health crises is vital not only to ensuring that states effectively address public health issues, but also that they protect people's equality and inherent dignity.

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