



The UIA Institute for the Rule of Law

STATEMENT

Paris, May 19, 2020

Statement about COVID-19 and Rule of Law

UIA-IROL, is gravely concerned about the deleterious effects the current global COVID-19 pandemic is having and will continue to have on fundamental rights and freedoms. As emergency measures are being invoked and implemented in countries across the globe, the infringements on human rights is multiplying at an alarming rate. While UIA-IROL recognizes that some of these measures are inevitable and necessary in order to stem the rising tide of the pandemic, we also are mindful of the need to preserve the fundamental rights of all – both in the current environment and after the pandemic has resolved -- to the maximum extent possible. To that end, there are numerous ways in which States can guarantee protection of these rights for their citizens.

Measures restricting rights and freedoms must provide certain guarantees and must be as limited as possible, in scope and time, to achieve necessary goals of fighting the pandemic.

First, all citizens must be guaranteed their fundamental freedoms and rights, to the greatest extent possible. The adequacy of steps taken, their necessity and their proportionality must be the guideposts for any measure implemented to address the COVID-19 crisis. Existing treaties are very clear with regard to the protection of human rights during a state of emergency. This is made clear by, among other things, Article 4 of the International Covenant on Civil and Political Rights which refers to a "public emergency" that threatens "the life of the nation and the existence of which is officially proclaimed"¹.

UIA-IROL further notes that that no emergency situation can justify repeal of or derogation from a number of fundamental rights, including the right to life, the prohibition of torture, the principle of legality or due process in criminal matters and freedom of thought, conscience and religion². Furthermore, judicial guarantees must also be respected during any state of emergency, as well as the presumption of innocence. Lastly, the protection of these non-derogable rights requires that the right to bring proceedings before a court and to enable the court to rule without unreasonable delay on the lawfulness of detention, shall not be affected by a State party's decision to create exceptions to or otherwise derogate from human rights legislation³.

¹**Article 4 of the International Covenant on Civil and Political Rights**

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

²See Art 4-2 of the International Covenant on Civil and Political Rights.

³See General Comment No. 29 on Article 4 (State of emergency) of the United Nations Human Rights Committee, CCPR/C/21/Rev.1/Add.11, para. 16.

UIA-IROL

(UIA) International Association of Lawyers – 20 rue Drouot – 75009 Paris (France), Association Loi 1901 n° W751207624
Tél. : +33 1 44 88 55 66 / Fax : +33 1 44 88 55 77 / E-mail : uiacentre@uianet.org / Web : www.uianet.org

UIA-IROL is also deeply concerned about certain private actions – e.g., by employers, service providers and even individuals -- that result in discriminating against and ostracising individuals based on their nationality, their presumed or proven health status, or their occupation (mainly healthcare providers, healthcare assistants and staff for patients, especially for vulnerable populations). UIA-IROL urges States to protect against such discrimination.

UIA-IROL further urges States to continue to respect privacy and medical confidentiality, to the greatest extent possible, despite the COVID-19 crisis. Of particular concern in this regard are measures taken that result in pervasive surveillance of citizens, under the guise of fighting the COVID-19 virus, especially for reasons unrelated to health, for example, to track political opponents or those who criticize the government. Such measures often violate not only international law but often the constitutions and domestic laws of the implementing States. Again, any such measures must be guided by the three principles of adequacy, necessity and proportionality. States must monitor and must protect their citizens against abuse or misuse of medical and other private information.

Comparative analyses shows that citizens' trust in their country's political and medical authorities plays a decisive role in effective compliance with emergency laws. Given the likelihood that extraordinary measures may be required for a limited period of time, UIA-IROL urges States to communicate with their citizens in a clear, transparent, accurate, and useful manner information regarding measures being implemented to combat the virus.

Furthermore, citizens have the right to be continually informed on the evolving situation by independent media as well as by medical professionals and subject matter experts. Consequently, UIA-IROL calls upon States to protect those who work in media, including journalists as well as scientific experts, against attacks, harassment, threats, detention, or censorship and to combat misinformation campaigns.

Return to normalcy and full restoration of rights must be States' priority when crisis ends:

UIA-IROL notes that the very principle of emergency measures that limit or otherwise derogate from important rights is that they are meant to be exceptional and temporary in nature. The COVID-19 crisis, an extreme emergency situation for a finite, although extended, period of time, must not be used as a pretext to extend restrictions on rights indefinitely. States must work to restore full rights and freedoms as soon as reasonably possible⁴

The role of lawyers in the current crisis and the restoration of rights in the post-crisis period:

Lawyers have a special role to play in the protection of rights, both during and after the period of emergency measures.

During the crisis, the protection of the population relies in large part on the legal profession, which plays a decisive role in ensuring that the principles of adequacy, necessity and proportionality are respected. Lawyers also are instrumental in protecting non-derogable rights from undue infringement, especially for the most vulnerable communities, which often are the first to be affected by the health crisis.

In this regard, UIA-IROL welcomes and supports the initiatives of several bar associations, which have sought to protect their citizenry by seeking to ensure the respect of civil rights. This is especially true with regard to people who have been detained (such as prisoners and migrants held in detention centers) and who are therefore exposed to an exponentially higher risk of infection, often without receiving minimum measures of medical care.

⁴See General Comment No. 29 on Article 4 (State of Emergency) of the United Nations Human Rights Committee, CCPR/C 21 /Rev.1/Add.

Our colleagues in the legal profession have also sought to protect asylum seekers who, because of the coronavirus and the resultant shutdown of government administrative offices, can no longer submit applications for entry or residency and are therefore forced to wander homeless from one city to another. UIA-IROL notes that States are not automatically exempt from their international obligations – notably under the 1951 Geneva Convention – regardless of the declaration of a health emergency.

Finally, once the crisis recedes, lawyers must redouble their efforts to help restore rights that have been temporarily curtailed or suspended as a result of the COVID-19 virus.

UIA-IROL fully supports lawyers and bar associations who are struggling daily in this difficult period to protect civil rights and calls upon all lawyers and bar associations to join together to meet the challenges of the post-crisis period.

Lastly, UIA-IROL urges States to ensure the accountability and bringing to justice of perpetrators of human rights violations or abuse of power during the state of emergency and to highlight the essential role played by an independent judiciary and an independent bar in the protection of human rights during the COVID-19 crisis.

More about UIA-IROL

The Institute for the Rule of Law of the International Association of Lawyers (UIA-IROL) promotes the Rule of Law and supports and defends, in particular, (1) lawyers, judges and human rights defenders who are harassed, threatened and/or persecuted in the exercise of their professions, (2) the independence of the legal and judicial professions, and (3) the UN Basic Principles on the Role of Lawyers, especially in defense of human rights.

For more information go to: www.uianet.org - uiacentre@uianet.org
Press contact: Marie-Pierre LIENARD, *Communication Officer* mplienard@uianet.org