

Rechtsidee

Vol 11 No 1 (2023): June

DOI: <https://doi.org/10.21070/jihr.v12i1.989>

Article type: (Human Rights)

Table Of Content

Journal Cover	2
Author[s] Statement	3
Editorial Team	4
Article information	5
Check this article update (crossmark)	5
Check this article impact	5
Cite this article	5
Title page	6
Article Title	6
Author information	6
Abstract	6
Article content	8

Rechtsidee

Vol 11 No 1 (2023): June

DOI: <https://doi.org/10.21070/jhr.v12i1.989>

Article type: (Human Rights)



RECHTSIDEE

PUBLISHED BY
UNIVERSITAS
MUHAMMADIYAH
SIDOARJO

ISSN 2443-3497
(online)



SCAN ME

Rechtsidee

Vol 11 No 1 (2023): June

DOI: <https://doi.org/10.21070/jihr.v12i1.989>

Article type: (Human Rights)

Originality Statement

The author[s] declare that this article is their own work and to the best of their knowledge it contains no materials previously published or written by another person, or substantial proportions of material which have been accepted for the published of any other published materials, except where due acknowledgement is made in the article. Any contribution made to the research by others, with whom author[s] have work, is explicitly acknowledged in the article.

Conflict of Interest Statement

The author[s] declare that this article was conducted in the absence of any commercial or financial relationships that could be construed as a potential conflict of interest.

Copyright Statement

Copyright © Author(s). This article is published under the Creative Commons Attribution (CC BY 4.0) licence. Anyone may reproduce, distribute, translate and create derivative works of this article (for both commercial and non-commercial purposes), subject to full attribution to the original publication and authors. The full terms of this licence may be seen at <http://creativecommons.org/licences/by/4.0/legalcode>

Rechtsidee

Vol 11 No 1 (2023): June

DOI: <https://doi.org/10.21070/jihr.v12i1.989>

Article type: (Human Rights)

EDITORIAL TEAM

Editor in Chief

Rifqi Ridlo Phahlevy , Universitas Muhammadiyah Sidoarjo, Indonesia ([Scopus](#)) ([ORCID](#))

Managing Editor

Noor Fatimah Mediawati, Universitas Muhammadiyah Sidoarjo, Indonesia ([Sinta](#))

Editors

Faizal Kurniawan, Universitas Airlangga, Indonesia ([Scopus](#))

M. Zulfa Aulia, Universitas Jambi, Indonesia ([Sinta](#))

Emy Rosnawati, Universitas Muhammadiyah Sidoarjo, Indonesia ([Sinta](#))

Totok Wahyu Abadi, Universitas Muhammadiyah Sidoarjo, Indonesia ([Scopus](#))

Complete list of editorial team ([link](#))

Complete list of indexing services for this journal ([link](#))

How to submit to this journal ([link](#))

Rechtsidee

Vol 11 No 1 (2023): June

DOI: <https://doi.org/10.21070/jjhr.v12i1.989>

Article type: (Human Rights)

Article information

Check this article update (crossmark)



Check this article impact (*)



Save this article to Mendeley



(*) Time for indexing process is various, depends on indexing database platform

COVID-19 Crisis and the State of Emergency: Analyzing Impacts, Paradoxes, and Recommendations

Salim Neamah, alhasnawy2015@yahoo.com, (1)

university of Kerbala, Iraq

Ahmed Rawdhan, ahmed.r@uokerbala.edu.iq, (0)

, Iraq

Haeder Rashed, haydarsami@hotmail.com, (0)

, Iraq

⁽¹⁾ Corresponding author

Abstract

This scientific article examines the exceptional situation that emerged during the COVID-19 pandemic and the subsequent imposition of states of emergency, which raised concerns about potential abuses of power by governments. Employing analytical and comparative approaches, the research explores the connection between the pandemic and its effects on human rights and freedoms, particularly regarding movement and assembly restrictions. The study highlights the diverse implementation of states of emergency across countries during the crisis. The findings reveal international gaps in preparedness, the violation of human rights, and the potential exploitation of emergencies for other purposes. Recommendations include enhancing international cooperation, reevaluating intellectual property rights related to combating epidemics, establishing a global health cooperation fund, setting reasonable limits for emergency measures, and implementing internal monitoring committees to ensure the proportionality of restrictions. These insights have significant implications for global health security, human rights protection, and international collaboration in response to future health emergencies.

Highlights:

- Impact of state of emergency: Examining the repercussions of COVID-19 pandemic emergency measures on human rights.
- Global health challenges: Assessing health system effectiveness in confronting COVID-19 and its impact on human rights.
- Recommendations for action: Proposing measures for international cooperation, intellectual property rights reconsideration, establishing a health cooperation fund, setting reasonable emergency limits, and implementing monitoring committees.

Keywords: COVID-19, state of emergency, human rights, global health, recommendations.

Rechtsidee

Vol 11 No 1 (2023): June

DOI: <https://doi.org/10.21070/jihr.v12i1.989>

Article type: (Human Rights)

Published date: 2023-06-29 00:00:00

Introduction

No doubt, that declaring an emergency is one of the matters stipulated by the constitution to confront exceptional cases that may threaten the security of the countries, and we have recently witnessed many cases of political crises the countries were exposed, and as a result, the state of alert and readiness was raised, especially during the Arab Spring revolutions and what followed of crises.

As soon as countries woke up from the slumber of political crises, the whole world faced an exceptional and unfamiliar situation that affected human security, health, and freedom of movement. Where, deportation, isolation, and curfews have become the title of this stage, especially with the absence of a vaccine for the Coronavirus "Covid-19". The Coronavirus pandemic was a direct reason for declaring an emergency, but, international human rights law ensured the availability of several conditions for the state to exercise its right to declare an emergency, as stated in Article 4 of the International Covenant on Civil and Political Rights in 1966, which the International Committee raised interpretation and comment on this Article provided that it is applied in the narrowest limits, and the human rights monitoring committee can investigate the extent to which the state fulfills this condition.

The "COVID-19" pandemic has created unprecedented challenges to human rights around the world, which has raised the concerns of the United Nations expert on freedom of peaceful assembly, who warned against using the emergency during the coronavirus crisis to impose comprehensive restrictions on the right of peaceful assembly. As a result of these concerns, detailed guidelines were issued for the governments of countries to follow to avoid violating human rights.

Significance of Research

The importance of this research appears in discussing the exceptional situation that led to the Corona pandemic, and the scope of the closure that countries faced, which led to the imposition of restrictions on human rights and freedoms at movement and assembly. The whole world, in order to confront the Corona situation, declared an emergency, especially a health emergency, to mitigate and limit the spread of the pandemic. There is no doubt there is a close link between the Corona pandemic and the restriction of human rights and freedoms, and this was an important motive for researching this topic.

Research problem

The main problem of this research is the impact of the Corona crisis on the state of emergency, especially the situation during the Corona pandemic and the extent of anxiety it left in the hearts of people in general. In addition to the association of this crisis with the restriction of rights and freedoms, where, the imposition of a state of emergency in turn raises fears that governments might have exploited it in a manner contrary to the public interest.

Methods

This research adopted the comparative analytical approach by analyzing the Corona crisis and its connection to rights and freedoms and being the main reason for imposing the emergency while adopting the comparative approach to show the paradoxes between countries in applying the state of emergency during that crisis.

For this purpose, the research has been divided into two main parts. In the first, we discussed the concept of the emergency state in general, and we dedicated the second to the effects of declaring an emergency under the coronavirus on Human Rights and the right of movement.

Result and Discussion

The Concept of The Emergency State

Scholars dealt with the definition of the state of emergency through many aspects, as the English jurisprudence defined it as: "that situation during which it is possible to bypass the usual constitutional principles to meet exceptional circumstances." [1] The American jurisprudence defined it as: "a case prepared to face unstable and non-recurring circumstances that cannot be confronted with the powers granted by ordinary legislation." [2] The French jurisprudence defined it as: "those exceptional circumstances specified by a previous law, which are granted when these conditions are met to the control authorities." [3] The administration takes specific unusual measures to confront these conditions and is subject to the supervision of the judiciary. [4]

Arab scholars have defined it as: "A legal system that is decided by urgent constitutional laws to protect national

Rechtsidee

Vol 11 No 1 (2023): June

DOI: <https://doi.org/10.21070/jihr.v12i1.989>

Article type: (Human Rights)

interests, and it is resorted to only on an exceptional and temporary basis to face emergency circumstances that the legitimate government tool fails to meet, and it ends with the end of its justifications." [5-7]

From the definitions, the scholars have deduced several conditions for declaring an emergency, are:

- 1) A serious and immediate danger threatening the state represented in exceptional circumstances, and the danger is either natural, such as earthquakes and floods, or external, such as wars, armed insurrection, military rebellion, and non-peaceful demonstrations. And the danger is required to be serious, that is, it is unusual in terms of type or extent, and it is also required that it be immediate, that is, it occurred and did not end or is imminent.
- 2) The impossibility of confronting the danger by normal legal means, and that the restriction be practiced within the narrowest limits.
- 3) The existence of a relationship of proportionality and causation between the state of necessity and the realization of the public interest, and its end with the disappearance of the exceptional circumstance.
- 4) The state of emergency is subject to the provisions of international and domestic legality, and its declaration must be an official procedure if it is followed by immediate declaration and the basic rights of individuals are not violated. [6,8]

Undoubtedly, the most common form of a state of political emergency is a war. Likewise, the existence of an imminent danger looming over is considered a state of political emergencies, such as a state of armed insurrection, extremely dangerous disturbances, or general disasters. Its declaration also extends to the danger resulting from the war that is not related to direct military actions. In the event of declaring a political emergency, the executive authority must not be liberated from the rule of law except by the law issued declaring it so that it cannot be described by the tyrannical regime of the state. In its various methods of application, the state of emergency legislation clarifies the reason for resorting to the application of this exceptional system and determines the period of its validity and the areas in which it is applied.

When exercising these powers, the emergency powers are subject to parliamentary oversight in terms of approving the declaration of a state of emergency initially, as in the Egyptian Emergency Law, or extending its operation, as in the state of urgency law, the martial law in France, and the emergency law in Iraq. If Parliament considers that the reasons invoked by the government are not serious, then it may refuse to implement the Emergency Law or not extend its implementation at the end of the period specified for its validity. These authorities are also subject to judicial oversight to ensure that they do not pass the scope of exceptional legality established in the law and that these authorities have restricted rights and freedoms to a sufficient and necessary extent to face the exceptional circumstances, as necessity is estimated accordingly. [4]

Comprehensive and Partial Emergency

If the state of emergency is related to the existence of predetermined exceptional circumstances, and the powers granted to the concerned bodies are unable to confront them according to legislation and regulations under normal circumstances, and the events may include the entire territory of the state, then the state of emergency is applied to all the state's territory, either if the events include part or all A specific area of the state's territory so that it does not affect the rest of the state's territory. Therefore, a state of emergency is declared in that part or, in such an area only. [9]

A state of emergency is imposed, in a legally defined area and period, when the state is exposed to war danger, security disturbance, or the occurrence of a natural or public health disaster. In a state of comprehensive emergency, it is imposed on all the territory of the state, and most legal systems under a state of emergency give the military authority the power to maintain public order, and the military judiciary the power to suppress violations, and in case implementing such, public freedoms are being restricted. In the case of a partial emergency, it is imposed on a part of the country's territory or on a part that falls under its sovereignty as a result of its occupation of another country or in imposing its protection or tutelage on a country. [4]

For example, France imposed a state of emergency on Paris on 13/6/1849, on large parts of France on 2/2/1851 as a result of the military coup, and on New Caledonia on the 1st of January 1985. Egypt also imposed a state of emergency on the governorates of Sinai and the Red Sea by Law No. 50 of 1950, and on the northern region of the border with Libya in 1980. The United States imposed a partial state of emergency in Texas against unrest in 1957 and imposed it in New York in 1996 to counter sectarian violence between whites and blacks. [10]

Health Emergency

Jurisprudence did not stand on one clear definition of the state of health emergency similar to the state of emergency in general, and accordingly, there were many jurisprudential efforts to define the state of health emergency; Including what was mentioned by the World Health Organization when issuing the International Health Regulations that were adopted by the Public Health Assembly at its 58th session held on May 23, 2005, where a health emergency was defined as a public health emergency of international concern known as (PHEIC), and

Rechtsidee

Vol 11 No 1 (2023): June

DOI: <https://doi.org/10.21070/jihr.v12i1.989>

Article type: (Human Rights)

constitutes an event Exceptionally, the International Health Regulations stipulated that:[11]

- 1) The occurrence of a sudden, dangerous, or unexpected health condition.
- 2) It constitutes a potential danger to public health in other countries due to the international spread of the disease.
- 3) That this event requires immediate international action to confront it.

A public health emergency has also been defined as a matter of international concern as: "a collectively extremely serious event that requires urgent and priority action by health authorities". The situation of a health emergency is also defined as an exceptional measure that can be decided by the Council of Ministers in the event of a health disaster, especially an epidemic, which endangers the health of the population. [12]

In terms of international agreements, Article (4) of the International Covenant on Civil and Political Rights of 1966 stipulates that: "In exceptional cases of emergency that threaten the life of the nation and whose establishment is officially declared, the states parties to this covenant may take, within the narrowest limits, measures Not abide by its obligations under this Covenant, provided that such measures are not inconsistent with other obligations under international law and do not involve discrimination on the grounds of race, color, sex, language, religion or social origin.[13]

Although there was no description of the state of emergency in Article (15) of the European Convention on Human Rights of 1950, it clarified the objective conditions for its establishment, as it stipulated that: "In the event of war or public danger that threatens the life of the nation, each contracting party may take measures that contravene the obligations stipulated in this Charter within the narrowest limits required by the situation, provided that these measures do not contradict the rest of the obligations emanating from international law.[14]

Whereas, Article (27) of the American Convention on Human Rights of 1969 came to be more clear when it stipulated the state of emergency and its substantive conditions, as it stipulated that: "A state party may not, in times of war or public danger, or other emergencies that threaten the independence of the state or its security to take measures limiting its obligation under the present Convention but only to the extent and for such period as are required by the necessities of the emergency and provided that such measures do not conflict with its other obligations under international law and do not discriminate on grounds of race, color, sex, language, religion or origin Social".

Hence, it appears that declaring a state of emergency is an exceptional regime that is subject to the principle of exceptional legality, which is permissible and not obligatory, meaning that it is a matter subject to the will of the public authority. As it ends with the disappearance of the exceptional circumstances that justified resorting to it or with the expiration of the period specified for its declaration without being extended.

The Effects of the Outbreak of the Corona Pandemic

Legal adaptation of the effects of the outbreak of the Corona pandemic (Covid-19).

The International Covenant on Economic, Social and Cultural Rights in 1966, which was ratified by most countries in the world, states (article 12) that everyone has the right to enjoy their full physical and mental health. All governments should take all measures to prevent, treat and control the epidemic and endemic diseases. Thus, states must take preventive measures for the health and safety of their citizens.

Such applies to the Corona pandemic (Covid-19), and the resulting mutant, where rapid spread and seriousness in the world have threatened global health. Indeed, this epidemic constituted a legal justification for lifting the state of extreme necessity globally, and thus this pandemic led to a restriction of rights as a result of the imposition of quarantine or isolation that limits freedom of movement and work and the prohibition of gatherings. Accordingly, the World Health Organization, by the powers stipulated in Chapter Two of the International Health Regulations, and by the text of Article (48), declared a state of emergency. This prompted the World Health Organization, in January 2020, to declare that the Corona pandemic constitutes an international concern, and with this declaration, the Corona pandemic constitutes an emergency that threatens the security, public health, and safety of people. As a result, many governments around the world declared an emergency. [15]

Based on this, it can be said that the Corona pandemic represents a major obstacle that falls on the shoulders of governments, especially with its rapid spread and the lack of a suitable vaccine for it, especially with the rapid mutation of this disease.

Accordingly, France imposed a state of emergency for the third time on March 24, 2020, to combat the Corona pandemic, as the state of emergency granted the government the power to restrict civil liberties by a decree issued without the approval of Parliament. This decree authorizes it, when necessary and within a maximum period of four months, to impose restrictions on public transport movement. Or to limit or completely ban some gatherings, or close the doors of some institutions to the public. The project to extend the state of emergency is condemned by

Rechtsidee

Vol 11 No 1 (2023): June

DOI: <https://doi.org/10.21070/jihr.v12i1.989>

Article type: (Human Rights)

some jurists and human rights advocates in France, as well as international criticism represented by the criticisms issued by the United Nations and the European Council.[16]

In Egypt, the Egyptian President's decision was issued, according to the Official Gazette, "Given the serious security and health conditions the country is going through, and after taking the consent of the Council of Ministers, the (President of the Republic) decided to declare a state of emergency throughout the country for a period of three months, starting from April 28, 2020." The decision stipulated that "the armed forces and the police force shall take the necessary measures to confront the dangers of terrorism and its financing, maintain security throughout the country, protect public and private property, and preserve the lives of citizens." [17]

The Egyptian Emergency Law has been amended, as the Emergency Law stipulates in its Article (3) item (1, 2, 6, 13) the following:

- 1) Place restrictions on people's freedom of gathering, movement, residence, and passage.
 - 2) Monitoring messages of any kind and monitoring newspapers, pamphlets, publications, editors, drawings, and all means of expression, publicity, and advertisement.
 - 3) Evacuating or isolating some areas, organizing means of transportation, and limiting transportation between different areas. By a decision of the President of the Republic, the circle of rights indicated in the previous paragraph may be expanded.
- 13) Banning public meetings, processions, demonstrations, celebrations, and other forms of gatherings, and restricting private meetings.[17]

As for Iraq, the competent authority to declare an emergency can be determined by paragraph (Ninth) of Article (61) of the Constitution of Iraq of 2005, as that paragraph granted the Council of Representatives the power to approve the declaration of war and the emergency by a two-thirds majority based on a call from the President of the Republic and from Prime Minister with the approval of the House of Representatives.

It should be noted that Article (61) of the Constitution amended Article 1 of Defense of National Safety Order No. (1) of 2004, which stipulates that: "The Prime Minister, after the unanimous approval of the Presidency, may declare an emergency in any region in Iraq." [18]

Whereas, the Iraqi constitution of 2005 did not provide for the exceptional powers granted to the prime minister to manage state affairs during a state of emergency. On the other hand, Article 61, paragraph (Ninth / C) of the Iraqi constitution obligated the need to issue a law regulating the exceptional powers granted to the prime minister in a manner that does not contradict the constitution. And because this law was not issued and the Defense of National Safety Order No. 1 of 2004 continued to be in force, as we explained previously, this order has authorized the Prime Minister, in case of emergency and within the borders of the region, with temporary exceptional powers, including imposing a curfew for a short and specified period And imposing restrictions on money and the possession of prohibited things and taking precautionary measures on parcels, letters, telegrams, and all means and devices of wired and wireless communication, in addition to imposing restrictions on means of transportation, communications, public and commercial stores, clubs, associations, unions, companies, institutions, departments, and others.

It should be noted that in response to the decision of the World Health Organization, an emergency was declared in Iraq on 3/15/2020, considering that the extension of the emergency depends on developments, and what is required by the health interest to prevent the spread of the Coronavirus.

And then, in the context of precautionary measures against "Corona", several Iraqi governorates decided to close their borders, namely: Dhi Qar, Babylon, Maysan, Najaf, Basra, Diwaniyah, Kirkuk, Wasit, Nineveh, and Karbala, in addition to Erbil and Sulaymaniyah, while some of them decided to impose a curfew. The Iraqi authorities decided to suspend studies in schools and universities until March 21, ban movement between governorates, close public places such as parks, cafes, cinemas, and mosques, ban entry to foreign arrivals from 13 countries, and prevent Iraqis from traveling to them. It is noteworthy that the Iraqi Council of Ministers announced, earlier, that it attaches utmost importance to combating "Corona," instructing to "release the necessary funds for the Ministry of Health and the provinces," and noting that "the need for continued cooperation and coordination with neighboring countries and the World Health Organization." [19]

3.1 The Effects of Declaring an Emergency Under the Coronavirus on Human Rights

There is no doubt that the spread of the Coronavirus had undeniable repercussions on public life and human rights, and since the right to health is one of the basic human rights, it is undoubtedly closely linked to the last original rights, but public health was imposed as one of the most important human rights. Emergencies and curfews in several countries, and the isolation of certain cities or regions, as they are among the important things that must be followed to limit this rapid spread of the virus, but they directly affect several basic human rights that may cause fear and anxiety among individuals and organizations when dealing with disabling them. Without adhering to the

conditions approved and renewed by the law, and in this way, we will study some of the rights that have been restricted as an effect of confronting the emerging coronavirus, including the following:

The Impact of Declaring a n Emergency Under the Coronavirus o n The Right To Peaceful Assembly

By the Guidelines on Freedom of Peaceful Assembly; it is: "a fundamental human right that can be enjoyed and exercised by individuals, groups, unincorporated associations, legal entities, and legal entities and serves communities many purposes, including the expression of diverse popular or minority opinions." [20] According to this definition, freedom of peaceful assembly is a basic human right that enjoys a solid and well-established basis in international human rights law, as Article 20 of the Universal Declaration of Human Rights 1948 stipulates that: "Everyone has the right to freedom of association and peaceful groups ".

On the same basis, it was stipulated in Article 21 of the International Covenant on Civil and Political Rights 1966, in addition to regional covenants such as the European Convention on Human Rights in Article (11) thereof and Article 15 of the American Convention on Human Rights, as it was reaffirmed by the participating countries in the Organization for Security and Cooperation in Europe Copenhagen Document 1990". [21]

The right to peaceful assembly is linked to democracy, as it constitutes an essential element in laying down its foundations and supporting it, as it conveys civic ideas clearly and entrenches them within societies, and also promotes the interests and viewpoints of many marginalized groups of people, and also provides opportunities for the peaceful expression of opinion in public places regardless of their status. [22]

In this context and on the other hand, international human rights law allows states to impose some restrictions on freedom of peaceful assembly, according to certain conditions and limits. Article 22, paragraph 2, of the International Covenant on Civil and Political Rights, stipulates that states may put restrictions on the right to peaceful assembly in accordance with the requirements of the law and are necessary measures in a democratic society, in the interests of national security or public safety, public order, the protection of public health, or, public morals, or the protection of the rights and freedoms of others.

In order to control the restrictions included by many countries' laws on freedom of peaceful assembly, the guidelines prepared by the expert on freedom of peaceful assembly of the United Nations, Mr. Clement Fall, included detailed provisions that governments must follow in order to avoid violating human rights in the context of combating the emerging coronavirus, the most important of which are: [23]

1. New legal measures must be ensured to respect human rights: Any restrictions on rights must be in accordance with the principles of legality, necessity, and proportionality. Comprehensive restrictions on human rights and fundamental freedoms may not be declared, just as it is necessary that any new measures that impede freedom of peaceful assembly or any right that governments owe their obligations to human rights standards, especially freedom of peaceful assembly, should be carried out in consultations with civil society, if possible before adopting new measures or laws and regulations.
2. Ensuring that a public health emergency is not declared as a pretext for violating rights and restricting public freedoms. The crisis should not be used as a pretext for suppressing rights in general or the right to freedom of peaceful assembly and association. The crisis cannot be a justification for the use of excessive force when dispersing gatherings nor for the imposition of disproportionate penalties.
3. Elections cannot be postponed indefinitely: The Special Rapporteur recognized that designing appropriate electoral approaches in the context of the current global pandemic is complex and that there are no easy solutions. Restrictions on assemblies in many countries impair the ability of individuals to campaign and participate in assemblies, educate voters, and monitor electoral processes. Considering these circumstances, the need to respect freedom of expression and fully guarantee the rights to freedom of peaceful assembly and association online.
4. Inclusive Participation should be ensured: Citizenship and an active civil society are key in times of crisis. Civil society must be considered an essential partner for governments in responding to the current crisis, in terms of helping frame inclusive policies, disseminating information, building joint and collaborative approaches, and providing social support to vulnerable communities. States should also support the participation of civil society organizations in the design and implementation of effective public health strategies.
5. Protecting laborers' rights and creating appropriate conditions within the workplace in the context of freedom of association and assembly: The crisis underscores the need for workplace protections and procedures that guarantee the right to health for all employees.
6. Freedom of expression must be guaranteed: the right of civil society actors including journalists and human rights defenders, to access, receive and impart information and ideas freely, whether in relation to the crisis and its management or other topics, must be guaranteed.
7. The participation and contribution of civil society in multilateral institutions must be ensured: The United Nations and other multilateral institutions must take steps to ensure that civil society organizations continue to participate and contribute to the formulation and making of all decisions they issue, including those related to the emerging coronavirus, to ensure the effectiveness of partnerships and interventions between the UN and the Government, and to monitor potential restrictions on freedom of peaceful assembly and the work of the civil society in the context of combating COVID-19.

Rechtsidee

Vol 11 No 1 (2023): June

DOI: <https://doi.org/10.21070/jihr.v12i1.989>

Article type: (Human Rights)

8. More than ever, international solidarity is needed: financial constraints severely limit the ability of civil society to contribute to the response to the COVID-19 crisis. Therefore, states should repeal laws that unduly restrict or mitigate civil society's ability to access funding, including international funding. Furthermore, where possible, states should provide financial and other support to civil society organizations and should recognize the key role that many civil society organizations play in ensuring broad public health.

In Egypt, a decision was issued to take all measures to confront the threat of the spread of the Coronavirus, and the Supreme Committee for the Management of Epidemics and Health Pandemics is responsible for issuing decisions, and these decisions included organizing public meetings, organizing or banning celebrations and other forms of gatherings, and those coming to the country from abroad should to undergo quarantine procedures or a procedure some medical examinations, receiving Corona vaccines, or preventing the reception of people coming from some destinations, according to the epidemiological situation.

As for Iraq, the committee took several decisions at the beginning of the crisis:

- 1) The continuation of the comprehensive ban for a week, with an emphasis on applying it accurately, according to the procedures set by the Ministry of Health through:

- a) Preventing gatherings in all their forms, and closing restaurants except for delivery service, event halls, parks, cafes, cinemas, malls, sports halls, private teaching institutes, private doctors' clinics, swimming pools, and shops, except food stores, fruit and vegetable stores, and bakeries. and pharmacies.

- b) Requiring citizens to wear masks in public places and punishing violators.

- c) Maintaining physical distancing, with no less than two meters between one person and another.

- d) Preventing movement between governorates, while fully adhering to the decision of the Supreme Committee for Health and National Safety No. (44) of 2020, regarding facilitating the entry of stranded families between governorates.

- C) Preventing the movement of individuals and vehicles within the governorates, except employees of the Ministry of Health, security agencies, and service departments referred to in Paragraph (11) of Resolution No. (57) of 2020 of the Supreme Committee for National Health and Safety.

- 2) Obliging governmental and non-governmental institutions and private hospitals to provide sterilization materials and masks for all their employees, while applying physical distancing measures and preventing gatherings.

- 3) Establishing a mini-operations room between the security forces responsible for implementing the ban and the Ministry of Health, for the purpose of accurately following up on the implementation of the comprehensive ban.

- 4) Tightening the imposition of penalties and fines against the owners of shops that are exempt from the comprehensive ban, in the event of violating the necessary measures to prevent the spread of the disease.

- 5) Completely closing the governorates that contain sacred religious shrines, and setting up a mechanism for burying the dead, so that vehicles carrying more than (7) people are not allowed to enter, for any reason.

- 6) Tightening procedures in the provinces that have border outlets with neighboring countries, such as (Sulaymaniyah, Diyala, Wasit, and Maysan).

- 7) Reconsider the vacations granted to the security services and forces of all kinds, so that they are in the alternative system and for a period of not less than two weeks to prevent the spread of the disease between the governorates.

The Impact of The Declaration of an Emergency Under Coronavirus on The Right to Movement

The international community has attached importance to the right to movement, which it has included in the International Bill of Human Rights. The right finds its legal basis in many international and regional instruments and covenants, including the Universal Declaration of Human Rights 1948, where Article (13) of it states that: "Everyone has the right to freedom of movement and to choose his place of residence within the borders of the state, and everyone has the right to leave any country, including his own country, and in returning to his country. Article 12 of the International Covenant on Civil and Political Rights also stipulates that right and added that it may not be restricted except by law and according to specific procedures and conditions. The American Convention also affirmed the right of movement of individuals in Article (22) of them along the lines of the African Charter on Human and Peoples' Rights 1981.

This right is also recognized and endorsed by many international human rights agreements, which made it one of every person's basic rights, in addition to that, some restrictions were placed on it that were stipulated in those agreements as well, including what was stated in the Article 12, the third paragraph of the International Covenant

Rechtsidee

Vol 11 No 1 (2023): June

DOI: <https://doi.org/10.21070/jihr.v12i1.989>

Article type: (Human Rights)

on Civil Rights and Political, which stipulates that: "The above-mentioned rights may not be restricted by any restrictions other than those stipulated by law and necessary to protect national security, public order, public health, public morals, or the rights and freedoms of others."

This text, which is considered one of the legitimate texts in international law, allows the possibility of restricting human freedom of movement if it is necessary to protect national security, public order, or public health, which makes the restrictive measures for freedom of movement that governments may take within the framework of imposing a comprehensive curfew to preserve Public health, after the outbreak of the new Corona epidemic, requires legitimate measures aimed at preserving the health of individuals and public health, however, this restriction or disruption of freedom of movement is subject to a number of conditions and procedures that must be met, which was confirmed by the Committee on Civil and Political Rights, and in its sixty-seventh session (1999), as stated in General Comment No. 27:

1. There must be exceptional circumstances threatening peace and security, public order, public health, or morals for freedom of movement to be restricted.
2. The law must determine the exceptional circumstances in which rights may be restricted, and the exceptional case must also be based on clear legal foundations.[24]

In the context of confronting the emerging Coronavirus, and based on the advice provided by the World Health Organization, many governments of the countries of the world have adopted several measures according to which the freedom of movement of people has been restricted, including, closing airports, disrupting mass transportation, and imposing quarantine, which is one of the most effective means to limit from the spread of epidemic diseases. According to these procedures, anyone is prevented from entering the areas where types of epidemics are spread and mixing with their people, and the people of those areas are also prevented from leaving them and staying in their homes.

In this context, after the outbreak of the new Coronavirus in China, which resulted in the death of 41 people in the country, the city of Wuhan, inhabited by 11 million people, was isolated on January 23, after it became clear that the virus that appeared in the city in late 2019 was highly contagious. As a result, a state of health emergency was declared, and a number of measures were taken, including the imposition of quarantine and the adoption of a complete closure of the city of Wuhan, suspending organized tourist flights inside and outside the country, and preventing traffic.

Italy also tended to close and prevent exit in late February, as it took several gradual restrictive measures since the emergence of the pandemic (Covid-19) and the infection and death of many of its citizens, as the authorities placed ten towns in the Lombardy region and a town in the Veneto province under quarantine, and residents were prevented from leaving, and schools and public places were closed.

Egypt is one of the first countries which has taken measures to impose a curfew issued by Resolution No. (768) of 2020. As for the permissibility of closing governorates and preventing movement between them, it was stated in Article (3) of Law No. 162 of 1958 that: "The President of the Republic may, when an emergency is declared to take, by written or oral order, the following measures: Place restrictions on the freedom of people to meet, move, reside, and pass in certain places and times... Evacuate or isolate some areas, organize means of transportation, and restrict and limit transportation between different regions...".

In Iraq, during the spread of the Corona pandemic, quarantine included curfews and movement at the country level and imposing restrictions on commercial activities and movement within cities, provided that the local authorities apply these restrictions throughout the country. Indeed, the authorities continued to impose various measures across the governorates, and such a strict ban was mitigated on 9/2/2020, as families were able to travel between governorates, provided that certain procedures were followed, and it became possible to provide basic health-related services. The committee also agreed to gradually reopen border crossings for commercial purposes only, from Sunday to Thursday, to meet the needs of local markets throughout Iraq, if workers follow general health instructions. Some Iraqi government employees also resumed work in their government offices.

Conclusion

The COVID-19 pandemic induced unparalleled apprehension globally, catalyzing the execution of unprecedented health emergency measures that intersected variably with each nation's healthcare and economic infrastructures, in turn invoking ramifications on fundamental human rights such as peaceful assembly, mobility, and work. This precipitated grave consternation among human rights organizations, apprehensive that these restrictions may fundamentally undermine human rights and public liberties, potentially solidifying as a long-term reality. Consequently, international experts proposed several recommendations for governments to balance health measures and human rights protection. This scenario underscored the intricate interplay between the right to health and other human rights, necessitating more profound contemplation to safeguard global population health. Key observations include inadequate international readiness for such health emergencies, the failure of most health systems to effectively respond to COVID-19 leading to human rights violations, the potential exploitation of global lockdowns for ulterior motives, and the disparities in crisis management across countries. Suggestions include

augmenting international cooperation within a legal framework to combat pandemics, reconsidering intellectual property rights to foster global health, establishing an international fund for health cooperation and virus mitigation, ensuring reasonable emergency impositions, and forming committees to monitor the extent of restrictions relative to health needs. The implications of these findings are vast, requiring extensive further investigation into the interconnections between public health emergencies and human rights infrastructures. Future research could delve deeper into developing effective, equitable crisis response frameworks that uphold human rights while mitigating the health emergency.

References

1. W. Wade and A. Phillips, "Constitutional and Administrative Law," 9th ed., 1977.
2. E. S. Corwin, "The President: Office and Powers," 1940.
3. L. Drago, "L'état d'urgence et les libertés publiques," *Revue de droit public*, 1955.
4. M. Al-Wakil, "The State of Emergency and the Administrative Control Authorities: A Comparative Study," 2nd ed., Dar Al-Nahda Al-Arabiya, Egypt, 2003.
5. Z. M. A. H. Mahfouz, "The State of Emergency in Comparative Law and in the Legislation of the United Arab Republic," 1st ed., Al-Ma'arif Alexandria, Egypt, 1966.
6. M. A. Ibrahim, "Guarantees of Individuals under Exceptional Circumstances in the International and Administrative Fields: A Comparative Study," 2008.
7. A. H. Shawarbi and S. Jadallah, "The Defect of Unconstitutionality and Legality of the Decision Declaring and Extending the State of Emergency and Military Orders," *Manshaat Al-Ma'arif*, Alexandria, 2000.
8. A. H. Ahmed, "The Council of Ministers in the Constitutions of Iraq during the Republican Era," Master's thesis, College of Law, University of Baghdad, 1997.
9. Z. M. A. H. Mahfouz, "The State of Emergency in Comparative Law and in the Legislation of the Arab Republic," 2010.
10. H. Mustafa, "Principles of Iraqi Administrative Law," Al-Ahlia Printing and Publishing Company, Baghdad, 1960.
11. International Health Regulations of the World Health Organization, 3rd ed., Printing and Publishing Division, 2005.
12. Reverso Dictionary, available at: <https://dictionnaire.reverso.net/francais-definition/Urgence+Sanitaire>. Accessed April 2023.
13. "Qu'est-ce que l'état d'urgence sanitaire?" [Online]. Available: <https://www.viepublique.fr/fiches/273947-quest-ce-que-letat-durgence-sanitaire>. Accessed April 2023.
14. European Convention on Human Rights, Council of Europe, 1950. Available: https://www.echr.coe.int/documents/convention_eng.pdf. Accessed April 2023.
15. "Novel Coronavirus (2019-nCoV) outbreak," United Nations, Jan. 30, 2020. [Online]. Available: <https://news.un.org/ar/story/2020/01/1048322>. Accessed April 16, 2023.
16. "Covid-19: كوفيد-19: فيروس كورونا المستجد في فرنسا," *France 24*, June 10, 2020. [Online]. Available: <https://www.france24.com/ar/20200610-%D9%8>. Accessed April 16, 2023.
17. Emergency Law No. 22 of 2020, Official Gazette Issue (18) bis (a), May 6, 2020.
18. National Safety Order No. (1) of 2004, issued on March 7, 2004, published in the Official Gazette, Issue No. 3987 of 2004.
19. "The Iraqi presidency, a proposal to declare a state of health emergency under discussion," *Al Mayadeen*, March 15, 2020. [Online]. Available: <https://www.almayadeen.net/news/politics/1386110>. Accessed April 17, 2023.
20. "Guidelines on Freedom of Peaceful Assembly," Office for Democratic Institutions and Human Rights (ODHIR), Organization for Security and Cooperation in Europe (OSCE), Poland, 2012.
21. The Copenhagen Meeting of The Conference On The Human Dimension Of The CSCE, Rule 9.2, 1990.
22. "Handbook for Monitoring Peaceful Assembly," Office for Democratic Institutions and Human Rights (ODHIR), Organization for Security and Cooperation in Europe (OSCE), Poland, 2013.
23. United Nations, "10 Principles for the Proper Management of Assemblies," September 2016, published by the Special Rapporteur on the rights to freedom of peaceful assembly and of association.
24. "General Comment No. 27, Article 12 (Freedom of Movement)," Committee on Civil and Political Rights, Sixty-seventh Session, 1999.