



LEGAL BRIEF

PREVENTING THE ABUSE OF PUBLIC HEALTH EMERGENCIES

Lawful Criteria to Declare a State of Emergency

**WITH PUBLIC INTEREST
RECOMMENDATIONS**

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**World Council
For Health**

Preventing the Abuse of Public Health Emergencies

Lawful Criteria to Declare a State of Emergency

“Knowledge makes a man unfit to be a slave.”
— Frederick Douglass

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Throughout history, it is evident that one of the principal tools employed by tyrannical governments to deny people their basic human rights and freedoms has been the baseless declaration of a state of emergency. Unsurprisingly then, the central legal instrument abused by governments during the COVID-19 pandemic was the declaration of an illicit state of emergency, which granted governments and their public health authorities extensive powers. This led to and facilitated unjustifiable gross violations of fundamental human rights for almost three years.

This *ultra-vires* abuse of authority would not have been practically possible had the general public, legal practitioners, health practitioners, politicians, and the media been adequately informed regarding the requirements of International Human Rights Law (IHRL) and the benchmarks needed to declare a legitimate state of emergency.

The purpose of this document is:

- a) to inform and educate the general public, legal practitioners, health practitioners, and government officials about how to ascertain the presence or absence of a *bona fide* (genuine) public health emergency.
- b) to set out the legal criteria and minimum thresholds necessary to declare a legitimate state of emergency.
- c) to show that these criteria were never met at any time during the COVID-19 era.
- d) to prevent the future abuse of emergency provisions.
- e) to highlight that certain *jus cogens* norms and fundamental human rights can never be violated, not even during a declared state of emergency, for example, “the right to be free from medical experimentation without free and informed consent.”

I. Summary

The abuse of emergency provisions over the past three years has again brought to the world’s attention the complicated relationship between the declaration of a ‘state of emergency’ and the protection of essential human rights. Controversially, the World Health Organization (WHO), an agency of the United Nations, ‘declared’ COVID-19 a pandemic on March 11, 2020. This was followed by many countries across the world instituting severe emergency measures, resulting in widespread violations of basic human rights. Governments abused the declaration of a state of emergency, revealing a brash and cavalier indifference towards IHRL and the lawful limits to policymaking.

Indeed, emergency measures were misused “as a nefarious government technique, rather than an exceptional temporary measure.”¹ Unlawful COVID-19-related pseudo-legal emergency regulations breached the fundamental human rights of billions of people globally.

The IHRL standards that authorities need to follow are clear regarding how limitations on essential human rights should be handled during public health emergencies. The requirements for any emergency measures derogating from covenant obligations are that they should, *inter alia*:

- respond to a genuine, imminent, and immense public or social need;
- be imposed by law and not imposed arbitrarily;
- be balanced and proportionate to the threat;
- be strictly required by the demands of the situation;
- be no more restrictive than needed to accomplish the purpose; and
- be non-discriminatory to any specific group.²

The international public health community should employ evidence-based policies to control the spread of disease and safeguard the public's health without infringing basic human rights. From a legal perspective, there was no justification to respond differently to COVID-19 than to other transmissible diseases with similar crude mortality rates, such as certain types of influenza and other respiratory diseases.

Human rights standards and principles contained in the **International Covenant on Civil and Political Rights (ICCPR)**, the **Siracusa Principles** (attached hereto **Annexure A**), and the **Paris Minimum Standards** (attached hereto **Annexure B**), specific to public health emergencies, comprise effective, practical criteria that State Parties need to observe to in order to honor their treaty obligations with regard to protecting and ensuring the basic human rights of all within their national borders.

Article 4(1) of the ICCPR explicitly determines that:

In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the State 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 ...**

The International Law Association **Paris Minimum Standards** of Human Rights Norms in a State of Emergency further define a public emergency as:

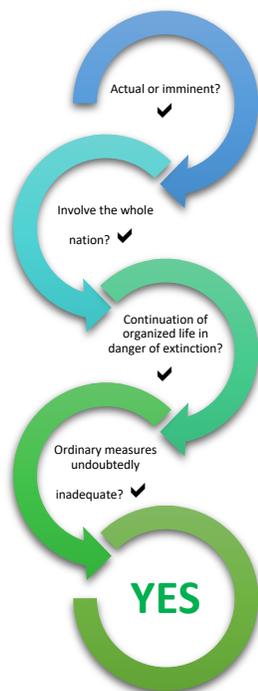
an exceptional situation of crisis or public danger, actual or imminent, which affects the whole population or the whole population of the area to which the declaration applies and constitutes a threat to the organized life of the community of which the State is composed.

Prior to the declaration of a state of emergency, the onus is on the government to show that the public health crisis 'threatens the life of the nation' and that this threat meets the following key criteria:

- It must be actual or imminent;
- Its effects must involve the whole nation;
- The continuance of the organized life of society must be endangered; and
- The threat or crisis must be exceptional in that the ordinary measures or controls for the preservation of public health, order, and safety are undoubtedly inadequate.³⁴⁵⁶⁷⁸

A public health emergency that does not meet any one of the above criteria or *desiderata* would not constitute a legitimate threat to 'the life of the nation'. Any human rights-infringing public health measures instituted pursuant to such a public health emergency would be illegitimate in terms of normative standards of international human rights.

Genuine Emergency



COVID-19 Pretend Emergency

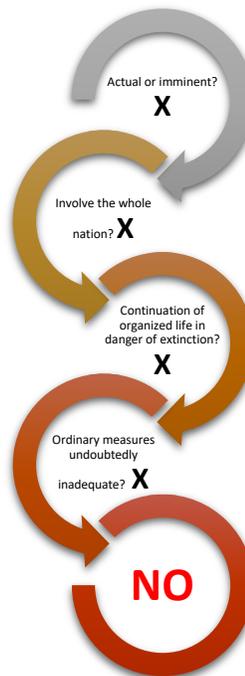


Figure 1: Decision Tree Determines a Legitimate State of Emergency: Yes or No.

Source: Dr W van Aardt (2022) COVID-19 Lawlessness

Certain fundamental human rights can never be suspended under any circumstances, not even during a lawful state of emergency. **Article 4 of the ICCPR** specifies a list of fundamental human rights from which no derogation is allowed. This list includes, *inter alia*:

- The right not to be arbitrarily deprived of life;
- The right not to be subjected to torture;
- The right not to be subjected to cruel, inhuman or degrading treatment or punishment; and
- The right not to be subjected to medical or scientific experimentation without free and informed consent.

Other *jus cogens* norms include prohibitions on crimes against humanity, war crimes, genocide, and slavery.⁹

It is of critical importance that these international norms are publicized widely and built into decision-making by State Parties when measures to prevent the spread of low-risk infectious viruses are instituted in the future.

The government is the entity primarily responsible for preserving human rights in the national sphere as well as on the international level. All States have a legal obligation to enact public policy that protects, respects, and ensures fundamental human rights in line with their international treaty obligations.

Bolstered by the recommendations of the WHO, numerous governments – almost all of them State Parties to the **ICCPR** (ratified by 173 governments worldwide, including the United States

of America, the United Kingdom, and all European Union Member States) – decided to take unbalanced, illegal, and oppressive public health actions that disregarded the following rights of citizens:

- The right to life;
- The right to freedom from medical experimentation without free and informed consent;
- The right to freedom of movement;
- The right to the equal protection of the law; and
- The right to freedom of thought, conscience, and religion.

Rudimentary requirements for the declaration of a lawful state of emergency were never met. This should never be allowed to recur. The systematic violation of human rights undermines national security and public order and constitutes a threat to international peace and stability.¹⁰

The inexplicable silence and inaction from major human rights NGOs, the United Nations Human Rights Commission (UNHRC), and other regional human rights judicial forums in the face of the most pervasive abuse of emergency declarations and egregious violation of international human rights law by G20 nations and other states, is a cause for extreme concern. It is indicative that the current IHR juridical order and its various checks and balances are severely compromised and not functioning as they should. This demands an independent review and investigation.

From a practical standpoint, the rampant abuse of emergency measures since the onset of the COVID-19 pandemic has confirmed the view that, *de facto*, there “are no ultimate institutional safeguards available for ensuring that emergency powers be used for the purpose of preserving the rule of law.”¹¹ This can only be assured by the people’s own knowledge of the law, proactive legal action, and their determination to ensure that their governments do not abuse discretionary power by imposing self-serving, biased, or arbitrary limitations on fundamental human rights.

II. State of Emergency and International Human Rights Law

A. IHRL Derogation Provisions

When a country is involved in a legitimate life-and-death struggle for survival, few will demand that it avoids taking extraordinary emergency measures, in the best interests of its population. But how exactly is the existence of a genuine and lawful public health emergency determined in terms of IHRL?

State of emergency or ‘derogation provisions’ in IHRL allow governments to legitimately suspend certain human rights guarantees to confront a genuine crisis “that threatens the life of the nation.”^{12 13 14 15 16} IHRL derogation provisions have been described as a ‘necessary evil’ given that emergency derogations are intentional acts by governments to disregard recognized international human rights legal duties in response to exceptional situations.¹⁷ However, derogation conditions in the ICCPR restrain the actions of national authorities, as IHRL obligations may only be limited to responding to a specific state of emergency that is both temporary in nature and that threatens the day-to-day functioning of the State.¹⁸

Article 4(1) of the ICCPR explicitly determines that:

In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the State 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.

Article 15 of the European Convention contains a similar provision:

In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under [the] Convention **to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.**

IHRL uses a combination of regulations and open-textured standards to monitor derogation in the time of public health emergencies. Some legal requirements are purely rule-based, including the legal duties *erga omnes* that States publish an official notice of derogation, abstain from discrimination, and fulfill their other IHRL legal obligations.^{19 20} These rules limit the options available to State Parties and aim to provide the three public interest criteria of “predictability, stability, and constraint” during public health emergencies.²¹

The UNHRC issued a General Comment on Article 4 in 1981 that was very concise, comprising only three articles mainly reiterating the terms of Article 4 of the ICCPR.²² The Comment does not indicate how to ascertain the presence of an emergency but makes clear that emergency measures taken must be of an “**exceptional and temporary nature**” and that “**in times of emergency, the protection of human rights becomes all the more important, particularly those rights from which no derogations can be made.**”²³

In 2001, an updated General Comment was released, which was considerably extended to 17 paragraphs with more detailed information.²⁴ This subsequent UNHRC Comment deals mainly with actions taken in reaction to an emergency and also does not consider specifically what establishes, or how to ascertain the existence of, such an emergency. Notably, the UNHRC Comment determines that, “Not every disturbance or catastrophe qualifies as a public emergency which threatens the life of the nation.”²⁵ It further states, “If State Parties consider invoking article 4, ... they should carefully consider the justification and why such a measure is necessary and legitimate in the circumstances.”²⁶

In April 2020, the OHCHR released a Statement entitled “Emergency Measures and COVID-19 Guidance” that also did not define the criteria of a ‘threat to the life of a nation’ but did highlight that:

Emergency powers should be used within the parameters provided by international human rights law, particularly the **International Covenant on Civil and Political Rights (ICCPR)**, which acknowledges that States may need additional powers to address exceptional situations. Such powers should be time-bound and only exercised on a temporary basis with the aim to restore a state of normalcy as soon as possible.

The suspension or derogation of certain civil and political rights is only allowed under specific situations of emergency that ‘threaten the life of the nation’. Some safeguards must be put in place, including the respect of some fundamental rights that cannot be suspended under any circumstance.²⁷

Through the General Comments, the UNHRC acknowledges the independent right of the government to determine the presence of a public health emergency allowing for **Article 4** to be invoked.²⁸ The UNHRC leaves the early determination of a national state of emergency to the State Party by only requiring that the government “carefully consider” the **necessity, legitimacy, and justification** of such a measure.²⁹ Derogation provisions further acknowledge the principal obligations of the State as the guardian of society and that, in extraordinary circumstances, several human rights guarantees may need to be suspended, **within defined parameters, while still meeting essential human rights legal obligations.**³⁰

B. Margin of Appreciation

In determining whether a lawful ‘public emergency’ exists, the ICCPR allows derogation only when existing conditions pose a tremendous and provable threat to the life of the nation.³¹ Because the ICCPR does not describe key terms such as ‘life of the nation’, national agencies and international courts are pressed to apply judgment in establishing whether a specific emergency qualifies as an emergency “threatening the life of the nation.”³²

To determine both the presence of such an emergency and the characteristics and extent of derogations required to triumph over it, States have a wide margin of appreciation.³³ However, States do not enjoy unrestricted power in this regard but are subordinate to IHRL as set out in various binding treaties ratified by States around the globe.³⁴

The **European Court of Human Rights** (ECtHR) held that:

It falls in the first place to each Contracting State, with its responsibility for the life of [its] nation, to determine whether that life is threatened by a ‘public emergency’ and, if so, how far it is necessary to go in attempting to overcome the emergency. In this matter, authorities have a wide margin of appreciation. Nevertheless, the States do not enjoy an unlimited power in this respect.³⁵

The ‘margin of appreciation’ that is recognized “varies depending upon the nature of the right and the nature and ambit of the restriction.”³⁶ An equilibrium must be attained between the public interest and the individual’s interest. Where the limitation is to a human right important to a free and democratic society, a much greater level of justification is necessary;³⁷ so too, where an emergency regulation impedes intimate aspects of private life. Conversely, “in areas such as morals or social policy, greater scope is allowed to the national authorities.”^{38 39}

The ‘margin of appreciation’ is the discretion left to a particular State to implement its protective plan of action in the way it sees fit or, in short, “the amount of latitude left to national authorities.”⁴⁰ Importantly, under the ‘margin of appreciation’ legal standard, the “burden lies on governments to justify emergency declarations during ex post facto judicial review.”^{41 42} The absence of such a rational justification would be an adequate ground for making a determination that IHRL has been transgressed.

For example:

- In the case of *Brannigan & McBride v. United Kingdom*, it was held that the United Kingdom had abused its emergency powers since there was no satisfactory justification for the actions that were taken.⁴³

- In the case of *Aksoy v. Turkey*, the ECtHR deduced that certain emergency actions that were taken “exceeded the government’s margin of appreciation due to the fact that it could not be said to be strictly required by the exigencies of the situation.”⁴⁴

In each of these instances, the court accepted the legitimacy of the government’s primary role in establishing temporary emergency measures, but also emphasized that national authorities must be able to offer *reasonable and sensible* justifications. These judgements highlight the principle that governments ultimately carry the burden to demonstrate credible and rational grounds for any declared ‘threat to the life of the nation’ and to justify why the actions they have taken to confront the emergency are *necessary and reasonable*.⁴⁵

The ‘margin of appreciation’ doctrine respects this designation of power, ensuring that international tribunals give a degree of deference to the context-sensitive decisions of national decision-makers during a state of emergency.

However, international courts should intervene:

- if and when national authorities neglect to motivate and support their human rights derogations with rational, reasonable, and common-sense deliberation supported by objective facts and data;
- if governments’ behavior reflects a pattern of illogical and abusive conduct; or
- if corporate corruption and conflicts of interest have compromised their fiduciary duty.

Therefore, a nation’s authority to derogate from human rights legal obligations during public emergencies is conditional upon the State serving as an *honest, honorable, and faithful* guardian of its people.^{46 47}

For this delegation of authority to function appropriately, national authorities need to adhere to international human rights norms and criteria. Deference to State derogations is not acceptable if circumstances indicate that State Parties misuse emergency powers for political and financial exploitation of its population.

The critical question that needs to be addressed is whether the threat posed by COVID-19 represented a public health emergency that threatened the life of the nation.

C. When does a Public Health Emergency Threaten the Life of a Nation?

With regards to what constitutes an emergency that ‘threatens the life of a nation’, the **European Court of Human Rights** (ECtHR) held that it should be:

an exceptional situation of crisis or emergency which affects the whole population and constitutes a threat to the organized life of the community of which the State is composed.^{48 49 50}

In the *Denmark, Norway, Sweden, and the Netherlands v. Greece* case, the ECtHR gave some guidance and held that, for a public emergency to threaten the life of a nation:

- a) it must be imminent or actual;
- b) it must affect the entire population; and
- c) the continuance of the organized life of the community must be threatened.⁵¹

The Court emphasized that the emergency or threat must be extraordinary, in that “the normal measures or restrictions permitted by the Convention for the maintenance of public safety, health, and order are plainly inadequate.”⁵²

The ECtHR highlighted the extraordinary character of a public health emergency as being a situation where ‘normality’ is indisputably a practical impossibility, and the normal day-to-day life of society cannot be followed.⁵³ Although set forth during a quasi-judicial proceeding and formally lacking legal precedential authority, the criteria in the Greek case were confirmed as influential precedents in later cases and commonly perceived to give direction to States.⁵⁴

An authoritative interpretation of the IHRL derogation provisions under the ICCPR has also been provided in the American Association for the International Commission of Jurists (AAICJ) **Siracusa Principles**.⁵⁵ With regards to what constitutes a “public emergency which threatens the life of a nation,” the Siracusa Principle determines that:

A threat to the life of the nation is one that:

- a) affects the whole of the population and either the whole or part of the territory of the State;
- and
- b) threatens the physical integrity of the population, the political independence or the territorial integrity of the State, or the existence or basic functioning of institutions indispensable to ensure and protect the rights recognized in the Covenant.⁵⁶

With regards to implementing a public emergency that threatens the life of a nation, the Siracusa Principles further comprise the following general principles:

- The scope of a limitation to a right shall not be interpreted to jeopardize the essence of the right concerned.
- All limitation clauses shall be interpreted strictly and in favor of the rights at issue.
- Laws imposing limitations on the exercise of human rights shall not be arbitrary or unreasonable.
- Every limitation imposed shall be subject to the possibility of challenge to and remedy against its abusive application.
- Whenever a limitation is required in the terms of the Covenant to be ‘necessary’, this term implies that the limitation: (a) is based on one of the grounds justifying limitations recognized by the relevant article of the Covenant; (b) responds to a pressing public or social need; (c) pursues a legitimate aim; and (d) is proportionate to that aim. Any assessment as to the necessity of a limitation shall be made on objective considerations.
- In applying a limitation, a State shall use no more restrictive means than are required for the achievement of the purpose of the limitation.
- The burden of justifying a limitation upon a right guaranteed under the Covenant lies with the State.
- Derogation from rights recognized under international law in order to respond to a threat to the life of the nation is not exercised in a legal vacuum. It is authorized by law and as such it is subject to several legal principles of general application.
- A proclamation of a public emergency shall be made in good faith based upon an objective assessment of the situation to determine to what extent, if any, it poses a threat to the life of the nation.

- A proclamation of a public emergency and consequent derogations from Covenant obligations that are not made in good faith are violations of international law.
- The provisions of the Covenant allowing for certain derogations in a public emergency are to be interpreted restrictively.
- In a public emergency, the rule of law shall still prevail. Derogation is an authorized and limited prerogative to respond adequately to a threat to the life of the nation. The derogating State shall have the burden of justifying its actions under law.

The focus on 'objective assessment' leaves open the possibility for a treaty-monitoring forum to become involved in judgement of the existence of a public health emergency, removing the exclusive ability of the State in adjudicating this important issue.⁵⁷

The International Law Association (ILA's) **Paris Minimum Standards of Human Rights Norms** in a state of emergency define a public emergency as:

... an exceptional situation of crisis or public danger, actual or imminent, which affects the whole population or the whole population of the area to which the declaration applies and constitutes a threat to the organized life of the community of which the State is composed.

Additionally, the Paris Minimum Standards, were intended to help ensure that, even in situations where a *bona fide* declaration of a state of emergency has been made, the State Parties concerned will refrain from suspending those basic human rights that are regarded as non-derogable that include:

- The Right to Legal Personality and Recognition as a Person before the Law
- Freedom from Slavery or Servitude
- Freedom from Discrimination to the Equal Protection of the Law
- The Right to Life
- The Inherent Right to Liberty and Security of the Person
- Freedom from Torture or to Cruel, Inhuman or Degrading Treatment or Punishment
- Freedom from Medical or Scientific Experimentation without Free and Informed Consent
- The Right to Fair Trial and *Habeus Corpus*
- Freedom of Thought, Conscience and Religion
- The Right to Legal Remedy and an Independent and Impartial Judiciary.

The Paris Minimum Standards are unambiguous that "[d]uring the period of the existence of a public emergency the state ... may not derogate from internationally prescribed rights which are by their own terms 'non-suspendable' and not subject to derogation."

D. COVID-19 did not Meet the Basic Criteria of a Genuine Emergency 'Threatening the Life of the Nation'.

International human rights prescriptions are precise that a public health calamity that 'threatens the life of the nation' must endanger or compromise some vital element of statehood or survival of the general population and contain the following key criteria:

- a) It must be actual or imminent.
- b) Its effects must involve the whole nation.
- c) The continuation of the organized life of society must be in danger of extinction.

- d) The threat or emergency must be extraordinary in that the ordinary measures or controls for the protection of public health, order, and safety are undoubtedly inadequate.

In practice, each criterion should be assessed cumulatively, and failure of an emergency to meet any one of the thresholds will preclude the declaration of a state of emergency. In other words, for a public health emergency to be genuine, the following four questions need to be answered affirmatively supported by actual facts and data.

- a) Is the threat actual or imminent?
- b) Does the threat involve the whole nation?
- c) Is a continuation of the organized life of society in danger of extinction?
- d) Is the threat so extraordinary that the ordinary measures for the protection of public health and order are undoubtedly inadequate?

A public health emergency that does not meet any one of the above *desiderata* would not constitute an authentic and legitimate threat to 'the life of the nation'. Any public health regulations contravening human rights that are enacted pursuant to such a pseudo or manufactured public health emergency would be illegal in terms of IHRL normative standards.⁵⁸

a) Criterion 1: Was the threat from COVID-19 actual or imminent?

From the factual evidence hereinafter, it is indisputable that the threat from COVID-19 was neither actual nor imminent in relation to the alleged scale and severity used as justification to enact a state of emergency.

The primary rationalization for COVID-19 emergency measures that were initially implemented was the predictive modeling compiled by Imperial College London. After that, nonsensical and arbitrary increases in positive Reverse Transcription-Polymerase Chain Reaction (RT-PCR) test results were abused to extend existing emergency measures or institute additional ones.⁵⁹ Although major policy decisions need model input, models are meaningful only to the extent that outputs are valid, accurate, transparent, based on truthfully documented sources, thoroughly assessed, objectively peer-reviewed, and that they produce fairly dependable projections.

Many States around the world misused predictive modeling and limited statistics to defend their emergency regulations, projecting *inter alia* more than two million COVID-19-related deaths in the United States, 500,000 in the United Kingdom, 375,000 in South Africa, and 100,000 in Sweden before the end of 2020. By August 2020, it had become glaringly obvious that the expected crude mortality rates, and thus the 'threat to the nations' were extremely speculative, demonstrably incorrect, and massively overestimated.^{60 61 62 63 64 65 66}

According to the US Centers for Disease Control and Prevention (CDC) and the WHO, by December 31, 2020, 352,225 Americans out of a population of 331,515,730 (0.10%) had died as a result of COVID-19.^{67 68} In the United Kingdom, at the end of 2020 the official death toll stood at 72,548 out of a population of approximately 66 million citizens (0.10%).⁶⁹ By December 31, 2020, South Africa, with a population of 60 million, recorded 28,033 deaths (less than 0.04%), and Sweden, with a population of 10.4 million, recorded 9,654 deaths. (less than 0.09%)^{70 71} In principle, predictive modeling can never be used as justification for an emergency, as such modeling is, by its very nature, highly speculative. Furthermore, it has become clear that corrupt

role-players exploited and profited from COVID-19, funding institutions conducting the modeling and manipulating predetermined outcomes.

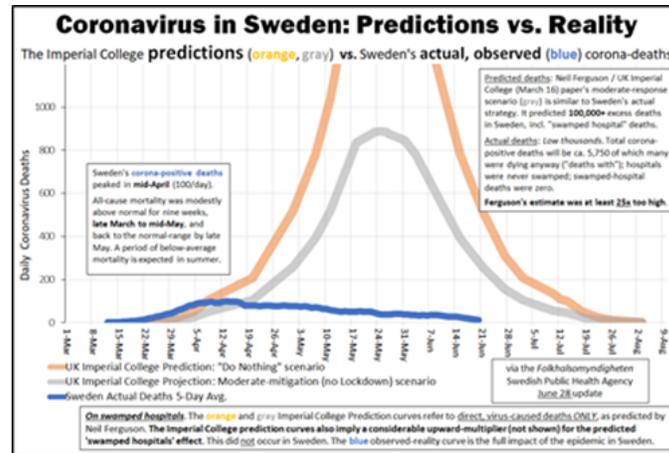


Figure 2: Coronavirus in Sweden: predictions vs. reality
Source: Swedish Public Health Agency (Folkhälsomyndigheten)

Following the initial declaration of a state of emergency, most governments used arbitrary increases in the number of positive PCR tests (which amplify fragments of live or dead virus found in nose and throat swabs) as justification to extend or implement new emergency regulations. This was fundamentally flawed and unjustifiable, since:

- The PCR tests have a questionable record of providing false and unreliable results.⁷²
- The PCR tests for COVID-19 were known to generate many false-positive results by reacting to DNA material that was not specific to SARS-CoV-2.^{73 74 75 76 77 78}
- The cycle threshold (CT) values of the PCR tests are completely incorrect at 35 cycles. It was extensively documented and acknowledged that any test using a CT value over 35 was theoretically meaningless.^{79 80 81} The CDC itself acknowledged that tests over 28 cycles did not produce dependable positive results and were therefore unacceptable. Notwithstanding this, virtually all the labs in the United States and the United Kingdom ran their PCR tests above 35 and at times as high as 45 cycles.^{82 83 84} This alone invalidated over 90% of the alleged positive COVID-19 cases.
- The Corman-Drosten article that was the source of every COVID-19 PCR test globally is suspicious. The genome of the SARS-CoV-2 virus was allegedly sequenced by Chinese researchers in December 2019 and made public on January 10, 2020. Less than 14 days later, Christian Drosten and colleagues had supposedly used the genome to create laboratory analysis for COVID-19 PCR tests. They authored a research article, "Detection of 2019 novel coronavirus (2019-nCoV) by real-time RT-PCR," which was submitted for peer review on January 21, 2020, and officially accepted on January 22. This implies that the manuscript was 'peer-reviewed' in less than two days, whereas this process typically takes a minimum of weeks, and often months.^{85 86}
- The CDC conceded that PCR tests "may not indicate the presence of an infectious virus," yet it was extensively misused to do exactly that in the case of COVID-19. A

research report produced by Collateral Global and academics at the University of Oxford in February 2022 determined that as much as one-third of all positive PCR cases may not have been infected with SARS-CoV-2 at all.^{87 88}

- There was tremendous corruption, exploitation, breach of fiduciary duties, and glaring conflicts of interest. Those who profited from the PCR tests were the same groups incessantly promoting testing and the continuation of emergency measures.^{89 90 91}

The substantial proportion of asymptomatic COVID-19 infections, the well-known incidence of acute comorbidities, and the potential for false-positive tests rendered the positive PCR results and death numbers extremely unreliable and most definitely not sufficiently credible to justify a lawful and genuine state of emergency.⁹²

Additionally, COVID-19 mortality numbers were exaggerated and are therefore misleading. The definition of what constituted a 'COVID-19 death' was changed to include a 'death by any cause within 28, 30, or 60 days of a positive test'. If test results were not obtainable, even 'probable' or 'presumed' COVID-19 deaths could be included.⁹³

Public health bureaucrats from Germany, Italy, the United Kingdom, the United States, and many other countries followed this intentionally deceptive and nonsensical practice. Removing the distinction between 'dying of COVID-19' and 'dying of something else after testing positive for COVID-19' (and in the USA, including those who were 'presumed' to have died of COVID-19) resulted in these deaths being conspicuously over-counted. Grouping these statistics together increased the apparent impact of the disease and was often used, together with positive PCR test records, to defend emergency regulations. In the United Kingdom, for example, in January 2022, the UK Government released statistics revealing that between February 2020 and December 2021 in England and Wales there were only 6,183 "deaths caused solely by COVID-19."⁹⁴

In the United States, a peer-reviewed study by Ealy, *et al.* entitled "COVID-19 Data Collection, Comorbidity & Federal Law: A Historical Retrospective" was published in October 2020 in the journal *Science, Public Health Policy, and The Law*. The authors concluded that:

The CDC has advocated for social isolation, social distancing, and personal protective equipment use as primary mitigation strategies in response to the COVID-19 crisis, ... These mitigation strategies were promoted largely in response to projection model fatality forecasts that have proven to be substantially inaccurate. The CDC published guidelines on March 24, 2020 that substantially altered how the cause of death is recorded exclusively for COVID-19 ... As a result, a capricious alteration to data collection has compromised the accuracy, quality, objectivity, utility, and integrity of their published data.⁹⁵

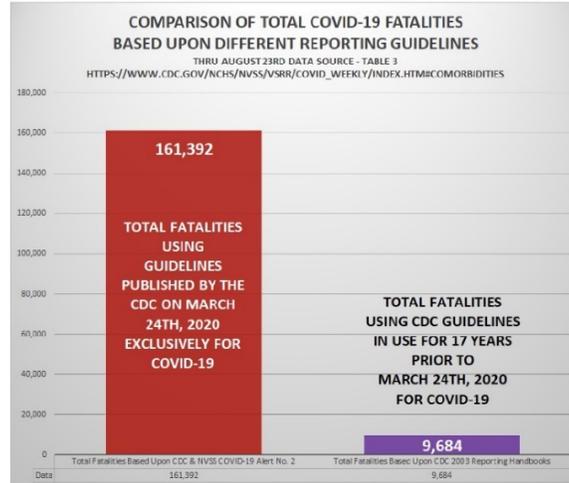


Figure 3: COVID-19 Using the March 24 Exclusive Guidelines vs Using the 2003 Guidelines. Had the CDC used the 2003 guidelines, total COVID-19 deaths would have been approximately 16.7 times lower than reported.
Source: Ealy *et al.* (2020)

b) Criterion 2: Did the threat from COVID-19 involve the whole population?

From the facts set out below, it is incontestable that at no stage did the threat from COVID-19 involve the whole population. Following some uncertainty in early 2020 concerning the infection fatality and crude mortality rates of COVID-19 in different sections of the population, it soon became glaringly obvious that COVID-19 only posed a risk to a tiny proportion of the populace that belonged to one of the vulnerable groups.

Infection fatality rates for COVID-19 depended mostly on age and underlying health conditions. By August 2020, it was apparent that the absolute risk of COVID-19 was very low for individuals younger than 65 years.^{96 97} Dr John Ioannidis, a former Stanford University professor who has contributed to evidence-based medicine, epidemiology, and clinical research, is one of the most published and influential scientists in the world. In a peer-reviewed study published by Elsevier in *Environmental Research* in September 2020, he noted that:

People <65 years old have very small risks of COVID-19 death even in pandemic epicenters and deaths for people <65 years without underlying predisposing conditions are remarkably uncommon. Strategies focusing specifically on protecting high-risk elderly individuals should be considered in managing the pandemic.⁹⁸

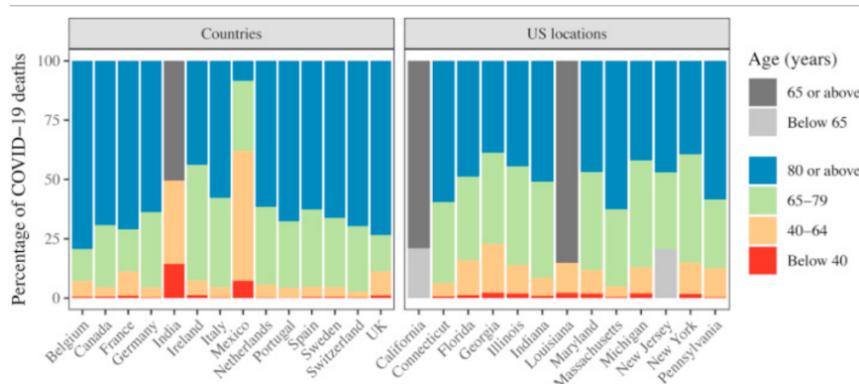


Figure 4: Proportion of COVID-19 deaths by specific age group category.

Source: Ioannidis *et al.* 2020. Population-level COVID-19 mortality risk for non-elderly individuals overall and for non-elderly individuals without underlying diseases in pandemic epicenters. *Environmental research*, 188, p.109890.

Recovery rates and fatality rates are reciprocal ways of looking at the available data. If a fatality rate is 0.018%, as for the age demographic 0 to 19 years, then the reciprocal recovery rate is 99.982%. Based on recovery rate data from August 2020, it was also apparent that individuals between the ages of 0 to 19, 20 to 49, and 50 to 69 years were at particularly low risk of death due to COVID-19.

Date	August 23rd	August 16th	August 9th	August 2nd
Age 0 to 19	99.982%	99.981%	99.980%	99.978%
Age 20 to 49	99.72%	99.72%	99.72%	99.71%
Age 50 to 69	97.31%	97.31%	97.28%	97.29%
Age 70+	82.43%	82.43%	82.15%	80.95%

Table 1: Recovery Rates by Age Compared to Preceding Weeks.

Source: Ealy *et al.* (2020) COVID-19 Data Collection, Comorbidity & Federal Law: A Historical Retrospective. *Science, Public Health Policy, and The Law*. 2:4-22.

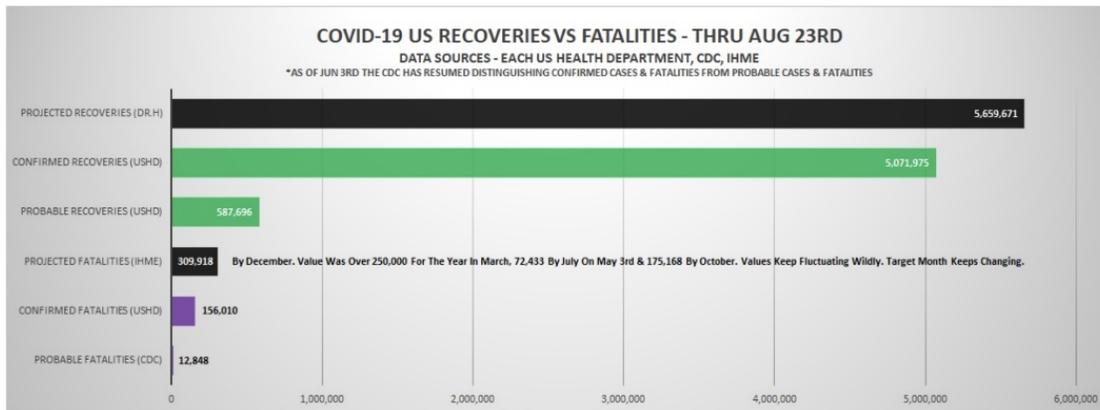


Figure 5: Confirmed Recoveries vs. Confirmed Fatalities. (as of 8.23.2020).

Source: Ealy *et al.* (2020)

In their peer-reviewed study from 2020, Ealy *et al.* noted that:

The age 70+ demographic makes up the largest percentage of fatalities (72.9%). This is alarmingly disproportionate to their relatively small percentage of cases (12.7%) and thus defines them as a high-risk population. The opposite is true for the age 0 to 19 demographic, which makes up a small percentage of fatalities (0.0554%).

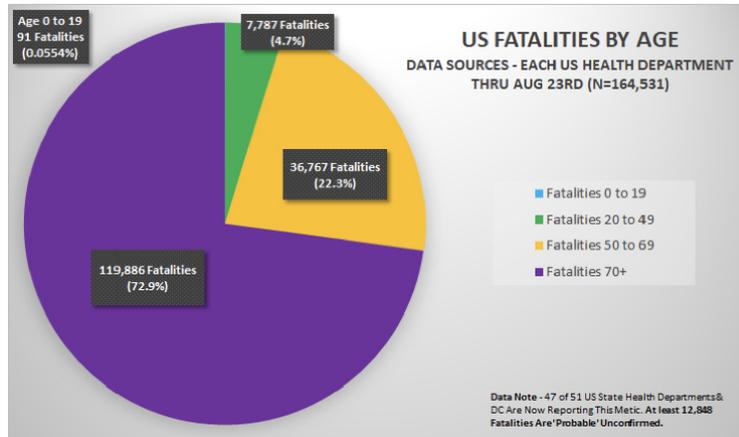


Figure 6: US Fatalities by Age.
Source: Ealy et al. (2020)

As at February 2021, when most UN Member States were continuing to implement harsh lockdowns, travel bans, and other repressive emergency measures, the global infection fatality rate (IFR) was approximately 0.15%, with 1.5 to 2 billion infections.⁹⁹ Since the second half of 2020, it had already been well-known - researched, documented, and published - that the COVID-19 crude mortality rate varied between 0.003% and 0.3% and that more than 99% of people were at no risk of death or severe illness from COVID-19.^{100 101}

Country	Case Fatality	Crude Mortality
United States of America	1.6%	0.22%
United Kingdom	1.5%	0.21%
South Africa	3.1%	0.15%
Ethiopia	1.8%	0.005%
Sweden	1.3%	0.14%
France	1.6%	0.17%
India	1.3%	0.03%

Table 2: COVID-19 case fatality and crude mortality rates
Source: Johns Hopkins University, Mortality Analysis (November 2020)

c) Criterion 3: Did COVID-19 threaten the continuance of the organized life of the community at any stage?

The facts presented below are self-evident: it is incontrovertible that COVID-19 never threatened the continuance of the organized life of the community. The threat from COVID-19, as perceived and conveyed by most State Parties around the world, was related to a threat that the capacity of intensive care units and healthcare providers to handle patients would be overwhelmed. The main line of reasoning used to justify emergency actions was that 'flattening the curve' would avoid a sudden flood of COVID-19 cases and shield healthcare providers from collapse.

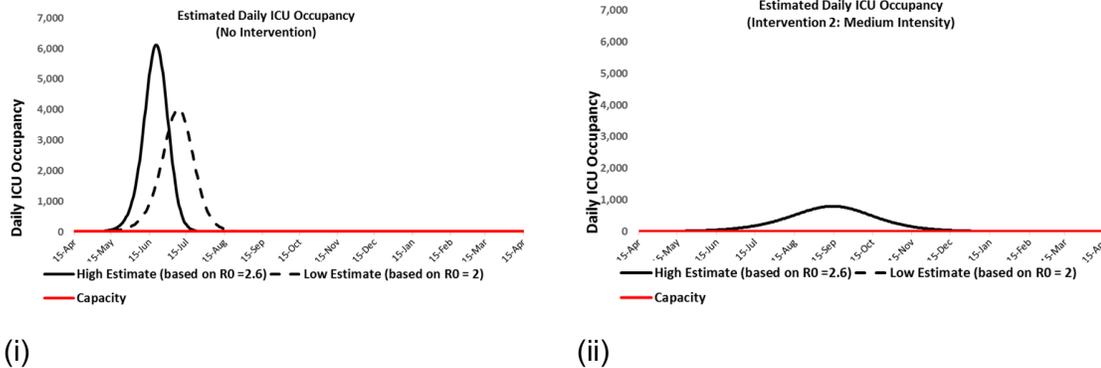


Figure 7: CDC Details of estimated demand for ICU beds assuming different levels of: i) Numbers infected per infectious person (R_0); ii) effectiveness of community interventions.
Source: USA CDC

However, none of the various healthcare providers were ever close to collapse at all. What is crucial to note is that States were dealing with the “concern about capacity, rather than the actual effect of COVID-19 on capacity.”¹⁰² Thus, what was feared was an extremely narrow and restricted ‘potential ICU capacity crisis’ rather than “an emergency threatening the continuance of all elements of the organized life of the community.”¹⁰³

The ‘ICU capacity crisis’ could have been easily managed through other ordinary measures, such as the expansion of ICU capacity by the allocation of additional government resources to healthcare providers, as was accomplished in New York City with the placement of the Comfort hospital ship and the transformation by the Army Corps of Engineers of the 1,800,000-square-foot Jacob K. Javits Convention Center into a substitute care facility for more than 2,000 non-COVID-19 patients.¹⁰⁴ Underscoring the fact that healthcare systems were never close to being overrun, in both the United Kingdom and United States, millions were wasted on temporary emergency hospitals that were never used.^{105 106}

The Associated Press reported that:

When virus infections ... fell short of worst-case predictions, the globe was left dotted with dozens of barely used or unused field hospitals. Some public officials say that’s a good problem to have — despite spending potentially billions of dollars to erect the care centers — because it’s a sign the deadly disease was not nearly as cataclysmic as it might have been.¹⁰⁷

To meet the criterion of “an emergency threatening the continuance of all elements of the organized life of the community,” the threat should be so immense and overwhelming that the day-to-day life of the country’s residents is affected in such a material way that normalcy is no longer possible.¹⁰⁸ This is an incredibly high criterion to meet as it implies that ordinary regulations, ordinary measures, and State institutions are no longer capable of controlling civil society.¹⁰⁹ This was most certainly not the case with COVID-19.

It was established early on in the pandemic that most deaths from COVID-19 would have followed as part of the ‘normal’ risks faced by individuals, predominantly the elderly and those with lingering medical problems. According to the US CDC, 94% of Americans who died with COVID-19 had other “types of health conditions and contributing causes.” Data on coronavirus-related deaths from the week ending February 1, 2020, through August 22, 2020, showed that “for 6 percent of

the deaths, COVID-19 was the only cause mentioned.” In other words, 94% of Americans who died from COVID-19 had contributing conditions.¹¹⁰

Across the world, COVID-19 did not have any significant impact on excess mortality, life expectancy, and mortality curves, and as such could not have affected **any** “elements of the organized life of the community” as all working-aged people were able to carry on with their duties and responsibilities as under normal conditions.^{111 112}

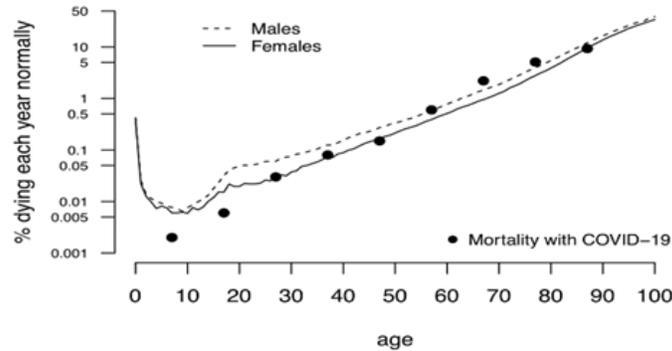


Figure 8: COVID-19 impact on life expectancy in England and Wales
Source: David Spiegelhalter, ONS, Imperial College London

The numbers of US deaths from or with COVID-19 (dark grey) and from all other causes (light grey), per age group, from February 2020 to February 2021, are depicted below:

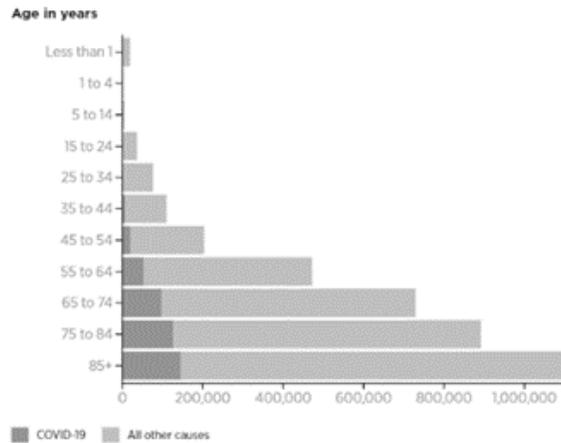


Figure 9: US deaths from or with COVID-19 compared with all other causes.
Source: CDC, USA Facts

The following graph depicts the number of deaths worldwide by cause in 2019.

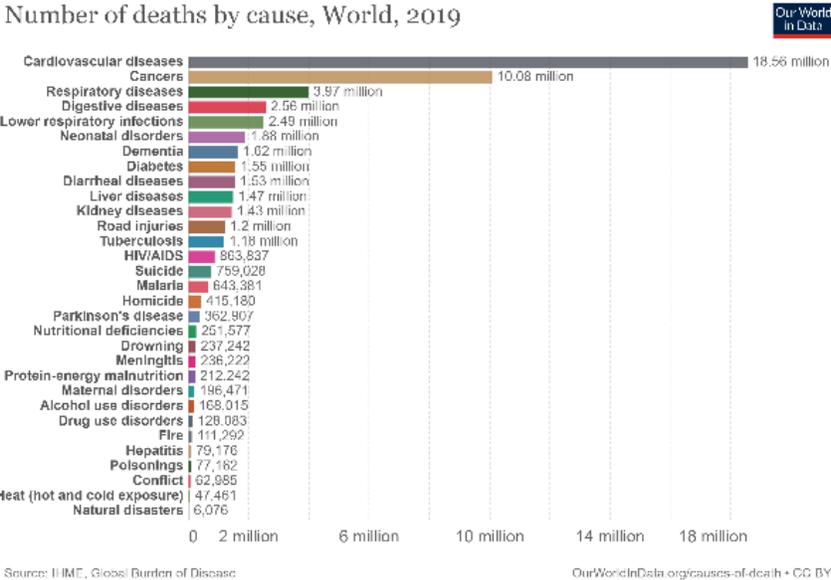


Figure 10: Number of deaths by cause 2019
Source: Our World in Data

Our World in Data published datasets that reveal that 58.8 million people died in 2019, the year preceding COVID-19. The largest fatal disease by far was cardiac disease – responsible for more than 18.5 million deaths, or around a third of all deaths that year. Cancers killed in excess of ten million individuals, or around one in six people, making it the second leading cause of death in the world. Respiratory infection killed 3.97 million individuals; lower respiratory diseases killed 2.49 million individuals.

Johns Hopkins University data shows that COVID-19 caused 1.88 million deaths globally in 2020. It is obvious that there were several other causes of death, such as cardiac disease, cancer, and other respiratory disorders, that had a notably larger impact on humanity than COVID-19, yet none of these triggered any emergency measures. If a state of emergency was not required for individuals dying from cardiovascular disease, diabetes, cancer, the flu, or other respiratory illnesses, which caused substantially more deaths than COVID-19, then there was no justification nor basis to enact emergency measures for COVID-19.¹¹³

d) Criterion 4: Was the COVID-19 crisis so exceptional that normal measures for public health and safety were inadequate?

It is not possible to contemplate a reasonable *raison d'état* based on the notion that a virus with an infection fatality rate of less than 0.15% was such an exceptional crisis that conventional and ordinary public health and safety actions were plainly inadequate.

The COVID-19 crisis was not exceptional in that normal measures for public health and safety were plainly adequate. Numerous ordinary measures could have been taken to successfully overcome the COVID-19 public health threat, such as:

- Making cheap and effective prophylactics and early treatment protocols available.^{114 115 116 117 118 119 120} This was done in Uttar Pradesh, India’s most populous State with 230 million people, which was nearly COVID-19-free following the proactive use of Ivermectin, included in home healthcare kits in 2021.¹²¹
- Adopting a ‘protect the vulnerable’ approach.¹²²
- Increasing the ICU capacity by allocating resources to field hospitals.
- Following the Swedish approach.¹²³
- Following a natural herd immunity approach.¹²⁴

From the straightforward evaluation set out in 2.4.1. to 2.4.4 above, it is abundantly clear that COVID-19 never posed a threat to the life of the nation as it did not even meet one of the four international human rights thresholds.

	Criterion 1: Is the threat actual or imminent?	Criterion 2: Does the threat involve the whole nation?	Criterion 3: Is the continuation of the organized life of society in danger of extinction?	Criterion 4: Is the threat so extraordinary that the ordinary measures for the protection of public health and order are undoubtedly inadequate?	FINDING ✓ X
Example A: Genuine Emergency	YES	YES	YES	YES	✓
Example B: Not Emergency	YES	YES	YES	NO	X
Example C: Not Emergency	YES	YES	NO	NO	X
Example D: Not Emergency	YES	NO	NO	NO	X
Example E: Covid-19: Not Emergency	NO	NO	NO	NO	X

Table 3: Criteria to determine a legitimate emergency.
Source: Dr W van Aardt (2022) COVID-19 Lawlessness.

Without doubt, if the general public, legal practitioners, health practitioners, politicians and the media had been equipped with the necessary knowledge of the actual common-sense IHRL requirements to declare a legitimate state of emergency, corrupt international and national public health agencies would not have been able to swindle their way into declaring a manufactured emergency, leading to arguably some of the most pervasive and severe violations of fundamental human rights in history.

Since the COVID-19 crisis did not meet the legal conditions of an emergency ‘threatening the life of a nation’, all derogation measures such as school closures, travel restrictions, small business closures, lockdowns, mask mandates, harmful vaccine mandates, and isolation mandates, were illegal breaches of the ICCPR.

III. Conclusion and Recommendations

Respect for fundamental human rights is needed to ensure minimum worldwide public legal order. Non-adherence to IHRL norms and contempt for human rights have led to the current state of lawlessness and insecurity that some refer to as the 'new normal'. Under IHRL normative standards, national authorities have a legal duty to respect, protect, and fulfill the human rights of all citizens.

When corrupt public bureaucrats, at the behest of their corporate paymasters, ignore their duty to protect those in their country from human rights abuses and exploitation, through the declaration of illicit emergencies and enabling of arbitrary pseudo-health mandates, they breach their international obligations *erga omnes*. They should be held responsible and prosecuted to the full extent of the law.

The illegitimate declaration of national emergencies resulting in the deprivation of vital human rights, witnessed on a monumental scale across the globe in the name of COVID-19 public health, should never be accepted again. Only with the firm foundation of a minimum global legal order, where States honor IHRL norms and their international legal obligations, can the world be shaped to achieve security and full enjoyment of human rights by all.

The 'paradoxical phenomenon' of the state of emergency reached its maximum worldwide deployment during the COVID-19 pandemic, with nearly all United Nations Member States declaring a state of emergency. In the West, in particular, IHRL norms were *de facto* abolished and negated with impunity by State aggression. While disregarding international law externally, and producing a state of emergency internally, these States still absurdly claimed to be complying with the law. The only purpose of these attempts 'to reinsert a legal vacuum into the legal order' was to protect illegal sovereign aggression at all costs.¹²⁵

IHRL, objectively interpreted and applied, does indeed expose the illicit actions of modern-day COVID-19 totalitarians. The bias inherent in individual countries determining what constitutes an emergency that poses 'a threat to the life of the nation' proved catastrophic during the COVID-19 era. Government bureaucrats abused emergency declarations to the detriment of human rights protection around the globe. "There is a fine line between governments' *bona fide* actions to secure the safety of the people, and governments' *male fide* actions illegitimately abusing public health derogation provisions."¹²⁶ But that line is clear.

Determining whether a situation constitutes a public emergency 'threatening the life of the nation' is seen predominantly as a political decision. However, declaring a state of emergency has substantial legal ramifications that too often have a disastrous adverse impact on fundamental human rights.¹²⁷ Human rights derogation can only be acceptable as a very temporary measure, allowing States to safeguard fundamental human rights. It should never be used by national authorities and their corrupt corporate sponsors to advance their political and financial agendas in a manner that endangers human rights.

Considering the 0.15% infection fatality rate of COVID-19, it is glaringly obvious that COVID-19 never constituted a threat to the life of any nation. The position held by most many State Parties that COVID-19 represented a public health emergency threatening the nation did not meet the minimum standards established in IHRL. If a disease with a crude mortality rate similar to that of influenza and other respiratory diseases can be abused to justify gross violations of fundamental

human rights, then States *de facto* and *de jure* have latitude to scorn all international human rights obligations with impunity. Sadly, this is precisely what took place.

The artificially manufactured COVID-19 crisis has been widely used to defend pervasive human rights violations.¹²⁸ To inhibit future abuse, ethical, uncompromised, objective, neutral, and independent international monitoring bodies must be involved in determinations of public emergencies. This is crucial to avoid the subjectivity that appears to have defined the existence of threats from COVID-19. The systematic violation of human rights undermines national security and public order and constitutes a threat to international peace and stability.¹²⁹

The silence and inaction of the UNHRC, regional human rights judicial forums, Human Rights Watch, and Amnesty International in the face of the most ubiquitous exploitation of emergency declarations and egregious violations of international human rights law by G20 nations is both incomprehensible and a cause for extreme concern. It indicates that the present IHR judicial order and its various checks and balances have been severely compromised and are not functioning as intended.¹³⁰

As noted by Dr Willem van Aardt (Extraordinary Research Fellow, North-West University):

When *jus cogens* norms are practically annulled, as *de facto* occurred during the past two and a half years, it is not that there is a “juridical void” but rather that political tyrants “deactivated and deposed the law” through unlawful State action ... The current “space devoid of law” needs to be brought back and reinstated into the international juridical order through the effectual implementation and adjudication of International Human Rights Law. A law that exists but is no longer practiced or effected no longer has meaning and serves as the gateway to injustice.¹³¹

From a practical standpoint, the widespread misuse of emergency measures during the course of the COVID-19 pandemic has confirmed the view that, *de facto*, there “are no ultimate institutional safeguards available for ensuring that emergency powers be used for the purpose of preserving the Constitution.”¹³² The only thing that can guarantee this is the people’s own knowledge of the law, proactive legal action, and their determination to ensure that their governments do not abuse their discretionary power by imposing self-serving, biased, or arbitrary limitations on fundamental human rights.

Recommendations:

1. Develop educational materials and campaigns through the WCH network regarding the criterion for a legitimate State of Emergency and explain how it was not met during the COVID-19 pandemic.
2. Establish IHRL early monitoring panels to monitor adherence to IHRL and alert WCH members, the public at large, the legal community, health practitioners, and politicians of IHRL violations.
3. Establish IHRL legal activism groups to take proactive legal action in the event of future abuse.

“The limits of tyrants are prescribed by the endurance of those whom they oppress.”

– Frederick Douglass

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SIRACUSA
PRINCIPLES

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Limitation and
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International Covenant
on Civil and Political
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Introductory Note

It has long been observed by the American Association for the International Commission of Jurists (AAICJ) that one of the main instruments employed by governments to repress and deny the fundamental rights and freedoms of peoples has been the illegal and unwarranted Declaration of Martial Law or a State of Emergency. Very often these measures are taken under the pretext of the existence of a "public emergency which threatens the life of the nation" or "threats to its national security."

The abuse of applicable provisions allowing governments to limit and derogate from certain rights contained in the International Covenant on Civil and Political Rights has resulted in the need for a closer examination of the conditions and grounds for permissible limitations and derogations in order to achieve an effective implementation of the rule of law. The United Nations General Assembly has frequently emphasized the importance of a uniform interpretation of limitations on rights enunciated in the Covenant.

With this in mind, the AAICJ initiated a colloquium composed of 31 distinguished experts in international law, held at Siracusa, Italy, in the Spring of 1984. This meeting, the first of its kind, was co-sponsored by the International Commission of Jurists, the Urban Morgan Institute for Human Rights, and the International Institute of Higher Studies in Criminal Sciences.

The participants examined the limitation and derogation provisions in the Covenant, seeking to identify:

- (a) their legitimate objectives;
- (b) the general principles of interpretation which govern their imposition and application; and
- (c) some of the main features of the grounds for limitation or derogation.

It was recognized that other criteria determine the scope of rights in the Covenant, e.g., the concept of arbitrariness, but time was not available to examine them. It was hoped that it might be possible to examine these other limits on some future occasion.

The participants were agreed that:

- (a) there is a close relationship between respect for human rights and the maintenance of international peace and security — indeed the systematic violation of human rights undermines the national security and public order and may constitute a threat to international peace; and

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(b) notwithstanding the different stages of economic development reached in different states, the implementation of human rights is an essential requirement for development in the broadest sense.

These principles are considered by the participants to reflect the present state of international law, with the exception of certain recommendations indicated by the use of the verb "should" instead of "shall."

Included as part of this publication are the agreed-upon Siracusa Principles and a cross-referenced text of the Covenant.

The AAICJ was founded on December 27, 1967, to uphold and strengthen the principles of human rights and the rule of law throughout the world. To this end, it cooperates with the International Commission of Jurists, a Geneva-based international non-governmental organization. The Association works closely with the American Bar Association and state and local bar associations. It also maintains close contact with legal scholars, U.S. Congressional and Senate members, the Department of State and other organizations and individuals in related fields in order to prepare and provide the most recent information on human rights.

The American Association encourages all nations to take effective measures to protect the basic rights of their citizens. Both the Association and the International Commission offer their counsel to any nation to facilitate its transition to a fuller realization of those rights.

William J. Butler, *President*

The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights

I. Limitation Clauses

- A. General Interpretative Principles Relating to the Justification of Limitations
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 - vi. "national security"
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II. Derogations in a Public Emergency

- A. "Public Emergency Which Threatens the Life of the Nation"
- B. Proclamation, Notification, and Termination of a Public Emergency
- C. "Strictly Required by the Exigencies of the Situation"
- D. Non-Derogable Rights
- E. Some General Principles on the Introduction and Application of a Public Emergency and Consequent Derogation Measures
- F. Recommendations Concerning the Functions and Duties of the Human Rights Committee and United Nations Bodies

I. LIMITATION CLAUSES

A. General Interpretative Principles Relating to the Justification of Limitations *

1. No limitations or grounds for applying them to rights guaranteed by the Covenant are permitted other than those contained in the terms of the Covenant itself.

2. The scope of a limitation referred to in the Covenant shall not be interpreted so as to jeopardize the essence of the right concerned.

3. All limitation clauses shall be interpreted strictly and in favor of the rights at issue.

4. All limitations shall be interpreted in the light and context of the particular right concerned.

5. All limitations on a right recognized by the Covenant shall be provided for by law and be compatible with the objects and purposes of the Covenant.

6. No limitation referred to in the Covenant shall be applied for any purpose other than that for which it has been prescribed.

7. No limitation shall be applied in an arbitrary manner.

8. Every limitation imposed shall be subject to the possibility of challenge to and remedy against its abusive application.

9. No limitation on a right recognized by the Covenant shall discriminate contrary to Article 2, paragraph 1.

10. Whenever a limitation is required in the terms of the Covenant to be "necessary," this term implies that the limitation:

(a) is based on one of the grounds justifying limitations recognized by the relevant article of the Covenant;

(b) responds to a pressing public or social need;

(c) pursues a legitimate aim; and

(d) is proportionate to that aim.

Any assessment as to the necessity of a limitation shall be made on objective considerations.

11. In applying a limitation, a state shall use no more restrictive means than are required for the achievement of the purpose of the limitation.

* The term "limitations" in these principles includes the term "restrictions" as used in the Covenant.

12. The burden of justifying a limitation upon a right guaranteed under the Covenant lies with the state.

13. The requirement expressed in Article 12 of the Covenant that any restrictions be consistent with other rights recognized in the Covenant is implicit in limitations to the other rights recognized in the Covenant.

14. The limitation clauses of the Covenant shall not be interpreted to restrict the exercise of any human rights protected to a greater extent by other international obligations binding upon the state.

B. Interpretative Principles Relating to Specific Limitation Clauses

i. "prescribed by law"

15. No limitation on the exercise of human rights shall be made unless provided for by national law of general application which is consistent with the Covenant and is in force at the time the limitation is applied.

16. Laws imposing limitations on the exercise of human rights shall not be arbitrary or unreasonable.

17. Legal rules limiting the exercise of human rights shall be clear and accessible to everyone.

18. Adequate safeguards and effective remedies shall be provided by law against illegal or abusive imposition or application of limitations on human rights.

ii. "in a democratic society"

19. The expression "in a democratic society" shall be interpreted as imposing a further restriction on the limitation clauses it qualifies.

20. The burden is upon a state imposing limitations so qualified to demonstrate that the limitations do not impair the democratic functioning of the society.

21. While there is no single model of a democratic society, a society which recognizes and respects the human rights set forth in the United Nations Charter and the Universal Declaration of Human Rights may be viewed as meeting this definition.

iii. "public order (*ordre public*)"

22. The expression "public order (*ordre public*)" as used in the Covenant may be defined as the sum of rules which ensure the functioning of society or the set of fundamental principles on which society is founded. Respect for human rights is part of public order (*ordre public*).

23. Public order (*ordre public*) shall be interpreted in the context of the purpose of the particular human right which is limited on this ground.

24. State organs or agents responsible for the maintenance of public order (*ordre public*) shall be subject to controls in the exercise of their power through the parliament, courts, or other competent independent bodies.

iv. "*public health*"

25. Public health may be invoked as a ground for limiting certain rights in order to allow a state to take measures dealing with a serious threat to the health of the population or individual members of the population. These measures must be specifically aimed at preventing disease or injury or providing care for the sick and injured.

26. Due regard shall be had to the international health regulations of the World Health Organization.

v. "*public morals*"

27. Since public morality varies over time and from one culture to another, a state which invokes public morality as a ground for restricting human rights, while enjoying a certain margin of discretion, shall demonstrate that the limitation in question is essential to the maintenance of respect for fundamental values of the community.

28. The margin of discretion left to states does not apply to the rule of non-discrimination as defined in the Covenant.

vi. "*national security*"

29. National security may be invoked to justify measures limiting certain rights only when they are taken to protect the existence of the nation or its territorial integrity or political independence against force or threat of force.

30. National security cannot be invoked as a reason for imposing limitations to prevent merely local or relatively isolated threats to law and order.

31. National security cannot be used as a pretext for imposing vague or arbitrary limitations and may only be invoked when there exist adequate safeguards and effective remedies against abuse.

32. The systematic violation of human rights undermines true national security and may jeopardize international peace and security. A state responsible for such

violation shall not invoke national security as a justification for measures aimed at suppressing opposition to such violation or at perpetrating repressive practices against its population.

vii. "*public safety*"

33. Public safety means protection against danger to the safety of persons, to their life or physical integrity, or serious damage to their property.

34. The need to protect public safety can justify limitations provided by law. It cannot be used for imposing vague or arbitrary limitations and may only be invoked when there exist adequate safeguards and effective remedies against abuse.

viii. "*rights and freedoms of others*" or the "*rights or reputations of others*"

35. The scope of the rights and freedoms of others that may act as a limitation upon rights in the Covenant extends beyond the rights and freedoms recognized in the Covenant.

36. When a conflict exists between a right protected in the Covenant and one which is not, recognition and consideration should be given to the fact that the Covenant seeks to protect the most fundamental rights and freedoms. In this context especial weight should be afforded to rights not subject to limitations in the Covenant.

37. A limitation to a human right based upon the reputation of others shall not be used to protect the state and its officials from public opinion or criticism.

ix. "*restrictions on public trial*"

38. All trials shall be public unless the Court determines in accordance with law that:

(a) the press or the public should be excluded from all or part of a trial on the basis of specific findings announced in open court showing that the interest of the private lives of the parties or their families or of juveniles so requires; or

(b) the exclusion is strictly necessary to avoid publicity prejudicial to the fairness of the trial or endangering public morals, public order (*ordre public*), or national security in a democratic society.

II. DEROGATIONS IN A PUBLIC EMERGENCY

A. "Public Emergency which Threatens the Life of the Nation"

39. A state party may take measures derogating from its obligations under the International Covenant on Civil and Political Rights pursuant to Article 4 (hereinafter called "derogation measures") only when faced with a situation of exceptional and actual or imminent danger which threatens the life of the nation. A threat to the life of the nation is one that:

(a) affects the whole of the population and either the whole or part of the territory of the state; and

(b) threatens the physical integrity of the population, the political independence or the territorial integrity of the state or the existence or basic functioning of institutions indispensable to ensure and protect the rights recognized in the Covenant.

40. Internal conflict and unrest that do not constitute a grave and imminent threat to the life of the nation cannot justify derogations under Article 4.

41. Economic difficulties *per se* cannot justify derogation measures.

B. Proclamation, Notification, and Termination of a Public Emergency

42. A state party derogating from its obligations under the Covenant shall make an official proclamation of the existence of a public emergency threatening the life of the nation.

43. Procedures under national law for the proclamation of a state of emergency shall be prescribed in advance of the emergency.

44. A state party derogating from its obligations under the Covenant shall immediately notify the other states parties to the Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and the reasons by which it was actuated.

45. The notification shall contain sufficient information to permit the states parties to exercise their rights and discharge their obligations under the Covenant. In particular it shall contain:

(a) the provisions of the Covenant from which it has derogated;

(b) a copy of the proclamation of emergency, together with the constitutional provisions, legislation, or decrees governing the state of emergency in order to

assist the states parties to appreciate the scope of the derogation;

(c) the effective date of the imposition of the state of emergency and the period for which it has been proclaimed;

(d) an explanation of the reasons which actuated the government's decision to derogate, including a brief description of the factual circumstances leading up to the proclamation of the state of emergency; and

(e) a brief description of the anticipated effect of the derogation measures on the rights recognized by the Covenant, including copies of decrees derogating from these rights issued prior to the notification.

46. States parties may require that further information necessary to enable them to carry out their role under the Covenant be provided through the intermediary of the Secretary-General.

47. A state party which fails to make an immediate notification in due form of its derogation is in breach of its obligations to other states parties and may be deprived of the defenses otherwise available to it in procedures under the Covenant.

48. A state party availing itself of the right of derogation pursuant to Article 4 shall terminate such derogation in the shortest time required to bring to an end the public emergency which threatens the life of the nation.

49. The state party shall on the date on which it terminates such derogation inform the other state parties, through the intermediary of the Secretary-General of the United Nations, of the fact of the termination.

50. On the termination of a derogation pursuant to Article 4 all rights and freedoms protected by the Covenant shall be restored in full. A review of the continuing consequences of derogation measures shall be made as soon as possible. Steps shall be taken to correct injustices and to compensate those who have suffered injustice during or in consequence of the derogation measures.

C. "Strictly Required by the Exigencies of the Situation"

51. The severity, duration, and geographic scope of any derogation measure shall be such only as are strictly necessary to deal with the threat to the life of the nation and are proportionate to its nature and extent.

52. The competent national authorities shall be under a duty to assess individually the necessity of any derogation measure taken or proposed to deal with the specific dangers posed by the emergency.

53. A measure is not strictly required by the exigencies of the situation where ordinary measures permissible under the specific limitations clauses of the Covenant would be adequate to deal with the threat to the life of the nation.

54. The principle of strict necessity shall be applied in an objective manner. Each measure shall be directed to an actual, clear, present, or imminent danger and may not be imposed merely because of an apprehension of potential danger.

55. The national constitution and laws governing states of emergency shall provide for prompt and periodic independent review by the legislature of the necessity for derogation measures.

56. Effective remedies shall be available to persons claiming that derogation measures affecting them are not strictly required by the exigencies of the situation.

57. In determining whether derogation measures are strictly required by the exigencies of the situation the judgment of the national authorities cannot be accepted as conclusive.

D. Non-Derogable Rights

58. No state party shall, even in time of emergency threatening the life of the nation, derogate from the Covenant's guarantees of the right to life; freedom from torture, cruel, inhuman or degrading treatment or punishment, and from medical or scientific experimentation without free consent; freedom from slavery or involuntary servitude; the right not to be imprisoned for contractual debt; the right not to be convicted or sentenced to a heavier penalty by virtue of retroactive criminal legislation; the right to recognition as a person before the law; and freedom of thought, conscience and religion. These rights are not derogable under any conditions even for the asserted purpose of preserving the life of the nation.

59. State parties to the Covenant, as part of their obligation to ensure the enjoyment of these rights to all persons within their jurisdiction (Art. 2(1)) and to adopt measures to secure an effective remedy for violations (Art. 2(3)), shall take special precautions in time of public emergency to ensure that neither official nor semi-official groups engage in a practice of arbitrary and extrajudicial killings or involuntary disappearances, that persons in detention are protected against torture and other forms of cruel, inhuman or degrading treatment or punishment, and that no persons are convicted or punished under laws or decrees with retroactive effect.

60. The ordinary courts shall maintain their jurisdiction, even in a time of public emergency, to adjudicate any complaint that a non-derogable right has been violated.

E. Some General Principles on the Introduction and Application of a Public Emergency and Consequent Derogation Measures

61. Derogation from rights recognized under international law in order to respond to a threat to the life of the nation is not exercised in a legal vacuum. It is authorized by law and as such it is subject to several legal principles of general application.

62. A proclamation of a public emergency shall be made in good faith based upon an objective assessment of the situation in order to determine to what extent, if any, it poses a threat to the life of the nation. A proclamation of a public emergency, and consequent derogations from Covenant obligations, that are not made in good faith are violations of international law.

63. The provisions of the Covenant allowing for certain derogations in a public emergency are to be interpreted restrictively.

64. In a public emergency the rule of law shall still prevail. Derogation is an authorized and limited prerogative in order to respond adequately to a threat to the life of the nation. The derogating state shall have the burden of justifying its actions under law.

65. The Covenant subordinates all procedures to the basic objectives of human rights. Article 5(1) of the Covenant sets definite limits to actions taken under the Covenant:

Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

Article 29(2) of the Universal Declaration of Human Rights sets out the ultimate purpose of law:

In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

These provisions apply with full force to claims that a situation constitutes a threat to the life of a nation and hence enables authorities to derogate.

66. A bona fide proclamation of the public emergency permits derogation from specified obligations in the Covenant, but does not authorize a general departure from international obligations. The Covenant in Articles 4(1) and 5(2) expressly prohibits derogations which are inconsistent with other obligations under international law. In this regard, particular note should be taken of international obligations which apply in a public emergency under the Geneva and ILO Conventions.

67. In a situation of a non-international armed conflict a state party to the 1949 Geneva Conventions for the protection of war victims may under no circumstances suspend the right to a trial by a court offering the essential guarantees of independence and impartiality (Article 3 common to the 1949 Conventions). Under the 1977 additional Protocol II, the following rights with respect to penal prosecution shall be respected under all circumstances by state parties to the Protocol:

(a) the duty to give notice of charges without delay and to grant the necessary rights and means of defense;

(b) conviction only on the basis of individual penal responsibility;

(c) the right not to be convicted, or sentenced to a heavier penalty, by virtue of retroactive criminal legislation;

(d) presumption of innocence;

(e) trial in the presence of the accused;

(f) no obligation on the accused to testify against himself or to confess guilt;

(g) the duty to advise the convicted person on judicial and other remedies.

68. The ILO basic human rights conventions contain a number of rights dealing with such matters as forced labor, freedom of association, equality in employment and trade union and workers' rights which are not subject to derogation during an emergency; others permit derogation, but only to the extent strictly necessary to meet the exigencies of the situation.

69. No state, including those that are not parties to the Covenant, may suspend or violate, even in times of public emergency:

(a) the right to life;

(b) freedom from torture or cruel, inhuman or degrading treatment or punishment and from medical or scientific experimentation;

(c) the right not to be held in slavery or involuntary servitude; and,

(d) the right not to be subjected to retroactive criminal penalties as defined in the Covenant.

Customary international law prohibits in all circumstances the denial of such fundamental rights.

70. Although protections against arbitrary arrest and detention (Art. 9) and the right to a fair and public hearing in the determination of a criminal charge (Art. 14) may be subject to legitimate limitations if strictly required by the exigencies of an emergency situation, the denial of certain rights fundamental to human dignity can never be strictly necessary in any conceivable emergency. Respect for these fundamental rights is essential in order to ensure enjoyment of non-derogable rights and to provide an effective remedy against their violation. In particular:

(a) all arrests and detention and the place of detention shall be recorded, if possible centrally, and made available to the public without delay;

(b) no person shall be detained for an indefinite period of time, whether detained pending judicial investigation or trial or detained without charge;

(c) no person shall be held in isolation without communication with his family, friend, or lawyer for longer than a few days, e.g., three to seven days;

(d) where persons are detained without charge the need for their continued detention shall be considered periodically by an independent review tribunal;

(e) any person charged with an offense shall be entitled to a fair trial by a competent, independent and impartial court established by law;

(f) civilians shall normally be tried by the ordinary courts; where it is found strictly necessary to establish military tribunals or special courts to try civilians, their competence, independence and impartiality shall be ensured and the need for them reviewed periodically by the competent authority;

(g) any person charged with a criminal offense shall be entitled to the presumption of innocence and to at least the following rights to ensure a fair trial:

— the right to be informed of the charges promptly, in detail and in a language he understands,

- the right to have adequate time and facilities to prepare the defense including the right to communicate confidentially with his lawyer,
- the right to a lawyer of his choice, with free legal assistance if he does not have the means to pay for it,
- the right to be present at the trial,
- the right not to be compelled to testify against himself or to make a confession,
- the right to obtain the attendance and examination of defense witnesses,
- the right to be tried in public save where the court orders otherwise on grounds of security with adequate safeguards to prevent abuse,
- the right to appeal to a higher court;

(h) an adequate record of the proceedings shall be kept in all cases; and,

(i) no person shall be tried or punished again for an offense for which he has already been convicted or acquitted.

F. Recommendations Concerning the Functions and Duties of the Human Rights Committee and United Nations Bodies

71. In the exercise of its power to study, report, and make general comments on states parties' reports under Article 40 of the Covenant, the Human Rights Committee may and should examine the compliance of states parties with the provisions of Article 4. Likewise it may and should do so when exercising its powers in relevant cases under Article 41 and the Optional Protocol relating, respectively, to interstate and individual communications.

72. In order to determine whether the requirements of Article 4(1) and (2) have been met and for the purpose of supplementing information in states parties' reports, members of the Human Rights Committee, as persons of recognized competence in the field of human rights, may and should have regard to information they consider to be reliable provided by other inter-governmental bodies, non-governmental organizations, and individual communications.

73. The Human Rights Committee should develop a procedure for requesting additional reports under Article 40(1)(b) from states parties which have given notification of derogation under Article 4(3) or which are reasonably believed by the Committee to have imposed emergency measures subject to Article 4 constraints. Such additional reports should relate to questions concerning the emergency insofar as it affects the implementation of the Covenant and should be dealt with by the Committee at the earliest possible date.

74. In order to enable the Human Rights Committee to perform its fact-finding functions more effectively, the committee should develop its procedures for the consideration of communications under the Optional Protocol to permit the hearing of oral submissions and evidence as well as visits to states parties alleged to be in violation of the Covenant. If necessary, the states parties to the Optional Protocol should consider amending it to this effect.

75. The United Nations Commission on Human Rights should request its Sub-Commission on Prevention of Discrimination and Protection of Minorities to prepare an annual list of states, whether parties to the Covenant or not, that proclaim, maintain, or terminate a public emergency together with:

(a) in the case of a state party, the proclamation and notification; and,

(b) in the case of other states, any available and apparently reliable information concerning the proclamation, threat to the life of the nation, derogation measures and their proportionality, non-discrimination, and respect for non-derogable rights.

76. The United Nations Commission on Human Rights and its Sub-Commission should continue to utilize the technique of appointment of special rapporteurs and investigatory and fact-finding bodies in relation to prolonged public emergencies.

International Covenant on Civil and Political Rights*

PREAMBLE

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

Considering the obligations of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and

* 16 December 1966 (G.A. Res. 2200 (XXI), *United Nations Doc. A/6316*); entry into force: 23 March 1976; 79 ratifications: Afghanistan, Australia, Austria, Barbados, Belgium, Bolivia, Bulgaria, Byelorussian SSR, Cameroon, Canada, Central African Rep., Chile, Colombia, Congo, Costa Rica, Cyprus, Czechoslovakia, Denmark, Dominican Rep., Ecuador, Egypt, El Salvador, Finland, France, Gabon, Gambia, German Dem. Rep., Germany/Fed. Rep., Guinea, Guyana, Hungary, Iceland, India, Iran, Iraq, Italy, Jamaica, Japan, Jordan, Kenya, Korea/Dem. Peop. Rep., Lebanon, Libyan Arab Jama., Luxembourg, Madagascar, Mali, Mauritius, Mexico, Mongolia, Morocco, Netherlands, New Zealand, Nicaragua, Norway, Panama, Peru, Poland, Portugal, Romania, Rwanda, Saint Vincent & Grenadines, Senegal, Spain, Sri Lanka, Suriname, Sweden, Syrian Arab Rep., Tanzania, Trinidad & Tobago, Tunisia, Ukrainian SSR, USSR, United Kingdom, Uruguay, Venezuela, Vietnam, Yugoslavia, Zaire, Zambia.

observance of the rights recognized in the present Covenant,

Agree upon the following articles:

PART I

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal

system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 4

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.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 8

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

3. (a) No one shall be required to perform forced or compulsory labour;

(b) Paragraph 3(a) shall not be held to preclude, in countries where imprisonment with hard labour may be

imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

(c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:

- (i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;
- (ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;
- (iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;
- (iv) Any work or service which forms part of normal civil obligations.

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Article 11

No one shall be imprisoned merely on the ground of inability to fulfill a contractual obligation.

Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

Article 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 15

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 19

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

Article 20

1. Any propaganda for war shall be prohibited by law.

2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

2. The right of men and women of marriageable age to marry and to found a family shall be recognized.

3. No marriage shall be entered into without the free and full consent of the intending spouses.

4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Article 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

2. Every child shall be registered immediately after birth and shall have a name.

3. Every child has the right to acquire a nationality.

Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

PART IV

Article 28

1. There shall be established a Human Rights Committee (hereinafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.

2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.

3. The members of the Committee shall be elected and shall serve in their personal capacity.

Article 29

1. The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in article 28 and nominated for the purpose by the State Parties to the present Covenant.

2. Each State Party to the present Covenant may nominate not more than two persons. These persons shall be nationals of the nominating State.

3. A person shall be eligible for renomination.

Article 30

1. The initial election shall be held no later than six months after the date of the entry into force of the present Covenant.

2. At least four months before the date of each election to the Committee, other than an election to fill a vacancy declared in accordance with article 34, the Secretary-General of the United Nations shall address a written invitation to the States Parties to the present Covenant to submit their nominations for membership of the Committee within three months.

3. The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties to the present Covenant no later than one month before the date of each election.

4. Elections of the members of the Committee shall be held at a meeting of the States Parties to the present Covenant convened by the Secretary-General of the

United Nations at the Headquarters of the United Nations. At that meeting, for which two thirds of the States Parties to the present Covenant shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

Article 31

1. The Committee may not include more than one national of the same State.

2. In the election of the Committee, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems.

Article 32

1. The members of the Committee shall be elected for a term of four years. They shall be eligible for reelection if renominated. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these nine members shall be chosen by lot by the Chairman of the meeting referred to in article 30, paragraph 4.

2. Elections at the expiry of office shall be held in accordance with the preceding articles of this part of the present Covenant.

Article 33

1. If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary character, the Chairman of the Committee shall notify the Secretary-General of the United Nations, who shall then declare the seat of that member to be vacant.

2. In the event of the death or the resignation of a member of the Committee, the Chairman shall immediately notify the Secretary-General of the United Nations, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

Article 34

1. When a vacancy is declared in accordance with article 33 and if the term of office of the member to be

replaced does not expire within six months of the declaration of the vacancy, the Secretary-General of the United Nations shall notify each of the States Parties to the present Covenant, which may within two months submit nominations in accordance with article 29 for the purpose of filling the vacancy.

2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the States Parties to the present Covenant. The election to fill the vacancy shall then take place in accordance with the relevant provisions of this part of the present Covenant.

3. A member of the Committee elected to fill a vacancy declared in accordance with article 33 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that article.

Article 35

The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities.

Article 36

The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant.

Article 37

1. The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations.

2. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

3. The Committee shall normally meet at the Headquarters of the United Nations or at the United Nations Office at Geneva.

Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously.

Article 39

1. The Committee shall elect its officers for a term of two years. They may be reelected.

2. The Committee shall establish its own rules of procedure, but these rules shall provide, *inter alia*, that:

(a) Twelve members shall constitute a quorum;

(b) Decisions of the Committee shall be made by a majority vote of the members present.

Article 40

1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights:

(a) Within one year of the entry into force of the present Covenant for the States Parties concerned;

(b) Thereafter whenever the Committee so requests.

2. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.

3. The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.

4. The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.

5. The States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this article.

Article 41

1. A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance to the following procedure:

(a) If a State Party to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation, or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter.

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State.

(c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged.

(d) The Committee shall hold closed meetings when examining communications under this article.

(e) Subject to the provisions of sub-paragraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for human rights and fundamental freedoms as recognized in the present Covenant.

(f) In any matter referred to it, the Committee may call upon the States Parties concerned, referred to in sub-paragraph (b), to supply any relevant information.

(g) The States Parties concerned, referred to in sub-paragraph (b), shall have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing.

(h) The Committee shall, within twelve months after the date of receipt of notice under sub-paragraph (b), submit a report:

- (i) If a solution within the terms of sub-paragraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;
- (ii) If a solution within the terms of sub-paragraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report.

In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when ten States Parties to the present Covenant have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 42

1. (a) If a matter referred to the Committee in accordance with article 41 is not resolved to the satisfaction of the States Parties concerned, the Committee may, with the prior consent of the States Parties concerned, appoint an *ad hoc* Conciliation Commission (hereinafter referred to as the Commission). The good offices of the Commission shall be made available to the States Parties concerned with a view to an amicable solution of the matter on the basis of respect for the present Covenant;

(b) The Commission shall consist of five persons acceptable to the States Parties concerned. If the States Parties concerned fail to reach agreement within three

months on all or part of the composition of the Commission, the members of the Commission concerning whom no agreement has been reached shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States Parties concerned, or of a State not party to the present Covenant, or of a State Party which has not made a declaration under article 41.

3. The Commission shall elect its own Chairman and adopt its own rules of procedure.

4. The meetings of the Commission shall normally be held at the Headquarters of the United Nations or at the United Nations Office at Geneva. However, they may be held at such other convenient places as the Commission may determine in consultation with the Secretary-General of the United Nations and the States Parties concerned.

5. The secretariat provided in accordance with article 36 shall also service the commissions appointed under this article.

6. The information received and collated by the Committee shall be made available to the Commission and the Commission may call upon the States Parties concerned to supply any other relevant information.

7. When the Commission has fully considered the matter, but in any event not later than twelve months after having been seized of the matter, it shall submit to the Chairman of the Committee a report for communication to the States Parties concerned:

(a) If the Commission is unable to complete its consideration of the matter within twelve months, it shall confine its report to a brief statement of the status of its consideration of the matter;

(b) If an amicable solution to the matter on the basis of respect for human rights as recognized in the present Covenant is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached;

(c) If a solution within the terms of sub-paragraph (b) is not reached, the Commission's report shall embody its findings on all questions of fact relevant to the issues between the States Parties concerned, and its views on the possibilities of an amicable solution of the matter. This report shall also contain the written submissions and a record of the oral submissions made by the States Parties concerned;

(d) If the Commission's report is submitted under sub-paragraph (c), the States Parties concerned shall, within three months of the receipt of the report, notify the Chairman of the Committee whether or not they accept the contents of the report of the Commission.

8. The provisions of this article are without prejudice to the responsibilities of the Committee under article 41.

9. The States Parties concerned shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.

10. The Secretary-General of the United Nations shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States Parties concerned, in accordance with paragraph 9 of this article.

Article 43

The members of the Committee, and of the *ad hoc* conciliation commissions which may be appointed under article 42, shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 44

The provisions for the implementation of the present Covenant shall apply without prejudice to the procedures prescribed in the field of human rights by or under the constituent instruments and the conventions of the United Nations and of the specialized agencies and shall not prevent the States Parties to the present Covenant from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

Article 45

The Committee shall submit to the General Assembly of the United Nations, through the Economic and Social Council, an annual report on its activities.

PART V

Article 46

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 47

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART VI

Article 48

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant.

2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed this Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 49

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 50

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 51

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General of the United Nations shall thereupon communicate any proposed amendments to the State Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 52

Irrespective of the notifications made under article 48, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph 1 of the same article of the following particulars:

(a) Signatures, ratifications and accessions under article 48;

(b) The date of the entry into force of the present Covenant under article 49 and the date of the entry into force of any amendments under article 51.

Article 53

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 48.

Optional Protocol to the International Covenant on Civil and Political Rights *

The States Parties to the present Protocol,

Considering that in order further to achieve the purposes of the Covenant on Civil and Political Rights (hereinafter referred to as the Covenant) and the implementation of its provisions it would be appropriate to enable the Human Rights Committee set up in part IV of the Covenant (hereinafter referred to as the Committee) to receive and consider, as provided in the present Protocol, communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant,

Have agreed as follows:

Article 1

A State Party to the Covenant that becomes a party to the present Protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant. No communication shall be received by the Committee if it concerns a State Party to the Covenant which is not a party to the present Protocol.

Article 2

Subject to the provisions of article 1, individuals who claim that any of their rights enumerated in the Covenant have been violated and who have exhausted all available domestic remedies may submit a written communication to the committee for consideration.

* 16 December 1966 (G.A. Res. 2200 (XXI), *United Nations Doc. A/6316*); entry into force: 23 March, 1976; 31 ratifications: Barbados, Bolivia, Canada, Central African Rep., Colombia, Congo, Costa Rica, Denmark, Dominican Rep., Ecuador, Finland, Iceland, Italy, Jamaica, Luxembourg, Madagascar, Mauritius, Netherlands, Nicaragua, Norway, Panama, Peru, Portugal, Saint Vincent & Grenadines, Senegal, Suriname, Sweden, Trinidad & Tobago, Uruguay, Venezuela, Zaire.

Article 3

The Committee shall consider inadmissible any communication under the present Protocol which is anonymous, or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of the Covenant.

Article 4

1. Subject to the provisions of article 3, the Committee shall bring any communications submitted to it under the present Protocol to the attention of the State Party to the present Protocol alleged to be violating any provision of the Covenant.

2. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

Article 5

1. The Committee shall consider communications received under the present Protocol in the light of all written information made available to it by the individual and by the State Party concerned.

2. The Committee shall not consider any communication from an individual unless it has ascertained that:

(a) The same matter is not being examined under another procedure of international investigation or settlement;

(b) The individual has exhausted all available domestic remedies.

This shall not be the rule where the application of the remedies is unreasonably prolonged.

3. The Committee shall hold closed meetings when examining communications under the present Protocol.

4. The Committee shall forward its views to the State Party concerned and to the individual.

Article 6

The Committee shall include in its annual report under article 45 of the Covenant a summary of its activities under the present Protocol.

Article 7

Pending the achievement of the objectives of resolution 1514 (XV) adopted by the General Assembly of the United Nations on 14 December 1960 concerning the Declaration on the Granting of Independence to Colonial Countries and Peoples, the provisions of the present Protocol shall in no way limit the right of petition granted to these peoples by the Charter of the United Nations and other international conventions and instruments under the United Nations and its specialized agencies.

Article 8

1. The present Protocol is open for signature by any State which has signed the Covenant.

2. The present Protocol is subject to ratification by any State which has ratified or acceded to the Covenant. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Protocol shall be open to accession by any State which has ratified or acceded to the Covenant.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

Article 9

1. Subject to the entry into force of the Covenant, the present Protocol shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or instrument of accession.

2. For each State ratifying the present Protocol or acceding to it after the deposit of the tenth instrument of ratification or instrument of accession, the present Protocol shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 10

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

Article 11

1. Any State Party to the present Protocol may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Protocol with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Protocol and any earlier amendment which they have accepted.

Article 12

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations. Denunciation shall take effect three months after the date of receipt of the notification by the Secretary-General.

2. Denunciation shall be without prejudice to the continued application of the provisions of the present Protocol to any communication submitted under article 2 before the effective date of denunciation.

Article 13

Irrespective of the notifications made under article 8, paragraph 5, of the present Protocol, the Secretary-General of the United Nations shall inform all States referred to in Article 48, paragraph 1, of the Covenant of the following particulars:

(a) Signatures, ratifications and accessions under article 8;

(b) The date of the entry into force of the present Protocol under article 9 and the date of the entry into force of any amendments under article 11;

(c) Denunciations under article 12.

Article 14

1. The present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States referred to in article 48 of the Covenant.

Individual Limitation Provisions Cross-Referenced to the Covenant

1. the limitation on actions “aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant” (Art. 5(1)).
2. “consistent with the other rights recognized in the present Covenant” (Art. 12).
3. “provided by law” (Arts. 12, 19), “prescribed by law” (Arts. 18, 22), “in conformity with the law” (Art. 21), “pursuant to law” (Art. 5), “established by law” (Art. 9).
4. “necessary . . . in a democratic society” (Arts. 21, 22), “in a democratic society” (Art. 14).
5. “public order (*ordre public*)” (Arts. 12, 14, 18, 19, 22).
6. “protection of public health or morals” (Arts. 12, 18, 19, 21, 22), including “for reasons of morals” (Art. 14).
7. “national security” (Arts. 12, 19, 21, 22), including “compelling reasons of . . .” (Art. 13) and “reasons of . . . in a democratic society” (Art. 14).
8. “public safety” (Arts. 18, 21, 22).
9. “protection of the rights and freedoms of others” (Arts. 12, 21, 22) including “the fundamental rights and freedoms of others” (Art. 18), and “respect of the rights or reputations of others” (Art. 19).
10. “when the interest of the private lives of the parties so requires” (Art. 14).

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It is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the Rule of Law.

— United Nations Universal Declaration
of Human Rights, 1948

The Paris Minimum Standards of Human Rights Norms in a State of Emergency

SECTION (A) EMERGENCY: DECLARATION, DURATION AND CONTROL

1. (a) The existence of a public emergency which threatens the life of the nation, and which is officially proclaimed, will justify the declaration of a state of emergency.
(b) The expression “public emergency” means an exceptional situation of crisis or public danger, actual or imminent, which affects the whole population or the whole population of the area to which the declaration applies and constitutes a threat to the organized life of the community of which the state is composed.
2. The constitution of every state shall define the procedure for declaring a state of emergency; whenever the executive authority is competent to declare a state of emergency, such official declaration shall always be subject to confirmation by the legislature, within the shortest possible time.
3. (a) The declaration of a state of emergency shall never exceed the period strictly required to restore normal conditions.
(b) The duration of emergency (save in the case of war or external aggression) shall be for a period of fixed term established by the constitution.
(c) Every extension of the initial period of emergency shall be supported by a new declaration made before the expiration of each term for another period to be established by the constitution.
(d) Every extension of the period of emergency shall be subject to the prior approval of the legislature.
4. The declaration of a state of emergency may cover the entire territory of the state or any part thereof, depending upon the areas actually affected by the circumstances motivating the declaration. This will not prevent the *1074 extension of emergency measures to other parts of the country whenever necessary nor the exclusion of those parts where such circumstances no longer prevail.
5. The legislature shall not be dissolved during the period of emergency but shall continue to function; if dissolution of a particular legislature is warranted, it shall be replaced as soon as practicable by a legislature duly elected in accordance with the requirements of the constitution, which shall ensure that it is freely chosen and representative of the entire nation.
6. (a) The termination of a state of emergency shall be automatic upon the expiration of a given term without prejudice to the right of express revocation before such expiry to be exercised by the executive or the legislature, as the case may be.
(b) Upon the termination of an emergency there shall be automatic restoration of all rights and freedoms which were suspended or restricted during the emergency and no emergency measures shall be maintained thereafter.
7. At the regional or international level, every declaration of emergency by a state party to a regional or international human rights treaty shall be subject to such judicial or other review as the terms of the particular treaty may provide; while, at the national level, such power of review shall be exercised in terms of the constitution and legal tradition of the state concerned, keeping in view the undertaking of the state to adopt legislative or other measures to give effect to the rights recognized by any treaty to which it may be a party.

SECTION (B) EMERGENCY POWERS AND THE PROTECTION OF INDIVIDUALS: GENERAL PRINCIPLES

1. During the period of the existence of a public emergency the state concerned may take measures derogating from its obligations to respect and ensure to all individuals within its territory and subject to its jurisdiction the human rights and fundamental freedoms internationally recognized, but it may not derogate from internationally prescribed rights which are by their own terms “nonsuspendable” and not subject to derogation.

2. The power to take derogatory measures as aforesaid is subject to five general conditions:

- (a) Every state which is a party to a regional or international human rights treaty shall comply with the principle of notification as may be prescribed by the particular treaty.
- (b) Such measures must be strictly proportionate to the exigencies of the situation.
- (c) Such measures must not be inconsistent with the other obligations of the state under international law.
- (d) Such measures must not involve any discrimination solely on the ground of race, colour, sex, language, religion, nationality or social origin.
- (e) The basic rights and freedoms guaranteed by international law shall remain non-derogable even during emergency. As the minimum, the constitution shall provide that the rights recognized as non-derogable in international law may not be affected by a state of emergency.

3. While assuming or exercising emergency powers every state shall respect the following principles:

- (a) The fundamental functions of the legislature shall remain intact despite the relative expansion of the authority of the executive. Thus, the legislature shall provide general guidelines to regulate executive discretion in respect of permissible measures of delegated legislation.
- (b) The prerogatives, immunities and privileges of the legislature shall remain intact.
- (c) The guarantees of the independence of the judiciary and of the legal profession shall remain intact. In particular, the use of emergency powers to remove judges or to alter the structure of the judicial branch or otherwise to restrict the independence of the judiciary shall be prohibited by the constitution.

4. (a) All emergency measures in derogation of the rights of individuals shall be supported by the authority of law as enacted by the duly elected representatives of the people.

(b) As far as practicable, norms to be applied during an emergency shall be formulated when no emergency exists.

(c) States shall review and, if necessary, revise the emergency measures (legislative or executive) from time to time to ensure reasonable guarantees against any abusive exercises of emergency powers.

5. The judiciary shall have the power and jurisdiction to decide: firstly, whether or not an emergency legislation is in conformity with the constitution of the state; secondly, whether or not any particular exercise of emergency power is in conformity with the emergency legislation; thirdly, to ensure that there is no encroachment upon the non-derogable rights and that derogatory measures derogating from other rights are in compliance with the rule of proportionality; and fourthly, where existing municipal laws and orders are not specifically rescinded or suspended, the judiciary shall continue to regard them as being in effect. A court of law shall have full powers to declare null and void any emergency measure (legislative or executive) or any act of application of any emergency measure which does not satisfy the

aforesaid tests.

SECTION (C) NON-DEROGABLE RIGHTS AND FREEDOMS--DRAFT ARTICLES 1-16

Article 1: Right to Legal Personality

1. Everyone shall have the right to recognition everywhere as a person before the law.
2. The inherent dignity of the human person shall be respected.
3. Every person has the right to have his physical, mental and moral integrity respected.

Article 2: Freedom from Slavery or Servitude

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 3: Freedom from Discrimination

1. All persons are equal before the law and are entitled without discrimination to the equal protection of the law.
2. There shall be no discrimination solely on ground of race, colour, sex, language, religion, nationality or social origin.

Article 4: Right to Life

1. Every person has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his right to life.
2. In a country where the death penalty does not exist it shall not be introduced as an emergency measure.
3. In a country where the death penalty exists, it may be imposed, even during emergency, only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and pursuant to a final judgment rendered by a competent court.
4. In no case shall the death penalty be imposed for political offences or related common crimes.
5. The death penalty shall not be imposed upon any person who, at the time of commission of the crime, was under 18 years of age or over 70 years of age. Women when pregnant or mothers of young children shall never be executed.
6. Every person sentenced to death shall have the right to apply for amnesty, pardon or commutation of the sentence which may be granted in all cases. No sentence of death shall be executed while a petition for such relief is pending before the competent court or authority.
7. Every state shall remain fully accountable for every enforced or involuntary disappearance of an individual within its jurisdiction occasioned by an act or omission of the state. With a view to preventing the inhuman and criminal practice of disappearances which may lead to illegal or arbitrary deprivation of the right to life, every state shall:
 - (a) maintain central registers or records to account for all persons that have been detained, so that their relatives and other interested persons may promptly learn of any

arrests that may have been made;

(b) guarantee that such detention shall be made only by competent and duly identified authorities as may be prescribed by law or regulations;

(c) guarantee that the persons so detained shall be kept in premises which afford every possible safeguard as regards hygiene and health.

Article 5: Right to Liberty

1. No one shall be deprived of his right to liberty and security of the person except on such grounds and in accordance with such procedures as are established by law.

2. Any law providing for preventive or administrative detention shall secure the following minimum rights of the detainee:

(a) The right to be informed, within seven days, of the grounds of his *1077 detention; however, disclosure of such facts in support of the grounds as the detaining authority considers to be prejudicial to the public interest need not be made to the detainee, without prejudice to the power of the reviewing authority in its discretion to examine in camera such facts if it considers it necessary in the interests of justice.

(b) The right to communicate with, and consult, a lawyer of his own choice, at any time after detention.

(c) The right to have his case reviewed within 30 days from the date of his detention by a judicial or quasi-judicial body constituted in accordance with the procedures designed to make such guarantees effective.

(d) No person shall be detained for a period longer than 30 days unless the reviewing authority before its expiry has reported that there is in its opinion sufficient cause for such detention.

(e) Even if the reviewing authority reports that in its opinion there is sufficient cause for a person's detention, such detention shall not be continued beyond a period of one year. If, however, circumstances then prevailing warrant detention, the detaining authority may, subject to the same conditions and safeguards, order further detention of such person.

(f) Regular visits by the members of the family of the detainee shall be permitted.

(g) The detainee shall be treated with humanity and respect for the inherent dignity of the human person and, in any event, such treatment, consistent with security, shall not be less favourable than that afforded to convicted prisoners.

(h) The names of the detainees with the dates of their orders of detention shall be published in an official gazette; the names of persons released should be similarly published, with the dates of their release.

3. In every case of detention without trial, during an emergency, the remedy of habeas corpus (or amparo) must be available to the detainee at least for the limited purpose of ensuring the supervisory jurisdiction of a competent court of law in five respects:

(a) for determination whether the relevant law of preventive or administrative detention is in compliance with the relevant constitutional requirements;

(b) whether the order of detention is in compliance with the law of preventive or administrative detention;

(c) whether the detainee is the person against whom the order of detention was issued and whether the order was made mala fides or in violation of natural justice;

(d) for ensuring that every detainee is treated with humanity and with respect by directing, inter alia, his medical examination and inspection of the prison or place of detention; and

(e) for ensuring that the minimum rights of the detainee mentioned in the preceding paragraphs are duly implemented by the detaining authority.

Article 6: Freedom from Torture

1. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.
2. Every state shall, in accordance with the provisions of the 1975 United Nations Declaration on the Protection of All Persons from being subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, take effective measures to prevent torture and other cruel, inhuman or degrading treatment or punishment from being practiced within its jurisdiction.
3. In particular, in the context of the principles recognized in the said 1975 Declaration, every state shall:
 - (a) ensure that acts of torture as defined in article 1 are offences under its criminal law as enjoined by article 4;
 - (b) frame general rules or instructions with regard to the training, functions, duties and requirements of law enforcement personnel and other public officials who are involved in the detention and interrogation of all persons deprived of their liberty (article 5);
 - (c) review systematically the interrogation methods and practices as well as arrangements for the custody and treatment of persons deprived of their liberty (article 6);
 - (d) conduct an impartial investigation by a competent authority whenever there is reason to believe that any act prohibited as aforesaid has been committed, whether or not a formal complaint is received (articles 8 and 10);
 - (e) institute criminal, disciplinary or other appropriate proceedings against the alleged offender or offenders if investigation establishes that such offence is suspected of having been committed (articles 9 and 10);
 - (f) afford appropriate compensation to the victim in accordance with national law (article 11) and inflict adequate punishment for the offender or offenders proved guilty;
 - (g) declare as inadmissible evidence, in any proceedings against the person concerned, any statement obtained as a result of an act prohibited as aforesaid.
4. The law of evidence shall not be amended so as to give additional incentives for obtaining confessions.
5. Every detainee shall be examined by a doctor soon after his arrest and his physical and mental condition duly recorded and signed by the doctor; thereafter periodical medical examinations shall be held and records thereof duly maintained. The detainee shall have the opportunity at all times to consult a doctor of his own choice.
6. With regard to the procedures for interrogation, every person in detention shall be entitled to the following minimum guarantees:
 - (a) all persons participating in interrogation shall be duly identified;
 - (b) rules shall be framed limiting the hours during which interrogation may occur and records shall be kept of all periods of interrogation with the names of all persons present;
 - (c) interrogation shall be subject to direct supervision by superior officers, and shall occur in conditions which permit this control to be exercised.
7. The establishment or infliction of such punishment as summary executions by firing squads, public hangings, floggings, the amputation of limbs and other cruel, inhuman or degrading forms of punishment are gross violations of international standards of humane treatment.

Article 7: Right to Fair Trial

Everyone charged with a penal offence shall be entitled to the following minimum guarantees of fair trial in full equality and without discrimination:--

1. The right to be informed promptly and in detail of the charge against him;
2. The right to have adequate time and facilities for the preparation of one's defence. This right shall include: (a) at least minimum communication with a counsel of one's own choice, and (b) the right of an indigent defendant to have free legal assistance in every case where the interests of justice so require;
3. The right to be present at one's trial, which should be conducted in a language comprehensible to the defendant;
4. Such trial should be held in public but, if attendance at such trial is restricted in any way, such restrictions shall not apply to the members of the family of the defendant;
5. The defendant has the right to be presumed innocent until proved guilty according to law;
6. No one shall be held guilty of any criminal offences on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby;
7. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations;
8. No person shall be prosecuted and punished for the same offence more than once, or for a similar offence based upon the same facts that has resulted in a conviction or acquittal;
9. No person accused of any offence shall be compelled to be a witness against himself;
10. Any establishment of a criminal offence or infliction of a punishment based on general principles arising out of religious or other sources, which contravene the aforesaid basic norms, shall be considered a gross violation of international law;
11. Every person has a right to be tried by a tribunal which offers the essential guarantees of independence and impartiality;
12. The right to appeal shall always be guaranteed;
13. The right to obtain attendance and examination of defence witnesses shall never be denied; nor shall the right to cross-examine all witnesses who appear at the trial, or to test the veracity of the evidence of those persons who do not attend or appear at the trial, ever be denied.

Article 8: Freedom of Thought, Conscience and Religion

1. Everyone has the right to freedom of thought, conscience and religion; freedom of religion includes the right to hold any religion or belief or none and to change his religion or belief, and freedom, either alone or in community with others, in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair the freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, public order, health or morals or the fundamental rights and freedoms of others.

4. Every state shall respect the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

5. Nothing in this article shall be construed to deny to any person the right to hold no religious beliefs.

Article 9: Freedom from Imprisonment for Inability to fulfil a Contractual Obligation

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

Article 10: Rights of Minorities

1. Persons belonging to ethnic, religious or linguistic minorities shall not be denied the right to enjoy their own culture, to profess and practice their own religion, or to use their own language.

2. Advocacy of national, racial, religious or linguistic hatred that constitutes an incitement to discrimination or violence, shall be prohibited by law.

Article 11: Rights of the Family

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

2. Marriage shall be entered into only with the free and full consent of the intending spouses.

3. The family is the natural and fundamental unit of society and is entitled to protection by society and the state.

Article 12: Right to a Name

Every person has the right to a given name and the surnames of his parents or that of one of them. The law shall regulate the manner in which this right shall be ensured for all, by the use of assumed names, if necessary.

Article 13: Rights of the Child

Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society and the state.

Article 14: Right to Nationality

1. Everyone has the right to a nationality.
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 15: Right to Participate in Government

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right of equal access to public service in his country.
3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 16: Right to a Remedy

1. The institution of an independent and impartial judiciary is essential for ensuring the rule of law, particularly in time of emergency.
2. Judicial guarantees essential for the protection of the rights aforesaid must be secured by every state in its constitution or by law.
3. All ordinary remedies as well as special ones, such as habeas corpus or amparo, shall remain operative during the period of emergency with a view to affording protection to the individual with respect to his rights and freedoms which are not or could not be affected during the emergency, as well as other rights and freedoms which may have been attenuated by emergency measures.
4. Civil courts shall have and retain jurisdiction over all trials of civilians for security or related offences; initiation of any such proceedings before or their transfer to a military court or tribunal shall be prohibited. The creation of special courts or tribunals with punitive jurisdiction for trial of offences which are in substance of a political nature is a contravention of the rule of law in a state of emergency.

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