

Impact of Covid-19 on civil and political rights – study on patterns and risks of violation by the measures taken by State authorities to tackle the virus outbreak in Viet Nam

Outcome report

by Centre for Civil and Political Rights (CCPR)

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1. About the study

Amid unprecedented scale of public health crisis caused by Covid-19 affecting people's health and lives around the world, various measures have been taken by State and local authorities including those restricting rights and freedoms of individuals. In many cases, such restrictions appear necessary to effectively deal with the virus outbreak and certain restriction of rights and freedoms are also allowed under the International Covenant on Civil and Political Rights (ICCPR) in limited circumstances including such public health crisis as caused by the Covid-19. However, concerns are also raised over some measures taken by the authority that clearly or potentially violate civil and political rights, including those unreasonably or over-proportionately restrict fundamental freedoms and unintentionally violating rights of individuals. In some instances, allegations have also been made that the Covid-19 outbreak is used by certain actors as justification or an opportunity to consolidate their powers (or give themselves new extraordinary powers) and crack down the civil society, Human Rights Defenders and the critics, whereby vulnerable groups in societies, who are anyway more severely affected by the outbreak and negative impact of counter measures, are often further victimised.

Against the background described above, the project seeks to grasp a picture of potential cases of violation of civil and political rights as enshrined in the ICCPR in Viet Nam. However, it does not attempt to determine whether or not actual violation including unpermitted derogation is taking place, except clear case of (procedural) violation, since doing so would require more in depth and case by case examination of the situation. Instead, it seeks to highlight patterns and risks of such violation. As such, the findings of this study as described in this report can be a basis for further in-depth examination and determination by the competent bodies at national and international level as well as for more comprehensive or focused monitoring and assessment. Furthermore, it should also help stakeholders at different levels, including international actors and UN bodies, to effectively address related human rights issues, develop human rights-based approach, and also detect systemic deficit or structural shortcomings and challenges of human rights protection while tackling public health emergency.

Objectives

To grasp and highlight patterns and risks of violations of civil and political rights as enshrined in the ICCPR by the measures taken by the authorities in Viet Nam in combating the Covid-19 outbreak

Method

The study was developed by CCPR, including its design as well as the *"Guidelines for stakeholders to monitor ICCPR violations by States' measures taken in the context of COVID-19 outbreak"* (ref. annex) and the *"Questionnaire for stakeholders to detect possible ICCPR violations by States' measures taken in the context of COVID-19 outbreak"* (ref. annex).

Based on the instructions, the guidelines and the questionnaire provided the CCPR, relevant data and information were collected by CCPR's civil society partners¹ from June to September 2020. Collected data and information were further analysed by the CCPR.

¹ Identity of the partner is kept confidential due to security concern.

2. Findings – risk assessment of the ICCPR violation by the State’s measures against COVID-19 outbreak

Based on the information collected and provided by the civil society partners, assessment was carried out on the measures taken by the authority in Viet Nam in the context of tackling COVID-19 pandemic i.e. whether the restrictions additionally imposed by those measures are within the permitted scope of restrictions and derogations under the ICCPR. In this context, it should be noted that the assessment do NOT cover the violation of the ICCPR and issues related to civil and political rights that have been already existing in the country such as those addressed by the UN HR Committee through the review of Viet Nam.²

Freedom of movement (ICCPR article 12)

Assessment: **potential risk of (procedural) violation**

- **Measures mainly introduced by instructions, dispatches and announcements by the Prime Minister and administrative bodies.**
- **Appear necessary and proportionate to the purpose of containing the outbreak.**
- **Applied without discrimination.**

Restrictions on the freedom of movement (ICCPR article 12) were mainly put by Instructions, Dispatches and Announcements by the Prime Minister, national and local administrative bodies including the Standing Committee of Communist Party respectively.

The Prime Minister’s Instruction No.15 of 27 March 2020³ put restriction on the movement of people within the country, in particular from the provinces and cities with recorded outbreaks. It also requested: the Ministry of Transportation to limit and regulate flights and other passenger transportation from Hanoi and Ho Chi Minh city to other areas as well as public transportation in general; and the Ministry of Defence and the Ministry of Public Security (MPS) to tightly control the entry of persons into Viet Nam, in particular from Laos and Cambodia. Movement of individuals was further restricted by the Prime Minister’s Instruction No.16 of 31 March 2020⁴, which introduced: social distancing measures; stay-at-home rule for all citizens except for essential and emergency activities; closure of main and secondary borders to Laos and Cambodia; 14-days quarantine for those entering from Laos and Cambodia; and tighter control of international entry into Viet Nam. Under these Instructions of the Prime Minister, local authorities have introduced different types of measures restricting and controlling the movement of people at the provincial and local levels.⁵

Our civil society partners regarded these restrictions as necessary and proportionate to contain the outbreak and being applied without any discriminatory impact on particular groups. As such, there is only a potential risk of procedural violation of the ICCPR article 12 §3, which requires any restriction to be provided by law.

Freedom of religion (ICCPR article 18)

Assessment: **potential risk of (procedural) violation**

- **Measures mainly introduced by Instructions of the Prime Minister.**
- **Appear necessary and proportionate to the purpose of containing the outbreak.**
- **Applied without discrimination.**

² See CCPR/C/VNM/CO/3

³ Instruction No.15/CT-TTg

⁴ Instruction No.16/CT-TTg

⁵ E.g. Announcements No. 143/TB-BCĐ (12 August 2020), No. 145/TB-BCĐ (14 August 2020), No. 176/TB-BCĐ (15 September 2020) by the People’s Committee of Thue Thien Hue province

Restrictions on the freedom to manifest one's religion (ICCPR article 18 §3) were mainly put by the Instruction No.15 by the Prime Minister dated 27 March 2020⁶, which limited the size of permitted gathering between 28 March and 15 April 2020 including the complete halt of religious rituals and activities at religious establishments with more than 20 persons.

Our civil society partners regarded this restriction as necessary and proportionate to contain the outbreak and being applied without any discriminatory impact on particular groups. As such, there is only a potential risk of procedural violation of the ICCPR article 18 §3, which requires any restriction to be prescribed by law.

Freedom of expression (ICCPR article 19)

Assessment: **risk of violation**

- **Measures introduced mainly by Instructions of the Prime Minister and Decrees of the government.**
- **Certain parts of the restriction appear unnecessary or overproportionate to the purpose of containing the outbreak.**
- **Applied without discrimination.**

The Instruction No.15 of 27 March 2020⁷ requested the Ministry of Public Security (MPS), Ministry of Health and Ministry of Information and Communication (MIC) and provincial People's Committees to strictly handle cases of "fake news" including through criminal procedure, while the definition of the "fake news" remain unclear. According to the information by the MPS as reported by tuoitre.vn⁸, Departments of Public Security (DPSs) across Viet Nam has dealt with 654 individuals who posted "fake news" including on social media between 31 January and 14 March 2020 and imposed administrative fines on at least 146 individuals among them.

In imposing administrative fines in those cases, DPSs have used the government's Decree 174/2013/ND-CP⁹ till 15 April 2020 and Decree 15/2020/ND-CP¹⁰ since 15 April 2020, which gave the power to administrative bodies to impose fines for different acts, including: providing false information, slandering, distorting, or hurting the reputation of agencies, organizations and the honor and dignity of individuals; providing information inconsistent with the interests of the country; propaganda against the State of the Socialist Republic of Vietnam; and undermining the great national unity but not to the extent of being examined for penal liability.

Although details of each case need to be further examined, including about what kind of information was regarded as "fake news" and on what basis, it appears that at least in some cases individuals who shared information or views critical of the authority including the Communist Party or even merely about the COVID-19 in general in the social media became subject of the "warning" or actual fines imposed by the authority.¹¹

⁶ Instruction No.15/CT-TTg

⁷ Instruction No.15/CT-TTg

⁸ <https://tuoitre.vn/hon-654-nguoi-bi-xu-ly-vi-dang-tin-that-thiet-ve-covid-19-20200315095026411.htm> (in Vietnamese, last accessed on 14 September 2020)

⁹ Decree 174/2013/ND-CP dated 13th November 2013 by Government on imposing administrative fines on the affairs of post, telecommunication, information technology and radio frequency (out of enforcement since 15th April 2020)

¹⁰ Decree 15/2020/ND-CP dated 3rd February 2020 by Government on imposing administrative fines on the affairs of post, telecommunication, radio frequency, information technology and digital exchange

¹¹ E.g. <http://www.mps.gov.vn/tin-tuc-su-kien/tin-an-ninh-trat-tu/lien-tiep-phat-hien-xu-phat-nghiem-cac-doi-tuong-loi-dung-dich-benh-covid-19-tung-tin-xuc-pham-to-chuc-ca-nhan-d22-t27540.html> (last accessed on 25 September 2020), <http://www.mps.gov.vn/tin-tuc-su-kien/tin-an-ninh-trat-tu/cong-an-thanh-pho-lao-cai-lien-tiep-xu-phat-cac-doi-tuong-dang-tai-thong-tin-sai-su-that-d22-t27455.html> (last accessed on 27 September

Our civil society partners regarded the restriction as unnecessary and overproportionate to contain the outbreak and being applied without any discriminatory impact on particular groups. As such, there is a risk of procedural violation of the ICCPR article 19 §3, which requires any restriction to be provided by law. In addition, in some cases the restriction put on the freedom of expression (ICCPR article 18 §2) by the measures taken against the COVID-19 outbreak appear to go beyond the permitted scope and require in depth examination by competent bodies such as the UN HR Committee. Furthermore, actions taken by the authority in this regard once again highlighted the issue of already severe restrictions put on the freedom of opinion and expression in Viet Nam through laws and practices including the Law on Administrative fines of 2012, the Criminal Code and the Civil Code of 2015, the Law on the Press of 2016, and the Law on Cybersecurity of 2018, which was further complicated and exacerbated.

Against this backdrop, it is recommended that detailed and targeted information should be collected and provided to the UN HR Committee in the framework of its follow-up procedure, whereby the freedom of expression is selected as one of the follow-up issues¹².

Freedom of peaceful assembly (ICCPR article 21)

Assessment: **low risk of violation** / **potential risk of (procedural) violation**

- **Measures mainly introduced by Instructions of the Prime Minister.**
- **Appear necessary and proportionate to the purpose of containing the outbreak.**
- **Applied without discrimination.**

Restrictions on the freedom of peaceful assembly (ICCPR article 21) were mainly put by the Instructions No.15 and No.16 by the Prime Minister dated 27 and 31 March 2020 respectively¹³. The Instruction No. 15 ordered the stop of gathering of more than 20 persons in a room and gathering of more than 10 persons in general except at State offices, schools and hospitals. The Instruction No.16 requested to stop gathering of more than 2 persons except at State offices, schools and hospitals.

Our civil society partners regarded this restriction as necessary and proportionate to contain the outbreak and being applied without any discriminatory impact on particular groups.

As ICCPR article 21 permits restrictions that are imposed in conformity with the law, there is only a potential risk of procedural violation of this article, if the Instructions of the Prime Minister are not based on or in any way in conformity with the law.

Freedom of association (ICCPR article 22)

Assessment: **low risk of violation**

There is no indication that any measures taken in the context COVID-19 outbreak is restricting the freedom of association.

Derogation from the ICCPR

Assessment: **low risk of violation**

There is no indication that any measures taken in the context COVID-19 outbreak is derogating from the ICCPR.

2020), <https://laodong.vn/phap-luat/gia-lai-xu-phat-nguoi-dua-tin-gia-ve-dich-covid-19-824012.lido> (last accessed on 27 September 2020)

¹² See CCPR/C/VNM/CO/3, §s 45, 46 and 58. Viet Nam is requested to submit its follow-up report by March 2021 detailing actions taken to implement the Committee's recommendations selected for the follow-up procedure. Civil society actors are also invited to submit own reports.

¹³ Instruction No.15/CT-TTg and No.16/CT-TTg

Guidelines for stakeholders to monitor ICCPR violations by States' measures taken in the context of COVID-19 outbreak

Prepared by the Centre for Civil and Political Rights (CCPR)

Version: September 2020

1. Introduction

Amid the unprecedented public health crisis caused by the COVID-19 pandemic, various measures have been taken by State and local authorities including those restricting rights and freedoms of individuals. In many cases, such restrictions appear necessary to effectively deal with the virus outbreak and protect the rights to life and health of all. Indeed, restrictions of certain civil and political rights are permitted under the International Covenant on Civil and Political Rights (ICCPR) in limited circumstances including such public health crisis as caused by the COVID-19. In addition, when facing national emergency situation, State parties to the ICCPR may, on a temporary basis, derogate from some of their obligations under the ICCPR, if requirements and conditions are met as provided by article 4 of the ICCPR.

However, concerns have been raised over the extent, impact and duration of some measures that might have gone beyond the scope of restrictions and derogations permitted under the ICCPR. Allegations have also been made that some State actors are using the COVID-19 crisis as a window of opportunity to consolidate their power, introduce new extraordinary powers, or crack down on civil society, Human Rights Defenders (HRDs) and critics. Importantly, it must also be noted that marginalised groups who have been more vulnerable to human rights violations due to structural deficits in the national system and deep-rooted issues in the society are disproportionately affected by the outbreak as well as the negative impact of the countermeasures.

The ICCPR gives the UN Human Rights Committee (HR Committee), the monitoring body of the ICCPR, the competence to determine whether or not there is an actual violation of the ICCPR. This would require a rigorous case by case examination of the situation, mainly in the context of the state reporting obligations, for which targeted information must be provided by national stakeholders, in particular civil society and HRDs.

Against this background, this Guidelines seeks to equip stakeholders, especially civil society and National Human Rights Institutions (NHRIs), with a tool to effectively monitor and assess negative impact of States' measures taken in the context of COVID-19 pandemic on civil and political rights. It provides an overview and simple explanation of: ICCPR articles that permits restrictions in public health emergency (Chapter 2); required procedure and conditions for legitimate derogation from the ICCPR (Chapter 3); and the rights enshrined in the ICCPR, from which no derogation is permitted in any circumstance even in a state of emergency (Chapter 4).

Each section is accompanied by several guiding questions that should help stakeholders on the ground detect patterns and risks of ICCPR violation in a more practical and effective manner. As such, it can also be a basis for further actions by different actors to identify and address violations of civil and political rights during public emergency, including development of human rights-based approach to public health crisis and strengthening local and national system human rights protection.

2. ICCPR articles that permits restrictions in limited circumstances

Articles 12 (freedom of **movement**), 18 §3 (freedom to **manifest one's religion**), 19 (freedom of **expression**), 21 (freedom of **peaceful assembly**), and 22 (freedom of **association**) of the ICCPR includes provisions in themselves that permit certain restrictions on the freedoms set out in the article concerned in limited **exceptional circumstances**. States parties are allowed to put such restrictions, when all conditions set out in respective articles are met, without derogating from their obligations under the ICCPR.

If any restrictions are put, States parties are required to provide the HR Committee, through their periodic reports, with specified information about them, in particular, their:

- Nature and exact scope;
- Circumstances;
- Justification; and
- Effect.¹⁴

The Committee will examine the situation and determine whether the restriction put in place is actually permitted or not through the periodic review of States party reports. General Comments (GC) of the HR Committee can be referred to for more details of how these provisions should be protected and restricted e.g.: GC 27 for article 12; GC 22 for article 18; GC 34 for article 19, and GC 37 for article 21 (currently there is no General Comment on article 22).

Art 12 - freedom of movement

Article 12 protects: the *right of everyone lawfully within the territory of a State* to the **liberty of the movement** and the **freedom to choose own residence** within that State (§1); *right of everyone* to the **freedom to leave any country, including one's own** (§2); and the *right of everyone* to **enter own country** (§4).

Article 12 §3 permits restrictions on §1 and §2 if they are **provided by law** and are **necessary to protect**:

- i. **National security**;
- ii. **Public order (*ordre public*)**;
- iii. **Public health**;
- iv. **Public morals**; and
- v. **Rights and freedoms of others**.

Restrictions must be **provided by law**, meaning that the *"law itself has to establish the conditions under which the rights may be limited"*¹⁵ using *"precise criteria and may not confer unfettered discretion on those charged with their execution"*¹⁶.

Restriction on the grounds other than the ones listed above are not permitted.

Measures taken for restriction *"must conform to the principle of proportionality"*, meaning that they must *"be appropriate to achieve their protective function"*, *"be the least intrusive instrument amongst those which might achieve the desired result"*, and *"be proportionate to the interest to be protected"*.¹⁷

The principle of proportionality must be respected *"not only in the law that frames the restrictions, but also by the administrative and judicial authorities in applying the law"*.¹⁸

¹⁴ E.g. HR Committee's General comment No.22 (CCPR/C/21/Rev.1/Add.4), §8

¹⁵ HR Committee's General Comment No.27 (CCPR/C/21/Rev.1/Add.9), §12

¹⁶ HR Committee's General Comment No.27 (CCPR/C/21/Rev.1/Add.9), §13

¹⁷ HR Committee's General Comment No.27 (CCPR/C/21/Rev.1/Add.9), §14

¹⁸ HR Committee's General Comment No.27 (CCPR/C/21/Rev.1/Add.9), §15

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Any restrictions “which are not provided for in the law or are not in conformity with the requirements of article 12, paragraph 3” would be regarded as violation of the rights guaranteed by ICCPR article 12 §1 and §2.¹⁹

Furthermore, any restrictions on article 12 need to be consistent with “the fundamental principles of equality and non-discrimination” and it will be a clear violation of the ICCPR if restrictions make “distinctions of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.²⁰ In case of aliens, if “a person is lawfully within a State, any restrictions on his or her rights guaranteed by article 12, paragraphs 1 and 2, as well as any treatment different from that accorded to nationals, have to be justified under the rules provided for by article 12, paragraph 3”²¹.

If any restriction is put on the article 12, States parties are required to provide all relevant information in their periodic reports to the HR Committee, including on:

- legal norms upon which restrictions are founded²²;
- available remedies for the restriction²³; and
- if aliens, who are lawfully within the State, are treated differently by the restriction, the circumstances of such different treatment and its justification²⁴.

HR Committee’s General Comment No. 27 (CCPR/C/21/Rev.1/Add.9) can be referred to for more details of how the freedom of movement should be interpreted and protected in accordance with the ICCPR article 12.

Art 18 §3 - freedom to manifest one’s religion

Article 18 protects the right of everyone to the freedom of thought, conscience and religion, including the 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.

Article 18 §3 allows certain [limitations on the freedom to manifest one’s religion](#), if they are [prescribed by law](#) and are [necessary to protect](#):

- i. [public safety](#);
- ii. [public order](#);
- iii. [public health](#);
- iv. [public morals](#); and
- v. [fundamental rights and freedoms of others](#).

[No limitations](#) are allowed on the [freedom of thought and conscience](#) and on the freedom to [have or adopt a religion or belief of one’s choice](#).

[National security](#) is **NOT** included in the permitted grounds. Limitations for the purpose of protecting morals should not derive exclusively from a single social, philosophical or religious tradition.²⁵

¹⁹ HR Committee’s General Comment No.27 (CCPR/C/21/Rev.1/Add.9), §12

²⁰ HR Committee’s General Comment No.27 (CCPR/C/21/Rev.1/Add.9), §18

²¹ HR Committee’s General Comment No.27 (CCPR/C/21/Rev.1/Add.9), §4

²² HR Committee’s General Comment No.27 (CCPR/C/21/Rev.1/Add.9), §12

²³ HR Committee’s General Comment No.27 (CCPR/C/21/Rev.1/Add.9), §3

²⁴ HR Committee’s General Comment No.27 (CCPR/C/21/Rev.1/Add.9), §4

²⁵ HR Committee’s General Comment No.22 (CCPR/C/21/Rev.1/Add.4), §8

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Any limitations on the freedom to manifest one's religion must NOT be applied in a matter that would weaken the protection of the rights guaranteed in the article 18 and "must be directly related and proportionate to the specific need on which they are predicated".²⁶

Restrictions may not be imposed for discriminatory purpose or applied in a discriminatory manner.²⁷

HR Committee's General Comment No. 22 (CCPR/C/21/Rev.1/Add.4) can be referred to for more details of how the freedom of religion should be interpreted and protected in accordance with the ICCPR article 18.

Art 19 §2 - freedom of expression including the right of access to information

ICCPR article 19 protects the right of everyone; to hold opinions without interference (§1); and to freedom of expression including to seek, receive and impart information and ideas (§2).

Article 19 §3 allows restrictions on §2 (freedom of expression including the right of access to information), if they are **provided by law** and are **necessary** for:

- i. respect of the rights or reputations of others; or
- ii. the protection of:
 - a. national security;
 - b. public order (ordre public);
 - c. public health; or
 - d. public morals.

No other grounds are allowed to restrict freedom of expression or the right of access to information. No restriction is allowed on article 19 §1 (freedom of opinion).²⁸ Any restriction put on the freedom of expression and the right of access to information must be "applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated"²⁹.

Laws that provide the restriction include "laws of parliamentary privilege and laws of contempt of court", but exclude "traditional, religious or other such customary law"³⁰. Those laws must be formulated with **sufficient precision** and made **accessible to the public**, may not confer unfettered discretion for the restriction on those charged with its execution, and must give sufficient guidance as to what sorts of expression are allowed and what not.³¹ Furthermore, laws restricting the article 19 §2, freedom of expression, must be compatible with the provisions, aims and objectives of the ICCPR and must not violate **non-discrimination** provisions.³²

Any restriction on the freedom of expression including the right of access to information must not be overbroad, but be proportional to achieve its protective function and be the least intrusive instrument.³³ This principle of proportionality must be respected in the law that frames the restriction and also in the application of the law.³⁴

HR Committee also notes that "Freedom of expression and access to information and a civic space where a public debate can be held constitute important safeguards for ensuring that States parties resorting to emergency powers in connection with the COVID-19 pandemic comply with their

²⁶ HR Committee's General Comment No.22 (CCPR/C/21/Rev.1/Add.4), §8

²⁷ HR Committee's General Comment No.22 (CCPR/C/21/Rev.1/Add.4), §8

²⁸ HR Committee's General Comment No.34 (CCPR/C/GC/34), §9

²⁹ HR Committee's General Comment No.34 (CCPR/C/GC/34), §22

³⁰ HR Committee's General Comment No.34 (CCPR/C/GC/34), §24

³¹ HR Committee's General Comment No.34 (CCPR/C/GC/34), §25

³² HR Committee's General Comment No.34 (CCPR/C/GC/34), §26

³³ HR Committee's General Comment No.34 (CCPR/C/GC/34), §34

³⁴ HR Committee's General Comment No.34 (CCPR/C/GC/34), §34

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*obligations under the Covenant*³⁵. With regard to the right of access to information, State authorities “*should provide reasons for any refusal to provide access to information*” and arrangements “*for appeals from refusals to provide access to information as well as in cases of failure to respond to requests*”.³⁶

HR Committee’s General Comment No. 34 (CCPR/C/GC/34) can be referred to for more details of how the freedom of opinion and expression should be interpreted and protected in accordance with the ICCPR article 19, including explanation about the role of media, right of access to information, freedom of expression and political rights, permitted restrictions on the freedom of expression, and the relationship between articles 19 and 20 of the ICCPR.

Art 21 - freedom of peaceful assembly

ICCPR article 21 stipulates that the right of peaceful assembly, whether outdoors, indoors, online, in public or private spaces, or a combination of thereof shall be recognized.³⁷ States parties are obliged to respect and ensure its exercise without discrimination, allow peaceful assemblies to take place without unwarranted interference, facilitate the exercise of this right and protect participants.³⁸

Article 21 allows restrictions, if they are “*imposed in conformity with the law*” and “*necessary in a democratic society*” in the interests of:

- i. national security;
- ii. public safety;
- iii. public order (*ordre public*);
- iv. protection of public health or morals; or
- v. protection of the rights and freedoms of others.

While restrictions on other ICCPR articles (i.e. 12, 18, 19 and 22 as listed in this chapter) need to be prescribed or provided by law, those on article 21 should be “*imposed in conformity with the law*” i.e. either through law or administrative decisions based on law, which in turn need to be precise and may not confer unfettered or sweeping discretion on those charged with its enforcement.³⁹

Any restrictions on peaceful assembly need to be interpreted narrowly, guided by the objective of facilitating the right, and must not be discriminatory or be aimed at discouraging participation or causing chilling effect.⁴⁰ Prohibition of a specific assembly must be the last resort, while any restriction must be necessary, proportionate and the least-intrusive measures to serve the protective function for the permitted grounds.⁴¹ Detrimental impact of the restriction cannot outweigh its benefit, otherwise it is disproportionate and not permissible.⁴²

Furthermore, restrictions on peaceful assemblies must be content neutral i.e. they must not be related to the message conveyed by the assembly, as the very purpose of peaceful assemblies is to advance ideas and establish the extent of support they enjoy.⁴³ Rules applicable for the freedom of expression (see above section) should be followed when dealing with expressive elements of assemblies, and as such, restrictions of peaceful assembly must not be used, for example; to stifle expression of political

³⁵ CCPR/C/128/2, §2 (f)

³⁶ HR Committee’s General Comment No.34 (CCPR/C/GC/34), §19

³⁷ HR Committee’s General Comment No. 37 (CCPR/C/GC/37), §6

³⁸ HR Committee’s General Comment No. 37 (CCPR/C/GC/37), §8

³⁹ HR Committee’s General Comment No. 37 (CCPR/C/GC/37), §39

⁴⁰ Manfred Nowak: UN Covenant on Civil and Political Rights. CCPR Commentary (2005) p. 493, § 27; HR Committee’s General Comment No. 37 (CCPR/C/GC/37), §9, §33, §36

⁴¹ HR Committee’s General Comment No. 37 (CCPR/C/GC/37), §37, §40

⁴² HR Committee’s General Comment No. 37 (CCPR/C/GC/37), §40

⁴³ HR Committee’s General Comment No. 37 (CCPR/C/GC/37), §48

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opposition, challenges to the authority, the constitution or political system, or the pursuit of self-determination; or to prohibit insults to the honour and reputation of official or State organs.⁴⁴

Recourse to courts or other tribunals to seek a remedy concerning restrictions must be readily available, including the possibility of appeal or review, for which the timeliness and duration of proceedings must not jeopardise the exercise of the right.⁴⁵

Assemblies that are NOT peaceful i.e. assemblies that entail violence (use of physical force by participants against others that is likely to result in injury or death, or serious damage to property), are not protected by the article 21, while mere pushing and shoving or disruption of vehicular or pedestrian movement or daily activities do not amount to “violence”.⁴⁶ Isolated acts of violence by some participants should not be attributed to others, the organisers, or to the assembly as a whole.⁴⁷ Just a possibility that a peaceful assembly may provoke adverse or even violent reactions from some members of the public is not sufficient grounds for its prohibition or restriction, but participants must be protected⁴⁸. At the same time, in accordance with the article 20 of the ICCPR, peaceful assemblies may not be used for propaganda for war, or advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.⁴⁹

HR Committee’s General Comment No. 37 (CCPR/C/GC/37) can be referred to for more details of how the freedom of peaceful assembly should be interpreted and protected in accordance with the ICCPR article 21, including explanation about the scope of the right, obligation of State parties, permitted restrictions, notification regimes, duties and powers of law enforcement agencies, assembly during states of emergency and armed conflict, and relationship between article 21 and other provisions of the ICCPR.

Art 22 - freedom of association

ICCPR article 22 protects the right of everyone to the freedom of association, including the right to form and join trade unions (§1).

Article 22 §2 allows restrictions on this freedom, only if they are **prescribed by law, necessary in a democratic society** in the interest of:

- i. national security or public safety;
- ii. public order (*ordre public*);
- iii. protection of public health or morals; or
- iv. protection of the rights and freedoms of others.

The article also allows imposition of lawful restrictions on the freedom of association of members of the armed forces and of the police. However, it basically does not put any restriction on the legal form of association.⁵⁰ Associations with any type of compulsory membership are not protected by this article.⁵¹ In addition, formation and activities of associations that promotes propaganda for war or carries out advocacy national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence must be prohibited by law in line with the ICCPR article 20.⁵²

⁴⁴ HR Committee’s General Comment No. 37 (CCPR/C/GC/37), §49

⁴⁵ HR Committee’s General Comment No. 37 (CCPR/C/GC/37), §69

⁴⁶ HR Committee’s General Comment No. 37 (CCPR/C/GC/37), §15

⁴⁷ HR Committee’s General Comment No. 37 (CCPR/C/GC/37), §17

⁴⁸ HR Committee’s General Comment No. 37 (CCPR/C/GC/37), §27, §52

⁴⁹ HR Committee’s General Comment No. 37 (CCPR/C/GC/37), §50

⁵⁰ Manfred Nowak: UN Covenant on Civil and Political Rights. CCPR Commentary (2005), p. 498, § 6

⁵¹ Manfred Nowak: UN Covenant on Civil and Political Rights. CCPR Commentary (2005), p. 499, § 9

⁵² Manfred Nowak: UN Covenant on Civil and Political Rights. CCPR Commentary (2005), p. 505, § 20

3. Required procedure and conditions for legitimate derogation from the ICCPR

In time of public emergency which threatens the life of the nation, States parties may take measures derogating from some obligations under the ICCPR as set out in the article 4 of the Covenant. The HR Committee acknowledges that public health crisis caused by the COVID-19 pandemic in many countries can be regarded as such public emergency as stipulated in the article 4, and thus, that States parties may take measures “to protect the right to life and health of all individuals within their territory and all those subject to their jurisdiction”, which “may, in certain circumstances, result in restrictions on the enjoyment of individual rights guaranteed by the Covenant”, and “on a temporary basis, resort to exceptional emergency powers and invoke their right of derogation from the Covenant ... provided that it is required to protect the life of the nation”.⁵³

However, to take such measures, proper **procedure** needs to be followed by the States parties, including **official proclamation of a state of emergency** and **formal notification to the UN Secretary-General**. Furthermore, any measures derogating from the ICCPR must: pass the test of **strict necessity and proportionality**; be **exceptional and temporary**; be **in conformity with other international obligations**; and, be **non-discriminatory**; while *there are certain rights from which no derogation can be made*, as described below.

States parties should not derogate from the ICCPR or rely on derogations already made, if the situation can be attained through restrictions or limitation of rights allowed under the ICCPR articles as listed in the chapter 2.⁵⁴

Required procedure for derogation

i. Official proclamation of a state of emergency

Derogation from the ICCPR must be exceptional and temporary and as such, fundamental conditions for the derogations are that “*the situation must amount to a public emergency which threatens the life of the nation, and the State party must have officially proclaimed a state of emergency*”.⁵⁵ In other words, it will be violation of their obligations under ICCPR, if States parties take any derogation measure without proclaiming a state of emergency.

ii. Notification to the UN SG

ICCPR article 4 §3 sets out that any State party to the ICCPR that are taking measures derogating from the obligations under the ICCPR “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*”. It also stipulates that, through the same way, a further communication shall be made on the date on which it terminates such derogation.

The HR Committee “*emphasises that the notification by States parties should include full information about the measures taken and a clear explanation of the reasons for them, with full documentation attached regarding their law*”, whereby **additional immediate notifications** are also required, when further measures are taken for derogation, including, for instance, **extension** and **termination of the state of emergency**.⁵⁶

⁵³ CCPR/C/128/2, §2

⁵⁴ HR Committee’s General Comment No.29 (CCPR/C/21/Rev.1/Add.11), §4; CCPR/C/128/2, §2 (c); for the provisions of the ICCPR that allow restrictions or limitations, please refer chapter 2

⁵⁵ HR Committee’s General Comment No.29 (CCPR/C/21/Rev.1/Add.11), §2

⁵⁶ HR Committee’s General Comment No.29 (CCPR/C/21/Rev.1/Add.11), §17

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In relation to the COVID-19 pandemic, the HR Committee has also called upon all States parties that have taken emergency measures, which derogate from their obligations under ICCPR, to comply without delay with their duty to notify the UN SG immediately.⁵⁷

Conditions of derogating measures

i. Strict necessity and proportionality of measures

Fundamental requirement for any measures derogating from the ICCPR is that “*such measures are limited to the extent strictly required by the exigencies of the situation*” and “*clearly distinct from restrictions or limitations allowed even in normal times under several provisions of the Covenant*”.⁵⁸ As such, derogations “*must, as far as possible, be limited in duration, geographical coverage and material scope, and any measures taken, including sanctions imposed in connection with them, must be proportional in nature*”.⁵⁹

In this context, HR Committee also emphasises that States parties should not derogate from the ICCPR or rely on derogations already made, if the situation can be attained through restrictions or limitation of rights allowed under certain articles of the ICCPR.⁶⁰

ii. Exceptional and temporary nature

Any derogation must be regarded as **exceptional** and only undertaken **temporarily** to the extent strictly required by the exigencies of the emergency situation, and the **predominant objective** of the derogation must be **restoration of a state of normalcy** where full respect for the ICCPR can again be secured.⁶¹

iii. Conformity with other international obligations

Any derogating measure must not “*be inconsistent with the State party’s other obligations under international law, particularly the international humanitarian law*” and no derogation can be made if it entails “*a breach of the State’s other international obligations*”⁶² including under other international human rights treaties from which no derogation is allowed⁶³. As such, States parties to the ICCPR **may in no circumstances use derogation** “*as justification for acting in violation of humanitarian law or peremptory norms of international law, for instance by taking hostages, by imposing collective punishments, through arbitrary deprivations of liberty or by deviating from fundamental principles of fair trial, including the presumption of innocence*”.⁶⁴ It should also be noted that, if “*action conducted under the authority of a State constitutes a basis for individual criminal responsibility for a crime against humanity by the persons involved in that action, article 4 of the Covenant cannot be used as justification that a state of emergency exempted the State in question from its responsibility in relation to the same conduct*”.⁶⁵

iv. Non-discrimination

As the ICCPR article 4 §1 clearly states, any derogating measure may not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin. HR Committee stresses that

⁵⁷ CCPR/C/128/2, §1

⁵⁸ HR Committee’s General Comment No.29 (CCPR/C/21/Rev.1/Add.11), §4; for the provisions of the ICCPR that allow restrictions or limitations in normal times, please refer chapter 2

⁵⁹ CCPR/C/128/2, §2 (b)

⁶⁰ HR Committee’s General Comment No.29 (CCPR/C/21/Rev.1/Add.11), §4; CCPR/C/128/2, §2 (c); for the provisions of the ICCPR that allow restrictions or limitations, please refer chapter 2

⁶¹ HR Committee’s General Comment No.29 (CCPR/C/21/Rev.1/Add.11), §1; CCPR/C/128/2, §2 (b)

⁶² HR Committee’s General Comment No.29 (CCPR/C/21/Rev.1/Add.11), §9

⁶³ CCPR/C/128/2, §2 (d)

⁶⁴ HR Committee’s General Comment No.29 (CCPR/C/21/Rev.1/Add.11), §11

⁶⁵ HR Committee’s General Comment No.29 (CCPR/C/21/Rev.1/Add.11), §12

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“there are elements or dimensions of the right to non-discrimination that cannot be derogated from in any circumstances”⁶⁶.

In this context, particular attention should be paid to the rights of minorities, as international protection of their rights includes elements that must be respected in all circumstances, especially in relation to the prohibition against genocide as well as the non-derogable nature of the ICCPR article 18⁶⁷. Similarly the equal enjoyment of human rights by women must be protected during a state of emergency.⁶⁸

v. Prohibition of derogation from non-derogable rights

As described in the next chapter, there are certain rights i.e. articles of the ICCPR from which no derogation is allowed even in a state of emergency. States parties may in no circumstance take any measures derogating from these rights i.e. articles.

4. Non-derogable rights under the ICCPR

Article 4 §2 sets out that no derogation can be made from following articles:

- Article 6
- Article 7
- Article 8 §1 and §2
- Article 11
- Article 15
- Article 16
- Article 18⁶⁹

Furthermore, there are also other provisions of the ICCPR from which no derogation can be made, although they are not listed in the article 4 §2.⁷⁰ All these rights i.e. provisions are listed below.

Art. 6 – right to life

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 judgement 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.

⁶⁶ HR Committee’s General Comment No.29 (CCPR/C/21/Rev.1/Add.11), §8

⁶⁷ HR Committee’s General Comment No.29 (CCPR/C/21/Rev.1/Add.11), §13 (c)

⁶⁸ HR Committee’s General Comment No.28 (CCPR/C/21/Rev.1/Add.10), §7

⁶⁹ Except article 18 §3 – freedom to manifest one’s religion, see chapter 2

⁷⁰ HR Committee’s General Comment No.29 (CCPR/C/21/Rev.1/Add.11), §13

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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.

Art. 7 – prohibition of torture

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.

Art. 8 §1 and §2 – prohibition of slavery

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.

Art. 11 – prohibition of imprisonment for failure to fulfill contractual obligation

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

Art. 15 – non-retroactivity of criminal laws

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 the 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.

Art. 16 – recognition as a person before the law

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

Art. 18 – freedom of religion and belief⁷¹

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.

Other elements of the ICCPR that cannot be derogated from

In addition to the rights and articles described above, the HR Committee clarifies that there are other elements of the ICCPR from which no derogation can be made even in a state of emergency, since they are essential for upholding the non-derogable rights listed in the ICCPR article 4 §2 and for ensuring the respect for the rule of law and the principle of legality.⁷² These rights i.e. articles are listed below.

⁷¹ Except the freedom to manifest one's religion as set out in the article 18 §3

⁷² CCPR/C/128/2, §2 (d)

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i. Art. 10 §1

Art. 10 §1 reads:

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

This provision, in the HR Committee's view, is a norm of general international law that cannot be derogated from.⁷³ Furthermore, States parties must pay special attention to the adequacy of health conditions and health services in places of incarceration, and also to the rights of individuals in situations of confinement, and to the aggravated threat of domestic violence arising in such situations.⁷⁴

ii. Prohibitions against taking of hostages, abductions or unacknowledged detention

These prohibitions are a norm of general international law, which cannot be derogated from even in a state of emergency.⁷⁵

iii. Prohibition of forced displacement

Deportation or forcible transfer of population without grounds permitted under international law, in the form of forced displacement by expulsion or other coercive means from the area in which the persons concerned lawfully present, constitutes a crime against humanity. These acts are prohibited in all circumstances.⁷⁶

iv. Art. 20 – prohibition of propaganda for war and advocacy of national, racial or religious hatred

States parties may, in no circumstance, “engage itself, contrary to article 20, in propaganda for war, or in advocacy of national, racial or religious hatred that would constitute incitement to discrimination, hostility or violence”⁷⁷ or “tolerate” such advocacy of hatred⁷⁸. In this context, States parties must also “take steps to ensure that public discourse in connection with the COVID-19 pandemic does not constitute advocacy or incitement against specific marginalized or vulnerable groups, including minorities and foreign nationals”.⁷⁹

v. Art. 2 §3 – right of victims to obtain an effective remedy

Art. 2 §3 reads:

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.

⁷³ HR Committee's General Comment No.29 (CCPR/C/21/Rev.1/Add.11), §13 (a)

⁷⁴ CCPR/C/128/2, §2 (e)

⁷⁵ HR Committee's General Comment No.29 (CCPR/C/21/Rev.1/Add.11), §13 (b)

⁷⁶ HR Committee's General Comment No.29 (CCPR/C/21/Rev.1/Add.11), §13 (d)

⁷⁷ HR Committee's General Comment No.29 (CCPR/C/21/Rev.1/Add.11), §13 (e)

⁷⁸ CCPR/C/128/2, §2 (e)

⁷⁹ CCPR/C/128/2, §2 (e)

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The provision constitutes a treaty obligation inherent in the Covenant as a whole, and as such, States parties must comply, even in a state of emergency, with the fundamental obligation hereunder to provide a remedy that is effective.⁸⁰

vi. Fundamental guarantee against arbitrary detention, right to habeas corpus

The fundamental guarantee against arbitrary detention is “*non-derogable*”, as even situations of emergency for which derogation is allowed cannot justify deprivation of liberty that is unreasonable or unnecessary under the given circumstances.⁸¹

The procedural guarantees protecting liberty of person can never be derogated from, since such derogation would circumvent the protection of non-derogable rights. “*In order to protect non-derogable rights, including those in articles 6 and 7, the right to take proceedings before a court to enable the court to decide without delay on the lawfulness of detention must not be diminished by measures of derogation*”.⁸²

vii. Guarantees of fair trial

HR Committee stresses that “*the guarantees of fair trial may never be made subject to measures of derogation that would circumvent the protection of non-derogable rights*”⁸³ and that “*deviating from fundamental principles of fair trial, including the presumption of innocence, is prohibited at all times*”⁸⁴. As such, “*the principles of legality and the rule of law require that fundamental requirements of fair trial must be respected during a state of emergency*” and “*only a court of law may try and convict a person for a criminal offence*”.⁸⁵

For example, as article 6 of the Covenant is non-derogable in its entirety, any trial leading to the imposition of the death penalty during a state of emergency must conform to the procedural safeguards set out by provisions of the ICCPR, in particular articles 14 and 15.⁸⁶ These safeguards include procedural guarantees such as the right to fair trial in death penalty cases as well as “*accessible and effective measures to vindicate rights, such as the duty to take appropriate measures to investigate, prosecute, punish and remedy violations of the right to life*”.⁸⁷

⁸⁰ HR Committee’s General Comment No.29 (CCPR/C/21/Rev.1/Add.11), §14

⁸¹ HR Committee’s General Comment No.35 (CCPR/C/GC/35), §66

⁸² HR Committee’s General Comment No.29 (CCPR/C/21/Rev.1/Add.11), §16; HR Committee’s General Comment No.35 (CCPR/C/GC/35), §67

⁸³ HR Committee’s General Comment No.32 (CCPR/C/GC/35), §6

⁸⁴ HR Committee’s General Comment No.29 (CCPR/C/21/Rev.1/Add.11), §11

⁸⁵ HR Committee’s General Comment No.29 (CCPR/C/21/Rev.1/Add.11), §16

⁸⁶ HR Committee’s General Comment No.29 (CCPR/C/21/Rev.1/Add.11), §15

⁸⁷ HR Committee’s General Comment No.6 (HRI/GEN/1/Rev.9 (Vol.I)), §67

Questionnaire for stakeholders to detect possible ICCPR violations by States' measures taken in the context of COVID-19 outbreak

Prepared by the Centre for Civil and Political Rights (CCPR)

Background

Amid the unprecedented public health crisis caused by the **COVID-19 pandemic**, various measures have been taken by State and local authorities including those restricting rights and freedoms of individuals. In many cases, such restrictions appear necessary to effectively deal with the virus outbreak and protect the rights to life and health of all. Indeed, restrictions of certain civil and political rights are permitted under the International Covenant on Civil and Political Rights (ICCPR) in limited circumstances including such public health crisis as caused by the COVID-19. In addition, when facing national emergency situation, State parties to the ICCPR may, on a temporary basis, derogate from some of their obligations under the ICCPR, if requirements and conditions are met as provided by article 4 of the ICCPR.

However, concerns have been raised over the **extent and impact of some measures that might have gone beyond the scope of restrictions and derogations permitted under the ICCPR**. Allegations have also been made that some State actors are using the COVID-19 crisis as a window of opportunity to **consolidate their power, introduce new extraordinary powers, or crack down on civil society, Human Rights Defenders (HRDs) and critics**. Importantly, it must also be noted that **marginalised groups** who have been more vulnerable to human rights violations due to structural deficits in the national system and deep-rooted issues in the society are **disproportionately affected by the outbreak, as well as the negative impact of the countermeasures**.

Determining whether or not there is an actual violation of the ICCPR is the mandate of the UN Human Rights Committee (HR Committee), the monitoring body of the ICCPR and would require a rigorous case by case examination of the situation. This questionnaire, therefore, seeks **to collect targeted first hand information** from national stakeholders, in particular civil society and HRDs, in order **to detect possible cases and patterns of ICCPR violation** by measures taken by States in the context of COVID-19 pandemic.⁸⁸ It is developed in the framework of CCPR's project to address ICCPR violation in public health emergencies, jointly implemented with the Global Alliance of National Human Rights Institutions (GANHRI).

Name of the organisation	
Name of the contact person	
Email of the contact person	
Date of entry / submission	
Confidentiality	Can we mention the name of your organisation as a source of information in our project? - Yes / No

⁸⁸ Please also refer to "Guidelines for stakeholders to monitor ICCPR violations by States' measures taken in the context of COVID-19 outbreak"

Annex II

How to fill in and usage of data collected

This questionnaire consists of 3 chapters and an annex. **Chapter 1** lists up four **ICCPR provisions** (12, 18 §3, 19 §2, 21 and 22) that **allow certain restrictions** of the rights under limited circumstances and asks questions to see whether, and if so, how these provisions are protected i.e. violated. **Chapter 2** focuses on whether and how **derogating measures** taken by States comply with procedural requirement as well as strict condition set under the ICCPR. In both chapters, please first check YES or NO for the questions in the checklists to determine whether there is any potential violation of the ICCPR. If your answer is "NO" to any of the questions listed in the checklist, please answer the other questions in each section. If any of the question does not apply to your case i.e. country, you can write "NA" as the answer to the question concerned, or simply skip to the next one. If there are any other information you would like to provide, in addition to your answers in chapters 1 and 2, please do so in the chapter 3. The **annex** to this questionnaire lists up **provisions and elements of the ICCPR that cannot be derogated from in any circumstances**.

Even if your country is not yet party to the ICCPR, your answer i.e. information is still **highly important** for us, except for the Chapter 2 a), to grasp the situation of the civil and political rights in **non-State parties to the ICCPR** as well as the negative impact of COVID-19 on them.

Please also refer to the "**Guidelines** for stakeholders to monitor ICCPR violations by States' measures taken in the context of COVID-19 outbreak" which comes with this questionnaire, for the explanation of legitimate restrictions and derogations allowed under the ICCPR.

Please provide your answers as **concise** as possible and, wherever possible, put the **source of information** for verification.

Information collected through this questionnaire will be analysed by the CCPR and used for the production of project outcomes, which will be published. If you or your organization DO NOT want to be published or mentioned in our project, e.g. for security concerns, please let us know.

Your contribution is extremely helpful for us and all other stakeholders to identify and address violations of civil and political rights caused through COVID-19 pandemic and can be an important basis for the development of human rights-based approach to public health crisis.

If you have any questions regarding this questionnaire, please contact: Daisuke Shirane, dshirane@ccprcentre.org.

5. Violation of articles that permits certain restrictions

Articles 12 (freedom of movement), 18 §3 (freedom to manifest one's religion), 19 §2 (freedom of expression), 21 (freedom of peaceful assembly), and 22 (freedom of association) of the ICCPR includes provisions in themselves that permit certain restrictions on the freedoms set out in the article concerned in limited exceptional circumstances.

a) Art 12 - freedom of movement

Article 12 protects: the *right of everyone lawfully within the territory of a State* to the liberty of the movement and the freedom to choose own residence within that State (§1); *right of everyone* to the freedom to leave any country, including one's own (§2); and the *right of everyone* to enter own country (§4).

Article 12 §3 permits restrictions on §1 and §2 if they are provided by law and are necessary to protect:

- vi. National security;
- vii. Public order (ordre public);
- viii. Public health;
- ix. Public morals; and
- x. Rights and freedoms of others.

Checklist for monitoring ICCPR violations in the context of COVID-19 outbreak:

If there are any measures taken by the State authority that restricts the freedom of movement as enshrined in the ICCPR article 12, are those measures ...:

- i. Only restricts the right of everyone lawfully within the territory of your country to their freedom of movement including freedom to choose own residence within your country (ICCPR article 12 §1); and/or the right of everyone to the freedom to leave any country, including one's own (ICCPR article 12 §2)?* - YES / NO
- ii. Provided by law with clear definitions and precise criteria for the limitation of the freedom?* - YES / NO
- iii. Absolutely necessary and the least intrusive (there is no better alternative) to protect public health from COVID-19 pandemic?* - YES / NO
- iv. Applied without discriminating purpose or impact on particular groups?* - YES / NO
- v. Equally protecting the health of everyone without any unjustified distinction (there is no particular groups who are left out from the protection, or particularly affected by the restriction)?* - YES / NO

If your answer is "NO" to any of the questions i – v above, there is a risk of ICCPR violation, please answer:

Which measures are restricting the right to the freedom of movement as enshrined in the ICCPR article 12, and how?

Which law provides the basis for the restriction and how?

What part of the restriction is unnecessary or overproportionate, or unjustified as compared to its purpose of protecting public health from COVID-19 outbreak, and how?

Which groups are discriminated, and how?

Which groups are left out from the protection and/or particularly affected by the restriction, and how?

Annex II

b) Art 18 §3 - freedom to manifest one's religion

Article 18 protects the right of everyone to the freedom of thought, conscience and religion, including the 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.

Article 18 §3 allows certain limitations on the freedom to manifest one's religion, if they are prescribed by law and are necessary to protect:

- vi. public safety;
- vii. public order;
- viii. public health;
- ix. public morals; and
- x. fundamental rights and freedoms of others.

No limitations are allowed on the freedom of thought and conscience and on the freedom to have or adopt a religion or belief of one's choice.

National security is NOT included in the permitted grounds. Limitations for the purpose of protecting morals should not derive exclusively from a single social, philosophical or religious tradition.⁸⁹

Checklist for monitoring ICCPR violations in the context of COVID-19 outbreak:

If there are any measures taken by the State authority that restricts the freedom of thought, conscience and religion as enshrined in the ICCPR article 18, are those measures ...:

- i. Only restricts the freedom to manifest one's religion (ICCPR article 18 §3)?*
- YES / NO
- ii. Provided by law with clear definitions and precise criteria for the limitation of the freedom?*
- YES / NO
- iii. Absolutely necessary and the least intrusive (there is no better alternative) to protect public health from COVID-19 pandemic?*
- YES / NO
- iv. Applied without discriminating purpose or impact on particular groups?* - YES / NO
- v. Equally protecting the health of everyone without any unjustified distinction (there is no particular groups who are left out from the protection, or particularly affected by the restriction)?*
- YES / NO

If your answer is "NO" to any of the questions i – v above, there is a risk of ICCPR violation, please answer:

Which measures are restricting the freedom of thought, conscience and religion as enshrined in the ICCPR article 18, and how?

Which law provides the basis for the restriction, and how?

What part of the restriction is unnecessary or overproportionate, or unjustified as compared to its purpose of protecting public health from COVID-19 outbreak, and how?

⁸⁹ HR Committee's General comment No.22 (CCPR/C/21/Rev.1/Add.4), §8

Annex II

Which groups are discriminated, and how?

Which groups are left out from the protection and/or particularly affected by the restriction, and how?

c) Art 19 §2 - freedom of expression

ICCPR article 19 protects the right of everyone; to hold opinions without interference (§1); and to freedom of expression including to seek, receive and impart information and ideas (§2).

Article 19 §3 allows restrictions on §2 (freedom of expression), if they are provided by law and are necessary for:

- iii. respect of the rights or reputations of others; or
- iv. the protection of:
 - a. national security;
 - b. public order (ordre public);
 - c. public health; or
 - d. public morals.

HR Committee also notes that “Freedom of expression and access to information and a civic space where a public debate can be held constitute important safeguards for ensuring that States parties resorting to emergency powers in connection with the COVID-19 pandemic comply with their obligations under the Covenant”⁹⁰.

Checklist for monitoring ICCPR violations in the context of COVID-19 outbreak:

If there are any measures taken by the State authority that restricts the freedom of expression as enshrined in the ICCPR article 19, are those measures ...:

- i. Only restricts the freedom of expression including to seek, receive and impart information and ideas (ICCPR article 19 §2)? - YES / NO*
- ii. Provided by law with clear definitions and precise criteria for the limitation of the freedom? - YES / NO*
- iii. Absolutely necessary and the least intrusive (there is no better alternative) to protect public health from COVID-19 pandemic? - YES / NO*
- iv. Applied without discriminating purpose or impact on particular groups? - YES / NO*
- v. Equally protecting the health of everyone without any unjustified distinction (there is no particular groups who are left out from the protection, or particularly affected by the restriction)? - YES / NO*

If your answer is “NO” to any of the questions i – v above, there is a risk of ICCPR violation, please answer:

Which measures are restricting the freedom of opinion and expression, including the right of access to information as enshrined in the ICCPR article 19, and how?

Which law provides the basis for the restriction and how?

What part of the restriction is unnecessary or overproportionate, or unjustified as compared to its purpose of protecting public health from COVID-19 outbreak, and how?

⁹⁰ CCPR/C/128/2, §2 (f)

Annex II

Which groups are discriminated, and how?

Which groups are left out from the protection and/or particularly affected by the restriction, and how?

d) Art 21 - freedom of peaceful assembly

ICCPR article 21 protects the right of peaceful assembly.

Only restrictions permitted on this right are those “imposed in conformity with the law” and are “necessary in a democratic society” in the interests of:

- vi. national security;
- vii. public safety;
- viii. public order (ordre public);
- ix. protection of public health or morals; or
- x. protection of the rights and freedoms of others.

Checklist for monitoring ICCPR violations in the context of COVID-19 outbreak:

If there are any measures taken by the State authority that restricts the freedom of peaceful assembly as enshrined in the ICCPR article 21, are those measures ...:

- i. Provided by law with clear definitions and precise criteria for the limitation of the freedom? - YES / NO*
- ii. Absolutely necessary and the least intrusive (there is no better alternative) to protect public health from COVID-19 pandemic? - YES / NO*
- iii. Applied without discriminating purpose or impact on particular groups? - YES / NO*
- iv. Equally protecting the health of everyone without any unjustified distinction (there is no particular groups who are left out from the protection, or particularly affected by the restriction)? - YES / NO*

If your answer is “NO” to any of the questions i – v above, there is a risk of ICCPR violation, please answer:

Which measures are restricting the freedom of peaceful assembly as enshrined in the ICCPR article 21, and how?

Which law provides the basis for the restriction and how?

What part of the restriction is unnecessary or overproportionate, or unjustified as compared to its purpose of protecting public health from COVID-19 outbreak, and how?

Which groups are discriminated, and how?

Which groups are left out from the protection and/or particularly affected by the restriction, and how?

Annex II

e) Art 22 - freedom of association

ICCPR article 22 protects the right of everyone to the freedom of association, including the right to form and join trade unions (§1).

Article 22 §2 only allows restrictions on this freedom, if they are **prescribed by law, necessary in a domestic society** in the interest of:

- v. national security or public safety;
- vi. public order (ordre public);
- vii. protection of public health or morals; or
- viii. protection of the rights and freedoms of others.

Checklist for monitoring ICCPR violations in the context of COVID-19 outbreak:

If there are any measures taken by the State authority that restricts the freedom of association as enshrined in the ICCPR article 22, are those measures ...:

- i. Provided by law with clear definitions and precise criteria for the limitation of the freedom? - YES / NO*
- ii. Absolutely necessary and the least intrusive (there is no better alternative) to protect public health from COVID-19 pandemic? - YES / NO*
- iii. Applied without discriminating purpose or impact on particular groups? - YES / NO*
- iv. Equally protecting the health of everyone without any unjustified distinction (there is no particular groups who are left out from the protection, or particularly affected by the restriction)? - YES / NO*

If your answer is "NO" to any of the questions i – v above, there is a risk of ICCPR violation, please answer:

Which measures are restricting the freedom of association as enshrined in the ICCPR article 22, and how?

Which law provides the basis for the restriction and how?

What part of the restriction is unnecessary or overproportionate, or unjustified as compared to its purpose of protecting public health from COVID-19 outbreak, and how?

Which groups are discriminated, and how?

Which groups are left out from the protection and/or particularly affected by the restriction, and how?

6. Derogation from the ICCPR

- a) Violation of required procedure for derogation (applicable only for the State party to ICCPR)

Annex II

If any measure is taken by the State authority of your country that derogates from the obligations under the ICCPR, please answer:

Has your country declared a state of emergency?

Has your country notified the UN Secretary General about the declaration, extension, and/or termination of the state of emergency?

Does the notification to the UNSG includes sufficient information about: exact measures taken, provisions derogated from; and the reason for derogation?

b) Violation by illegitimate derogation

Checklist for monitoring ICCPR violations in the context of COVID-19 outbreak:

If any measures are taken by the State authority of your country that derogates from the obligations under ICCPR, are those measures:

- i. Absolutely necessary (there is no other options but derogation) to protect public health from COVID-19 pandemic? - YES / NO
- ii. Temporary i.e. limited in duration, at least planned to be ended when the situation of normalcy is restored? - YES / NO
- iii. NOT violating any other obligation of the State under international law, especially international humanitarian law? - YES / NO
- iv. Applied without discriminating purpose or impact on particular groups? - YES / NO
- v. Equally protecting the health of everyone without any unjustified distinction (there is no particular groups who are left out from the protection, or particularly affected by the derogation)? - YES / NO
- vi. NOT derogating from any of the articles i.e. elements of the ICCPR listed in the annex? - YES / NO

If your answer is “NO” to any of the questions i – vi above, there is a risk of ICCPR violation, please answer:

Which (parts of) measures derogating from the ICCPR are not strictly necessary or unjustified as compared to the conditions of derogation permitted under the ICCPR as well as their purpose of protecting public health from COVID-19 outbreak and restoration of normalcy, and how?

Which obligations of the State under other international law, in particular international humanitarian law, is violated, and how

Which groups are discriminated, and how?

Which groups are left out from the protection and/or particularly affected by the restriction, and how?

Annex II

From which articles, rights and/or elements listed in the Annex are measures derogating from, and how?

7. Other remarks

If you have any other information you would like to provide concerning potential or actual violation of civil and political rights as enshrined in the ICCPR, please insert here.