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This paper presents findings of the “COVID-19 and States of Emergency” Symposium,¹ a global study of the use of emergency powers from the perspective of human rights, democracy, and the rule of law. We draw on this research to assist the Committee in its inquiry, by delivering comparative global insights on how the negative impact on human rights can be minimised by building a strong framework for protecting rights and the rule of law during an emergency.

Background to the Evidence

The “COVID-19 and States of Emergency” Symposium reported on emergency responses from a human rights perspective in 74 countries worldwide in April-May 2020, drawing from over 100 constitutional experts, legal scholars, NGOs, and former judges of the European Court of Human Rights. A paper summarising the findings at the symposium from which we draw conclusions for this submission is available at [this link](#). Given the international nature of the symposium this submission focuses on the Committee’s first question.

What steps need to be taken to ensure that measures taken by the Government to address the COVID-19 pandemic are human rights compliant?

The COVID-19 crisis is a global public health emergency. To protect the Right to Life (*Article 2 ECHR*, *Article 6 ICCPR*), governments have adopted a wide variety of responses to contain the spread of the pandemic and mitigate its negative social and economic effects. The right to life has [three facets](#): (1) a general duty to create a legal and administrative framework to safeguard life; (2) the operational duty to protect people; and (3) the duty to investigate breaches to this right.

A majority of states worldwide have taken positive and preventative steps to fulfil this duty. The severity of the pandemic has necessitated public health interventions, including social distancing measures and ‘lockdowns’, which have seen the most restrictive measures on individual rights and liberties placed on societies in contemporary history. These include restrictions on individual liberty, movement, assembly, worship, and education. Access to justice, and the rights associated with democratic have also been restricted as courts, and legislatures are challenged to fulfil their constitutional functions.

However, adopting a human rights approach offers Government a means of transparently balancing competing human rights perspectives. As Alice Donald and Philip Leach write, [‘measures adopted by](#)

¹ The Symposium was jointly hosted by the Verfassungsblog and Democracy Reporting International under the re:constitution programme with support from Stiftung Mercator and convened by Joelle Grogan. For all reports follow [this link](#).

[states which comply with a human rights framework are likely to be more effective in protecting life and health, than ones that restrict other rights disproportionately](#)'. An essential aim during a public health emergency should be to protect the right to life by adopting "[appropriate measures to address the general conditions in society that may give rise to direct threats to life](#)", while minimising restrictions on other human rights.

Drawing lessons from the Symposium, we have identified Rule of Law and Good Governance principles² that have enabled governments to strike this balance. These recommendations highlight the good practices which appear to have correlated with positive outcomes, including lower infection rates, lower mortality rates, and the earlier lifting of restrictions.

1. Ensure legal certainty and clear, consistent public communication including in legal rules, public messaging and when providing policy updates.

Evidence from [New Zealand](#), and the example of [Iceland's](#) 'rule of common sense' show that legal rules and restrictions that are certain in their meaning, consistent and prospective in their application help ensure successful responses. Legal changes should be announced in advance with sufficient notice in order to enable individuals to act accordingly. As the [Czech Republic's](#) experience shows too many changes in regulations introduced to combat this virus can cause confusion.

2. Ensure transparency in decision-making

The membership of key decision-making bodies should be made publicly available and the scientific evidence and rationale which underlies public policy and legal measures should be made available in both full and accessible executive summary on public websites. The success of [Germany](#) in reducing infection rates to a manageable level for the public health system has been attributed in part to the Chancellor's ability to translate the science into '[easy to follow language](#)' which encouraged rule following.

3. Comply with international law and human rights standards.

States should follow the guidance of multilateral organisations, and introduce measures which are necessary, proportionate, time-limited and respect the principles of legality and human rights. Where possible states should respond to the crisis within the constraints of [normally applicable powers](#). The Parliament of [Hungary](#) successively delegated almost unlimited legislative power, without time limit, to the Hungarian government which has since been used to introduce policies with little connection with COVID-19, prompting international criticism including from the [Secretary General of the Council of Europe](#). A welcomed aspect of the [United Kingdom's](#) Coronavirus Act 2020 is its self-containment. While the Act has introduced temporary amendments to other Acts, its provisions only relate, and can [only be interpreted](#) as relating, to COVID-19. Upon the expiry of the

² We note that this is only early stage evidence, but base our findings of a rich history of research demonstrating the links between the Rule of Law and Good Governance, and good public health and human rights outcomes. (e.g. [here](#) and [here](#))

Act, its effects – even where it has modified other primary acts – disappear. In distinction to concerns in other states as to the permanent changes to the law following the introduction of these emergency powers, the Coronavirus Act 2020 is not expected, or designed, to create any permanent change. The [undertaking of the Government to provide evidence and explanation](#) in justifying their conclusions in two-monthly reports is also to be welcomed in providing essential scrutiny.

4. States should avoid the disproportionate use of force and penalties for, and arbitrary or discriminatory application of, breaches of COVID-19 measures.

In a number of countries enforcement of lockdowns has raised human rights concerns. In order to ensure equal and consistent application of the relevant rules, a differentiation in treatment under the law (for example, based on age) should only be introduced for objectively justified and health-based reasons. In the [United Kingdom](#), concerns have been [raised](#) in the context of the Regulations which governed lockdown that there may be targeted use of these powers to police minority groups. While not indicative of the probability (or possibility) of systemic or widespread misuse of powers, it highlights the critical lack of communication as to the legal use of the powers. This creates critical concerns where there is disparity in the application of the law, particularly where there is little guidance on what constitutes a ‘reasonable belief’ in what [may not be an exhaustive list](#) of excuses.

5. Deliver rapid, coordinated, and collective action

States which responded rapidly to the COVID-19 crisis have been able to exert more control to mitigate the negative consequences of the epidemic. To deliver such rapid action it is necessary to transfer power to the executive, however this should not lead to the suspension of checks and balances as the legislature with the judiciary, fulfil an important function in the oversight and review of executive action undertaken in the emergency. [South Korea](#) responded promptly aggressively to the first signs of concern regarding coronavirus, introducing and quickly expanding on extensive testing and contact tracing, isolation and treatment, without imposing stringent restrictions on the freedom of expression or movement. [New Zealand](#)’s early response and coordinated messaging has been credited with ensuring the country has one of the lowest fatality rates in the world.

6. Ensure that emergency measures are only targeted at resolving the health crisis and not at other policy goals

Non-pharmaceutical interventions should be limited to the purpose of responding to the crisis, and should not be means of introducing government policies through the backdoor. For example, in [Poland](#), attempts were made to pass unrelated bills criminalising abortion and banning sex education through emergency measures.

7. Provide oversight mechanisms to ensure higher quality of law, policy and compliance

Political scrutiny, judicial review and public accountability through the media throughout the emergency are essential in order to act as an important check on the use of power, and review the proportionality of the restriction on rights. This oversight can improve both the quality of the law and effectiveness of the measures. Good practice has been seen in [Finland](#) in the adoption of

provisions to allow for virtual assembly and voting, and for inviting public scrutiny of decrees for constitutionality and rights compliance through real-time posting on a legal blog.

8. Engage with external (including scientific) expertise, and stakeholders and learn from international experience

While emergency necessitates urgent action, subsequent and ongoing review and reform is needed to ensure that states adapt to the latest information, developments, and challenges. Engaging with external expertise and examining international experience to adopt the most successful practices improves the quality of domestic law and policy. This includes following guidance issued by multilateral organisations.

Actions to consider include law reform to protect human rights following identification and analysis of best practices at domestic and international levels. This will be essential for the necessary review and reform of provisions in health legislation.

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