

CHECKLIST

COVID-19 and Human Rights

Assessing Compliance of Legal Measures with International Standards

On January 30, 2020, the World Health Organization declared the coronavirus outbreak a “public health emergency of international concern.”¹ In response to the virus, governments worldwide have adopted emergency laws and other measures that are purported to deal with the public health emergency, but that can also restrict rights and constrain civic space. For example, some states have introduced lockdowns and curfews that restrict freedom of movement and are using excessive force to enforce the measures. Other governments have criminalized the sharing of certain types of information, thus violating expression and access to information rights. Yet others have banned all public gatherings, preventing groups from exercising their right to assemble even if they respect public health requirements.²

Global and continental African human rights mechanisms have responded to the dangers that such overly-broad measures present to the exercise of fundamental rights by producing a growing array of guidance. This checklist references select guidance issued by the African Commission on Human and Peoples’ Rights (ACHPR), namely the [Human Rights Based Effective Response to Covid-19 in Africa](#) (the ACHPR Guidance), and the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association’s [Ten Key Principles](#) to ensure measures respect human rights to association and peaceful assembly (the UNSR’s Guidance).

The checklist provides users with a simple tool to assess whether new and existing government measures comply with this guidance in relation to the exercise of the fundamental freedoms of association, peaceful assembly, expression, and public participation. Guidance on how to best protect human rights while responding to the pandemic continues to evolve, and consequently this checklist is not meant to be exhaustive.³

¹ World Health Organization, [Statement](#) on the second meeting of the International Health Regulations (2005) Emergency Committee regarding the outbreak of novel coronavirus (2019-nCoV) (Jan. 30, 2020).

² For more information on restrictive measures that governments have introduced, please visit the International Center for Not-for-Profit Law’s [Covid-19 Civic Freedom Tracker](#).

³ More information on the wide variety of guidance by the ACHPR can be accessed at the [Documentation Center](#), and by the United Nations on its page on [Covid-19 and its Human Rights dimensions](#).

✓ Steps the State must take before introducing measures:⁴

1. Consult with civil society (and other stakeholders).
2. Present a clear, evidence-based plan for introducing the measures.
3. Provide an effective framework for how the State will apply and enforce the measures consistently and predictably.
4. Foresee possible exemptions for civil society actors, particularly those monitoring human rights, trade unions, social services providing humanitarian assistance, journalists and lawyers so that they can offer services during the pandemic.⁵

Where it declares a state of emergency and limits rights, the State must inform Parliament and the Secretary General of the United Nations and ensure that the state of emergency is time-bound, or automatically expires when the public health emergency ends.

The State should publicly declare and officially gazette the measures once it adopts them.

✓ When measures that restrict rights are justifiable:⁶

Certain rights cannot be limited, including the right to life and freedom from torture or cruel, inhuman or degrading treatment or punishment. The State cannot impose blanket restrictions on rights and fundamental freedoms and should clearly set out the consequences of non-compliance including civil and criminal responsibility of those violating the measures.

Restrictions on any other fundamental right must be:

1. Narrowly defined and proportionate to the need to prevent and contain Covid-19.
2. Set out in a law.
3. Necessary for a legitimate public health goal and the least intrusive way to protect public health.
4. Proportional (the least restrictive means to achieve the public health aim).
5. Temporary and have an end date when full enjoyment of the rights is restored.

⁴ These steps are drawn from the UNSR's Guidance, Principle 1, and the ACHPR Guidance, Principle 1.

⁵ Lawyers are not included in the Guidance, but courts in several jurisdictions have since confirmed that lawyers are essential services. See, for example, Kenyan case: *Law Society of Kenya v Hillary Mutyambai Inspector General National Police Service & 4 others*; *Kenya National Commission on Human Rights & 3 others (Interested Parties) [2020] eKLR*, accessible [at this link](#).

⁶ These provisions are drawn from the UNSR's Guidance, Principle 2, and the ACHPR Guidance, Principles 5 and 10.

6. Applied in a manner that does not disproportionately impact vulnerable groups including the informally employed, persons with disabilities, homeless people and small businesses.
7. Subject to judicial review.

STATE OBLIGATIONS

✓ When implementing the measures:

GENERAL OBLIGATIONS:⁷

- Not use the measures to discriminate based on race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or any status or similar grounds.
- Not apply penalties disproportionately.
- Not use excessive force, including in dispersing assemblies.
- Treat people affected by the virus and people from countries with major spread of the virus humanely and with dignity and not subject them to attacks and discriminatory treatment.
- Ensure that the penalties applied do not contribute to the further spread of infections.
- Consider issues such as the reduced functioning of judicial systems and the financial hardship faced by many before applying penalties.
- Mobilize both state and non-state actors including civil society organizations (CSOs), and opinion and community leaders to ensure compliance with preventive and containment measures.

SPECIAL PROTECTIONS FOR VULNERABLE GROUPS:⁸

- The State adopts special measures for older persons and others with underlying health conditions who are at greater risk of severe sickness and death.
- The poor, homeless, internally displaced persons, asylum seekers, refugees and migrants also benefit from the prevention and containment measures.

⁷ These provisions are drawn from the UNSR's Guidance, Principles 1 and 2, and the ACHPR Guidance, Principles 2 and 5.

⁸ These provisions are drawn from ACHPR Guidance, Principles 6, 7, 8 and 11.

- The measures have regard to the needs of women and girls and persons with disabilities.
- The State takes measures to limit spread among prisoners and detainees, including reducing congestion, and releasing those held for minor offences, the rehabilitated who pose limited risk to society, and persons awaiting trial for minor offenses.
- Everyone, irrespective of their health insurance status and geographic location, can access treatment and care.
- The State adopt measures that mitigate the severe and disproportionate consequences of prevention and containment measures, especially for the most vulnerable and those whose survival depends on day-to-day engagement in economic activities.
- The State establishes a solidarity fund to address the social and economic impact of prevention and containment measures on the most vulnerable.

✓ On ensuring effective oversight on measures:⁹

- There are independent, effective and efficient systems to (a) monitor and review the measures; (b) take corrective action; and (c) investigate allegations of human and peoples' rights violations.
- There are strong judicial and parliamentary checks and balances to avoid excessive and broad executive power, and to check the arbitrary exercise of executive authority.

COMPLIANCE OF MEASURES WITH SPECIFIC PROTECTED RIGHTS AND FREEDOMS

✓ Freedom of Peaceful Assembly and Association:¹⁰

- The State does not restrict registration of CSOs, and associations can register online.
- CSOs can continue to exercise their rights to freedom of peaceful assembly and of association online and offline.
- The State fully respects and protects individuals' rights to privacy when exercising their rights to freedom of peaceful assembly and association online.

⁹ These provisions are drawn from the UNSR's Guidance, Principles 1 and 2, and the ACHPR Guidance, Principle 12.

¹⁰ These provisions are drawn from the UNSR's Guidance, Principles 4, 5, 6 and 9.

- The State ensures that CSOs can conduct advocacy freely and participate in-person or via online fora in policy development.
- Organizations can access the communities they serve without undue limitations.
- There are no laws that unduly constrict civil society’s ability to access funding, including international funding.
- The State provides financial support to CSOs delivering vital social support, particularly those which support persons with disabilities and vulnerable communities.
- Where possible, the State provides both financial and other forms of support to CSOs and recognizes the key role many CSOs play in ensuring public health.
- There are workplace protections and measures that ensure the right to health of all employees, and employees cannot be fired for organizing around the need for enhanced protection and safety at their workplaces.

✓ Freedom of Expression:¹¹

- Civil society actors, including journalists and human rights defenders, can freely seek, receive and impart ideas and information about the crisis, its management, or other subjects.
- The State avoids laws criminalizing “false news.”
- The State ensures access to and use of the internet to the entire population and it is affordable.
- The State does not restrict access through internet shutdowns or online censorship.

✓ Right to Participation:¹²

- The State treats civil society as an essential partner in responding to the crisis (including framing inclusive policies, disseminating information, building cooperative approaches, and providing social support to vulnerable communities).
- The State supports CSOs’ participation in designing and implementing effective public health strategies.

¹¹ These provisions are drawn from the UNSR’S Guidance, Principles 5 and 7.

¹² These provisions are drawn from the UNSR’s Guidance, Principle 4.

- CSOs, defense lawyers, and journalists are not prevented from undertaking vital work monitoring the police, prisons, migrant detention centers and other State legal processes.

ELECTIONS AND PARTICIPATION¹³

- In the context of elections, freedom of expression is respected and peaceful assembly and association online (and offline) are fully ensured.
- The State is transparent in its decision-making processes in the context of elections.
- The State consults with civil society in determining appropriate approaches.
- The State takes all measures possible to ensure the timely carrying out of elections, including through alternative voting procedures.

PARTICIPATION IN MULTILATERAL INSTITUTIONS¹⁴

- CSOs can participate in all policy decisions, including those related to the Covid-19 response, by public-private partnerships, at the UN and other multilateral institutions.
- Such institutions make available broadcasts and archives of open sessions of human rights bodies and other meetings, and where feasible, facilitate civil society's online participation.
- To ensure the effectiveness of UN/government partnerships and interventions, and to monitor potential restrictions on civil society in the context of Covid-19, UN Agencies and bodies proactively reach out to CSOs in the absence of in-person meetings, and consider adapting online meetings and consultations to the security needs of human rights defenders and the challenges in exercising freedom of association online.

¹³ These provisions are drawn from the UNSR's Guidance, Principle 3.

¹⁴ These provisions are drawn from the UNSR's Guidance, Principle 8.