

Mandate of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Killings

#COVI19 HUMAN RIGHTS DISPATCH – NUMBER 1

POLICE AND MILITARY USE OF FORCE IN A STATE OF EMERGENCY

#NoCurfewOnHumanRights

Guidance on the use of force by law-enforcement personnel in time of COVID-19 emergency

- **States of emergency** are exceptional; their duration should be strictly limited
- **The right to life is non-derogable**
- **Law-enforcement measures** should be guided by the **principles of legality, necessity, proportion, precaution** and **non-discrimination**. These are fundamental principles of international human rights law that binds all states
- **Vulnerable groups** – such as the poor, migrant workers, the homeless – are already affected disproportionately by the virus. They should not be rendered victimized further because of state of emergency measures. Police must take **appropriate and heightened precautionary measures**, and conduct **context-based assessment of whether the use of force is necessary and proportionate**
- **Discussion, instruction, consultation and community engagement** – these should be the operating principles for the police

The numbers of allegations of police killings and their excessive use of force that I am receiving and have been reading are deeply concerning. Graphic accounts of police cruelty and violence, often directed at the most vulnerable individuals and communities, are multiplying. In real time, it is difficult to prove that Governments' responses to #Coronavirus are leading to increased rates of unlawful killings and injury by police or other law-enforcement personnel but history warns us to be on high alert. History tells us that more often than not states of emergency and curfews, whatever their purported motivation, lead to an increase in violence by the state.

There are several reasons for this: the imposition by legislators of ill-defined laws that grant, or at least appear to grant, “exceptional” excessive powers to the police; the existence of institutional cultures in policing which tolerate – even rely upon – the use of force; greater public tolerance for police violence under circumstances of real and/or perceived threats; a weakening of institutional arrangements for monitoring, reporting and oversight; press censorship and suppressions of scrutiny from civil society; as well as dehumanization of certain groups in society; etc.

Excessive use of force by police is always unlawful under international law, including during states of emergency.

According to Article 4 of the ICCPR, States may derogate from their obligations under the Covenant but only “in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed.” Derogations must be set in law and may be taken only “to the extent strictly required by the exigencies of the situation.”

Most importantly: THE RIGHT TO LIFE IS NON-DEROGABLE.

The prohibition against arbitrary deprivation of life is non-derogable at all times, even in states of emergency, meaning it cannot be taken away or compromised. The implication is that the use of force including of firearms must be governed by national legislation in compliance with international obligations.

A state of emergency, including the imposition of curfew, may legitimately grant law enforcement officers more powers but that option can NEVER include “the power” to take life arbitrarily. Under a state of emergency, when law enforcement agencies are resorting to force, they must continue abiding by the principles of *necessity*, *proportionality* and *precaution*:

Necessity: Law enforcement officials may only use force when it is strictly necessary and only to the extent required for the performance of their duties. As far as possible, the use of force and of firearms must be avoided, with non-violent means exhausted before resort to violent means. Firearms shall not be used against persons except: i) in self-defence, ii) in defence of others against the imminent threat of death or serious injury, iii) to prevent a particularly serious crime involving grave threat to life, iv) or to arrest a person presenting such a danger.

Proportionality: Force used must be proportionate to the legitimate objective to be achieved. Should lethal force be used, restraint must be exercised at all times and damage and/or injury mitigated, including by giving a clear warning of the intent to use force, by providing sufficient time to heed that warning, and by providing medical assistance as soon as possible when necessary. Law enforcement officials are to be empowered to put life at risk only for the purpose of saving or protecting other lives. Just as with the principle of *necessity*, the proportionality *principle* limits the use of lethal force by police officers to situations where the primary aim must be to save life

Precaution: Reasonable precautions must be adopted to prevent loss of life. This includes putting in place appropriate command and control structures; providing for the proper training of law enforcement officials in the use of force, including less lethal techniques; and, where possible, requiring the issuing of a clear warning before using force; and ensuring medical assistance is available.

While COVID19 is new, the applicable human rights norms are not. The principles of legality, necessity, proportionality, and precaution applied to the right to life, must be implemented.

In addition, law enforcement officers are required to abide by the principle of non-discrimination: they have the duty to respect and protect the human rights of every person, irrespective of their race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Yet, as reports from around the world reveal, states of emergency are increasing the vulnerability to police violence of particular groups and individuals, including poor people forced to go out to make a living; homeless men, women and children; women and children in situations of domestic violence; migrants and refugees; slum dwellers and all those who live a “hand to mouth” existence for whom daily economic activity is essential for daily survival.

As those people seek to make their and their family’s existence viable under the shadow of contagion’s heavy threat, inevitably it is they who are also more likely to find themselves in breach of state of emergency regulations, particularly as they pertain to freedom of movement. **You can’t stay home if you don’t have one. You can’t be under lockdown if don’t have what you need to feed your family. How do you “socially distance” in an urban slum?**

Addressing increased vulnerability and the consecutive risks to life and dignity must be integrated in the design and implementation of emergency regulations.

Government are required to devise specific measures to mitigate the impact of the state of emergency on vulnerable groups and take steps to protect them against disproportionate effects, including on their right to life.

Such mitigation must be reflected as well at the level of policing. Law enforcement institutions and individual officers are required to integrate understanding of the vulnerability of specific groups when enforcing state of emergency regulations. This calls for appropriate and heightened



precautionary measures, and context-based assessment of whether the use of force is necessary and proportionate.

Impositions of derogations of freedom of movement, including curfews, are permitted under international law in specific circumstances and may be a necessity in the context of the COVID19 epidemic. But the breaking of a curfew, or of any restriction on freedom of movement for that matter, should NOT constitute grounds for excessive use of force by the police and under NO circumstances should it lead to the use of lethal force. This rule applies to all at all times – no exceptions. It is crucial to recall this particularly in view of the fact that so many people have no home in which to remain confined nor the means by which to sustain their families under such isolation.

Law enforcement officers, their commanders, the systems that support them and the Governments who direct them, must understand these realities. For millions of people, policies such as curfews can be the more direct threats to their dignity and wellbeing than even the virus itself. There are other ways to police than force first. Discussion, instruction, consultation and community engagement – these should be the operating principles for the police as well. This is what international law demands because it is what protection of human rights in a time of contagion requires.

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2 April 2020