



LEGAL FRAMEWORK OF THE BALANCE BETWEEN HEALTH EMERGENCY LAW AND PUBLIC FREEDOMS IN THE LIGHT OF THE COVID-19 PANDEMIC

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Abstract:

A public health emergency is an exceptional situation that goes beyond the mere guarantee of health safety and extends to all matters relating to public health at local, regional and international levels. This requires the public authorities to take all urgent measures by means of decrees and regulatory or administrative decisions that allow for the exceptional adoption of all urgent economic, financial, social or environmental measures.

The efforts made to combat the COVID-19 pandemic have been significant and considerable, at a time when not all countries were prepared for such global health crises with serious health and economic consequences. Nevertheless, governments have sought to develop strategies to protect at least a minimum of economic and social rights and public freedoms, particularly for the most vulnerable and neglected members of society. This approach emphasises the protection of public freedoms to form healthy communities that enjoy the rule of law and the protection of human rights.

Keywords: *Public health emergency law, rights, freedoms, COVID-19 pandemic, constitutional reference.*

INTRODUCTION

The traditional concept of necessity in constitutional law originated in late nineteenth-century Germany, where royal constitutions recognised the prince's power to issue urgent decrees with the force of law on the basis of the doctrine of public necessity¹. This concept is rooted in Hegel's philosophy of the state. Constitutional jurisprudence, through various theories, affirms that exceptional or urgent necessity allows the government to take actions outside its jurisdiction, while acknowledging that such actions remain subject to judicial review or parliamentary oversight. However, there is disagreement about the necessity and legal value of government action².


States of emergency and siege are among the most significant applications of the theory of necessity, clearly illustrating the idea of exceptional legitimacy and its implications for public freedoms. Most countries have regulated the state of emergency in their constitutional documents³. The state of emergency originated in France⁴ in response to the Algerian War of Independence, with the aim of dealing with the conditions prevailing in Algeria by extending the powers of the police in the field of security, thereby restricting public freedoms in order to guarantee public

¹- SaïdBoualchir, *The Algerian Political System*, Dar Al-Huda, 1993, Algeria, p. 263.

²- See also Samia Laib, *Responsibility in Algerian Constitutional Law*, Doctoral thesis; University of Badji Mokhtar Annaba, Algeria, 2014.

³- Samia laib, *Manal Arabah. Criminal Legislative Policy in the Balance of the Impacts of the Coronavirus*, *Journal of Research Unit in Human Resource Development*,* vol. 17, no. 1, Algeria, May 2022, p. 676.

⁴- The state of emergency in France was organised by the decree of 3 April 1955, modified by the decrees of 8 July 1955 and 15 January 1960.



safety. However, the Algerian constitution does not use the same justification for the state of emergency, but recognises it as a means of countering any threat to public order, and allows the President of the Republic to declare a state of emergency or siege in the event of urgent necessity. A public health emergency is an exceptional measure that goes beyond the mere guarantee of health safety and extends to all matters relating to public health at local, regional or international level. It requires the public authorities to take all urgent measures by means of decrees and regulatory or administrative decisions, enabling them to adopt exceptional measures of an economic, financial, social or environmental nature that require urgent action¹. This situation places the State beyond its international obligations regarding civil and political rights and freedoms, which may be restricted, such as the right of assembly, work, residence, movement, expression and other rights and freedoms, without compromising the stability of essential public facilities and the provision of basic services to citizens².

All governments that declared a public health emergency or a state of lockdown sought to recalibrate the exercise of rights and freedoms because of the damage caused by the COVID-19 pandemic to public health, the productivity of administrative and economic institutions and, consequently, to social and economic security.

From this perspective, the problem of the study can be formulated as follows Did the Public Health Emergency Act enacted in response to the COVID-19 pandemic achieve the principle of balancing the protection of individual rights and freedoms with the necessary level of national security?

METHODOLOGY OF THE STUDY

To address the problem of the study, a descriptive approach is required to describe the phenomenon of the global spread of the COVID-19 virus and the associated health, economic and social risks. This includes the imposition of public health emergency laws, which have introduced various restrictions on public rights and freedoms in order to protect public health and public safety. In addition, an analytical approach will be used to analyse and interpret the legal texts related to the issue under which the state of lockdown or health emergency has been declared, as enacted by most countries in line with the health requirements faced by the world. A comparative methodology will also be used to highlight recent legislation and efforts to protect rights and freedoms, drawing on their experience in this area.

Aims of the study

The study aims to:

Analyse the health emergency law declared in response to the COVID-19 pandemic in terms of the limits of legal protection of public rights and freedoms.

Examine the impact of the health crisis on the labour system in both the public and private sectors, highlighting the need to revise economic legislation in order to achieve a financial balance between public expenditure and revenue in the light of the strategies adopted to support the most affected and vulnerable groups due to the spread of the coronavirus.

Address the issue of the balance between public security and civil liberties in the context of the declaration of a public health emergency during the COVID-19 pandemic, particularly as the public health emergency may disrupt the traditional balance between authorities, which is essential to safeguard freedoms. This threatens the fragile balance between freedoms and security, especially since the declaration of a public health emergency gives the authorities wide powers, such as banning public gatherings, restricting air, land and sea travel, closing down establishments and placing individuals in quarantine or home confinement.

In order to analyse the issue, the study is divided into two main sections:

¹- SamiaLaib, The impact of the novel coronavirus on the labour market: E-Commerce, *Journal of Labour Law and Employment*, vol. 5, no. 4, Algeria, 2020, p. 5.

²- Samir AitArjdhal, The Intervention of Public Authorities under the Declared State of Emergency: A Legal and Rights-Based Approach, *Researcher Journal, Special Issue on the Coronavirus Pandemic (COVID-19)*, No. 17, April 2020, Morocco, p. 28.



1. The legal basis for the declaration of a public health emergency due to the COVID-19 pandemic
2. The health emergency law in the balance between security and public freedoms during the COVID-19 pandemic.

First section: The legal basis for declaring a public health emergency due to the COVID-19 pandemic

It is widely accepted in constitutional jurisprudence that granting emergency powers to the executive leads to a concentration of state power in the hands of the president. This leads to a temporary abandonment of the principle of the separation of powers in order to deal with exceptional threats¹. It is argued that the danger of executive overreach with its extensive powers is not comparable to the threat posed by the crisis itself. It is therefore crucial to assess the balance between security and public freedoms when declaring a state of emergency.

The French judiciary, particularly through the rulings of the Court of Conflict, has established that the decision to declare a state of emergency is not considered an act of sovereignty and has asserted its control over it. In the “Pelletier” case, the Court of Conflict examined the reasons and motivations behind the declaration of a state of emergency. The French Council of State also adopted this position, considering that it was not an act of sovereignty².

On the other hand, the Egyptian Supreme Administrative Court, while examining the legal nature of the decision to declare a state of emergency within the Egyptian system, concluded that this decision was an act of sovereignty and therefore not subject to judicial review, as it was taken by the government in its capacity as a ruling authority and not as an administrative authority³.

China reported an outbreak of the disease to the World Health Organisation (WHO), which subsequently declared it a global pandemic. As a result, the organisation concluded that the COVID-19 virus met the description of a pandemic and considered it a public health emergency of global concern⁴. This prompted most countries to use public health emergency powers to control the spread of the virus as effectively as possible.

1. Constitutional framework for the declaration of a public health emergency in comparative constitutions

The French Constitution of 1958, as amended in 2008, carefully regulates the provisions on emergencies because of their close relationship with rights and freedoms. Article 36(1) of the 1958 French Constitution gives the Prime Minister the power to declare a state of emergency for a maximum period of 12 days⁵. According to paragraph 2, this period can only be extended beyond 12 days with the approval of Parliament⁶.

¹- WajdiThabetGhabrial, *The Exceptional Powers of the President of the Republic*, Maktabat Al-Ma'arefa, Alexandria, Cairo, 1988, p. 237.

²- SalahuddinFawzi, *The Reality of Executive Power in the Constitutions of the World*, Dar Al-Nahda Al-Arabiya, Cairo, 2003, p. 28.

³- Ahmed Salama Ahmed Badr, "The Legislative Authority of the Head of State in the Parliamentary System," PhD dissertation, Cairo, 2003, p. 691.

⁴- See the WHO Director-General's opening remarks at the media briefing on COVID-19 - 11 March 2020: [WHO](<https://www.who.int/>).

⁵- Constitution of 4 October 1958 (original text promulgated on 4 October 1958 and published in the Official Journal on 5 October 1958).

⁶- The state of siege can be declared by the Council of Ministers; only Parliament can authorise its extension beyond 12 days.

- The state of emergency (law of 3 April 1955, amended by the ordinance of 15 April 1960, the law of 20 November 2015 and the law of 21 July 2016) differs from the state of siege in that it recognises the jurisdiction of civil courts and allows administrative detentions.

- Gilles Champagne, *The Essentials of Constitutional Law: The Institutions of the Fifth Republic*, 16th edition, Gualino Publisher; LexisNexis Editions, 2017, p. 101.



The French Parliament enacted a public health emergency law giving the government broad powers for two months to combat the global COVID-19 pandemic¹. This law allowed the French Prime Minister to issue decrees restricting the movement of citizens and further regulating their freedoms during the pandemic.

In Egypt, the 1971 Constitution gives the President the power to declare a state of emergency to deal with exceptional circumstances, either by invoking Article 74 of the Constitution or by declaring a state of emergency as defined by law. This declaration must be submitted to the People's Assembly within fifteen days for its decision².

The 2014 Constitution, amended in 2019, changed the procedures and timelines for declaring a state of emergency under Article 154. The declaration now requires the approval of a majority of the members of the Assembly and cannot exceed three months, with extensions only possible for a similar period with the approval of two-thirds of the members of the Assembly. If the Assembly is not in session, the approval of the Cabinet is required and the matter must be presented to the new House of Representatives at its first meeting. These new timelines and procedures significantly limit the president's previously broad powers to declare a state of emergency. In addition, the House of Representatives cannot be dissolved under any circumstances during a state of emergency.

Article 2 of Law No. 162 of 1958, as amended by Law No. 37 of 1972, stipulates that a state of emergency shall be declared and lifted by a decision of the President of the Republic³.

When Professor Dr Suleiman Al-Tamawy asked the question: "When is a state of emergency declared?", the Drafting Committee of the 1971 Constitution noted that Article 1 of Law No. 162 of 1958 answered this question by stating that "a state of emergency may be declared whenever security or public order is threatened in the territories of the Republic or in any part thereof, whether due to the outbreak of war, the threat of war, internal disturbances, natural disasters or the spread of epidemics".

Law No. 22 of 2020 was issued to amend certain provisions of the Emergency Law No. 162 of 1958, as the Egyptian constitution allows the president to declare a state of emergency in response to an epidemic. This law was issued by the President after being approved by the House of Representatives on 22 April⁴ and provides the emergency authorities with new measures to combat the coronavirus.

¹- Decree No. 2020-293 of March 23, 2020, published in JORF No. 0072 on March 24, 2020 - text No. 7 - prescribing the general measures necessary to address the COVID-19 epidemic within the framework of the state of health emergency.

²- Article 154 of the Egyptian Constitution of 2014, amended in 2019, states: "The President of the Republic announces the state of emergency, after taking the opinion of the Council of Ministers, in the manner regulated by law, and this declaration must be presented to the House of Representatives within seven days for its decision. If the declaration occurs outside the regular session, the council must be summoned immediately to consider it. In all cases, a majority of the members of the council must approve the declaration of the state of emergency, which shall be for a specified period not exceeding three months, and may only be extended for an equivalent period with the approval of two-thirds of the council's members. If the council is not in session, the matter is submitted to the Council of Ministers for approval, to be presented to the new House of Representatives at its first meeting. The House of Representatives may not be dissolved during the state of emergency."

³- Sabri Muhammad Al-Sanousi, *The Political Role of Parliament in Egypt*, Dar Al-Nahda Al-Arabiya, Cairo, 2006, p. 154.

⁴- Law No. 22 of 2020, concerning the amendment of certain provisions of Law No. 162 of 1958 regarding the state of emergency, Official Gazette, No. 18 bis A, year 63, issued on May 6, 2020.



The Egyptian President, after consulting the Cabinet, extended the state of emergency for a period of three months throughout the country, under Decision No. 168 of 2020, due to the serious security and health conditions facing the nation¹.

With regard to the situation in Algeria, constitutional texts empower the President of the Republic to declare a state of emergency in response to exceptional circumstances, in accordance with Article 91 of the 1996 Constitution. This is in contrast to the 1963 and 1976 constitutions², which did not lay down any substantive or formal conditions to be met by the President when declaring or extending a state of emergency.

On the other hand, in the 1989³ and 1996 constitutions, the founder of the Algerian constitution established formal and substantive conditions that must be met for the action to be considered constitutional, thus allowing other state institutions to participate with the president in the decision to declare one of the two states. The 1996 Constitution, as amended in 2020⁴, specifies in Article 97 that the substantive conditions include urgent necessity and a defined duration, while the formal conditions include the convening of the Supreme Security Council, consultation with the President of the National People's Assembly and the President of the Council of the Nation, consultation with the Prime Minister, and consultation with the President of the Constitutional Court.

In view of the current health situation, Algeria, unlike some other countries, has not adopted a public health emergency law, as there is no constitutional basis for doing so⁵. Instead, it has opted for a less severe approach to public freedoms by imposing a health quarantine. Although it includes preventive measures similar to those introduced by public health emergency laws in comparable systems, the Prime Minister, acting within the limits of his constitutional powers, issued Executive Decree No. 20-69 on measures to prevent and combat the spread of the COVID-19 virus⁶. Subsequently, the Algerian government issued a second Executive Decree No. 20-70 of 24 March 2020⁷, the first article of which aims to define complementary measures to prevent the spread of the coronavirus pandemic. These measures aim to exceptionally reduce physical contact between citizens in public spaces and workplaces. The measures set out in this decree apply throughout the country and may be lifted or extended, if necessary, in accordance with the procedures set out in Article 2 of the same decree.

2. International attention to the need to place human rights at the centre of COVID-19 responses

The World Health Organization defines the right to health as “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity”. States have an obligation to guarantee both freedoms and rights and to take appropriate measures necessary to address the

¹- Decision No. 168 of 2020, regarding the declaration of a state of emergency throughout the country, Official Gazette No. 17 bis, issued on April 28, 2020.

²- SamiaLaib, *the Center of Political Authority Between Islamic Jurisprudence and Algerian Constitutional Law*, Dar Al-Jamia Al-Jadida, Egypt, 2018, p. 181.

³- Algerian Constitution of 1989, dated February 23, 1989, Official Gazette No. 9, issued on March 1, 1989.

⁴- Algerian Constitution of 1996, amended by Presidential Decree 20-442, Official Gazette No. 82 of 2020.

⁵- SamiaLaib, *ManalArabah, Criminal Legislative Policy in the Balance of the Impacts of the Coronavirus*, the previous reference, p. 680.

⁶- Executive Decree No. 20-69, dated March 21, 2020, concerning measures to prevent the spread of the coronavirus pandemic and combat it, Official Gazette No. 15, p. 6.

⁷- Executive Decree No. 20-70, dated March 24, 2020, concerning the determination of additional measures to combat the spread of the coronavirus (COVID-19), Official Gazette No. 16, p. 9.

social and economic determinants of health, such as the provision of food, water, sanitation, safe and healthy working conditions and housing¹.

Measures to contain the virus pose a serious threat to the right to life, health and security. All States have a responsibility under international human rights law to protect their populations at all levels and in all settings. This responsibility is exemplified in Article 2 of the International Covenant on Economic, Social and Cultural Rights², which states that “States Parties to the present Covenant undertake to take steps, individually and through international assistance and co-operation, in particular economic and technical, to the maximum of their available resources, with a view to achieving progressively the full realisation of the rights recognized in the present Covenant”. These include the adoption of legislative measures prohibiting assembly and movement, the cancellation of religious and civic celebrations and the closure of certain institutions, with the exception of banking and insurance services.

A number of strict and relatively similar measures have been introduced in most countries around the world to combat the spread of the virus³, with the possibility of criminal sanctions for those who resist these preventive measures and actions.

The situation created by the COVID-19 pandemic forced many countries to impose indefinite quarantine measures. As a result, a number of laws have been enacted with specific provisions for public health emergencies, such as fines and imprisonment, aimed at maintaining public order and providing a penal framework for orders issued by the authorities in these exceptional circumstances⁴.

Measures restricting fundamental rights during a state of emergency must be necessary under international law, explicitly stated in the legislation and clearly defined in terms of time and place, to the extent that they are absolutely necessary and proportionate to the exigencies of the health situation. In addition, effective remedies must be available for violations of rights recognised in the Covenant, such as the right to adequate housing and the right to the highest attainable standard of health under Article 12 of the Covenant, not to mention the liberty and security of the person and freedom of movement and travel.

The threat to the international community has shifted from the openness of globalisation to nationalist closure. With border closures, travel bans and curfews, countries are now facing the virus alone, relying on their different health capacities. This situation has led UN Secretary-General Antonio Guterres to declare that humanity is facing an existential threat⁵.

International cooperation imposes two essential obligations on all States: the first relates to the need to seek and accept international assistance, and the second relates to the duty of those States in a position to do so to provide such assistance.

¹- World Health Organization. The Right to Health, Fact Sheet No. 31, Geneva (Switzerland), 2008, pp. 3-9.

The International Covenant on Economic, Social and Cultural Rights** was adopted and opened for signature, ratification, and accession by United Nations General Assembly Resolution 2200 (XXI) on December 16, 1966, and entered into force on January 3, 1976, according to Article 27.

²- The Italian government adopted Decree No. 6 issued on February 23, 2020, followed by a series of more detailed decrees, all aimed at implementing measures to contain the COVID-19 virus.

³- DECREE-LAW 23 February 2020, n. 6. Available at: [Normattiva]([\)](https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legge:2020-02-23;6!vig=)

⁴- Chaima Al-Shawi, Legal Perspectives on the Novel Coronavirus (COVID-19), Al-Bahith Journal, Special Issue on the Coronavirus Pandemic, No. 17, Morocco, April 2020, p. 92.

⁵- Abdul Wahab Karim Al-Alwani, The Importance of International Cooperation in Facing the Coronavirus Pandemic, Al-Arabi 21, published on March 27, 2020, accessed on July 24, 2020, at 19:00: [Link](<https://arabi21.com/story>).



The United Nations is working to facilitate international cooperation to harness the power of science in the fight against the COVID-19 pandemic. It is also working with partners to explore innovative tools for crisis response. Remarkably, less than 100 days after the World Health Organization (WHO) was notified of the new coronavirus, research efforts accelerated at an unprecedented rate.

WHO Director-General Tedros Adhanom Ghebreyesus has confirmed the success of the Solidarity Trial - a WHO initiative to evaluate potential treatments for COVID-19 - which has already attracted participation or interest from 74 countries¹.

The UN Charter encourages cooperation between Member States². Article 1(3) of the Charter emphasises “the achievement of international co-operation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion”. This notion is reinforced in Article 13(b). In particular³, cooperation in the vital area of health has led to the establishment of specialised agencies and organisations under the UN, including the World Health Organisation, dedicated to promoting international cooperation in health matters.

In Chapter Nine on Economic and Social Co-operation, Article 55(b) emphasises the facilitation of solutions to international economic, social and health problems and the promotion of international co-operation in cultural and educational matters. In addition, Article 62 of Chapter Ten of the Charter calls upon the Economic and Social Council to undertake studies and prepare reports on international questions, including health⁴, and to coordinate with specialized international agencies in the implementation of the principles and purposes of the United Nations.

The Office of the United Nations High Commissioner for Human Rights, together with the World Health Organisation, has repeatedly called for the adoption of containment measures that respect human rights. This international concern stems from the difficulty of balancing two essential equations: the need to take measures to control the virus in response to the urgency of the situation, and the obligation to uphold human rights standards as international commitments.

Preventive measures and responses to the virus must be consistent with human rights standards, in a manner proportionate to the assessed risks based on the severity of the situation in each country. This is particularly relevant in the context of public health emergency laws or quarantines, which

¹- United Nations, United Nations Global Communications Office, the UN Mobilizes Global Cooperation for Science-Based COVID-19 Responses, accessed on April 24, 2020, at 20:00: [Link](<https://www.un.org/ar/un-coronavirus-communications-team/un-mobilizes-global-cooperation-science-based-covid-19-responses>).

²- The UN Charter was signed on June 26, 1945, in San Francisco at the conclusion of the United Nations Conference on the International Organization and came into force on October 24, 1945.

³- Article 13, paragraph b states: "Promoting international cooperation in the economic, social, cultural, educational, and health fields, and assisting in the realization of human rights and fundamental freedoms for all people, without distinction of any kind such as race, sex, language, or religion, and without distinction between men and women."

⁴- The International Telecommunication Union, a specialized agency of the United Nations, calls on the information and communication technology community to rise to the challenge posed by the pandemic, holding a series of webinars on the use of artificial intelligence. At the beginning of the series, experts from the Republic of Korea shared how innovative technologies were used to flatten the curve in the East Asian country.

See UN High Commissioner for Human Rights Michelle Bachelet, "Coronavirus: Human rights need to be front and centre in response," GENEVA (6 March 2020): [Link](<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25668&LangID=E>).

may require restrictions on movement and personal freedoms, including bans on public gatherings, religious and civic celebrations, and other measures to contain the spread of the pandemic.

Given the gravity of the current global health crisis, international law allows states to use extraordinary powers in response to major threats. However, it is crucial that the security measures taken to combat the virus are not excessive. Any emergency measures taken by states to deal with COVID-19 must be proportionate, necessary and non-discriminatory¹.

In line with this perspective, the World Health Organization has urged all nations to strike a delicate balance between ensuring and protecting public health and mitigating the economic and social impact while respecting human rights and freedoms. This approach underscores the importance of integrating human rights standards into containment measures enacted under public health emergency laws.

Second: The Health Emergency Law in Balancing Security and Freedoms During the COVID-19 Pandemic

The constitutional provisions governing states of emergency in Algeria and in comparative systems show that a state of emergency is by nature an exceptional and extraordinary system designed to deal with a 'danger' such as a global pandemic. However, the definition of danger as the sole criterion for declaring a state of emergency is overly broad and vague, making it difficult to establish a precise and accurate definition of what constitutes danger². The intention behind broadening the criteria for declaring a state of emergency is to give the President significant discretionary powers to justify the declaration of such a system³.

Judicial oversight and emergency powers

Judicial jurisprudence and legislation grant the administration a degree of leeway from the principle of legality in exceptional circumstances to deal with crises. However, concerns about potential administrative abuse in violating individual rights and freedoms under the guise of extraordinary powers and measures have led to the granting of judicial oversight of these measures. This oversight aims to ensure a minimum level of freedoms that does not threaten public order, while at the same time allowing for the management of exceptional situations and the restoration of calm and order in society. Judicial oversight is considered the most effective form of control for the protection of public rights and freedoms in extraordinary circumstances, as it is essential for establishing the necessary balance between the privileges of authority and the rights and freedoms sought by citizens⁴.

01-Impact of the health emergency law or quarantine on rights and freedoms

¹- Fouad Abdel Nabi Hassan Farag, "The President of the Republic in the Egyptian Constitutional System," PhD dissertation, Cairo University, 1995, p. 280.

²- Previousreference, p. 281.

³- For more, see: Hamza Naqash, "The Role of Administrative Judiciary in Protecting Personal Freedoms During States of Emergency: The Case of Administrative Detention," *Journal of Human Sciences*, University of Constantine, No. 45, Algeria, 2016, p. 249.

Haki Ismail, "Control over the Actions of Authorities Based on States of Emergency: A Comparative Study in the Iraqi, Egyptian, and Anglo-American Systems," Cairo, 1981.

Ahmad NoursDaliwan, "Control over the Actions of Emergency Authority in Jordan During States of Emergency: A Comparative Study," Amman, 2005.

⁴- Article 7 of Executive Decree 20-69 defines the following users: health users regardless of the employing agency, users affiliated with the General Directorate of National Security, users affiliated with the General Directorate of Customs, users affiliated with the General Directorate of Prisons, users affiliated with the General Directorate of Telecommunications, quality control and fraud prevention users, users affiliated with the Phytosanitary Authority, users assigned to cleaning and disinfection tasks, and users assigned to monitoring and guarding tasks.



Algeria has not adopted a public health emergency law because there is no constitutional basis for such a measure; instead, it has opted for quarantine. The Algerian government has issued two executive decrees, the first being Decree No. 20-69, which deals with preventive measures against the spread of the COVID-19 pandemic. This decree outlines the organisation of work within public administrations and institutions, with the aim of establishing social distancing measures to prevent the spread of the virus, in particular to reduce physical contact between citizens in public spaces and workplaces.

These measures reflect the delicate balance that must be maintained between safeguarding public health and respecting individual rights and freedoms during a crisis.

During the specified period, which may be extended depending on the health situation, at least 50% of the employees in each public institution and administration will be placed on exceptional paid leave. Employees in vital sectors are excluded from this measure¹. According to Article 8 of Decree No. 20-69, priority for exceptional leave is given to pregnant women, persons responsible for raising young children, persons with chronic illnesses and persons with fragile health.

Public institutions and administrations are encouraged to take all measures to promote teleworking, in compliance with the laws and regulations in force².

In addition to Executive Decree No. 20-69, the Algerian government issued a second Executive Decree, No. 20-70, dated 24 March 2020³. According to its first article, this decree aims to establish complementary measures to prevent the spread of the COVID-19 pandemic. These complementary measures are aimed at establishing quarantine systems, restricting movement, regulating commercial activities, supplying citizens and establishing rules for social distancing. The decree also outlines methods for mobilising citizens to contribute to the national effort to prevent and control the spread of the coronavirus⁴.

On 13 June 2020, the Prime Minister issued a further executive decree, which included modifications to the home confinement measures and measures taken as part of the prevention system against the spread of COVID-19⁵. The state's efforts to combat this virus must adequately prioritise the protection of the most vulnerable and marginalised people in society, both health-wise and economically. A human rights-based approach to this pandemic is essential to achieve healthy communities governed by the rule of law and the protection of human rights⁶.

¹- Article 9 of Executive Decree 20-96, previous reference, p. 7.

²- Executive Decree 20-70, dated March 24, 2020, concerning the determination of additional measures to combat the spread of the coronavirus (COVID-19), Official Gazette No. 16, p. 9.

³- Article 11 of Executive Decree 20-70 specifies exceptions to the lockdown in the private economic sector, stating that the closure measure applies to all retail trade activities except those ensuring the supply of foodstuffs to the population, in accordance with the legally stipulated distancing measures. The activities exempted from the closure include those providing essential public services, particularly in public cleanliness, water, electricity, gas, telecommunications, postal services, banks, and insurance companies, as well as private health institutions, including medical clinics, laboratories, and imaging centers, pharmaceutical products and medical supplies activities, fuel and energy distribution institutions, and activities of vital importance, including wholesale markets, according to Article 12.

⁴- Executive Decree 20-159, dated June 13, 2020, includes amendments to home confinement and measures taken within the framework of the prevention and control of the spread of COVID-19, Official Gazette No. 35, issued on June 14, 2020, p. 20.

⁵- Nabi Muhammad, "COVID-19 Between the Necessity of Containment Measures and Compliance with International Standards," *Al-Bahith Journal*, Special Issue on the Coronavirus Pandemic, No. 17, Morocco, April 2020, p. 113.

⁶- Article 8 of Law No. 22 of 2020, concerning the amendment of the state of emergency law, previous reference.



Health Emergency Law in Egypt

Under the Egyptian Health Emergency Law, Law No. 22 of 2020 included amendments to certain provisions of the Emergency Law No. 162 of 1958, which was issued by the President following its approval by the House of Representatives on 22 April. This law empowered the President to implement emergency measures restricting public freedoms in response to COVID-19.

The President or his delegates are authorised to take all or some of these measures to deal with the public health emergency. These measures include the suspension of classes in universities and schools, the total or partial suspension of work in ministries, public enterprises, other state enterprises and the private sector¹. In addition, the law allows for the partial or total suspension of payments for electricity, gas and water services, as set out in Article 9 of Law 22/2020.

Emergency measures and restrictions under the Public Health Emergency Act Article 4 of the decree states that anyone who violates the orders issued by the President of the Republic in accordance with Law No. 162 of 1985 shall be punished by imprisonment. The activation of the state of emergency allows the state authorities to prohibit meetings and demonstrations if they pose a risk to national security or threaten the stability of the state.

A ban has also been imposed on public meetings, processions, demonstrations, celebrations and other forms of assembly. Restrictions have also been imposed on private gatherings, and persons arriving from abroad are required to undergo health quarantine in accordance with the rules established by the competent authorities.

These restrictions extend to the area of competition and pricing, where the export of certain goods and products has been banned. Restrictions have also been placed on the trade, transport, sale and possession of certain goods, and price controls have been imposed on certain services and products².

Ultimately, the health emergencies or quarantines that have been declared in various countries as a result of COVID-19 do not bring economic activity to a halt. Instead, these exceptional measures require a reduction in the movement of citizens. Movement is permitted for work purposes in open economic administrations and institutions, including companies, factories, agricultural work, shops and commercial spaces related to the daily consumption of citizens, pharmacies, the banking sector, social security, petrol stations, medical clinics, telecommunications companies, essential liberal professions and shops selling cleaning products.

Movement is therefore restricted to persons whose presence at their place of work is essential and who must produce a signed and stamped certificate from their employer to prove this necessity.

02- Governments' efforts to protect the rights and freedoms of those affected by the COVID-19 pandemic

The global economic and financial disruption caused by the spread of COVID-19 is a stark reminder of the challenges facing economies, particularly those of major countries. The stoppage of production due to closures and the declaration of public health emergencies to contain the spread of the virus have prompted governments to rapidly develop strategies to protect the minimum economic and social rights of those affected by the pandemic.

In Algeria, the authorities have sought to strike a balance between the security aspect of the quarantine imposed and the protection of as many public rights and freedoms as possible. Specifically, as regards traders whose shops were closed as a preventive measure against COVID-19,

¹- Articles 14-17 of the Public Health Emergency Law 20/22, previous reference, detail this.

²- The number of beneficiaries of the solidarity grant established by President Abdelmadjid Tebboune for those affected by the COVID-19 pandemic is approximately 322,000 beneficiaries, according to statistics from the Ministry of Interior, Local Authorities, and Urban Planning. The same source clarified that the number of beneficiaries of the 10,000 dinar grant, registered in the lists approved by the relevant local directors up to May 27, 2020, after the lists were purged, reached 321,955 beneficiaries. [Link](<http://www.aps.dr/algerie>).



the government decided to extend the deadline for submitting applications to benefit from the solidarity subsidy set by the President. This extension will allow all traders sufficient time to register and benefit from the planned measures.

In addition, the compensation process for affected traders is being managed by the Ministries of Interior and Finance. As part of ongoing efforts to provide social and economic support to families affected by the pandemic preparedness measures, and following the completion of the first phase of the 10,000 Algerian dinar solidarity grant, the government has begun paying a second instalment of the same amount to registered beneficiaries¹ in all provinces.

An analysis of Egypt's strategy for balancing emergency law and public freedoms:

Egypt's Health Emergency Law has introduced temporary measures to protect individual rights in the face of the challenges posed by the pandemic. Article 8(2) of the Health Emergency Law allows for the suspension of time limits for the exercise of rights, including procedural time limits for mandatory complaints, lawsuits and appeals, as well as other time limits established by laws and regulatory decisions. The running of these time limits resumes on the day following the end of the suspension period, and additional time may be added to these time limits in lieu of the suspension period. However, this suspension does not apply to time limits related to pre-trial detention or appeals against criminal decisions concerning persons detained pursuant to these decisions.

With regard to tax obligations, the law has extended the deadlines for filing tax returns and paying all or part of the taxes due for a maximum period of three months, which may be extended for a further similar period. During these extensions, there will be no penalties for late payment or additional taxes. In addition, the extension periods will not be included in the calculation of the limitation period for the tax due.

These measures reflect an effort to ensure that, while public health and safety are prioritised, individual rights and economic responsibilities are also taken into account, thus providing citizens with some relief during the ongoing crisis².

The solidarity movement mobilised the entire capitalist class to make donations, followed by voluntary contributions from senior officials in public and private institutions and their subordinates. This initiative embodied non-material values with a humanitarian dimension aimed at achieving social solidarity³.

The pandemic opened up new ways of understanding and dealing with certain phenomena, leading to the formulation of a collective national response involving the government and all sectors of society. Legal and human rights advocates were also involved in these efforts, working together to develop plans to increase the capacity for collective action that would go beyond individual responses to this health crisis⁴.

These efforts also aimed to counter the spread of misinformation circulating online, which can create waves of panic among citizens and negatively affect their well-being. By fostering a spirit of cooperation and mutual aid, these initiatives not only addressed immediate needs, but also reinforced the importance of community resilience in the face of challenges.

CONCLUSION

¹- This is specified in Articles 10-11 of the Public Health Emergency Law 20/22. previous reference.

²- Fekita Ben Jelloul, "The COVID-19 Pandemic: The Dialectic of Victory and Defeat," *Al-Bahith Journal*, Special Issue on the Coronavirus Pandemic, No. 17, April 2020, Morocco, p. 53.

³- "It is no longer a secret that the fight against fake news represents a major challenge for the government and social networks. However, it intensifies with this health crisis." AyoubLahlou, *Journal of the Researcher*, Special Issue on the Coronavirus Pandemic, No. 17, April 2020, p. 164.

⁴- Jean-Pierre Dedet, "Epidemics," *Collection:Univer Sciences*, 2010; Dunod; p. 129.



Emergency measures have spread to many countries, with widespread curfews and states of emergency declared in many places, granting extraordinary powers to the governing authorities at the expense of laws and constitutions.

Emergency rule is often seen as one of the harshest forms of rule, as it creates an exceptional system that enhances executive power at the expense of liberty, and establishes a framework of exceptional legitimacy that is much broader than that which exists under normal circumstances.

The Health Emergency Act aims to mitigate the impact of the COVID-19 pandemic on citizens, particularly the most vulnerable groups. The practical realities required the implementation of strict and robust measures to contain the spread of the epidemic, especially after the World Health Organization declared it a global pandemic and public health emergency. This underscores the importance of protecting individuals from all potential risks during this period, while ensuring that all preventive measures are in place to provide maximum protection, particularly in terms of health care.

The efforts made to combat the COVID-19 pandemic were formidable and significant, especially considering that not all countries were prepared for such global health crises with serious health and economic consequences. Nevertheless, governments have sought to develop strategies to ensure the minimum economic, social and public rights of the most marginalised and neglected members of society. This approach is rooted in a commitment to protect public freedoms and aims to build healthy communities that uphold the rule of law and human rights.

KEY FINDINGS

Based on the analysis presented in this brief, we have reached the following key conclusions:

- The conditional nature of human rights: Most human rights are not absolute and can be restricted to protect national security, public order, public health or public morality. This principle applies to the Health Emergency Act enacted due to the COVID-19 pandemic.
- Scope of government authority: The power of governments to declare public health emergencies or impose quarantines is primarily limited in time and geography to the exigencies of the exceptional health situation. While such measures are necessary in a democratic society, the restrictions imposed under health emergency laws must be proportionate and consistent with international human rights law.
- Collaborative approach: Most countries have adopted a participatory methodology and a comprehensive strategy to address the COVID-19 pandemic as an international and national imperative. This effort has involved the combined efforts of various stakeholders within a framework of international cooperation among states, international organisations and diverse associations.
- Meeting international commitments: The actions taken by many countries are generally consistent with their obligations under international human rights law. However, it is important to recognise the potential conflicts that these measures may pose for the protection of human rights. Ongoing monitoring of government emergency measures is necessary to ensure compliance with international standards on the protection of human rights and freedoms.
- Economic impact: The current circumstances arising from the COVID-19 pandemic have led to stock market collapses and economic crises for many companies. As a result, the Public Health Emergency Act has infringed on freedom of competition and pricing in order to ensure public safety. However, this infringement is considered temporary, given the existing imbalance between supply and demand.

Measures taken under the Public Health Emergency Act have resulted in job losses and wage reductions, with long-term consequences for individuals' livelihoods. It is therefore essential to address the unintended consequences of the security and health measures taken to combat the virus through a specific strategy that is consistent with states' obligations to uphold these rights and freedoms.

Based on the findings of this study, we propose the following key recommendations:

- Integrate environmental considerations: Despite the importance of the legal texts enacted in response to the COVID-19 pandemic to contain the virus within a legal framework, these measures have struggled to keep pace with the rapid development and change in environmental threats. There is a need to reintegrate environmental considerations into all areas of communication, transactions and individual and collective behaviour, as all public rights and freedoms are directly affected by and interact with the environment.

- Establish special committees or funds: Governments should establish special or exceptional committees or funds to ensure a minimum level of economic and social security during health emergencies and emerging viruses. These structures should focus on assisting the most vulnerable.

- Judicial oversight of preventive measures: Preventive measures taken by countries to contain the virus must be subject to judicial oversight (review of legality and appropriateness). In addition, these measures must comply with the standards of the International Covenant on Civil and Political Rights.

In conclusion, it is essential that the various political and civil actors work together to overcome this environmental crisis by promoting a culture of awareness of environmental risks and effective ways of dealing with them within economic and administrative institutions, both national and international.

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