

***1072** The **Paris Minimum Standards** of Human Rights Norms in a State of Emergency

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After 6 years of study by a special subcommittee [\[FN1\]](#) and 2 additional years of revision by the full Committee on the Enforcement of Human Rights Law, [\[FN2\]](#) the 61st Conference of the International Law Association, held in Paris from August 26 to September 1, 1984, approved by consensus a set of minimum standards governing the declaration and administration of states of emergency that threaten the life of a nation, including 16 articles setting out the nonderogable rights and freedoms to which individuals remain entitled even during states of emergency. [\[FN3\]](#)

These standards, designated the **Paris Minimum Standards** of Human Rights Norms in a State of Emergency, are intended to help ensure that, even in situations where a bona fide declaration of a state of emergency has been made, the state concerned will refrain from suspending those basic human rights which are regarded as nonderogable under Article 4 of the International Covenant on Civil and Political Rights, [\[FN4\]](#) Article 15 of the European Convention on Human Rights [\[FN5\]](#) and Article 27 of the American Convention on Human Rights. [\[FN6\]](#)

The Paris Standards build upon earlier studies of the above nonderogation articles by Judge Buergenthal, [\[FN7\]](#) Professor Hartman [\[FN8\]](#) and Professor Higgins. [\[FN9\]](#) ***1073** They also take into account the contributions made by Nicole Questiaux [\[FN10\]](#) and Erica-Irene Daes, [\[FN11\]](#) special rapporteurs of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, and a recent publication of the International Commission of Jurists, *States of Emergency*. [\[FN12\]](#) They should be of considerable help to governments, international monitoring bodies and nongovernmental organizations concerned with the meaning, scope and effect of such treaty obligations. [\[FN13\]](#)

The Paris Standards are as follows:

SECTION (A) EMERGENCY: DECLARATION, DURATION AND CONTROL

1. (a) The existence of a public emergency which threatens the life of the nation, and which is officially proclaimed, will justify the declaration of a state of emergency.

(b) The expression "public emergency" means an exceptional situation of crisis or public danger, actual or imminent, which affects the whole population or the whole population of the area to which the declaration applies and constitutes a threat to the organized life of the community of which the state is composed.

2. The constitution of every state shall define the procedure for declaring a state of emergency; whenever the executive authority is competent to declare a state of emergency, such official declaration shall always be subject to confirmation by the legislature, within the shortest possible time.

3. (a) The declaration of a state of emergency shall never exceed the period strictly required to restore normal conditions.

(b) The duration of emergency (save in the case of war or external aggression) shall be for a period of fixed term established by the constitution.

(c) Every extension of the initial period of emergency shall be supported by a new declaration made before the expiration of each term for another period to be established by the constitution.

(d) Every extension of the period of emergency shall be subject to the prior approval of the legislature.

4. The declaration of a state of emergency may cover the entire territory of the state or any part thereof, depending upon the areas actually affected by the circumstances motivating the declaration. This will not prevent the *1074 extension of emergency measures to other parts of the country whenever necessary nor the exclusion of those parts where such circumstances no longer prevail.

5. The legislature shall not be dissolved during the period of emergency but shall continue to function; if dissolution of a particular legislature is warranted, it shall be replaced as soon as practicable by a legislature duly elected in accordance with the requirements of the constitution, which shall ensure that it is freely chosen and representative of the entire nation.

6. (a) The termination of a state of emergency shall be automatic upon the expiration of a given term without prejudice to the right of express revocation before such expiry to be exercised by the executive or the legislature, as the case may be.

(b) Upon the termination of an emergency there shall be automatic restoration of all rights and freedoms which were suspended or restricted during the emergency and no emergency measures shall be maintained thereafter.

7. At the regional or international level, every declaration of emergency by a state party to a regional or international human rights treaty shall be subject to such judicial or other review as the terms of the particular treaty may provide; while, at the national level, such power of review shall be exercised in terms of the constitution and legal tradition of the state concerned, keeping in view the undertaking of the state to adopt legislative or other measures to give effect to the rights recognized by any treaty to which it may be a party.

SECTION (B) EMERGENCY POWERS AND THE PROTECTION OF INDIVIDUALS: GENERAL PRINCIPLES

1. During the period of the existence of a public emergency the state concerned may take measures derogating from its obligations to respect and ensure to all individuals within its territory and subject to its jurisdiction the human rights and fundamental freedoms internationally recognized, but it may not derogate from internationally prescribed rights which are by their own terms "nonsuspendable" and not subject to derogation.

2. The power to take derogatory measures as aforesaid is subject to five general conditions:

(a) Every state which is a party to a regional or international human rights treaty shall comply with the principle of notification as may be prescribed by the particular treaty.

(b) Such measures must be strictly proportionate to the exigencies of the situation.

(c) Such measures must not be inconsistent with the other obligations of the state under international law.

(d) Such measures must not involve any discrimination solely on the ground of race, colour, sex, language, religion, nationality or social origin.

(e) The basic rights and freedoms guaranteed by international law shall remain non-derogable even during emergency. As the minimum, the constitution shall provide that the rights recognized as non-derogable in international law may not be affected by a state of emergency.

*1075 3. While assuming or exercising emergency powers every state shall respect the following principles:

(a) The fundamental functions of the legislature shall remain intact despite the relative expansion of the authority of the executive. Thus, the legislature shall provide general guidelines to regulate executive discretion in respect of permissible measures of delegated legislation.

(b) The prerogatives, immunities and privileges of the legislature shall remain intact.

(c) The guarantees of the independence of the judiciary and of the legal profession shall remain intact. In particular, the use of emergency powers to remove judges or to alter the structure of the judicial branch or otherwise to restrict the independence of the judiciary shall be prohibited by the constitution.

4. (a) All emergency measures in derogation of the rights of individuals shall be supported by the authority of law as enacted by the duly elected representatives of the people.

(b) As far as practicable, norms to be applied during an emergency shall be formulated when no emergency exists.

(c) States shall review and, if necessary, revise the emergency measures (legislative or executive) from time to time to ensure reasonable guarantees against any abusive exercises of emergency powers.

5. The judiciary shall have the power and jurisdiction to decide: firstly, whether or not an emergency legislation is in conformity with the constitution of the state; secondly, whether or not any particular exercise of emergency power is in conformity with the emergency legislation; thirdly, to ensure that there is no encroachment upon the non-derogable rights and that derogatory measures derogating from other rights are in compliance with the rule of proportionality; and fourthly, where existing municipal laws and orders are not specifically rescinded or suspended, the judiciary shall continue to regard them as being in effect. A court of law shall have full powers to declare null and void any emergency measure (legislative or executive) or any act of application of any emergency measure which does not satisfy the aforesaid tests.

SECTION (C) NON-DEROGABLE RIGHTS AND FREEDOMS--DRAFT ARTICLES 1-16

Article 1: Right to Legal Personality

1. Everyone shall have the right to recognition everywhere as a person before the law.
2. The inherent dignity of the human person shall be respected.
3. Every person has the right to have his physical, mental and moral integrity respected.

Article 2: Freedom from Slavery or Servitude

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

*1076 Article 3: Freedom from Discrimination

1. All persons are equal before the law and are entitled without discrimination to the equal protection of the law.
2. There shall be no discrimination solely on ground of race, colour, sex, language, religion, nationality or social origin.

Article 4: Right to Life

1. Every person has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his right to life.
2. In a country where the death penalty does not exist it shall not be introduced as an emergency measure.
3. In a country where the death penalty exists, it may be imposed, even during emergency, only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and pursuant to a final judgment rendered by a competent court.
4. In no case shall the death penalty be imposed for political offences or related common crimes.
5. The death penalty shall not be imposed upon any person who, at the time of commission of the crime, was under 18 years of age or over 70 years of age. Women when pregnant or mothers of young children shall never be executed.
6. Every person sentenced to death shall have the right to apply for amnesty, pardon or commutation of the sentence which may be granted in all cases. No sentence of death shall be executed while a petition for such relief is pending before the competent court or authority.
7. Every state shall remain fully accountable for every enforced or involuntary disappearance of an individual within its jurisdiction occasioned by an act or omission of the state. With a view to preventing the inhuman and criminal practice of disappearances which may lead to illegal or arbitrary deprivation of the right to life, every state shall:
 - (a) maintain central registers or records to account for all persons that have been detained, so that their relatives and other interested persons may promptly learn of any arrests that may have been made;

(b) guarantee that such detention shall be made only by competent and duly identified authorities as may be prescribed by law or regulations;

(c) guarantee that the persons so detained shall be kept in premises which afford every possible safeguard as regards hygiene and health.

Article 5: Right to Liberty

1. No one shall be deprived of his right to liberty and security of the person except on such grounds and in accordance with such procedures as are established by law.

2. Any law providing for preventive or administrative detention shall secure the following minimum rights of the detainee:

(a) The right to be informed, within seven days, of the grounds of his ***1077** detention; however, disclosure of such facts in support of the grounds as the detaining authority considers to be prejudicial to the public interest need not be made to the detainee, without prejudice to the power of the reviewing authority in its discretion to examine *in camera* such facts if it considers it necessary in the interests of justice.

(b) The right to communicate with, and consult, a lawyer of his own choice, at any time after detention.

(c) The right to have his case reviewed within 30 days from the date of his detention by a judicial or quasi-judicial body constituted in accordance with the procedures designed to make such guarantees effective.

(d) No person shall be detained for a period longer than 30 days unless the reviewing authority before its expiry has reported that there is in its opinion sufficient cause for such detention.

(e) Even if the reviewing authority reports that in its opinion there is sufficient cause for a person's detention, such detention shall not be continued beyond a period of one year. If, however, circumstances then prevailing warrant detention, the detaining authority may, subject to the same conditions and safeguards, order further detention of such person.

(f) Regular visits by the members of the family of the detainee shall be permitted.

(g) The detainee shall be treated with humanity and respect for the inherent dignity of the human person and, in any event, such treatment, consistent with security, shall not be less favourable than that afforded to convicted prisoners.

(h) The names of the detainees with the dates of their orders of detention shall be published in an official gazette; the names of persons released should be similarly published, with the dates of their release.

3. In every case of detention without trial, during an emergency, the remedy of *habeas corpus* (or *amparo*) must be available to the detainee at least for the limited purpose of ensuring the supervisory jurisdiction of a competent court of law in five respects:

(a) for determination whether the relevant law of preventive or administrative detention is in compliance with the relevant constitutional requirements;

(b) whether the order of detention is in compliance with the law of preventive or administrative detention;

(c) whether the detainee is the person against whom the order of detention was issued and whether the order was made *mala fides* or in violation of natural justice;

(d) for ensuring that every detainee is treated with humanity and with respect by directing, *inter alia*, his medical examination and inspection of the prison or place of detention; and

(e) for ensuring that the minimum rights of the detainee mentioned in the preceding paragraphs are duly implemented by the detaining authority.

Article 6: Freedom from Torture

1. 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.

***1078** 2. Every state shall, in accordance with the provisions of the 1975 United Nations Declaration on the Protection of All Persons from being subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, take effective measures to prevent torture and other cruel, inhuman or degrading treatment or punishment from being practiced within its jurisdiction.

3. In particular, in the context of the principles recognized in the said 1975 Declaration, every state shall:

(a) ensure that acts of torture as defined in article 1 are offences under its criminal law as enjoined by article 4;

(b) frame general rules or instructions with regard to the training, functions, duties and requirements of law enforcement personnel and other public officials who are involved in the detention and interrogation of all persons deprived of their liberty (article 5);

(c) review systematically the interrogation methods and practices as well as arrangements for the custody and treatment of persons deprived of their liberty (article 6);

(d) conduct an impartial investigation by a competent authority whenever there is reason to believe that any act prohibited as aforesaid has been committed, whether or not a formal complaint is received (articles 8 and 10);

(e) institute criminal, disciplinary or other appropriate proceedings against the alleged offender or offenders if investigation establishes that such offence is suspected of having been committed (articles 9 and 10);

(f) afford appropriate compensation to the victim in accordance with national law (article 11) and inflict adequate punishment for the offender or offenders proved guilty;

(g) declare as inadmissible evidence, in any proceedings against the person concerned, any statement obtained as a result of an act prohibited as aforesaid.

4. The law of evidence shall not be amended so as to give additional incentives for obtaining confessions.

5. Every detainee shall be examined by a doctor soon after his arrest and his physical and mental condition duly recorded and signed by the doctor; thereafter periodical medical examinations shall be held and records thereof duly maintained. The detainee shall have the opportunity at all times to consult a doctor of his own choice.

6. With regard to the procedures for interrogation, every person in detention shall be entitled to the following minimum guarantees:

(a) all persons participating in interrogation shall be duly identified;

(b) rules shall be framed limiting the hours during which interrogation may occur and records shall be kept of all periods of interrogation with the names of all persons present;

(c) interrogation shall be subject to direct supervision by superior officers, and shall occur in conditions which permit this control to be exercised.

7. The establishment or infliction of such punishment as summary executions by firing squads, public hangings, floggings, the amputation of limbs and other cruel, inhuman or degrading forms of punishment are gross violations of international standards of humane treatment.

***1079 Article 7: Right to Fair Trial**

Everyone charged with a penal offence shall be entitled to the following minimum guarantees of fair trial in full equality and without discrimination:--

1. The right to be informed promptly and in detail of the charge against him;

2. The right to have adequate time and facilities for the preparation of one's defence. This right shall include: (a) at least minimum communication with a counsel of one's own choice, and (b) the right of an indigent defendant to have free legal assistance in every case where the interests of justice so require;

3. The right to be present at one's trial, which should be conducted in a language comprehensible to the defendant;

4. Such trial should be held in public but, if attendance at such trial is restricted in any way, such restrictions shall not apply to the members of the family of the defendant;

5. The defendant has the right to be presumed innocent until proved guilty according to law;

6. No one shall be held guilty of any criminal offences 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 a lighter penalty, the offender shall benefit thereby;

7. 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;

8. No person shall be prosecuted and punished for the same offence more than once, or for a similar offence based upon the same facts that has resulted in a conviction or acquittal;

9. No person accused of any offence shall be compelled to be a witness against himself;

10. Any establishment of a criminal offence or infliction of a punishment based on general principles arising out of religious or other sources, which contravene the aforesaid basic norms, shall be considered a gross violation of international law;

11. Every person has a right to be tried by a tribunal which offers the essential guarantees of independence and impartiality;

12. The right to appeal shall always be guaranteed;

13. The right to obtain attendance and examination of defence witnesses shall never be denied; nor shall the right to cross-examine all witnesses who appear at the trial, or to test the veracity of the evidence of those persons who do not attend or appear at the trial, ever be denied.

***1080** Article 8: Freedom of Thought, Conscience and Religion

1. Everyone has the right to freedom of thought, conscience and religion; freedom of religion includes the right to hold any religion or belief or none and to change his religion or belief, and freedom, either alone or in community with others, 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 the freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, public order, health or morals or the fundamental rights and freedoms of others.

4. Every state shall respect 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.

5. Nothing in this article shall be construed to deny to any person the right to hold no religious beliefs.

Article 9: Freedom from Imprisonment for Inability to fulfil a Contractual Obligation

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

Article 10: Rights of Minorities

1. Persons belonging to ethnic, religious or linguistic minorities shall not be denied the right to enjoy their own culture, to profess and practice their own religion, or to use their own language.

2. Advocacy of national, racial, religious or linguistic hatred that constitutes an incitement to discrimination or violence, shall be prohibited by law.

Article 11: Rights of the Family

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

2. Marriage shall be entered into only with the free and full consent of the intending spouses.

3. The family is the natural and fundamental unit of society and is entitled to protection by society and the state.

Article 12: Right to a Name

Every person has the right to a given name and the surnames of his parents or that of one of them. The law shall regulate the manner in which this right shall be ensured for all, by the use of assumed names, if necessary.

Article 13: Rights of the Child

Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society and the state.

*1081 Article 14: Right to Nationality

1. Everyone has the right to a nationality.
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 15: Right to Participate in Government

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right of equal access to public service in his country.
3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 16: Right to a Remedy

1. The institution of an independent and impartial judiciary is essential for ensuring the rule of law, particularly in time of emergency.
2. Judicial guarantees essential for the protection of the rights aforesaid must be secured by every state in its constitution or by law.
3. All ordinary remedies as well as special ones, such as *habeas corpus* or *amparo*, shall remain operative during the period of emergency with a view to affording protection to the individual with respect to his rights and freedoms which are not or could not be affected during the emergency, as well as other rights and freedoms which may have been attenuated by emergency measures.
4. Civil courts shall have and retain jurisdiction over all trials of civilians for security or related offences; initiation of any such proceedings before or their transfer to a military court or tribunal shall be prohibited. The creation of special courts or tribunals with punitive jurisdiction for trial of offences which are in substance of a political nature is a contravention of the rule of law in a state of emergency.

[FN1]. Of the Board of Editors.

[FN1]. Chaired by Mr. Subrata Roy Chowdhury of India.

[FN2]. Chaired by the undersigned, with members from Australia, Bangladesh, Bulgaria, Canada, Finland, the Federal Republic of Germany, Ghana, Guyana, Hungary, India, Japan, the Republic of Korea, Nepal, the Netherlands, Nigeria, the Philippines, Sweden, Switzerland, the United Kingdom, the United States and Yugoslavia.

[FN3]. The committee's report and draft minimum standards will be published in the *Report of the 61st Conference* (Paris). The minimum standards as approved are identical with the committee's draft, save for the deletion of proposed Article 11(4), which had provided that "each family shall be entitled to at least one child."

[FN4]. *Adopted* Dec. 16, 1966, GA Res. 2200 (XXI), 21 UN GAOR, Supp. (No. 16) at 52, UN Doc. A/6316 (1966) (entered into force Mar. 23, 1976).

[FN5]. Nov. 4, 1950, 213 UNTS 222 (entered into force Sept. 3, 1953).

[FN6]. American Convention on Human Rights, *opened for signature* Nov. 22, 1969 (entered

into force July 18, 1978), reproduced in ORGANIZATION OF AMERICAN STATES, HANDBOOK OF EXISTING RULES PERTAINING TO HUMAN RIGHTS IN THE INTER-AMERICAN SYSTEM,,,,,, OEA/Ser.L/V/II.60, Doc. 28, at 29 (1983), and INTERNATIONAL HUMAN RIGHTS INSTRUMENTS § 170.1 (R. Lillich ed. 1985).

[FN7]. Buergenthal, *To Respect and to Ensure: State Obligations and Permissible Derogations*, in THE INTERNATIONAL BILL OF RIGHTS: THE COVENANT ON CIVIL AND POLITICAL RIGHTS 72 (L. Henkin ed. 1981).

[FN8]. Hartman, *Derogation from Human Rights Treaties in Public Emergencies*, 22 HARV. INT'L L.J. 1 (1981).

[FN9]. Higgins, *Derogations under Human Rights Treaties*, 48 BRIT. Y.B. INT'L L. 281 (1976-77).

[FN10]. Questiaux, *Study of the Implications for Human Rights of Recent Developments Concerning Situations Known as States of Siege or Emergency*, UN Doc. E/CN.4/Sub.2/1982/15(1982).

[FN11]. Daes, *The Individual's Duties to the Community and the Limitations on Human Rights and Freedoms under Article 29 of the Universal Declaration of Human Rights*, UN Doc. E/CN.4/Sub.2/432/Rev.2(1983).

[FN12]. INTERNATIONAL COMMISSION OF JURISTS, *STATES OF EMERGENCY: THEIR IMPACT ON HUMAN RIGHTS* (1983).

[FN13]. At present, the committee has embarked upon a 4-year study of the international monitoring of states of emergency. This study, intended to determine how international bodies can protect more effectively the basic human rights of individuals set forth in the Paris Standards, is being conducted by the committee's rapporteur, Prof. Hartman, under the direction of the undersigned.