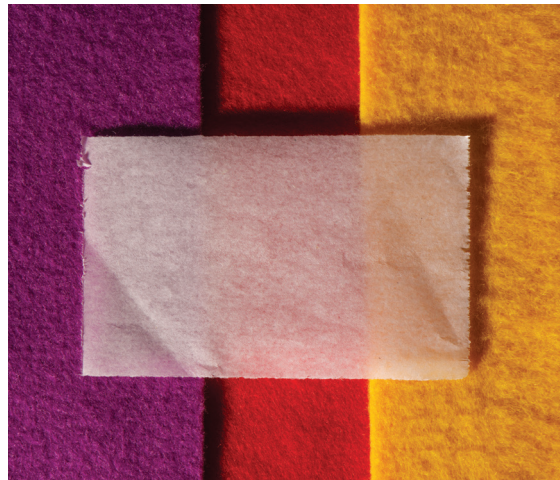




PA-X RESEARCH REPORT



# Negotiating States of Emergency

Sean Molloy



This research draws on the PA-X Peace Agreements Database ([www.peaceagreements.org](http://www.peaceagreements.org)), a database of all peace agreements at any stage of the peace process from 1990 to 2019. The database is fully searchable and supports both qualitative and quantitative examination of peace agreements.

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In exceptional circumstances, states can declare a state of emergency. Doing so allows the authorities, in times of urgent necessity, to take exceptional actions which often bypass rights and legislative processes, in order to safeguard national security, maintain law and order, protect citizens' lives and property, keep essential public services working, concentrate relief resources and direct them to the areas of greatest need, and in general to restore normality (see Ní Aoláin and Gross, 2006). These powers can include, for instance, suspending rights and freedoms – for example, allowing a government to detain persons and hold them without trial.

Across the globe, states are adopting this approach in response to COVID-19 (see the ICNL's online [COVID-19 Civic Freedom Tracker](#)). For Neve Gordon and Catherine Rottenberg (2020), the logic is straightforward: during a state of emergency, governments need the flexibility to address emerging threats and to exercise all power vested in the state to alleviate the situation. Indeed, international human rights law permits, in exceptional circumstances, states to derogate from their human rights obligations. Part of the logic, as noted by scholars including Alan Greene (2020), is that any exceptions are governed by a legal framework, which can help to ensure that any deviations from the norm are monitored.

At the same time, states of emergency carry significant risks, not least of human rights abuses and the normalisation of extended powers granted specifically to respond to the crisis that give rise to them. Times of emergency can, therefore, produce what Oren Gross (2003) terms a tension of 'tragic dimensions' between democratic values and responses to emergencies. Given that some states have declared broad states of emergency that appear to consolidate already-existing authoritarian tendencies, or extend executive powers in situations where minority groups have long-standing territorial or discrimination claims that are linked to violent conflict, this is a particular concern. Are COVID-19 states of emergency causing a wider, more long-term impact on democracy and fuelling and accelerating democratic decay, particularly in conflict-affected, or post-conflict states? The UN Secretary General has made a global appeal for ceasefires which has received considerable international attention, and some measure of response from armed groups (see Escola de Cultura de Pau, 2020). In formally democratic states that are conflict-affected, where armed groups go on ceasefire, often a state will retain its monopoly on the 'legitimate use of force' meaning that they will reciprocate by lifting emergency measures brought in to deal with 'terrorism' (see Ní Aoláin and Gross, 2006). The call for ceasefires and a close examination of COVID-19 states of emergency is therefore linked.

To help inform consideration of COVID-19 dynamics, this report asks how countries emerging from periods of conflict have sought to include commitments regarding the various parameters of states of emergency in peace agreements. At the end of a conflict, when and how do governments scale back states of emergency and what types of restraint do they put in place to counter their excessive use? These measures tell a story of the link between states of emergency and conflict, and what confidence-building regarding removing states of emergency looks like. This indicates possibilities of how the COVID-19 states of emergency relationship to conflict and peacemaking might play out.

Peace agreements, as documents produced to end conflict, often display levels of ingenuity and creativity, often in extraordinarily complex and uncertain contexts. Provisions on such issues including when, how, why and where states of emergency can be declared, are also often ways of limiting the state's recourse to violence which protects civilians, and the quid pro quo for a non-state armed group's agreement to ceasefire. This report draws on Version 3 of the PA-X Peace Agreement database (<https://www.peaceagreements.org/>), which contains approximately 1832 peace agreements, found in more than 150 peace processes between 1990 and the end of 2019. The report focuses specifically on how peace agreements include provisions on states of emergency, and proceeds to a question and answer-based structure guided by the following enquires:

- ▶ Under what circumstances do peace agreements stipulate an emergency be declared?
- ▶ Do peace agreements delineate powers that authorities have under states of emergency?
- ▶ According to peace agreements, whom has the power to declare a state of emergency?
- ▶ Do peace agreements specify where states of emergency apply?
- ▶ What role do peace agreements give to Parliament/legislatures?
- ▶ Do peace agreements include a role for courts?
- ▶ How do peace agreements include temporal limits on a state of emergency?
- ▶ Do peace agreements provide for the extension of a state of emergency?
- ▶ In what ways do peace agreements seek to limit the actions of authorities during a state of emergency?
- ▶ What might we learn from peace agreements?

By examining how peace agreements, and particularly peace agreement constitutions (see Bell and Zuelletta, 2016), have addressed this issue, this report intends to deepen understanding about what is meant by a state of emergency and the various components and considerations that attach to them.

## Context Setting:

### What Do We Mean by a State of Emergency and Why is it Important?

The term 'emergency' connotes a sudden, urgent, usually unforeseen event or situation that requires immediate action, often without time for prior reflection and consideration (Gross, 1998: 439). States of emergency defy precise definition. This is due, in part, because what constitutes an emergency varies according to context. Yet, as a general rule, a state of emergency is a response to some unforeseen event such as the coronavirus (COVID-19) pandemic of 2020. But in a peace agreement context, states of emergency will often have been used to respond to non-state armed violence itself. Indeed, states often prefer to use states of emergency, within their constitution, rather than to understand and respond to the violence as a non-international armed conflict (Gross and Ni Aolain, 2006).

Under states of emergency, normal laws are often circumvented. Kouroutakis and Ranchordás (2016: 31) refer to a process of temporary de-juridification, which 'can mean that special and extraordinary measures are enacted to respond to a certain crisis, in derogation of existing standards and rules.' In their place, states might pass emergency legislation or regulations, 'the legal rules that governments make to deal with the threat in the exercise of the wider powers that have been given to the government under a state of emergency' (Welikala, 2020).

### Box 1: State of Emergency Derogations from Human Rights Obligations under Peace Agreement Constitutions

Nepal, Constitution of Nepal 2015, 20 September 2015, art. 273

(10) While issuing the Proclamation or Order of state of emergency pursuant to clause (1), the President may suspend the fundamental rights provided in Part 3 so long as the Proclamation or Order is in operation.

(11) In circumstances where any Article of this constitution is suspended pursuant to clause (10), no petition may be made in any court of law, nor any question be raised for the enforcement of the fundamental rights conferred by such Article.

Somalia, Provisional Constitution of The Federal Republic of Somalia, 1 August 2012, art. 38

Limitation of Rights, ... (5) Possible restriction of fundamental rights during a state of emergency is dealt with in Chapter 14, Article 131 of this Constitution.

South Africa, South African Constitution of 1993 (Interim Constitution), 18 November 1993, art. 34

(4) The rights entrenched in this Chapter may be suspended only in consequence of the declaration of a state of emergency, and only to the extent necessary to restore peace or order.

South Sudan / Sudan, The Interim National Constitution of the Republic of Sudan 2005, 6 July 2005, art. 211

The President of the Republic, with the consent of the First Vice President, may during the state of emergency take, by virtue of law or exceptional order, any measures that shall not derogate from the provisions of this Constitution and the Comprehensive Peace Agreement except as may be provided herein:-

(a) to suspend part of the Bill of Rights. However, there shall be no infringement on the right to life, sanctity from slavery, sanctity from torture, the right of non-discrimination on the basis of race, sex, religious creed, the right in litigation or the right to fair trial

[cont'd]

Zimbabwe, Constitution of Zimbabwe Amendment (No 20) 2013, 19 March 2013, art. 87

... the fundamental rights and freedoms set out in this Chapter may be further limited by a written law providing for measures to deal with situations arising during a period of public emergency, but only to the extent permitted by this section and the Second Schedule.

Declaring a state of emergency both limits the application of existing laws, while at the same time transferring additional powers to the executive as required by the situation in question. Both national constitutions (including peace agreement constitutions, see Box 1) and international human rights treaties (see Box 2) often contain clauses that allow governments to temporarily suspend their obligations in a time of crisis. The logic of doing so, according to Gordon and Rottenberg (2020), is straightforward: during a state of emergency, governments need flexibility to address emerging threats and to exercise all power vested in the state to alleviate the situation. In permitting extraordinary deviations from the norm, important safeguards exist to limit how and when these powers can be used.



## Box 2: Derogations under International law

### Article 4(1) of the [International Covenant on Civil and Political Rights](#):

"In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin."

### Article 27(1) of the [American Convention on Human Rights](#):

"In time of war, public danger, or other emergency that threatens the independence or security of a State Party, it may take measures derogating from its obligations under the present Convention to the extent and for the period of time strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law and do not involve discrimination on the ground of race, color, sex, language, religion, or social origin."

### Article 15(1) of the [European Convention on Human Rights](#):

"In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law."

### Article 30 of the 1961 [European Social Charter](#):

"In time of war or other public emergency threatening the life of the nation any Contracting Party may take measures derogating from its obligations under this Charter to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law."

There are nonetheless significant risks associated with declaring a state of emergency, particularly in contexts prone to violence and/or authoritarianism. According to Greene (2020), officially declaring a state of emergency allows exceptional powers in exceptional circumstances, which means the mechanism is also supposed to prevent such powers from being enacted in a time of 'normalcy'. But emergency provisions can lead to both scenarios. Firstly, while emergency powers might be deemed necessary to respond to times of crisis, these powers can be used to impinge on rights in ways not permissible under international law or according to state constitutions. For instance, no derogation is permitted for certain rights, such as the right to life, the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment, and the right not to be held in slavery - indeed, slavery and the slave-trade in all forms (see art. 4(2) ICCPR, as an example). And yet these rights, particularly the right to life, are often violated during emergency contexts, particularly during conflicts. For those rights which permit derogation (for example, right to liberty and security of person, the right to freedom of thought, conscience and religion, and right of peaceful assembly), any measures must be strictly required by the exigencies of the situation and consistent with the other obligations under international law. If, however, state actions exceed beyond the necessity of the situation, human rights violations can emerge. Thus, while states of emergency might be necessary to enable states to respond flexibly to the crisis at hand, such as COVID-19, they should not exceed these requirements.

Secondly, despite the supposed temporariness of states of emergency and the powers afforded as a result of them, emergency provisions can become normalised. Lutz Oette (2020), for instance, notes that history offers countless examples where supposedly temporary measures became the new normal, strengthening state control in their wake. This applies particularly to hastily enacted emergency laws vesting governments with far-reaching powers. Christine Bell (2020) concurs that states of emergency have a long history of uneven application to national minorities and political opponents. Such is the risk of exceeding emergency powers that a group of UN Experts have stipulated that:

While we recognize the severity of the current health crisis and acknowledge that the use of emergency powers is allowed by international law in response to significant threats, we urgently remind States that any emergency responses to the coronavirus must be proportionate, necessary and non-discriminatory (OHCHR 2020).

When approached from a human rights perspective, emergency provisions, with potential for derogating from human rights obligations, can become the norm. Thus, alongside the potential for abusing emergency powers, there is the risk that human rights conflagrations can extend well beyond any set timeframe.

For Oren Gross (2003) states of emergency produce the 'tragic dimensions' between democratic values and responses to emergencies. This relates to both the tensions and trade-offs associated with the need to allow for an extraordinary government response to emergency situations, on the one hand, and the need to protect and respect individual rights and freedoms and ensure the emergency has clear limits and oversight, on the other. As such, the high-stake nature of a state of emergency raises a number of questions: who is permitted to issue them and by what means? Who or what monitors the decision to declare an emergency, the laws passed during these periods and their impacts? Where do they apply and how long for? Who decides when to end or renew a state of emergency? What limits are placed on emergency powers and how might these powers impinge on the enjoyment of human rights and civil liberties? The remainder of this report examines how peace agreements have sought to address states of emergency, including when they are permitted, how they are regulated and what they cover. In doing so, it asks what countries declaring states of emergency might learn from how those negotiating an end to conflict have sought to address emergencies.

## a. Under What Circumstances do Peace Agreements Stipulate an Emergency be Declared?

Specifying the grounds on which a state of emergency can be declared may help to ensure that emergency powers are not used inappropriately. But there is no agreed upon definition of such circumstances, which give right to the declaration of a state of emergency. As Oren Gross (1998: 438) notes:

defining a 'state of emergency' is no easy task. It may even be argued that defining 'emergency' is not a meaningful project. Whatever the tools used to attend to this definitional problem, some of the terms that will eventually be used are inherently open-ended and manipulable. Overly flexible definitions allow decisionmakers a relatively wide margin of discretion without setting real guidelines for their actions.

The circumstances which give rise to a state of emergency are much contested, however some parameters have been set. For instance, the European Court of Human Rights has ruled that an emergency is 'an exceptional situation of crisis or emergency which affects the whole population and constitutes a threat to the organised life of the community of which the State is composed' ([Lawless v. Ireland \(no. 3\)](#), § 28). The crisis or danger should also be exceptional in that the normal measures or restrictions permitted by the Convention for the maintenance of public safety, health, and order are plainly inadequate ([Denmark, Norway, Sweden and the Netherlands v. Greece](#) § 153). Under the Siracusa Principles, which explain the permissibility of derogations under the ICCPR, states should not take derogation measures unless they face 'a situation of exceptional and actual or imminent danger which threatens the life of the nation'. For the UN Human Rights Committee, 'a natural catastrophe, a mass demonstration including instances of violence, or a major industrial accident' may constitute public emergency (2001, para. 5).

It is, nevertheless, generally accepted that states are afforded a degree of deference in determining when to initiate a state of emergency. As the ECtHR stated in [Ireland v. the United Kingdom](#) (§ 207): 'it falls in the first place to each Contracting State, with its responsibility for 'the life of [its] nation', to determine whether that life is threatened by a 'public emergency''. The differences that exist in defining a state of emergency is reflected in the variations across peace agreements. For instance, according to the [Political Constitution of Colombia](#) (1 July 1991), a declaration of a state of emergency can follow events 'that disrupt or threaten to disrupt in serious or imminent manner the economic, social, or ecological order of the country or which constitute a grave public calamity (art. 215).

In Nepal, by contrast, the [Constitution of Nepal](#) 2015 (20 September 2015) stipulates that a state of emergency can be invoked in response to war, external attack, armed revolt, extreme economic breakdown, natural calamity or epidemic outbreak (art. 273). This mirrors the approach in South Africa, whereby a state of emergency can be declared under such circumstances as 'war, invasion, general insurrection or disorder or at a time of national disaster' ([South African Constitution of 1993 \(Interim Constitution\)](#), 18 November 1993, art. 34).

The [Provisional Constitution of The Federal Republic of Somalia](#) (1 August 2012) stipulates that '[a]State of emergency may be declared only if it is necessary to deal with a serious situation arising from war, invasion, insurrection, disorder, a natural disaster or some other grave public emergency' (art. 131(1)). In South Sudan / Sudan, [The Interim National Constitution of the Republic of Sudan 2005](#) (6 July 2005) requires an 'imminent danger, which may be as a result of war invasion, blockade, natural disaster or epidemics, as may threaten the country, or any part thereof or the safety or economy of the same, declare a state of emergency in the country, or in any part thereof, in accordance with this Constitution and the law (art. 210).

## b. Do Peace Agreements Delineate Powers that Authorities Have Under States of Emergency?

Different countries grant different powers to authorities under states of emergency. Peace agreements reflect these disparities with the powers afforded varying across contexts. In Bosnia and Herzegovina / Yugoslavia (former), for instance, the [Declaration Concerning the Constitution of the Federation of Bosnia and Herzegovina \(with Proposed Constitution of the Federation of Bosnia and Herzegovina attached\)](#) (18 March 1994) authorises the Government to promulgate decrees having the force of law in response to national emergencies when the Legislature is unable to do so (art. 9). It specifies that such decrees shall take effect in the same manner as a decision of the Legislature. Similarly, in Nepal, the [Constitution of Nepal 2015](#) (20 September 2015) provides that after a state of emergency has been declared, the President may issue necessary orders to meet the exigencies. Orders so issued shall be operative with the 'same force and effect as law so long as the state of emergency is in operation' (art. 273(9)). Beyond the promulgation of emergency legislation, governments might also, in times of emergency, be permitted to appropriate private property or natural resources in order to fund emergency responses. In the Philippines / Mindanao, for example, a framework agreement which begins to set out the constitutional map for Mindanao, provides that:

Jurisdiction and control over and the right of exploring for, exploiting, producing and obtaining all potential sources of energy, petroleum, in situ, fossil fuel, mineral oil and natural gas, whether onshore or offshore, is vested in the BJE as the party having control within its territorial jurisdiction, provided that in times of national emergency, when public interest so requires, the Central Government may, during the emergency, for a fixed period and under reasonable terms as may be agreed by both Parties, temporarily assume or direct the operations of such strategic resources ([Memorandum of Agreement on the Ancestral Domain Aspect of the GRP-MILF Tripoli Agreement on Peace of 2001](#) (5 August 2008, art. 5).

Often, the powers encompass various issues and areas. In South Sudan / Sudan, under [The Interim National Constitution of the Republic of Sudan 2005](#) (6 July 2005), the President of the Republic is permitted to: (a) to suspend part of the Bill of Rights; (b) to dissolve or suspend any of the state organs or suspend such powers, as may be conferred upon the states under this Constitution; and (c) to take any such measures as deemed necessary to the state of emergency, which shall have the force of law (art. 211).

In addition, and particularly unique to peace agreements, negotiated settlements can also permit the use of emergency legislation in an attempt to further a peace process. For instance, in 2002, Unionists withdrew from the Northern Ireland Executive after Sinn Féin's offices at Stormont were raided by the police, who were investigating allegations of intelligence gathering on behalf of the IRA by members of the party's support staff. The Assembly, already suspended, dissolved on 28 April 2003 as scheduled, but the elections due the following month were postponed by the United Kingdom government and were not held until November that year. In 2006, the agreement entitled the Joint Strategy for the Restoration of the Assembly and Executive (6 April 2006) committed the British Government to introduce emergency legislation to re-establish the political institutions of Northern Ireland. Similarly, in Niger / Air and Azawad, the [Accord de N'Djaména entre le Gouvernement de la République du Niger et le Front Démocratique pour le Renouveau \(FDR\)](#) (21 August 1998) permitted the government to use emergency procedures to accelerate the conversion of FDR into a political party after its disarmament (art. 7). These examples, while not relating specifically to a state of emergency, demonstrate the utility of using peace negotiations and agreements to bring about emergency legislation that can assist in the furtherance of a peace process.

### c. According to Peace Agreements, Who Has the Power to Declare a State of Emergency?

In most circumstances, the authority to initiate or propose a state of emergency normally rests with the executive. According to Bulmer (2018), this is because the chief executive has a general and ongoing responsibility, implicit in the nature of the executive power even if not explicit, to protect the public and the state from harm. He continues that 'the executive branch also has the resources needed to respond to an emergency, including access to intelligence information, discretionary funds and control of military, police and civil defence assets.' As Box 3 demonstrates, peace agreements largely reflect these trends.

### Box 3: Powers to Declare a State of Emergency

Algeria, Plate-forme portant consensus national sur la période transitoire, 26 January 1994, art. 15

The State President shall decree a state of siege or of emergency as foreseen in article 86 of the Constitution. An Ordinance shall determine the regime of the state of siege or emergency.

Nepal, Constitution of Nepal 2015, 20 September 2015, art. 273

the President may, by Proclamation or Order, declare a state of emergency to be enforced in Nepal or any specified part thereof.

Madagascar, Charte de la Transition, 9 August 2009, art. 4

The President of the Transition shall: ... Proclaim a state of emergency, of national need or of martial law should circumstances require this for the defence of the Republic, public order or the security of the State, according to the conditions and procedures foreseen by law.

Zimbabwe, Constitution of Zimbabwe Amendment (No 20) 2013, 19 March 2013, art. 113

States of Public Emergency:

(1) The President may by proclamation in the Gazette declare that a state of public emergency exists in the whole or any part of Zimbabwe.



#### d. Do Peace Agreements Specify Where States of Emergency Apply?

States of emergency can apply in the whole country or part of it. For instance, in Democratic Republic of Congo, [Draft Constitution of the Transition](#), (1 April 2003) stipulates that the state of emergency or the state of siege may be proclaimed over the whole or part of the territory of the Republic (art. 135). In Nepal, pursuant to the [Constitution of Nepal 2015](#) (20 September 2015), the President may, by Proclamation or Order, declare a state of emergency to be enforced in Nepal or any specified part thereof (art. 273), while in Somalia, [Provisional Constitution of The Federal Republic of Somalia](#) (1 August 2012) states that '[a] State of emergency may be declared affecting the whole or part of the country, but shall not be more extensive than necessary to deal with the situation' (art. 131).

#### e. What Role do Peace Agreements Give to Parliament / Legislatures?

Parliaments play crucial functions in both consultation and approval of a declaration of a state of emergency or in scrutinising a declaration in its aftermath.

##### *(i) Consultation and Prior Approval*

Unilateral declarations might be particularly problematic in those contexts where conflict emerges, in part, as a result of the concentration of power in the hands of elites from certain backgrounds. In these cases, consultations or legislative approval must be granted before the state of emergency can come into effect: pre-declaration approval.

In the Central African Republic, for example, the [Transitional National Charter \(Interim Constitution\)](#), requires that decrees should be taken through a joint decision by the Head of State of the Transition, the Prime Minister, and the relevant Minister (18 July 2013, art. 32). In Burundi, the Constitution of 18 March 2005 (18 March 2005) stipulates, under art. 115 that:

When the institutions of the Republic, the independence of the nation, the integrity of the territory or the execution of its international engagements are menaced in a grave and immediate manner and the regular functioning of the public powers is interrupted, the President of the Republic may proclaim, by decree-law, the state of exception and take all the measures required by these circumstances, after official consultation with the Government, with the Bureaus of the National Assembly and of the Senate, with the National Council of Security and with the Constitutional Court.

Similarly, in the Democratic Republic of Congo, the [Draft Constitution of the Transition](#) (1 April 2003) permits the declaration of a state of siege and a state of emergency following a proposal from the Council of Ministers in keeping with the recommendation of the High Council for Defence as well as the National assembly and the Senate (art. 74); while in Libya, the [Libyan Political Agreement \(Sukhairat Agreement\)](#) (17 December 2015) holds that Declaration of states of emergency, war and peace, and adoption of exceptional measures [can be made] upon the approval of the National Defence and Security Council (Article (8) ... e). In Rwanda, a state of emergency can be decreed after a decision taken by the Cabinet and on consultation with the Bureau of the National Assembly and the Supreme Court ([The Protocol of Agreement between the Government of the Republic of Rwanda and the Rwandese Patriotic Front on Power-Sharing within the Framework of a Broad-based Transitional Government \(Continuation of the Protocol of Agreement Signed on the 30th October, 1992\)](#), (9 January 1993). This is similar to Colombia, where the President can declare an emergency so long as he obtains the signature of all the ministers ([Political Constitution of Colombia](#), 1 July 1991, art. 18).

In some cases, thresholds exist for the legislature's approval or confirmation of a state of emergency: a simple majority (more votes in favour than against); an absolute majority (approval by 50 per cent +1 of the total membership); or a supermajority (Bulmer 2016: 15). For instance, in Iraq, the [Constitution of Iraq](#) (15 October 2005) requires two thirds majority based on a joint request from the President of the Republic and the Prime Minister (art. 61).

In conflict-affected settings, there might also be arrangements for national governments to approve a state of emergency in a sub-national entity. For example, as per the [Bougainville Peace Agreement](#) 30 August 2001), which established the autonomous region of the island of Bougainville in Papua New Guinea, if it is necessary to declare a state of emergency in Bougainville, the autonomous Bougainville Government will be responsible for initiating a request to the central government of Papua New Guinea (art. 271). But such a request is not a declaration, and under articles 275 the agreement states that:

The parties acknowledge that the power to initiate and declare states of emergency which apply nationally, or substantially in other parts of Papua New Guinea or in relation to a declared war will remain a National Government responsibility (states of emergency which apply only in other parts of Papua New Guinea will not be affected by this agreement).

*(ii) Post-legislative Scrutiny*

Such is the nature of emergencies that measures must be adopted expediently, often with little or no scrutiny by or consultation with legislatures or parliaments as envisaged above. To counteract this, constitutions and peace agreements may require that executive decisions are confirmed by some other branch of government, such as legislatures and at times the courts. In Libya, the [Libyan Political Agreement \(Sukhairat Agreement\)](#) (17 December 2015) outlines that following the declaration of a state of emergency, the matter shall be presented to the House of Representatives for endorsement within no more than ten (10) days of its issuance (art. (8)e).

In Somalia, the [Provisional Constitution of The Federal Republic of Somalia](#) (1 August 2012) states under art. 131(3) that the President acting on the request of the Council of Ministers may declare a necessary state of emergency, which shall then be debated, and may be approved, by both Houses of the Federal Parliament within 21 days after that declaration. [The Interim National Constitution of the Republic of Sudan 2005](#) (6 July 2005), art. 210 (2) provides that the declaration of a state of emergency shall be submitted to the National Legislature within fifteen days of the issuance of the declaration. It further states that When the National Legislature approves the declaration of a state of emergency, all laws, exceptional orders or measures issued or taken by the President of the Republic pursuant to the state of emergency shall continue to remain in force (art. 210 (3)). The position in Zimbabwe is similar. Pursuant to art. 113(2) of the [Constitution of Zimbabwe Amendment \(No 20\) 2013](#) (19 March 2013), a declaration of a state of public emergency ceases to have effect after fourteen days beginning with the day of publication of the proclamation in the Gazette unless, before the end of that period, the declaration is approved by at least two-thirds of the total membership of Parliament at a joint sitting of the Senate and the National Assembly art. 113 (2).

## f. Do Peace Agreements Include a Role for Courts?

Peace agreements, while rarely referring to courts when addressing states of emergency, nevertheless define some roles for judicial institutions. Firstly, when governments pass emergency legislation, courts might be asked to rule on compatibility with existing constitutions. In the Democratic Republic of Congo, the [Draft Constitution of the Transition](#) (1 April 2003) requires that any urgency measures are submitted to the Supreme Court of Justice, which forthwith rules to declare if they infringe this Constitution or not (art. 136). In other cases, Courts might be asked to rule on the legality of the declaration of a state of emergency. In Somalia, art. 131(7) provides that the validity of a declaration of a State of emergency, and the procedures involved in making the declaration, may be challenged in court ([Provisional Constitution of The Federal Republic of Somalia](#), (1 August 2012)). Often, courts will be competent to assess both the declaration of a state of emergency and emergency regulations. In South Africa, the [South African Constitution of 1993 \(Interim Constitution\)](#), (18 November 1993) instructs that any superior court shall be competent to enquire into the validity of a declaration of a state of emergency, any extension thereof, and any action taken, including any regulation enacted, under such declaration (art. 34(3)). Similarly, in Zimbabwe, the [Constitution of Zimbabwe Amendment \(No 20\) 2013](#) (19 March 2013) provides that the Constitutional Court, on the application of any interested person, may determine the validity of: (a) a declaration of a state of public emergency; (b) any extension of a declaration of a state of public emergency; and (c) Any court may determine the validity of any legislation enacted, or other action taken, in consequence of a declaration of a state of public emergency (art. 113).

## g. How Do Peace Agreements Include Temporal Limits on a State of Emergency?

A state of emergency is supposed to be a temporary response to a particular urgent need. The intention should be to use the powers conferred by a state of emergency only to address that urgent need and then restore constitutional normality as soon as possible. As identified above, one of the dangers associated with states of emergency is the risk that they become the norm. Peace agreements, in response, can include provisions for the termination of a state of emergency.

For instance, the 1991 [Political Constitution of Colombia](#) stipulated, under art. 215, that the President may declare a state of emergency for periods up to 30 days in each case which, in all, may not exceed 90 days in a calendar year. In the DRC, the [Draft Constitution of the Transition](#) (1 April 2003) specifies that any decree proclaiming the state of emergency or the state of siege ceases by right to produce its effects after the expiry of the period defined when declaring (art. 135). In Iraq, the [Constitution of Iraq](#) (5 October 2005) outlines under art. 62 that the state of emergency shall be declared for a period of thirty days, which can be extended after approval each time. The [South African Constitution of 1993 \(Interim Constitution\)](#) (18 November 1993) lays down that 'the declaration of a state of emergency and any action taken, including any regulation enacted, in consequence thereof, shall be of force for a period of not more than 21 days, unless it is extended for a period of not longer than three months, or consecutive periods of not longer than three months at a time, by resolution of the National Assembly adopted by a majority of at least two-thirds of all its members' art. 34 (2). Similarly, in Zimbabwe, the [Constitution of Zimbabwe Amendment \(No 20\) 2013 \(19 March 2013\)](#) provides that a declaration of a state of public emergency ceases to have effect after fourteen days beginning with the day of publication of the proclamation in the Gazette unless, before the end of that period, the declaration is approved by at least two-thirds of the total membership of Parliament at a joint sitting of the Senate and the National Assembly (art. 113(2)).

There are also ways in which peace agreements themselves play a role in ending states of emergency. Here, rather than defining the particular contours of the emergency, such as the end date, an agreement can commit those responsible for ongoing emergencies to lift them. For instance, the conflict in Northern Ireland was characterised by ongoing and intermittent pieces of emergency legislation. This included the Emergency Provisions Acts (EPA) of 1973, 1975, 1978, 1987 and 1991 and the Prevention of Terrorism Acts (PTA) of 1974, 1976, 1984, and 1989. While the EPA applied only to Northern Ireland, the PTA applied in the whole of the United Kingdom. Under [The Agreement Reached in the Multi-Party Negotiations \(Good Friday Agreement or Belfast Agreement\)](#) (10 April 1998), it was expressed that the 'participants note that the development of a peaceful environment on the basis of this agreement can and should mean a normalisation of security arrangements and practices' (page 22). On this basis, it also included a commitment that '[t]he British Government will make progress towards the objective of as early a return as possible to normal security arrangements in Northern Ireland, consistent with the level of threat and with a published overall strategy, dealing with the removal of emergency powers in Northern Ireland.' This was preceded by earlier agreements, such as the [Mitchell Report](#) (22 January 1996), which recommended a review of emergency legislation, consistent with the evolving security situation.

In Algeria, the Plate-forme pour une solution politique et pacifique de la crise algérienne (Plate-forme de Rome) (13 January 1995) instructs that a movement towards peace should be gradual, concurrent and negotiated, and should include lifting the state of emergency, and the repeal of special measures. In Sudan, the Agreement between the Government of Sudan and the National Democratic Alliance (NDA) (Cairo Agreement) (18 July 2005) includes provisions on the '[l]ifting of the state of emergency proclaimed that was dictated by the necessities of war and the different conflicts in compliance to the peace agreement' (art. 2(1)). In Sudan / Darfur, the Agreement between the Government of Sudan and the Justice and Equality Movement-Sudan on the Basis of the Doha Document for Peace in Darfur (6 April 2013) provides that '[w]ithin one year after the signing of this Agreement, Government of Sudan GOS shall, in collaboration with the Darfur Regional Authority (DRA), review the security situation in Darfur with a view to lifting the state of emergency if the situation warrants' (art. 2(5)). In some exceptional cases, the responsibility for ending a state of emergency is given to mechanisms tasked with implementing a peace agreement (see South Sudan, Agreement on Cessation of Hostilities between the Government of the Republic of South Sudan (GRSS) and the Sudan People's Liberation Movement/Army (In Opposition) (SPLM/A in Opposition), (23 January 2014), art. 1.3.

## h. Do Peace Agreements Provide for the Extension of a State of Emergency?

Such is the nature of emergency situations that it is often difficult to identify precisely when a situation will end. Thus, there must also be mechanisms in place that enable the extension or renewal of a state of emergency. Peace agreements can, in some cases, make provisions for renewal processes. As an illustration, the [Political Constitution of Colombia](#) (1 July 1991) provides under art. 215 that 'The Congress shall examine for a period of up to 30 days, extendable by agreement of the two Houses, the report with explanations presented to it by the government on the causes justifying the state of emergency and the measures adopted and shall make an express pronouncement on the convenience and appropriateness of same'. In Nepal, the [Constitution of Nepal 2015](#) (20 September 2015) stipulates that:

(6) Notwithstanding other provisions in this article, the proposal to extend the period of the Proclamation or Order of state of emergency for another period, not exceeding for three months, may be forwarded in the federal legislature, stating that the circumstances under clause (4) still exist.

(7) Pursuant to Clause (6), if the resolution for Proclamation or Order of state of emergency for another period is passed by a majority of the two third members present of both the houses of the federal legislature, the state of emergency for the said period shall continue to exist (art. 273).

In Iraq, the [Constitution of Iraq](#) (15 October 2005) outlines that a state of emergency shall be declared for a period of thirty days, which can be extended after approval each time (art. 61), while the [Provisional Constitution of The Federal Republic of Somalia](#) (1 August 2012) instructs that The Federal Parliament may approve or extend a state of emergency for no more than three months at a time. If the Federal Parliament does not approve or extend a state of emergency, the state of emergency ceases to be in effect (art. 131 (4)).



## i. In What Ways do Peace Agreements Seek to Limit the Actions of Authorities During a State of Emergency?

As has been noted, there is the potential that states will abuse the powers afforded to them under a state of emergency. Therefore it is common for the same documents that permit a country to adopt a state of emergency to also define some of the ways in which emergency powers are limited. For instance, in Burundi, [Constitution of 18 March 2005](#) prohibits Parliament from being dissolved during the exercise of the exceptional powers (art. 115). In other cases, agreements can refer back to constitutions, requiring that the execution of any emergency powers be done in such a way that does not contradict the constitution (Iraq, [Constitution of Iraq](#) (15 October 2005), art. 61).

In Colombia, the [Political Constitution of Colombia](#) (1 July 1991) specifies that International treaties and agreements ratified by Congress that recognize human rights and prohibit their limitation in states of emergency have domestic priority (art. 93). As noted in Box 3, many international treaties, such as the ICCPR (art. 4), permit states to derogate from human rights obligations during times of emergency. Although such clauses might be interpreted as diluting the importance of human rights, another view is that certain rights, such as freedom of assembly, necessitate some restrictions during states of emergency. The mechanisms which monitor compliance with international human rights standards, such as the ICCPR, can also monitor whether a state of emergency is in fact occurring and when it ends. This means, at least in theory, that these monitoring mechanisms, as a result of derogation clauses, can monitor how a state is complying with the contours as defined under international law. In addition, these international treaties also define those rights, which are not subject to derogation (for, example, right to life, torture, slavery) and from which states cannot deviate from their obligations. Again, referring to international human rights standards can help to ensure the ongoing monitoring of international actors.

## j. What Might We Learn From Peace Agreements?

Peace agreement provisions largely reflect many constitutions around the globe, irrespective of whether they have been formulated in conflict-affected settings. As such, they grapple with similar issues to most constitutions when providing for states of emergency. These include defining who has the authority to declare a state of emergency, where the measures apply, and for how long. They also identify the role of scrutinising both executive decisions to declare a state of emergency and the actions taken under it. This requires an approach that brings in some role for political and legal institutions beyond the executive: parliaments and courts have important roles to play in assessing whether the states are acting within certain constitutional confines or those outlined under international law. The roles of parliaments and the courts are also crucial in determining when a state of emergency should end or be renewed. Peace agreements, like most constitutions and certain international human rights treaties, recognise that at certain times, some rights might be limited. But they also seek to limit the actions that states are required to take.

There are, however, ways in which peace agreements have some unique characteristics which point to the conflict-related dimensions of restraining states of emergency in the future. Peace agreements can help define relationships between national and sub-national units in the process of declaring a state of emergency when conflict has had a sub-national dimension. Alongside the range of provisions addressed above, peace agreements can themselves also serve to end states of emergency by, for example, committing governments to do so as part of the negotiating process. They can also include provisions that promote the passing of emergency legislation in order to help further a peace process. While not referring to states of emergency per se, these commitments and subsequent actions can, nevertheless, set in motion a longer process of ending existing states of emergency, as was the case in Northern Ireland.

The broader relevance of this report to the 2020 COVID-19 global pandemic is to highlight that behind all stories of a state of emergency being declared should be a wide range of process requirements, forms of scrutiny, substantive rules, and various actors and institutions, which, in theory, exist to ensure that emergency powers are not abused and that states of emergency do not become the new normal. It is often the absence or abrogation of these requirements and rules that leads to protracted states of emergency and human rights abuses. Understanding the components of a state of emergency can empower citizens to scrutinise the actions of authorities during periods of crisis, particularly those which have been declared in response to COVID-19.

## Useful Resources

Bulmer, E. (2016) Emergency Powers International IDEA Constitution-Building Primer 18,

- ▶ <https://www.idea.int/sites/default/files/publications/emergency-powers-primer.pdf>

Carnegie Endowment for International Peace:

- ▶ <https://carnegieendowment.org/publications/interactive/protest-tracker>

COVID-19 Civic Freedom Tracker – ICLN, ECLN, UN Special Rapporteur Fionnuala D. Ní Aoláin:

- ▶ <https://www.icnl.org/covid19tracker/>

DEM-DEC:

- ▶ <https://www.democratic-decay.org/>

Escola de Cultura de Pau, Ceasefires in Armed Conflicts during the Coronavirus Pandemic:

- ▶ <https://escolapau.uab.cat/en/publications/ecp-notes-on-conflict-and-peace/>

PSRP: Conflict, Development, and COVID-19 Resources:

- ▶ <http://www.politicalsettlements.org/2020/03/25/conflict-development-and-covid-19-resources/>

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Yemen, [National Dialogue Conference Outcomes Document](#), 25 January 2014.

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