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*The Threat of Derogations from International Human Rights Treaties to  
Democracies Worldwide*

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# Secção I

## Investigação Científica\*

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## The Threat of Derogations from International Human Rights Treaties to Democracies Worldwide

### A Ameaça das Derrogações de Tratados Internacionais de Direitos Humanos para as Democracias ao redor do mundo

João Victor Jambo STUART<sup>1</sup>

**ABSTRACT:** According to the International Human Rights Law, States can limit the application of human rights rules to preserve individual and collective interests, such as public health, for example. The COVID-19 pandemic and its exceptional circumstances made several States worldwide go further. They decided to derogate their obligations concerning international human rights rules, suspending their applicability inside these countries' territories under the justification that it is part of the sanitary attempts to address the spread of the disease. This article intends to show that this decision allows States to skip their international responsibility to respect human rights instead of guaranteeing people's most fundamental rights. The suspension effect brought by a derogation enlarges the power of governments to create policies and laws to contain the emergency. However, governments do not need to observe some international human rights limitations if the derogation lasts. As a result, it allows some States to use the public health emergency brought by the COVID-19 to legitimize abusive and discriminative legislation, which purpose is to persecute political opposition and restrict minorities' rights, for example. Therefore, adopting derogations in situations in which a simple limitation would be sufficient allows national governments to put their responsibility to follow international human rights terms and conditions out of the way under the justification of combatting a health emergency.

**KEYWORDS:** Derogations; emergency; International Human Rights treaties; discrimination.

**RESUMO:** De acordo com o Direito Internacional dos Direitos Humanos, Estados podem limitar a utilização de normas internacionais de direitos humanos para preservar interesses individuais e coletivos, como a saúde pública, por exemplo. A pandemia do COVID-19 e as circunstâncias excepcionais que ela trouxe consigo convenceram diversos Estados a irem além disso. Eles decidiram utilizar a derrogação em relação a seus respectivos tratados internacionais sobre direitos humanos, suspendendo a aplicabilidade desses instrumentos dentro desses territórios sob a justificativa de que isso era parte dos esforços nacionais para conter o avanço da doença. O presente artigo tem por objetivo mostrar que essa decisão de adotar o mecanismo da derrogação permite aos Estados se esquivar de suas respectivas obrigações internacionais no tocante a direitos humanos ao invés de ajudar a preservá-los. O efeito de suspensão trazido por esse mecanismo aumenta o poder

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dos governos nacionais de criar políticas públicas e legislações para conter a situação de emergência. No entanto, no decorrer do período em que vigora a derrogação, os Estados deixam de observar algumas limitações importantes com relação a direitos humanos. Com isso, alguns Estados passaram a utilizar a derrogação como mecanismo para justificar a criação de legislações discriminatórias e abusivas, cujo propósito é perseguir oposições políticas e minorias sociais. Diante disso, optar pela derrogação em situações nas quais uma simples limitação de direitos seria suficiente é algo que permite aos governos nacionais colocar de lado suas obrigações internacionais em relação a direitos humanos sob a justificativa de controlar uma situação de emergência.

**PALAVRAS-CHAVE:** Derrogação; emergência; tratados internacionais de direitos humanos; discriminação.

## 1. Health crisis and States' responses

Since the beginning of the sanitary crisis brought by the new coronavirus, many States have been implementing measures to restrict the exercise of some fundamental rights, namely the right to freedom of speech and the right to come and go. Other States have gone further: they decided to adopt the mechanism of derogation, an alternative that allows States to suspend their international human rights obligations due to the existence of certain circumstances. However, derogations might end up allowing States to skip their international obligations because of the suspension effect that free these States from observing human rights limitations at the time they are passing new legislations or planning new public policies. Consequently, the health emergency caused by the COVID-19 may be used to restrict people's rights disproportionately and weaken the presence of the International Human Rights Law inside national jurisdictions. Therefore, this article intends to discuss the importance of a reasonable assessment related to the necessity of implementing derogations. It aims to show that they need to be the ultimate choice for States to deal with emergencies, because, otherwise, they may be destructive to the presence of international human rights rules as well as to the efficacy of democratic institutions.

## 2. What are derogations?

Using the International Covenant of Civil and Political Rights<sup>2</sup> as a model,

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<sup>2</sup> UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: <https://www.refworld.org/docid/3ae6b3aa0.html>

this treaty explains that derogations are escaping clauses that suspend or restrict the application of a determined group of human rights while emergencies last. However, these same limitations find surveillance on international law rules<sup>3</sup>. Article 04 (01) of the ICCPR illustrates the requirements that derogations need to respect to be valid. Firstly, although the public emergency may allow States to derogate from several Civil and Political liberties, these suspensions also need to proportionate “to the extent strictly required by the exigencies of the situation”<sup>4</sup>.

Moreover, States also must not include certain rights on the list of derogated rights. These absolute rights cannot suffer limitations or suspensions under any circumstance. The International Covenant of Civil and Political Rights (ICCPR) in its article 04 (02) states that these absolute rights include, for example, the prohibition against the arbitrary deprivation of life; the prohibition on torture or cruel, inhuman and degrading treatment or punishment; the prohibition on slavery and servitude; and the prohibition on prolonged arbitrary detention<sup>5</sup>. Besides, national governments must not use the derogation to establish a discriminative treatment based on race, color, sex, language, religion, or social origin<sup>6</sup>.

A third requirement for the validation of derogations is the necessity of the governments to warn the international body responsible for the treaty about which rights and liberties were suspended, the reasons for the suspension, and how much time the derogation will last<sup>7</sup>. In the case of the ICCPR, according to article 4 (3), the States need to inform the Secretary-General of the United Nations.

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<sup>3</sup> Hafner-Burton, Emilie M., Laurence R. Helfer, and Christopher J. Fariss. 2011. “Emergency and Escape: Explaining Derogations from Human Rights Treaties” *International Organization* 65(4): 673-707, available at: [https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2947&context=faculty\\_scholarship](https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2947&context=faculty_scholarship).

<sup>4</sup> UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171.

<sup>5</sup> Debeljak, Julie. 2006. “Balancing Rights in a Democracy: The Problems with Limitations and Overrides of Rights under the Victorian Charter of Human Rights and Responsibilities Act 2006” *Melbourne University Law Review* 32(2): p. 422–69. Available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1498885](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1498885).

<sup>6</sup> International Justice Resource Center, 2020. “OHCHR & Human Rights Committee Address Derogations During COVID” 2020. *International Justice Resource Center* [news], April 29. Available at: <https://ijrcenter.org/2020/04/29/ohchr-human-rights-committee-address-derogations-during-covid-19/> (November 18, 2020).

<sup>7</sup> Ibidem.

### 3. Differences between limitations and derogations

According to Sebastian Touzé, article 15 of the European Convention of Human Rights states that due to a situation of war or because of a general danger that threatens the lives of the citizens of a country, States are entitled to derogate from international treaties, including human rights treaties<sup>8</sup>. It means that they can temporarily suspend or restrict the exercise of a delimited number of rights under that treaty. Differently, when it comes to internal limitations, it is not necessary to exist a declared emergency for them to happen, and suspensions cannot happen because States are still bound to their international obligations concerning human rights.

Besides, Sebastian Touzé states that adopting a derogation is something discretionary to governments<sup>9</sup>. Thus, they can choose to use it or not if they believe that the situation of danger requires a suspension or adjustment of some fundamental rights to bring peace or a faster solution. For that reason, derogations are the last resource available for States to keep their control over a situation. Differently, limitations are a less drastic alternative because States can restrict the exercise of constitutional rights without suspending the international protection of human rights in a territory.

Another distinction that needs to be highlighted concerns the obligation of the States to notify the derogation to the general secretary of the United Nations when it comes to the ICCPR, and to the general secretary of the Council of Europe when the derogation refers to the European Convention of Human Rights. In the case of limitations, this type of notification is not required, once the commitment of States concerning international treaties is not affected, but regarding derogations, ignoring the obligation to notify the United Nations might interfere on the validity of this decision<sup>10</sup>. In conclusion, one of the most significant distinctions between these two legal institutes concerns the impact that each one of them has on the reduction of the exercise as well as on the

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<sup>8</sup> Touzé, Sebastian. 2020. "La Restriction Vaudra Toujours Mieux Que La Dérogation... - Le Club Des Juristes." *Le Club des Juristes*. Available at : <https://www.leclubdesjuristes.com/blog-du-coronavirus/que-dit-le-droit/la-restriction-vaudra-toujours-mieux-que-la-derogation/> (November 11, 2020).

<sup>9</sup> Ibidem.

<sup>10</sup> Istrefi, Kushtrim, and Isabel Humburg. 2020. "To Notify or not to Notify: Derogations from Human Rights Treaties" *Opinio Juris* [blog], April 18. Available at: <http://opiniojuris.org/2020/04/18/to-notify-or-not-to-notify-derogations-from-human-rights-treaties/> (November 11, 2020).

international protection of fundamental rights, once they suffer a higher restriction in the case of derogations.

#### **4. The risks of choosing derogations during an emergency or a crisis**

The current situation of the pandemic represents a sufficient motivation for countries to indicate that there is a state of emergency in progress. Also, the process of derogation does take into consideration some limits regarding some essential rights, namely the right to life. However, it is still a risk to adopt it given the current circumstances. The deep uncertainties brought by the pandemic combined with the considerable freedom that is granted to States after they receive a derogation may endanger the preservation of human rights inside several countries. It may happen because of some legal aspects of the mechanism of the derogation that increase this space of choice of the States regarding how long the emergency will last.

Many international human rights treaties demand the States that choose to implement derogations to inform the respective international body about this choice, such as in the case of the ICCPR in its article 4 (1). Also, these same States need to explain why they decided to suspend rights instead of limiting them and determine which rights are being suspended<sup>11</sup>. However, these treaties do not possess any clause that regulates the form and the extent to which these derogations are going to take place in their respective States. Consequently, the States acquire a wide margin to put in practice policies and legislations to control the crisis that may not necessarily observe international human rights patterns.

Besides, several treaties also do not request the States to determine a specific time duration for the derogation, which is contrary to the fact that derogations are temporary measures. The European Convention of Human Rights, for instance, only says that the States must notify the responsible organization when the threatening situation ends as well as when the States

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<sup>11</sup> Emmons, Cassandra. 2020. "International Human Rights Law and COVID-19 States of Emergency" *Verfassungsblog* [blog], April 25. Available at: <https://verfassungsblog.de/international-human-rights-law-and-covid-19-states-of-emergency/> (November 11, 2020).

restore the rights that were suspended<sup>12</sup>. Nevertheless, none of the international human rights treaties specifies how soon after the end of the state of emergency the international agencies need to be informed. As a result, States may never notify the end of the exceptional circumstances to international organizations and continue to use restrictive measures to reduce the presence of human rights under the justification that it keeps facing an uncommon scenario.

Moreover, these negative aspects of derogations become worse because ignoring the duty to inform the international organizations about the end of the emergency does not bring any punishment to States. It encourages governments to disrespect this rule and even extend the existence of authoritarian policies and legislations to a time when threatening situations no longer exist, which makes derogation measures illegitimate and dangerous<sup>13</sup>. It happens because, as the States have a broad discretion to determine the duration of the derogation clause, the organizations cannot simply assume that the exceptional circumstances have disappeared. Then, States might keep affirming that their countries are still facing an emergency, and international bodies cannot interfere with that.

Lastly, treaties also do not offer any reference of time about when the States should restore their citizen's rights after the end of the crisis. It allows national governments to extend the limitations brought by derogations to more months, or even years, as a way to enforce their interests, and these may not be in accordance with international human rights rules<sup>14</sup>.

To illustrate, in April 2017, the Egyptian government issued a decree that declared a state of emergency in the country, which allowed the country to derogate from international human rights treaties. As derogations are temporary measures, it would be expected that the government ended the state of emergency after some time, but it did not happen. In June, the Egyptian president launched another decree determining the extension of the state of

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<sup>12</sup> Council of Europe. "Guide on Article 15 of the European Convention on Human Rights" *Council of Europe/European Court of Human Rights*, August 2020. Available at: [https://www.echr.coe.int/documents/Guide\\_Art\\_15\\_ENG.pdf](https://www.echr.coe.int/documents/Guide_Art_15_ENG.pdf) (April 8, 2021).

<sup>13</sup> *Ibidem*.

<sup>14</sup> *Ibidem*.



emergency, and in October 2017, it happened for the third time<sup>15</sup>. None of these decrees had the following notification to the respective international agencies neither resulted in the restoration of rights of the citizens. It happened because, as it was said before, the States enjoy a disproportionate margin of decision to choose the extension of the derogation, which cannot be effectively controlled by international bodies. Also, the legal framework of derogations does not possess any type of clause that holds States accountable for not respecting the obligation to notify the international organizations as well as for ignoring the necessity of reinstalling those rights that fell under the scope of the derogation measures.

Youssef Auf states that, in the case of Egypt, a repeating improper use of States of emergency and exceptional mechanisms, namely derogations, to tackle terrorism and other types of security issues is only undermining the political debate and democratic activity<sup>16</sup>. Consequently, it increases the rates of political intolerance and extremism in the country. Although this thought is particular to the situation of Egypt, the sanitary crisis brought by the COVID-19 pandemic boosted the surge of derogations all over the world. In that sense, it is necessary to observe this same dangerous effect of derogations in other countries as well, even in those who do not have deadly security troubles.

The Egyptian example demonstrates that the abusive use of derogations might lead to a constant process of erosion and weakening of the rule of law, and consequently, to the erosion of democratic values and institutions. Therefore, governments need to assess if suspending certain international protections is the most effective way to overcome crises and emergencies.

## **5. The enforcement of authoritative governments because of derogations and its consequences to democratic principles**

States of emergency must be necessary to curb crises and other types of unexpected events that can put in danger the preservation of civil rights and democratic institutions. Thus, implementing a State of emergency will not necessarily provoke disproportionate enforcement of executive organs, and,

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<sup>15</sup> Auf, Youssef. 2020. "The State of Emergency in Egypt: an Exception or Rule?" *Atlantic Council* [blog], February 2. Available at: <https://www.atlanticcouncil.org/blogs/menasource/the-state-of-emergency-in-egypt-an-exception-or-rule/> (November 12, 2020).

<sup>16</sup> Ibidem.

consequently, a decline of democracies. However, Anna Luhrmann and Brian Rooney argue that States of emergency and its measures, including the derogations of international human rights treaties, works perfectly for those political leaders that intend to use these circumstances to enhance their powers and reduce the interference of oppositions as well as the powers of accountability resources, such as constitutional courts<sup>17</sup>. They comment that because of inefficient and disproportionate management of States of emergency, the threshold that separates democracies from autocracies, a situation in which a country is still a democracy, but it develops a steady decline of democratic principles, becomes smaller.

One of the primary intentions of states of emergency is to grant extraordinary powers to chief executives to allow them to deal with an emergency without boundaries from other powers. Anna Luhrmann and Brian Rooney give the example of the Slovenian Constitution of 1991 that grants the government the ability to “issue decrees with the force of law” (Article 108) during a state of emergency or war<sup>18</sup>. As a result, during States of emergency executive pieces of legislation that have not passed through the voting process in a parliament become law automatically. At the same time, the authors point out that only 55% of the declared States of emergency finish within a determined period<sup>19</sup>. When it comes to the relation between derogations and these inconsistencies of States of emergency, it is possible to realize that these mechanisms also grant an enormous amount of power to executive leaders. As derogations’ duration and content are completely up to the States to decide, it is quite easy for them to extend this resource while they wish to. Plus, once States of emergency can be renewed, governments can also implement new derogations to continue to manage the crisis. Thus, States of emergency jointly with derogations allow executive leaders to govern by using non-democratic rules for a long quantity of time without facing greater institutional obstacles.

This thought demonstrates that there is a difference between States of emergency and autocracy. The first one encompasses a temporary and exceptional period in which certain fundamental rights and democratic

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<sup>17</sup> Lührmann, Anna, and Bryan Rooney. 2020. “Autocratization by Decree: States of Emergency and Democratic Decline” *Comparative Politics*. Available at: [https://www.vdem.net/media/filer\\_public/31/1d/311d5d45-8747-45a4-b46f-37aa7ad8a7e8/wp\\_85.pdf](https://www.vdem.net/media/filer_public/31/1d/311d5d45-8747-45a4-b46f-37aa7ad8a7e8/wp_85.pdf)

<sup>18</sup> Ibidem, p.06.

<sup>19</sup> Ibidem, p.06.

guarantees might suffer a constraint so that specific countries may skip the emergency. Differently, the second one refers to a scenario in which those measures that were supposed to be exceptional turned into permanent or constant rules<sup>20</sup>. The risks of adopting a derogation without assessing the exact necessity of this resource are that, firstly, its suspension effect from international treaties, and possibly, from international mechanisms of constraints, such as regional human rights courts, which allows executive chiefs to not observe some limitations regarding imprisonment and judgment of people, for example. Secondly, due to the broad margin of decision that derogations grant to the executive branch, this part of the government becomes responsible for elaborating decrees that become law automatically without any kind of assessment by a democratic body, namely a parliament<sup>21</sup>. Both aspects are essential for a state of emergency to transform into an autocracy. Therefore, derogations, as part of those measures that come within the scope of States of emergency, support these leaders in expanding their powers by restricting the interference of other public institutions as well as weakening the presence of opposition parties. As an example, in 2016, the Turkish government passed through a state of emergency because one part of the Turkish armed forces announced a coup d'état to take Recep Tayyip Erdogan out of the government. The uprising forces were defeated and one week after the incident, the Turkish government announced it would derogate from the European Convention of Human Rights under the provision of its article 15, claiming the country was facing a terrorist threat imposed by the Gülen movement, the name of a group that tried to overthrow Erdogan<sup>22</sup>. At the same occasion, the Turkish Permanent Representative notified the secretary general of the Council of Europe about the derogation<sup>23</sup>.

The derogation months included several abusive measures of the Turkish

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<sup>20</sup> Ibidem, p. 08.

<sup>21</sup> Ibidem, p.09.

<sup>22</sup> Nugraha, Ignatius Yordan. 2017. "Human Rights Derogation during Coup Situations" *The International Journal of Human Rights* 22(2): 194-206. Available at: <https://www.tandfonline.com/doi/full/10.1080/13642987.2017.1359551>.

<sup>23</sup> Council of Europe. "Reservations and Declarations for Treaty No.005 - Convention for the Protection of Human Rights and Fundamental Freedoms" *Council of Europe*, August 2018. Available at: [https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/declarations?p\\_auth=86fyHVX0&\\_coeconventions\\_WAR\\_coeconventionsportlet\\_enVigueur=false&\\_coeconventions\\_WAR\\_coeconventionsportlet\\_searchBy=state&\\_coeconventions\\_WAR\\_coeconventionsportlet\\_codePays=TUR&\\_coeconventions\\_WAR\\_coeconventionsportlet\\_codeNature=10](https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/declarations?p_auth=86fyHVX0&_coeconventions_WAR_coeconventionsportlet_enVigueur=false&_coeconventions_WAR_coeconventionsportlet_searchBy=state&_coeconventions_WAR_coeconventionsportlet_codePays=TUR&_coeconventions_WAR_coeconventionsportlet_codeNature=10) (April 8, 2021).

government against international human rights rules. More than 40,000 thousand people were jailed because of the government's accusations that they were collaborating with the Gülen movement, and freedom of the press was seriously restricted because of the arrest of thousands of journalists and the closure of independent media outlets<sup>24</sup>. Amnesty international required explanations from the Turkish government due to the accusations of torture crimes against detainees, which included beatings and rape as well the denial of access to medical services and basic supplies, such as water and food<sup>25</sup>.

This example clarifies the reason why derogations are such a useful instrument for executive bodies to become more powerful in their territories. It shows that, in this case, the Turkish government did not pass through a public emergency that threatens the life of its nation neither put into risk the existence of which is officially proclaimed. It is worth remembering that the text, and the mandatory circumstances for the derogation to occur, of the article 15 of the European Convention on Human Rights are based on the article 4 of the ICCPR<sup>26</sup>. In that sense, Ignatius Yordan Nugraha explains that, according to the interpretation of article 4<sup>0</sup>, an emergency can only prompt a derogation from a certain international obligation when it reflects a threat that is real, and not hypothetical<sup>27</sup>. Therefore, this requirement also applies in the case of derogations from the article 15 of ECHR, once that it is necessary to exist a war or other public emergency threatening the life of the nation<sup>28</sup>. Nevertheless, regarding the Turkish coup, it did not provoke any type of massive violence or terrorist attack because those who began the initiative ended up being arrested a few days after the beginning of the movement, and their plan to overthrow the president failed<sup>29</sup>. Therefore, in this case, it is not legally correct to say that Turkey fulfilled all the requirements for asking a derogation from the ICCPR, as

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<sup>24</sup> Lührmann, Anna, and Bryan Rooney. 2020. "Autocratization by Decree: States of Emergency and Democratic Decline" *Comparative Politics*.

<sup>25</sup> Nugraha, Ignatius Yordan. 2017. "Human Rights Derogation during Coup Situations" *The International Journal of Human Rights* 22(2): 194-206.

<sup>26</sup> Council of Europe. "Guide on Article 15 of the European Convention on Human Rights" *Council of Europe/European Court of Human Rights*, August 2020. [https://www.echr.coe.int/documents/Guide\\_Art\\_15\\_ENG.pdf](https://www.echr.coe.int/documents/Guide_Art_15_ENG.pdf) (April 8, 2021).

<sup>27</sup> Nugraha, Ignatius Yordan. 2017. "Human Rights Derogation during Coup Situations" *The International Journal of Human Rights* 22(2): 194-206.

<sup>28</sup> Council of Europe. "Guide on Article 15 of the European Convention on Human Rights" *Council of Europe/European Court of Human Rights*, August 2020.

<sup>29</sup> Nugraha, Ignatius Yordan. 2017. "Human Rights Derogation during Coup Situations" *The International Journal of Human Rights* 22(2): 194-206.

it did. Even with the possibility of a civil war after the coup, it had already been dismantled<sup>30</sup>. This is the reason why the Turkish derogation of this episode is disproportional and unnecessary. There is not any evidence about the concrete threat to the nation imposed by the coup, as it demands article 4<sup>o</sup> of the ICCPR and article 15 of the ECHR.

The Turkish government used the derogation as a tool for claiming that a coup constitutes a danger to the nation, but indeed, it was a risk to the existence of the government. However, the Human Rights Committee in its comment 29 states “not every disturbance or catastrophe qualifies as a public emergency which threatens the life of the nation”<sup>31</sup>. Not even certain armed conflicts come into the scope of the threat to the nation. Besides, the comment stresses that the threat exists towards the nation itself, and not the government<sup>32</sup>. Therefore, the derogation in this situation was unlawful. Turkey did not demonstrate a reasonable threat to its nation or respected the necessity of suspending rights as strictly as the situation demanded. Thousands of people ended up in jail without the proper legal defense and media professionals and media channels were substantially intimidated by the actions of the Turkish government. In conclusion, it is possible to see that an inefficient assessment of the real urgency in implementing derogation measures can lead to a disproportionate enforcement of executive bodies of the government, and consequently, to an erosion of the democratic institutions and values that have the power to stop the advancement of executive agencies in normal times. This whole dismantlement of the democratic scenario encompasses a concrete reduction of the protection of international human rights, because, as leaders are going through an attack, a crisis or even a deadly virus, they should not care about human rights<sup>33</sup>. This grants more power to executive chiefs because it convinces people on how increasing their powers and diminishing people’s legal guarantees might be a more rapid alternative for putting people away from that specific threat<sup>34</sup>.

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<sup>30</sup> Ibidem, p. 197.

<sup>31</sup> Human Rights Committee. 2001. “CCPR General Comment n. 29: Article 4: Derogations during a State of Emergency” *United Nations*, August 31, 2001. <https://www.refworld.org/docid/453883fd1f.html> (November 18, 2020).

<sup>32</sup> Nugraha, Ignatius Jordan. 2017. “Human Rights Derogation during Coup Situations” *The International Journal of Human Rights* 22(2): 194-206.

<sup>33</sup> Lührmann, Anna, and Bryan Rooney. 2020. “Autocratization by Decree: States of Emergency and Democratic Decline” *Comparative Politics*.

<sup>34</sup> Ibidem, p. 20.

This can be extremely problematic because, as derogations lack some important enforcement resources, such as forcing the States to restore the rights which were affected by the derogation, it becomes very difficult to hold chief leaders or even the States themselves accountable for human rights violations, such as in the case of Turkey in 2016. Besides, derogations normally provide a broad freedom of choice to States regarding how much time they will last and which types of measures they will generate to certain fundamental rights. Thus, chief executives end up acquiring an opportunity to enjoy the feature of chaos and fear that is common during emergencies to claim a reduction of important human rights as a solution for the elimination of the crisis.

## 6. Conclusion

According to Frédéric Sudre, a derogation would work as the last resource to deal with an emergency, which means that States need to employ this mechanism only when the other alternatives brought by international treaties were not enough to avoid the increase of the threat that the country is trying to curb<sup>35</sup>. In the middle of the pandemic, given the evidence about the risks involving derogations, national governments must study if a derogation would be the right response to curb this situation. Therefore, this article does not intend to draw derogations as a perverse institute, but it aims to clarify that executive leaders must assess if derogations are a necessity for them to overcome their emergencies. Otherwise, choosing to suspend human rights can provoke a serious undermining of their protection due to the problematic lack of accountability measures of the institute of the derogation as well as because of the wide space of choice given to national chief executives by this institute. Consequently, those societies that experiment this wrong approach regarding the use of derogation also end up suffering with an increase of its executive organs and a decline of the force of its democratic institutions.

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<sup>35</sup> Sudre, Frédéric. 2020. "La Mise En Quarantaine De La Convention Européenne Des Droits De L'homme" *Le Club des Juristes* [blog], April 20. <https://www.leclubdesjuristes.com/blog-du-coronavirus/que-dit-le-droit/la-mise-en-quarantaine-de-la-convention-europeenne-des-droits-de-lhomme/> (November 11, 2020).

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