
THE HUMAN RIGHTS IMPLICATIONS OF QUARANTINE MEASURES TO ADDRESS COVID-19

1. Quarantine Measures to Contain the Spread of COVID-19

- This policy brief builds upon and supports the National Human Rights Commission's statement on the need to respect human rights in the response against COVID-19. As the National Emergency Task Force for COVID-19 plans to introduce further quarantine measures to contain and delay the spread of the virus it is critical that the human rights implications of such measures are addressed. Quarantine measures involve restricting the movement of individuals who may have been exposed to the virus, from the rest of the population, with the objective of monitoring symptoms and the early detection of cases. As such, quarantine measures restrict the right to freedom of movement and may result in the deprivation of liberty. This means that the National Emergency Task Force must follow international law in the imposition of new and existing quarantine measures and ensure that all efforts are made to protect against torture and cruel, degrading, and inhumane treatment under the Convention Against Torture (CAT).

2. Restrictions to Freedom of Movement and the Right to Liberty

- The scope of the current COVID-19 pandemic permits Lebanon to derogate from Article 12(1) (*the right to freedom of movement*) and Article 9(1) (*the right to liberty*) of the International Covenant on Civil and Political Rights (ICCPR). Article 12(3) establishes that a necessary restriction to freedom of movement for the protection of public health is permitted, while Article 9 permits a temporary and non-arbitrary deprivation of liberty for an emergency situation, such as the current pandemic. It is important to clarify that some quarantine measures may only result in the restriction to the freedom of movement, and not the deprivation of liberty. Therefore, all quarantine measures should be assessed objectively and separately.
- Even so, under these circumstances, any quarantine measure must satisfy the Siracusa Principles which govern the limitations or derogations of the provisions of the ICCPR. As such, the following principles must be respected in relation to restricting both rights:
 - Lebanon must *only* derogate from Article 12(1) and Article 9(1) on public health grounds.
 - The scope of the 'public health' limitation referred to in the Covenant shall not be interpreted so as to jeopardize the essence of the right to freedom of movement or the right to liberty.
 - Lebanon must provide in its law for the imposition of quarantine measures and they must be compatible with all other rights in the Covenant, especially the right against torture and cruel, degrading, and inhumane treatment.
 - The imposition of quarantine measures must only be for containing or delaying the spread of COVID-19.

- Quarantine measures must not be applied in an arbitrary manner.
 - There must be the possibility for quarantined individuals to challenge and remedy the imposition of quarantine measures under the oversight of the judiciary.
 - Quarantine measures must not discriminate under any circumstances on the basis of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
- Importantly, the use of quarantine measures must be ‘necessary’. In addition to public health grounds, they must (i) respond to the pressing pandemic of the virus, (ii) pursue the legitimate aim of ensuring there is not an increase in the spread of the virus, and (iii) be a proportionate measure. Moreover, the use of quarantine measures must be reassessed if one of these requirements no longer continues to be satisfied. This should be in accordance with the International Health Regulations (2005) and WHO interim guidance on Considerations for Quarantine of Individuals in the Context of the Containment of COVID-19 (29 February 2020).
 - Indeed, considering that places of quarantine (which have already been established or will likely be established in the near future) fall under the ICCPR and CAT it follows that fundamental legal safeguards must be respected. At a minimum, persons quarantined should be provided: (i) the right to be informed of the reason for being placed in quarantine; (ii) a written record of their quarantine; (iii) the right to legal assistance; (iv) the right to medical assistance; and (v) the right to notify a third party.

3. Responsibility to Protect Against Torture and Cruel, Degrading, and Inhumane Treatment

- It follows from the imposition of quarantine measures that the National Emergency Task Force in conjunction with other state bodies has a responsibility to protect against torture and other cruel, degrading, and inhumane treatment. Article 16 of CAT defines the obligation of Lebanon in relation to cruel, degrading, and inhumane treatment:

‘Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.’

- Places of quarantine are supervised and run by public officials at the direction of the state, thus the obligations placed upon Lebanon in Article 16 extend to the imposition of such measures. To this extent, the National Emergency Task Force must (i) educate and inform all officials involved in the implementation of quarantine measures about the prohibition of torture and cruel, degrading, and inhumane treatment (Article 10 of CAT); (ii) systematically review the rules, methods, and practices for the treatment of persons in places of quarantine (Article 11 of CAT); (iii) put in place procedures to ensure the prompt and impartial investigation of torture and cruel, degrading, and inhumane treatment in places of quarantine (Article 12 of CAT); and (iv) ensure that quarantined persons have the right to complain and have their case promptly and impartially examined by competent authorities (Article 13 of CAT).

4. Ensuring Visits to Places of Quarantine to Protect Against Torture and Cruel, Degrading, and Inhumane Treatment

- The Optional Protocol to the Convention Against Torture (OPCAT) establishes that the National Preventive Mechanism (NPM) in coordination with the National Emergency Task Force is responsible for visiting places of quarantine which result in the deprivation of liberty. Article 4(2) of OPCAT affirms that:

‘For the purposes of the present Protocol, deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority.’

- In light of Article 4(2), which establishes the scope of OPCAT, Article 4(1) requires Lebanon to allow visits to places where persons are deprived of liberty and are under its jurisdiction and control. Therefore, in accordance with Article 4(1) and Article 19(a), the NPM should conduct regular visits to places of quarantine which result in the deprivation of liberty and exercise its function to protect against torture and other cruel, degrading, and inhumane treatment. The Ministry of Public Health is obliged to facilitate such visits.
- The NPM may be ‘temporarily’ restricted from visiting places of quarantine under Article 14(2) of OPCAT. However, any restrictions should be necessary for reasons of ‘public safety’, exercised specifically, and be strictly temporary. It is not enough to state that places of quarantine may contain persons infected by COVID-19. Protective clothing should be given to NPM members to conduct visits, in the same way medical officials are granted entry. An active NPM will not only strengthen safeguards against the misuse of places of quarantine, it will act to satisfy the conditions under international law imposed on any derogation from the ICCPR, placing quarantine measures on a firmer legal footing.

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Recommendations

To the National Emergency Task Force for COVID-19:

- The National Emergency Task Force must lay down clear guidelines for the imposition of quarantine measures: these must include their purpose, necessity, the scientific evidence supporting their imposition, the reason for their effectiveness, and the public health grounds on which they are based. This should be supported with a monitoring and evaluation framework to assess the effectiveness of the measures. This should be published weekly on the Ministry of Public Health's website.
- The National Emergency Task Force must set up a mechanism to ensure that the imposition of quarantine measures can be challenged and there is effective remedy for complaints that are upheld. In addition, a mechanism must be developed to ensure the prompt and impartial investigation of places of quarantine where there are reasonable grounds to believe that there is torture and cruel, degrading, and inhumane treatment.
- The National Emergency Task Force must enforce a code of conduct and conduct trainings for all public officials engaged in the imposition, running, and inspection of places of quarantine: this must clearly state that human rights principles under international law should be followed at all stages of the quarantine process, including the prohibition of all forms of discrimination. This should apply to the Rapid Response Teams (RRT) in charge of case collection, contact tracing, and specimen collection.
- The National Emergency Task Force should ensure that persons in places of quarantine are afforded fundamental rights: (i) the right to be informed of the reason for being placed in quarantine; (ii) the right to legal assistance; (iii) the right to medical assistance; and (iv) the right to notify a third party. This should include a centralized record of persons held in quarantine.
- The National Emergency Task Force should facilitate the visit of independent monitors, including the NPM, by providing safe, unhindered access to individuals and places under quarantine. Public health and safety should be respected at all times.
- The National Emergency Task Force must urgently investigate the introduction of alleged discriminatory quarantine measures by local authorities against Syrian refugees in the Bekaa on 26 February 2020.

To the National Preventive Mechanism:

- The National Preventive Mechanism should exercise its authority to visit places of quarantine and protect against torture and cruel, degrading, and inhumane treatment.
- A roadmap should be produced stating the specific places, timeline, and outcome of such visits.

To the World Health Organization (WHO):

- The WHO must ensure that the latest human rights advice in the response against COVID-19 is disseminated to the National Emergency Task Force, including best practices.

To the Inter-Agency Coordination:

- The Inter-Agency must update the Lebanon Crisis Response Plan 2017 – 2020 to ensure that essential humanitarian assistance is still delivered in light of the current COVID-19 pandemic, particularly in places of quarantine.
- The Inter-Agency must set up a protection monitoring system to ensure that refugees in places of quarantine are provided fundamental rights and are not discriminated against.