

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS RESTRICTIONS AND LIMITATIONS

CAN states limit or restrict civil and political rights without violating the International Covenant on Civil and Political Rights (ICCPR)?

Yes, but only the rights and to the extent foreseen within the Covenant itself. The limitations should not jeopardise the right itself and should be interpreted strictly and in favour of the rights at issue. Limitations should be provided for by national law and be compatible with the objective and purposes of the Covenant.

WHAT are the rights that can be limited according to the ICCPR?

- the right to liberty of movement (Article 12);
- the right to freedom of religion or belief (Article 18);
- the right to freedom of expression (Article 19);
- the right to peaceful assembly (Article 21);
- the right to freedom of association (Article 22).

WHEN are restrictions or limitations of human rights in line with the ICCPR?

- When they are necessary, among others, to protect public order or public health;
- When they are not arbitrary;
- When they can be challenged, and a remedy obtained;
- When they are not discriminatory;
- When there are no other less restrictive means to be applied;
- When the state can justify objectively the limitation.

HOW can it be assessed if a restriction or limitation complies with the ICCPR?

Is this limitation or restriction prescribed by law?

- Is the restriction or limitation provided for by a national law and was that law in force when the restriction or limitation was applied?
- Is the restriction or limitation reasonable to achieve the required goal?
- Is the restriction or limitation clear and accessible to everyone?
- Are there safeguards and effective remedies available against the unlawful, unnecessary or unproportioned imposition or application of limitations or restrictions of human rights?

Is the limitation or restriction necessary in a democratic society?

- Is the limitation or restriction in the genuine interest of democracy, ie is there a pressing public or social need relating to one of the legitimate grounds recognized by the relevant article of the Covenant?
- Is the limitation or restriction proportionate to the legitimate ground?
- Can the state demonstrate that the limitations do not impair the democratic functioning of the society?
- Is this limitation or restriction in line with the principles of the UN Charter and the UN Declaration of Human Rights?

HOW can it be assessed if a restriction or limitation complies with the ICCPR?

Is the restriction or limitation necessary to protect national security, public order, public health or morals or the rights and freedoms of others?

- Do the limitations or restrictions directly contribute to a legitimate ground, and are there no other less restrictive measures that can be taken?
- Are the state agents responsible for the maintenance of the public order subject to controls in the exercise of their power through the parliament, courts or other competent independent body?

In the context of COVID-19: Are the limitations and restrictions necessary to protect public health?

- Are the measures that lead to limitations and restrictions of human rights specifically dealing with a serious threat to the health of the population or individual members of the population, eg are these measures that lead to restrictions or limitations contributing to preventing or slowing the spread of the disease or are they supporting the affected individuals?
- Was due regards payed to the international health regulations of the World Health Organization (WHO)?

For more information, see:

The International Covenant on Civil and Political Rights and the Siracusa Principles on the Limitation and Derogation Provisions in the Covenant on Civil and Political Rights of the American Association for the International Commission of Jurists, available at: <https://www.icj.org/wp-content/uploads/1984/07/Siracusa-principles-ICCPR-legal-submission-1985-eng.pdf>.