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# When a Temporary State of Emergency becomes Permanent

*France as a Case Study*

**STOP  
ISLAMOPHOBIA**

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## Introduction

In November 2015, France declared a State of Emergency as an immediate response to two violent attacks in Paris causing the deaths of 130 people and injuring close to five hundred others, 100 of them seriously.<sup>1</sup> Although states of emergency, as enshrined in law, are conceived as temporary measures to return to a “normal” state of affairs as soon as possible, in the French example, the declared state of emergency was extended five times, until November 2017, when many of the emergency powers and measures were codified and written in to ordinary law. In effect, restrictions introduced during the temporary state of emergency became permanent.

This framing paper details the international legal framework that underpins the establishment of a state of emergency and uses France as a case study to show how a state of emergency was introduced and repeatedly extended before eventually becoming permanent.

Human rights guarantees were significantly weakened by the introduction of emergency powers that, among other measures, granted search and seizure operations without judicial oversight and far below the legal threshold that had previously been upheld under French law. The emergency measures were systematically implemented in a discriminatory manner targeting Muslims in particular, who were treated with suspicion for no other reason beyond their religious beliefs or practices. Searches could be carried out based solely on suspicion, rather than on material proof, and those targeted were often subsequently stigmatised within their communities or removed from their workplace, although there was no evidence to suggest their involvement in criminal behaviour. By the end of 2015, physical violence and symbolic actions (such as attacks on mosques) against Muslims in France had increased by 150% and 140%, respectively.<sup>2</sup>

Beyond the systematic targeting of Muslims, emergency measures were used as a justification to restrict freedom of movement, assembly, association, and expression across French society. Environmental activists, groups acting in solidarity with refugees, trade unionists, workers, and other organised civil society actors and movements were repeatedly prevented from exercising their legitimate right to protest under the terms of the emergency measures. Significantly, the fact that the state of emergency was repeatedly extended, although violent attacks continued to occur, and that it was used to target Muslims, environmentalists, and other civil society actors where no link to criminal behaviour was established, raises serious questions about the justification given for the state of emergency. It seems that it was used not so much to restore a “normal” state of affairs in the face of a threat of terrorism, but as a pretext to curtail fundamental human rights norms and to pacify dissent across French society.<sup>3</sup>

At a time when many states around the world have announced emergency measures to deal with the onset of the Covid-19 global pandemic, France acts as a case in point reminding us that we must be vigilant in the face of states of emergency and rigorously monitor which emergency powers are granted, to whom, to what end, and for how long. History has shown that measures taken under a state of emergency tend to stick, causing serious repercussions for exercising human rights and upholding the rule of law.

## States of emergency

States have an obligation under International Law, Customary International Law, and domestic legislation to respect, protect and fulfil the fundamental rights of their citizens and those under their jurisdiction.<sup>4</sup> A State of Emergency is a particular context that permits a state to limit certain, specific rights in order to address a particular threat to public safety and national security, with the proviso that these measures seek to restore a “normal” state of affairs with full respect of rights as soon as possible.

There are three criteria that must be fulfilled for a legitimate State of Emergency to exist under International Human Rights Law (IHRL):<sup>5</sup>

1. The existence of a public emergency which threatens the life of the nation
2. An official proclamation of the public emergency<sup>6</sup>
3. Any measures taken that derogate from a state’s obligations under international law must be limited to the extent required by the public emergency, and must not be inconsistent with the state’s other obligations or discriminate on the ground of race, colour, sex, language, religion or social origin.<sup>7</sup>

In situations of armed conflict, international humanitarian law also applies, ensuring further safeguards against the abuse of state power.<sup>8</sup> Even in such a situation, derogations are only permitted as far as the conflict constitutes a threat to the life of a nation.

### **How is this provided for by law?**

States of Emergency are codified by international and regional covenants and treaties (see annex one), as well as in national laws. International provisions detail which rights can never be derogated from. Certain, specific derogations are permitted only if they are prescribed by law, follow a legitimate objective, and are proportionate to the emergency situation.<sup>9</sup> States *are permitted to unilaterally derogate from some obligations under international covenants, but only temporarily, in exceptional circumstances, and only according to specific safeguards.*<sup>10</sup>

### **Which rights are absolute and cannot be derogated from?**

No derogation is permitted, even under legitimate states of emergency from:

- The right to life (Article 6 ICCPR, Article 2 ECHR);
- The prohibition of torture, cruel, inhuman or degrading treatment or punishment (Article 7 ICCPR, Article 3 ECHR);
- The prohibition of slavery (Article 8 ICCPR, Article 4(1) ECHR);
- The principle of legality in the field of criminal law (Article 15 ICCPR, Article 7 ECHR);
- Prohibition of imprisonment due to inability to fulfil a contractual obligation (Article 11 ICCPR)
- The recognition of everyone as a person before the law (Article 16 ICCPR)

- The right to freedom of thought, conscience and religion (Article 18 ICCPR), though the manifestation of that religion or belief may be subject to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

Examples of safeguards which are subject to some derogation measures include:

- the right to liberty and security of person, and freedom from arbitrary detention, and to due process,<sup>11</sup>
- the right to freedom of movement and to leave a country (including one's own) and to enter one's country of citizenship,<sup>12</sup>
- equality before the law,<sup>13</sup>
- freedom from arbitrary interference with family or privacy,<sup>14</sup>
- the freedom of expression,<sup>15</sup>
- the right to peaceful assembly.<sup>16</sup>

Articles not listed in Article 4 of the International Covenant on Civil and Political Rights (hereinafter ICCPR) may not be derogated from at will, even in situations of threat to the life of a nation; derogations must be limited to those strictly required by the situation, according to careful analysis.<sup>17</sup>

### **Process: what steps need to be put in place when derogating from IHRL?**

International and European law requires states to announce formally the exact nature of a State of Emergency and any rights to be derogated from. Under the ICCPR, states must inform other states party, via the UN Secretary General, of which ICCPR provisions it is limiting, the reasons why, and then the date on which these derogations are to be ended.<sup>18</sup> Under the European Convention on Human Rights (hereinafter ECHR), states must "keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor". States must also inform the Secretary General when "such measures have ceased to operate and the provisions of the Convention are again being fully executed."<sup>19</sup> This process is supposed to ensure oversight of whether the measures taken by states are "strictly required by the exigencies of the situation", and to allow all states to monitor compliance with IHRL.<sup>20</sup>

### **States of emergency in practice**

States must show the necessity of the measures adopted, that they are proportionate and not discriminatory, and cannot derogate in a fashion inconsistent with other obligations under international law.

Any derogations from fundamental rights safeguards under a state of emergency must be specific, necessary and legitimate, according to the exact circumstances, and limited to the extent strictly required by the circumstances, in terms of duration, geographical coverage, and material scope of the response to the emergency.<sup>21</sup> States must provide careful justification both for the decision to declare an emergency threatening the life of the nation, and for each specific measure taken under the ensuing state of emergency.<sup>22</sup>

There are situations in which the declaration of a state of emergency could be illegitimate. If the “threshold of application” is not met, if the measures adopted are disproportionate, and if the procedural requirements of notification are not fulfilled. Courts have tended to assess the proportionality of measures adopted, rather than the threshold of application.<sup>23</sup>

According to The Paris Minimum Standards of Human Rights Norms in a State of Emergency, “the declaration of a state of emergency shall never exceed the period strictly required to restore normal conditions”.<sup>24</sup> Once such normal conditions are restored, there must be “automatic restoration of all rights and freedoms which were suspended or restricted during the emergency and no emergency measures shall be maintained thereafter.”<sup>25</sup>

### **Permanent States of Emergency and Counter-Terrorism**

Since the September 11<sup>th</sup> attacks, some states have relied on a “war on terror” narrative to frame certain violent attacks as acts of war and have increased their use of policies, practices and legislature that impact negatively on “virtually all human rights – civil, cultural, economic, political and social”.<sup>26</sup> Ever more restrictive policies have been introduced beyond the scope of what is permitted under a legitimate state of emergency, often justified as necessary to counter the threat of terrorism, and as a fundamental part of fighting the so-called “war on terror”. The expanse towards what is in effect a permanent state of emergency has particularly affected “vulnerable groups...on the basis of origin and socio-economic status, in particular migrants, refugees and asylum-seekers, indigenous people and people fighting for their land rights or against the negative effects of economic globalisation policies”, who are often targeted by counter-terrorism policies.<sup>27</sup>

## France

Between January 2015 and the end of 2018, 14 attacks, the highest profile of which were committed in the name of the so-called Islamic State group, or ISIS, were carried out in France, prompting a series of changes in emergency and common law.

A State of Emergency declared in November 2015 was extended five times to November 2017, effectively creating a long-term emergency state, which allowed administrative authorities to conduct searches and surveillance outside traditional legal limits. The fact that these powers were repeatedly extended because the estimated terrorism threat did not decrease highlights more the failure of such measures to counter such a threat, rather than their capacity to stabilise an emergency situation.<sup>28</sup>

During this period, a series of permanent amendments to criminal and security law were adopted, which incorporated some of the measures introduced under the State of Emergency into common law (see annex two figures 1 and 2). This drew severe criticism from lawyers, civil society, and the *Defenseur des droits*, the French ombudsman body (hereafter DDD).<sup>29</sup>

The Government explained to the Council of State that Law No. 7017-1510, of 31 October 2017 was intended to “reinforce permanently the tools and means at the disposal of the authorities outside the temporary legal framework of the state of emergency” - in effect this made a temporary state of emergency permanent.

### Before the November 2015 State of Emergency

Some derogations were permitted under ordinary French law before the on-going State of Emergency that began in 2015. Most measures were contained in criminal law, as well as in civil and administrative law. These covered interception for security reasons, refusal of admission, refusal of asylum, and the freezing of assets, among other deprivations of rights.<sup>30</sup> Special criminal laws outlining specific offences enabled criminal investigations at the earliest possible stage, while procedural rules sanctioned specific investigation techniques, with judges specialising in terrorism involved at all points of proceedings.<sup>31</sup>

The UN's Human Rights Committee published a periodic review of France in 2015, before the incidents of November 2015 and of 2016, and before the State of Emergency became a reality. The Committee was satisfied that in 2011, legal guarantees were extended to persons held in police custody accused of terrorism,<sup>32</sup> but was concerned that access to legal counsel could be withheld for 72 hours, with interviews limited to 30 minutes, and the extension of maximum custody to 96 or sometimes 144 hours, including for minors over the age of 16.<sup>33</sup>

Anti-terrorism provisions in ordinary criminal law had been strengthened already in November 2014,<sup>34</sup> including the offence of “apology of terrorism”, punishable with five years in prison and a maximum fine of €75,000, increasing to seven years in prison and a maximum fine of €100,000 for online communications. Of 298 judicial procedures for apology of terrorism following the January 2015 Paris attacks, 96 involved minors.<sup>35</sup> The Human Rights Committee found such measures

“hard to reconcile with the rights set out in the Covenant”, particularly regarding their application following the attacks in Paris in January 2015.<sup>36</sup> Of particular concern to the HRC were instances of prosecution, particularly of minors, for “vindicating terrorism” adjudicated in immediate hearings, engaging rights of liberty and security of person, equality before the law, freedom of opinion and expression, prohibition of propaganda for war or for national, religious or racial hatred, the right to freedom of assembly, and freedom of association with others.<sup>37</sup>

## Legislative changes in France

From 07 to 09 January 2015, gunmen carried out attacks in and around Paris, beginning with the high profile shooting at the offices of magazine *Charlie Hebdo*, a spate of attacks linked to ISIS that ended two days later with a shooting at a kosher supermarket.<sup>38</sup> Immediately following these attacks,<sup>39</sup> almost 5,000 security personnel were stationed to Jewish schools, synagogues and cultural sites, replaced shortly afterwards by soldiers who remained there long term.<sup>40</sup> In November of the same year, 130 people were killed and hundreds wounded in coordinated attacks by shooting and suicide-bombing in restaurants and bars across Paris, at the *Stade de France* stadium (where a friendly match was being played between France and Germany), and the Bataclan music venue (where rock-group Eagles of Death Metal were playing to a sold-out audience).<sup>41</sup> The attack at the Bataclan killed 89 people, while 99 more were critically injured. The attacks were also linked to ISIS, and were believed to be a reaction to France’s involvement in Syria.

The French Council of Ministers declared a State of Emergency the same night, authorising the deployment of security forces at the Bataclan venue, police raids across France and one in Belgium, and the strengthening of border controls. During the period of the state of emergency, which lasted almost two years, several laws were passed giving administrative authorities extensive powers to prevent disturbances to public security and order in the context of the prevention of terrorism. Under the repeatedly extended State of Emergency from November 2015, up to 7,000 soldiers were deployed to protect schools, cultural sites, shops, and other sites deemed to be potential targets.<sup>42</sup>

The State of Emergency declared on 13 November gave powers to the Minister of the Interior to:

- Place under house arrest persons whose actions prove dangerous for security and public order;
- Using electronic tags, track individuals who have been sentenced for past acts of terrorism, having served their sentences;
- Take any measure necessary to block online materials condoning or inciting acts of terrorism;
- Disband by decree (via the Council of Ministers) any association or group involved in, facilitating, or inciting the commission of acts which pose a serious threat to public order;
- Restrict freedom of movement, of persons and vehicles, within the state by imposing defence and security zones, and imposing a curfew in certain areas;<sup>43</sup>
- Bar persons suspected of disturbing public order from residing in certain parts of the state;
- Detain persons and resources;
- Prohibit certain public meetings and demonstrations;

- Provisionally close certain meeting places;
- Authorise administrative searches (in the presence of a criminal investigation police officer). Such raids were not allowed on the property of lawyers, judges, journalists, or members of parliament;
- Establish protection security zones in which residence is regulated.<sup>44</sup>

A subsequent Act was passed on 20 November 2015, extending the State of Emergency for a further three months and increasing the grounds available to impose house arrest to apply to any person for whom “there are serious reasons to believe that his behaviour constitutes a threat to public safety and order”.<sup>45</sup> This was a much more lenient application of suspicion than had previously been allowed under the wording “whose activity is dangerous for public safety and order”.

The third extension of the State of Emergency was implemented in May, in order to cover the Euro 2016 football tournament and the end of the Tour de France cycling race. The fourth extension of the State of Emergency, the law of 21 July 2016, followed an attack in Nice which killed 84 people and injured over 40 more during Bastille day celebrations. The French National Assembly voted to extend the State of Emergency by six months, which would last until January 2017, despite a commission of enquiry concluding that the State of Emergency had only had a limited impact on improving security.<sup>46</sup> This extension re-introduced measures for carrying out administrative searches, requiring that a search order be supplied to the party concerned,<sup>47</sup> and added identity checks and vehicle inspections.<sup>48</sup>

The Ministry of the Interior and the Ministry of Justice assessed the 2015 State of Emergency, and announced 3099 house searches (almost two thirds of which took place in the first two weeks following the 13 November attacks, half of all searches were carried out by night), leading to the discovery of 492 weapons, 453 offenses logged, 309 arrests and two appeals.<sup>49</sup> 199 legal proceedings were initiated over breaches of weapons legislation, and 181 proceedings launched over breaches of drug legislation, while 162 legal proceedings were launched over counterfeiting and receiving stolen goods, inter alia.<sup>50</sup> There were 382 cases of house arrest and four temporary closures of theatres, bars, and meeting places.

By January 2016, just two of these proceedings had been opened at the counter-terrorism department of the Paris Public Prosecutor.<sup>51</sup> The DDD remarked that **the ordinary law system already allowed for extensive surveillance by intelligence services in the July 2015 updated and strengthened law on intelligence. The objective of prevention of terrorist attacks could have been addressed under this law, which would have avoided the widely criticized, often violent and stigmatizing, and largely futile raids.**

**Though the State of Emergency laws did not specifically name any community or protected characteristic as a target, the actions pursued under it “massively target[ed] Muslims with a totally arbitrary character”.**<sup>52</sup> The raids, excessive both in number and use of force, against people of Muslim and North African backgrounds, demonstrate the consolidation of Islamophobia in France’s institutions, exacerbating socio-economic divides and further isolating citizens, both socially and politically.<sup>53</sup>

**Of particular concern are figures showing that 51.5% of police and military personnel voted in 2015's regional elections for the explicitly Islamophobic National Front party.**<sup>54</sup> The lack of judicial oversight over use of powers by these forces during a State of Emergency jeopardised the principles of proportionality and the prohibition of discrimination.<sup>55</sup>

## **Impacts on fundamental rights**

The prolonged, and now permanent, state of emergency in France has had a profoundly negative impact on fundamental rights.

The first complaint to the *Defenseur de droits, DDD*, regarding the State of Emergency, was made on 27 November 2015. By 26 February, over 70 complaints were submitted regarding administrative searches (34), assigned residence orders (18),<sup>56</sup> and other measures linked to the State of Emergency though not directly related (17).<sup>57</sup> Reflecting on the State of Emergency, the DDD concluded in 2015: "The demand for protection took precedence over the concern for liberties and equality".<sup>58</sup> Four bans were issued on leaving the country, two security agents were dismissed from their employment due to having beards, and one employee was dismissed from their role following a search, while another was dismissed because the nickname on his record was the same as the name of a terrorist.<sup>59</sup>

## **Rights to security and privacy**

During the State of Emergency, searches were authorised on grounds that were more vague and at a lower threshold than allowed by ordinary criminal law, including if there was serious cause to believe a location was frequented by a person whose behaviour posed a threat to public order and security.<sup>60</sup> These could be conducted at any time and with no prior notice or judicial oversight. From the enactment of the State of Emergency in November 2015 until the end of that year, the DDD received 18 referrals related to searches, and 11 referrals related to house arrests.<sup>61</sup>

In the grounds put forward for searches, subjects were either directly suspected of jihadist activism (providing a "well-founded suspicion of terrorism") or subjected to a search due to their contact, to an unspecified degree and both directly and indirectly, with an alleged activist in the jihadist movement.<sup>62</sup> This provides a "suspicion of terrorism", rather than a "well-founded" suspicion.<sup>63</sup> Numerous cases were documented whereby houses or businesses owned by or associated with Muslims were specifically targeted and searched. Other locations targeted included homes occupied by environmental activists, which were searched using emergency powers, in the lead up to the COP 21 conference held in Paris.<sup>64</sup> **It quickly became evident that the emergency powers were being used against society more broadly to pacify dissent, going well beyond tackling the threat of terrorism – the initial justification for introducing a state of emergency.**

**In numerous reports, material damage was caused in homes during searches, and in many cases occupants were handcuffed or threatened with firearms, sometimes in front of children.<sup>65</sup> Many searches did not result in any further charges. In 2016, complaints under this category principally concerned the methods used to carry out administrative searches.<sup>66</sup> This was particularly the case for raids conducted between November 2015 and February 2016, with many complaints referring to**

**“night-time raids involving large numbers of officers armed with handguns and/or wearing balaclavas, and emphasised the lack of any explanation” for such searches.<sup>67</sup>**

Aside from material damages, the public nature of searches conducted with force affected individuals’ or organisations’ life in their communities, risking stigmatization and discrimination.<sup>68</sup> In one particular case a woman was dismissed by her employer following a search for posing “a threat to the company”, despite the fact that nothing was found to warrant further investigation during the search.<sup>69</sup> The DDD highlights allegations of physical and psychological abuse, particularly in the presence of children.<sup>70</sup> Complainants also referred to “discriminatory remarks due to their being of the Muslim faith”.<sup>71</sup> By the end of 2016, the DDD had received 92 complaints, 42 of which concerned searches – how they were carried out or their consequences on those effected.

### **Freedom of movement, freedom of expression and freedom of assembly**

Limits to the rights to freedom of expression and to peaceful assembly should only be imposed when any lesser restriction is not possible, and the rights themselves should not be put in jeopardy.<sup>72</sup> Under the 2015-2017 State of Emergency in France, bans on public assembly were permitted under vague grounds, such as the likelihood to provoke disorder,<sup>73</sup> and authorities could restrict the movement of people in specific areas in order to prevent public assemblies.<sup>74</sup> As of the 21 July 2016 extension of the State of Emergency, parades, marches and rallies could be prohibited if police could not ensure public order based on available resources. Though this had been used as a justification prior to the amendment, the ease with which it could be relied upon by the authorities to curtail public assemblies was significantly strengthened by writing it in to the emergency extension amendment.<sup>75</sup> The State of Emergency has been invoked as a justification in cases where authorities imposed bans on public assemblies using ordinary powers, because of increased demands on law enforcement.<sup>76</sup>

By May 2017, 155 measures banning public assembly had been issued under the State of Emergency, raising concerns over whether such broad measures were strictly necessary and proportionate to pursue the aim of maintaining public order or whether they were in fact being used to curb dissent more broadly under the pretext of an alleged terrorist threat.<sup>77</sup> In many cases the banning of public assemblies was not directly linked to the prevention of violent attacks on the population, and therefore could not be justified as a necessary and proportionate measure to pursue the objectives of the State of Emergency.<sup>78</sup> **This is a serious violation of human rights principles whereby emergency legislation designed to deal with a very specific threat is instead being applied to curb the legitimate right to protest.** For instance, all demonstrations in particular parts of Paris were forbidden between 1 and 13 December 2015, in order to prevent public demonstrations around the COP 21 Climate Conference being hosted in the city.<sup>79</sup>

**Demonstrations around the reform of labour laws were also affected by bans** based in ordinary law but justified in light of the state of emergency and limited police resources to maintain public order in 2016. One prohibition, on 9 June, cited the fact that violent acts had occurred in the context of previous protests organised by other groups, rather than any specific suspicion of any intention to cause violence on the part of the organisers. **A general ban was imposed on**

**all marches on the days surrounding a public assembly of trade unions on 15 September 2016, due to “ambiguous connections” with violent groups.**<sup>80</sup> In these cases, it does not seem that the least restrictive measure possible to maintain public order was followed.<sup>81</sup>

In October 2016, **emergency and ordinary law was used to ban two protests against plans to evict thousands of migrants, asylum seekers and refugees from an informal camp near Calais**, based on the possibility of attendance by far-left and far-right groups, and a previous precedent of public disorder from similar protests.<sup>82</sup> The strain on police resources was also cited. In the second of these protests, on 14 October, no direct link was made between the organisers of the protest and individuals who had previously committed violent acts.<sup>83</sup>

Protests against the harassment of migrants in Paris were also prevented from taking place. This was partly by formal notification by police banning marches and limiting demonstrations to one site, and then informally by preventing people from leaving the camp where the march had been due to begin, to prevent them from reaching the site of assembly. This required considerable resources, though again the extra strain on police resources posed by the State of Emergency was cited as a justification.<sup>84</sup> The High Court of Paris determined that the march had not posed a threat to public order. These bans therefore also seem a disproportionate derogation of the right to freedom of assembly, pursuing the maintenance of public order separately to addressing any threat of terrorism.<sup>85</sup>

Under the State of Emergency, **an assigned residence order could be imposed on someone whose behaviour provides “serious reasons to believe” that they pose a threat to security and public order.** These orders could include a 12-hour night curfew, restriction of travel to a specific municipality and a daily local reporting obligation (sometimes up to three times a day). Orders last for three months following the first issue, and can then be renewed for a further 12 months, with “new or complementary elements” eligible for renewal once again for six months.<sup>86</sup> In effect, this meant such orders could last the entire duration of the State of Emergency, though authorities have not conclusively demonstrated that these measures are effective in preventing acts of terrorism.<sup>87</sup> **The onerous reporting obligations and the geographical limitations of assigned residence orders have prevented some individuals from attending their work, meetings and medical appointments.**<sup>88</sup>

**Twenty-six environmental activists were subjected to assigned residence orders during the COP 21 conference, though most had never been investigated, charged or convicted of any crimes, suggesting that rather than seeking to prevent acts of terrorism, the emergency laws were being used to arbitrarily limit the activities of individuals assumed to be “radicalised”.**<sup>89</sup> The Council of State upheld the Ministry of the Interior’s arguments that the measures had supported the protection of public order and security, though the government acknowledged that these individuals did not pose a threat to national security.<sup>90</sup>

The DDD found that techniques of intervention taken to implement the ongoing State of Emergency, such as identity checks, screenings and searches, infringed on the rights to freedom of movement, freedom of expression, and freedom of assembly.<sup>91</sup>

**Aside from demonstrations, freedom of expression was increasingly limited in people’s daily**

**lives, primarily of Muslims, who were overwhelmingly targeted by the state of emergency.**

In one particular example the DDD was contacted by a woman wearing a headscarf, who was admitted to school grounds in the morning to prepare for an event of the parents' committee, of which she was a member, but was denied entry that same afternoon due to school rules prohibiting religious symbols.<sup>92</sup> Ninety per cent of reports to the *Collectif Contre L'Islamophobie en France* (Collective Against Islamophobia, CCIF) concerning discrimination in primary schools in 2015 related to mothers barred from accompanying school outings because of the supposedly "proselytizing character" of their clothing, despite such treatment being outside the scope of the 15 March 2004 law on secularity and conspicuous religious symbols in schools.<sup>93</sup>

## **The behaviour of police**

With increased discretion allowed to law enforcement bodies to authorise, ban, or moderate events, the behaviours and culture of those bodies merits investigation. The law of 28 February 2017 on public security cited the hostility faced by police as grounds for allowing wider discretion in the use of force, with the Minister of the Interior citing acts of violence by protestors as grounds to cancel events. On the other hand, investigations were launched into alleged excessive violence by police, and the same Minister was prompted to send letters to local prefects counselling only proportionate use of force at public assemblies, including that journalists should not be prevented from carrying out their work.<sup>94</sup> Civil society condemned the arbitrary and excessive use of force by law enforcement officials during public assemblies, including the targeting of journalists, calling into question the necessity and proportionality of the measures used.<sup>95</sup>

The DDD criticized the additional powers given to the police because contemporary legislation and case law already allowed the invocation of self-defence or a state of necessity to use weapons.<sup>96</sup> Therefore the inclusion of these new provisions meant that the legal framework was imprecise and at risk of being interpreted in many different ways.<sup>97</sup>

**Statements from police to media also contradicted official statements and seemed, given their falsehood, inflammatory. Following a series of searches of a mosque in Lagny-sur-Marne and properties associated with its president, secretary and treasurer, no investigation was launched, but police reports to the media included allegations of materials glorifying acts of terrorism and a "hidden religious school".<sup>98</sup>**

## **Issues of necessity, proportionality, and legitimacy**

Though in agreement that "exceptional measures" were needed to address "an exceptional situation", the DDD recommended early in 2016 that the State of Emergency be limited by material and temporal limits, and that "a strict causal link between the reasons for the measure taken and those of the state of emergency be demanded."<sup>99</sup> **In January 2016 five UN special rapporteurs<sup>100</sup> counselled against the extension of the State of Emergency, stating that "these measures do not seem to adjust to the fundamental principles of necessity and proportionality".<sup>101</sup>**

Still monitoring the State of Emergency in 2017, the DDD found that the measures created had allowed the administration to employ the purpose of maintaining order to implement measures,

without establishing a link between said measure and the terrorist threat it was supposed to address. It noted that the State of Emergency powers were used without such a link, particularly in policing demonstrations during the COP 21 conference, and the dismantling of the “Lande” refugee camp in Calais.<sup>102</sup>

The National Assembly reported that collective and individual measures had been used without a direct link to an alleged terrorist threat in order to limit the movement of people during demonstrations and to maintain order.<sup>103</sup>

## **How did the temporary state of emergency in effect become permanent under legislative change?**

In implementing measures to respond to a specific emergency, the principles of proportionality and necessity are at risk if these measures continue in effect even when the emergency situation has passed, risking inconsistency with principals of international human rights law.<sup>104</sup>

The Human Rights Council emphasises that:

*“If compelling reasons require the establishment of specific certain powers for certain authorities... such powers should be contained in **stand-alone** legislation capable of being recognised as a unique exception to general legal constraint and not absorbed into ordinary law...subject to sunset clauses and periodic review...to ensure that provisions that may have been necessary at one point in time remain proportionate...the need for exceptional powers should be subject to a stricter and more compelling test if there has been a long term emergency in place”.*

The State of Emergency declared in the wake of the November 2015 attacks was extended five times, up to 1 November 2017.<sup>105</sup> Announcements in 2015 mentioned the reinforcement of identity checks, visual inspections, luggage searches, and new rules for the regulation of self-defence.<sup>106</sup> In 2016 the DDD repeated their concern that this “exceptional state of affairs...might well become seen as a normal state of our legislation, all the more so as it is regularly reinforced by permanent measures restricting freedoms”.<sup>107</sup>

**In July 2017, the French Senate sought to incorporate certain measures of the State of Emergency regime into ordinary law, in order to grant “administrative authorities extensive powers in the fight against terrorism”.**<sup>108</sup> According to the DDD, extensive powers to restrict rights and freedoms had already been conferred to the administrative authority under ordinary law in the cause of the “prevention of terrorism”.<sup>109</sup> The inclusion of measures to restrict freedoms comparable to those introduced under the State of Emergency laws, without a situation of “public danger threatening the life of the nation” could, according to the DDD, contradict the ECHR and the ICCPR.<sup>110</sup> In its opinion on the 17 July proposal, the DDD invited the National Assembly to seek “a better balance between the need to ensure public security and order and the need to protect rights and freedoms”.<sup>111</sup>

Nonetheless, in 2017 the Government incorporated into ordinary law certain measures to grant extensive powers to the administrative authorities to fight terrorism.<sup>112</sup> The bill aimed to give

administrative authorities increased powers to prevent breaches of public order and security, to prevent acts of terror, and to amend intelligence legislation and border controls.<sup>113</sup>

One problem identified by the DDD was the lack of a sufficiently precise definition of the term “terrorism” in the Code of Internal Security, the legislation containing most of the provisions that conferred new powers on the administrative authority.<sup>114</sup> Nor did the code refer to provisions in the Criminal Code for the punishment of acts of terrorism.<sup>115</sup> Another concern highlighted was the encroaching imbalance between the administrative and judicial authorities in France, reducing the capacity to prevent abuses of powers.<sup>116</sup>

**By incorporating any derogations from rights and freedoms that were previously justified by a State of Emergency into ordinary law, the application of these limits is no longer checked by the Administrative Judge.**<sup>117</sup> The Administrative Judge could challenge the imposition or lifting of a State of Emergency, and could challenge administrative police measures taken under the State of Emergency, including house arrest, searches, limits to the movement of people and vehicles, temporary closure of public places, etc. Removal of such checks is a shift towards incorporating measures used in a State of Emergency into ordinary law, creating imbalance between administrative and judicial authority, disregarding constitutional and conventional requirements.

The Internal Security Code now confirmed that local state authorities could set up protective parameters in places or events where it was alleged that there may be a risk of terrorist attacks, to control and check the entry and movement of people, conduct security checks, luggage searches, and vehicle visits.<sup>118</sup> The DDD pointed out that existing provisions already allowed for these measures at the request of a public prosecutor.<sup>119</sup> Most importantly, the DDD highlighted that in order to avoid misuse of these measures, the establishment of a clear link between the measures and a terrorist threat must be required.<sup>120</sup> The recommendations were not taken into account, raising concerns that such measures could be used not just at cultural and sporting events, but at parades, processions, or gatherings (supposedly protests), to maintain public order, rather than to address a particular threat of terrorism.<sup>121</sup>

## Why is this important for fundamental rights?

**Fundamental human rights principles are being threatened by the imposition of permanent limitations on exercising rights such as freedom of expression, assembly, association, religion, and many other rights that have been directly impacted by these legislative amendments.**

By enshrining such limitations in ordinary law, rather than reverting to a State of Emergency, there is much less scrutiny and oversight surrounding how these limitations are implemented. As such, they quickly become normalised, rather being considered exceptional. Moreover, derogations from fundamental rights and freedoms are no longer sanctioned by Article 15 ECHR or Article 4 ICCPR. In order for such measures to be legitimate in “ordinary” law, Constitutional Council and European Court of Human Rights (ECtHR) case law requires a clear, precise, and intelligible law.<sup>122</sup>

**The amendments to ordinary law proposed in July 2017, based on the Internal Security Code (CSI) Article L. 228-1, for example allowed places of worship to be closed based on “serious reasons”, rather than on material proof.** According to the DDD this contradicted the principle

of legality through its lack of sufficient clarity or predictability regarding what conduct would prompt such a closure.<sup>123</sup> The DDD criticized the imprecise criteria of the measure for creating a restriction on freedom of religion.<sup>124</sup>

The Government also rejected the Senate Law Commission's suggestion that the "threat" justifying a perimeter of protection (provided for in CSI Article L.226-1) be "current and serious", further reducing the clarity of the ordinary law. The DDD criticized the absence of conditions for strict interpretation of grounds to introduce such a measure, the lack of a time limit on the duration of the protective perimeter, and the lack of framework to prevent discriminatory practices.<sup>125</sup>

The DDD also opined that the administrative control and constraint measures proposed by the Government were too general, contradicting the principle of proportionality, which would have been required under derogations in a State of Emergency.

Whereby previously it was necessary to objectively establish quantifiable material proof under the French legal code, the threshold under what is effectively a permanent state of emergency now sits at a subjective interpretation of what may be considered a "serious reason". This is exemplary of counter-terrorism strategy more broadly which has blurred many of the lines set out under the rule of law. Similar to Countering Violent Extremism (CVE) programmes that, far from being based on solid evidence of actual events, purport to predict what might happen in the future before it has actually taken place, the legislative amendments brought about by effecting a permanent state of emergency in France erode the most fundamental of human rights norms. This moves us in to uncharted waters with regard to upholding the rule of law through laws that in and of themselves may be considered unlawful under international legal standards.

## Recommendations and Conclusion

**The extended State of Emergency in France failed to curb acts of violence and instead increased stigmatization and political and social marginalization of certain groups, particularly Muslims or those perceived as Muslim. Legitimate protest has been curbed, arbitrary restrictions on individual freedoms put in place, and with the entry of such measures into ordinary law, even less oversight is possible. These measures must be ended immediately and reparations pursued for those who have been targeted under them.**

- A dedicated study should be conducted into the practical application of these laws in relation to a number of civil and political and economic, social and cultural rights with a view to immediately restoring human rights norms that have been eroded under the now permanent state of emergency. These include:
- A review of the relationship between the State of Emergency laws and amendments to ordinary laws, and attitudes to religious expression, and its impacts on certain groups.<sup>126</sup> Such a review should seek to establish what impact emergency laws have had on institutionalized and social racism in France and elsewhere, through case-law analysis and social research.

- A study of civil society actions against these emergency and common laws would provide a useful synthesis of successful and unsuccessful appeals, tracking the changing attitudes of domestic and international courts and providing insight into whether some rights are stable or are being eroded, particularly for certain groups<sup>127</sup>.
- Further review on rights to freedom of movement, freedom of assembly, and the right to private and family life, under the permanent State of Emergency in France.<sup>128</sup> This should take into account the specific groups affected by measures, including religious minorities, migrants and asylum seekers, trade unions, and activists.
- A French language analysis of the *Défenseur des Droits* opinions spanning 2015-2020.<sup>129</sup>
- A review of 21<sup>st</sup> Century States of Emergency in other states in Europe.

Finally, within the context of states of emergency ushered in to tackle the Covid-19 pandemic:

Conduct a review the State of Emergency declared in the wake of the Covid-19 pandemic. In March 2020, The French National Assembly voted to approve a text introducing a State of Health Emergency giving the Prime Minister “the power to declare, by decree and upon recommendation of the Health minister, general measures setting limits to the freedom of movement, the freedom of enterprise and the freedom to congregate and would allow him to proceed to the requisition of all necessary goods and services to fight against a health disaster”, as well as confinement and requisitions, provisions on the postponement of municipal elections, economic support measures, and measures impacting employment and justice law.<sup>130</sup> The following are of particular relevance to this review:

- The rights affected by emergency measures declared by states during the Covid-19 Pandemic include the rights to freedom of movement, liberty and security, freedom of assembly and association, education, freedom of thought, conscience and religion.<sup>131</sup>
- Referrals received by the DDD concerned situations arising during travel certificate inspections by law enforcement agencies, including allegations of violence, inappropriate comments, challenges to statements, and the lack of sanitary protection worn by law enforcement officers while conducting inspections.<sup>132</sup>
- The DDD noted complaints concerning economic vulnerability, particularly the situation faced by homeless people and people living in camps, who were particularly affected by the refusal of certain businesses to accept cash payments.<sup>133</sup> In terms of police control of lockdown, the DDD logged complaints of ethnic profiling, and of complaints of those with physical difficulties obtaining printed authorization documents to leave their homes.<sup>134</sup>

France has ushered in a permanent state of emergency through various legislative changes, which it justified by a perceived “threat from Muslim extremists”. The adoption of measures derogating from France’s obligations to fundamental human rights has been broadly accepted in the context of the so-called “war on terror”. However, during the State of

Emergency in France, and especially in the adoption of derogations into ordinary law, such measures have been applied far outside this purpose, and their impacts have demonstrated a disproportionate and discriminatory application.

The extensive impacts on rights to freedom of movement, freedom of expression, freedom of religion, as well as the relationships between emergency laws and increased religious and racial discrimination should be clearly established by further research, and the changes in the lives not only of France's minority populations but also for France as a whole should be assessed.

France's role in Europe's politics should also be further understood, in terms of other states' adoption of emergency measures and how easy it has been to justify them. This should be reviewed in light of emergency measures adopted to address the Covid-19 pandemic, and particularly in terms of how such powers have been deployed by authorities.

## Annex One

According to the International Covenant on Civil and Political Rights (ICCPR) Article 4, in a State of Emergency, a state 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.”*

A further safeguard is provided in ICCPR Article 5, which details that:

*“Nothing in the present Covenant may be interpreted as for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.”*

The European Convention on Human Rights and Fundamental Freedoms (ECHR) provides for States of Emergency in article 15:

*“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.”<sup>135</sup>*

ECHR article 15 does not include a specific provision regarding discrimination, but the same principles of non-discrimination are safeguarded by ECHR article 14.

## Annex Two

Figure 1. Timeline of events in France

Date	Event/Legislative change
3 April 1955	<p>The <b>Act of 3 April 1955</b> allows a State of Emergency of up to 12 days to be declared by decree by the Council of Ministers, signed by the President.</p> <p>Parliamentary authorisation needed to extend State of Emergency beyond 12 days.</p> <p>Activated during the Algerian War in 1955, 1958, and 1961.</p> <p>Activated during the secessionist movements in New Caledonia in 1984.</p> <p>Activated in 2005 following riots in Paris Suburbs.</p> <p>Activated in 2015, and extended until 01 November 2017, following attacks in Paris.</p>
4 October 1958	<p>The <b>Constitution of France</b>, or the Constitution of the Fifth Republic, is adopted.</p> <p><b>Article 16</b> allows the President to take measures required, following consultation with Prime Minister, National Assemblies and the Council of the Constitution, in situations where the institutions of the republic, the independence or integrity of the nation, or international commitments, are threatened in a manner serious and immediate, where the proper functioning of constitutional public authorities is interrupted.</p> <p>In such a scenario the nation must be informed by message, and the measures adopted must be in order to return to a normal situation as soon as possible. The National Assembly must not be dissolved during the exercise of emergency powers.</p> <p><b>Article 36</b> allows a "State of Siege" of up to 12 days to be decreed by the Council of Ministers. Parliamentary approval needed to extend State of Siege beyond 12 days.</p>
1981	State Security Court abolished having presided over national security cases since 1963
July 21 1982	<b>Law No. 82-621</b> amends article 702 of the <i>Code d'Instruction Criminelle</i> , the <b>Code of Criminal Procedure</b> , enshrining the principle that in peace-time, all crimes against the "fundamental interests of the nation" are now under the jurisdiction of the ordinary criminal justice system. <sup>136</sup>
11 September 2001	Attacks of 11 September 2001 in the US lead to a strengthening of internal prevention measures and international co-operation, including the Acts of 15 November 2001, 18 March 2003, 9 March 2004, 23 January 2006, and 21 December 2012, reinforcing basic legislation and procedural regulations (see Figure 2).
7 July 2005	Suicide bombings on public transport in London result in 56 deaths and 784 injuries.
October-November 2005	Riots in suburbs of Paris and other cities following the deaths of two young people from Malian and Tunisian communities as they entered a metro station while running from police. This led to the application of the Act of 3 April 1955 on 8 November 2005.
January 23, 2006	<b>Law No. 2006-64</b> increases maximum period of police custody to six days in terrorism cases, under certain conditions, as a response to the 7 July London bombings in 2005.
January 2015	<p>7 January 2015, two gunmen attacked the offices of satirical magazine <i>Charlie Hebdo</i>, killing twelve people.</p> <p>8 January 2015, another gunman attacked a police officer and injured a street cleaner.</p> <p>9 January 2015, the same man attacked the <i>Hyper Cacher</i>, a kosher supermarket, killing four Jewish people, and taking more hostage before being killed by police.</p> <p>Responsibility for the attacks was claimed by ISIS.</p>
24 June 2015	<p><b>Law on intelligence</b> gives French intelligence agencies new powers, criticised by the Human Rights Committee as "excessively broad, highly intrusive surveillance powers on the basis of broad and insufficiently defined objectives, without prior authorization of a judge, and without an adequate and independent oversight mechanism".<sup>137</sup></p> <p>This engages with Article 17 ICCPR and 8 ECHR, the respect to private and family life.</p>
13 November 2015	<p>130 people killed and hundreds wounded in coordinated attacks by shooting and suicide-bombing in restaurants and bars across Paris, the <i>Stade de France</i> stadium and the Bataclan music venue.<sup>138</sup></p> <p>Following the attacks in Paris, a State of Emergency was decreed on the basis of <b>Law 55-385 of 3 April 1955</b>, establishing a State of Emergency for 12 days.</p>

20 November 2015	<p><b>Act 2015-1501</b> extends the application of the 1955 Act to three months from 26 November 2015, and strengthens the application of some of its provisions, introducing Parliamentary oversight of measures implemented.</p> <p>The <i>Defenseur des droits</i> receives all complaints relating to the implementation of measures under this emergency legislation, via 400 territorial delegates.<sup>139</sup></p>
July-September 2016	<p>14 July 2016: a 19 tonne truck is deliberately driven into crowds celebrating Bastille Day on the <i>Promenade des Anglais</i> in Nice, killing 86 people and injuring 458.</p> <p>26 July 2016: a Catholic Church in <i>Saint-Etienne-du-Rouvray</i>, in Normandy, is attacked by men with knives and false explosive belts during mass, resulting in six people taken captive, one of whom was violently killed, and another critically wounded.</p> <p>04 September 2016: a car containing seven gas canisters is found near Paris's <i>Notre Dame</i> Cathedral.</p>
18 July 2017	<p><b>Law n°104</b> reinforcing internal security and the fight against terrorism adopted, incorporating into ordinary law "certain measures inspired by the state of emergency regime granting the administrative authorities extensive powers in the fight against terrorism"</p>
14 March 2020	<p>A State of Health Emergency declared by the Health Minister under Ministerial Decree based on <b>Article L3131-1</b> of the <b>Public Health Code (CSP)</b>.</p>
17 March 2020	<p><b>Governmental Decree 2020-260</b> begins national lockdown, and regulates travel to prevent the spread of the COVID-19 virus.</p> <p>Citizens cannot move outside the home unless for one of limited listed reasons:</p> <p>Journeys to places of work, or professional journeys, which cannot be postponed; Travel to purchase professional necessities and essential purchases in authorised establishments; Travel for health reasons; Travel for compelling family reasons, such as childcare or assisting vulnerable persons; Short local trips for individual exercise and to exercise pets.</p> <p>To apply one of the above exceptions, written documents must be carried outside the home to justify the trip.</p>
19 March 2020	<p><b>Governmental Decree 2020-279</b> adds new exceptions to Decree 2020-260.</p>
23 March 2020	<p><b>Emergency Response to the Covid-19 Epidemic Act (2020-290)</b> adopted by accelerated legislative procedure in articles 1-8. Codified in the Public Health Code (<b>CSP</b>) <b>Articles L. 3131-14 to L.3131-12</b>.</p> <p><b>Governmental Decree 2020-293</b> adopted, incorporating and adding to the restrictions of Decrees 260 and 279.</p> <p><b>According to Article L3131-13 para 3</b>, an extension of the State of Health Emergency past one month must be authorised by Parliament (whereas other States of Emergency must have Parliamentary approval for an extension past 12 days).</p> <p>Unlike the 1955 State of Emergency Act, there is no provision for the lapsing of the emergency state in the case of a change in Government or National Assembly, meaning that a newly elected National Assembly would have to adopt a new Act in order to end the State of Health Emergency.</p>

Figure 2. Major amendments to security, criminal, and intelligence laws in France

<b>Act No. 86-1020 of 9 September 1986 on action against terrorism</b>	
<b>Act No. 2003-239 of 18 March 2003 on internal security</b>	
<b>Act No. 2004-204 of 9 March 2004</b>	bringing justice into line with new patterns of crime
<b>Act No. 2006-64 of 23 January 2006 on action against terrorism</b>	Article 8 amends Act 2003-239 Article 26, containing provisions on security and frontier checks, and facilities for computerised checking of vehicle registration data in certain high-risk areas, and photographing of their occupants.

<p><b>Law of 14 March 2011</b> (referred to as LOPPSI 2)</p>	<p>Covers the capturing of computer data, aiming to allow investigators the technical means to capture data processed in a computer but not yet disseminated.</p> <p>In the field of terrorism, investigators can access computer data concerning suspects with the authorisation of an investigating judge.</p>
<p><b>Act No. 2012-1432 of 21 December 2012 on security and action against terrorism</b></p>	<p>Adds Article <b>113-13</b>, allowing prosecution of any French national or individual habitually resident in France for an alleged act of terrorism abroad (crimes and lesser indictable offences) without having to wait for an official report of the acts by the foreign State or to establish that the act constitutes an offence in both countries. Covers attendance at any “training camps” if no crime has been committed.</p>
<p><b>French Criminal Code</b></p>	<p>Updated regularly by new Acts amending and adding new articles.</p> <p><b>Article 421-1</b> lists a series of crimes and lesser indictable offences as acts of terrorism when connected with any individual or collective operation aimed at seriously disturbing public order by intimidation or terror.</p> <p><b>Act No. 2001-1062 (15 November 2001) adds Article 421-2-2</b> on everyday security, defines the financing of facilitating of financing through advice of terrorist enterprise as a terrorist act, “regardless of the actual commission of such an act”.</p> <p><b>Article 421-2-3</b> punishes failure to account for resources for a person in contact with persons engaging “habitually” in terrorist acts.</p> <p><b>Article 421-2-4</b> punishes incitement of a terrorist act by various means (pressure, threats, offer of gifts, etc.), even where such incitement is not acted upon</p> <p><b>Article 421-5, para. 2</b> punishes direct incitement to, or justification of terrorism, already punishable offences under Section 24 of Act of 29 July 1881 on freedom of the press.</p> <p><b>Articles 422-6</b> refers to the freezing of assets or the confiscation of assets in cases of terrorism (linked to Articles L.564-1 ff of the Monetary financial code)</p> <p>Under <b>Articles 421-3</b> and following of the Criminal Code, acts of terrorism are punishable with heavier sentences, up to life imprisonment for the most serious acts.</p>

<b>Code of Criminal Procedure</b>	<p><b>Article 706-88</b> allows police custody of up to 96 hours for all terrorism offences, including for minors over 16. Custody can be extended up to six days if there is serious danger of imminent acts of terror in France or abroad, or it is essential for requirements of international cooperation. A person suspected of terrorism is entitled to legal assistance immediately, though this can be deferred for up to 72 hours in exceptional cases or in order to prevent bodily harm.</p> <p><b>Article 76</b> allows seizures and searches without the agreement of the persons concerned, including at night, under special authorisation.</p> <p><b>Article 78-2-2</b> allows vehicle inspections</p> <p><b>Article 70-696</b> allows phone tapping authorised by the judge in connection with expedited or preliminary police investigations for a period of 15 days, once renewable, on application by the public prosecutor</p> <p><b>Articles 706-97 to 706-97-6</b> allow sound-recording and image fixing devices in any public or private place or vehicle by order of the investigating judge, following consultation with the public prosecutor and consent of the liberties and detention judge.</p> <p><b>Section 706-25-2</b> authorises the relevant departments to take part in electronic exchanges using a pseudonym, to remain in contact with persons suspected committing offences, and use such means to obtain evidence and information.</p> <p><b>Articles 145-1 and 2</b> allow longer periods of detention on remand to facilitate judicial investigation</p> <p><b>Articles 706-103</b> allow the freezing of assets</p>
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Figure 3. Amendments to emergency laws, criminal and security laws in France since 2015

13 November 2015: State of Emergency decreed on the basis of <b>55-385</b> of 3 April 1955	Parliamentary approval must be sought to extend the State of Emergency beyond 25 November
21 November 2015: <b>Act 2015-1501</b> is published in the Official Journal <sup>140</sup>	<p>State of Emergency extended for three months from 26 November, various measures updated and strengthened:</p> <p>Authorities can now impose assigned residence orders on anyone if they have “good reason to believe” their behaviour represents a threat to public order and security. This person can be prohibited from coming into any contact with individuals suspected of any act posing a threat to public order. Electronic tags can be used to track individuals who have served sentences for past of terrorism. Penalties for breaching provisions on searches and house arrests are significantly increased.</p> <p>Administrative searches cannot be carried out of premises used to exercise parliamentary mandates or the professional activity of lawyers, magistrates or journalists. The State Prosecutor must be informed of any decisions to conduct a search, which will then take place in the presence of a criminal investigation police officer. A copy can be made of any data stored on any computer system or electronic equipment found in the search.</p> <p>Groups or associations found to be involved in, facilitating or instigating acts posing a threat to public order can be disbanded.</p> <p>The Minister of the Interior can take ‘any measure’ necessary to block websites that condone or incite acts of terrorism.</p>
2 February 2016	Bill aimed at strengthening fight against terrorism adopted by Senate
May 2016	Third extension of the State of Emergency, to cover the dates of the Euro 2016 football tournament and the end of the Tour de France. This was foreseen as the final extension.

3 June 2016 Law 2016-386 reinforcing the fight against organised crime, terrorism and its financing	Significantly modified the French Criminal Code, the Code of Criminal Procedure, and the Internal Security Code (See Figure 3)
21 July 2016	Fourth bill extending 2015 state of emergency following attacks on Bastille Day celebrations.
28 February 2017 Law 2017-258 on Public Security	Responding to protests by law enforcement officials, the bill clarifies situations in which law enforcement can use weapons, but makes insufficient distinction between firearms (lethal weapons) and less lethal weapons. According to UN Basic Principles on the use of force and firearms, <sup>141</sup> the use of the former is permissible only in instances where their use is strictly unavoidable to protect life.
30 October 2017 Law 2017-1510 reinforcing internal security and the fight against terrorism	<p>Primarily modifying the Internal Security Code. Key measures include:</p> <ul style="list-style-type: none"> <li>- Establishment of protection perimeters to ensure security at events or vulnerable places (particularly sporting or cultural events). Bag inspections, security frisking and vehicle checks all allowed within this perimeter, under supervision of police officers and gendarmes. Refusing checks will result in removal from the security perimeter.</li> <li>- Closure of places of worship in cases where words, writings, activities, ideas or theories found to endorse or incite terrorism, hatred or discrimination.</li> <li>- Administrative controls and individual monitoring measures against any person where there is serious reason to believe their behaviour poses a “particularly serious” threat, or who has regular contact with individuals or organisations with terrorist intent, or who supports views that incite terrorism. Can be accompanied by electronic surveillance or obligation to report daily to police or gendarmerie.</li> <li>- Entry and search, with judicial authorisation, of any place where there is serious reason to believe a person representing or in contact with people representing a terrorist threat frequents.</li> <li>- Ability to carry out administrative investigation of civil servants who “pose a risk” of radicalisation, with the possibility to result in transfer, suspension or removal.</li> <li>- Identity checks in border areas and within 10km of international stations and airports, 20km around more sensitive ports and airports. Maximum duration of a check extended to 12 hours.</li> <li>- Adapt domestic law to EU Passenger Name Record (PNR) Directive</li> <li>- Creation of new criminal offence, with a 15 year sentence and €225,000 fine for parents who incite their children to commit acts of terrorism or travel abroad for the same purpose, which can also result in loss of guardianship.</li> </ul>
01 November 2017,	State of Emergency ends. 30 October 2017 Act to reinforce internal security is already in force as of 31 October 2017

## Notes

1. See: <https://www.theatlantic.com/entertainment/archive/2018/11/paris-attacks-three-years-later/575629/> Accessed on 9 October 2020
2. See: [http://www.islamophobie.net/wp-content/uploads/2020/02/CCIF-Annual-Report-2016\\_0.pdf](http://www.islamophobie.net/wp-content/uploads/2020/02/CCIF-Annual-Report-2016_0.pdf) Accessed on 9 October 2020
3. Amnesty International statement on France's permanent state of emergency Available at: <https://www.amnesty.org/en/latest/news/2017/09/a-permanent-state-of-emergency-in-france/> Accessed on 18 September 2020
4. Sir Nigel Rodley, 'International Human Rights Law', in Evans, M. D, *International Law*, Oxford University Press, Oxford, 783-820
5. Paris Minimum Standards of Human Rights Norms in a State of Emergency, *The American Journal of International Law*, Vol. 79, No. 4 (Oct., 1985), pp. 1072-1081
6. The term "public emergency" refers to an "exceptional situation of crisis or public danger, actual or imminent, which affects the whole population of the area to which the declaration applies and constitutes a threat to the organised life of the community of which the state is composed" see: Paris Minimum Standards of Human Rights Norms in a State of Emergency (1985).
7. International Covenant on Civil and Political Rights (ICCPR), adopted by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, Article 4 <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>
8. CCPR General Comment No. 29: Article 4: Derogations during a State of Emergency, 2001, CCPR/C/21/Rev.1/Add.11, 3
9. See annex one for relevant articles in ICCPR and ECHR
10. CCPR/C/21/Rev.1/Add.11, paragraph 1, 2
11. ICCPR Article 9
12. ICCPR Article 12
13. ICCPR Article 14
14. ICCPR Article 17
15. ICCPR Article 19
16. 16 ICCPR Article 21
17. 17 CCPR/C/21/Rev.1/Add.11, 6
18. 18 ICCPR Article 4 (3)
19. ECHR Article 15 (3)
20. CCPR/C/21/Rev.1/Add.11, 17 It should be noted that reports by states should be sufficiently detailed and precise regarding legislation adopted and practices used to implement emergency powers, including full information about what measures will be taken, justification of these measures, and full legal documentation – see *Lawless v Ireland*
21. CCPR/C/21/Rev.1/Add.11, 4
22. CCPR/C/21/Rev.1/Add.11, 5
23. *Brannigan & McBride v the UK* ECtHR 14553/89 (1993) – Court concluded that national governments are in a better position to determine whether a state of emergency exists, providing a wide, but not unlimited, margin of appreciation. *A v UK* ECtHR 100/1997/884/1096 (1998) - a wide margin of appreciation granted, but derogations (indefinite detention without trial) determined to be disproportionate and discriminatory (as they only applied to non-nationals).
24. The Paris Minimum Standards of Human Rights Norms in a State of Emergency, 3

25. The Paris Minimum Standards of Human Rights Norms in a State of Emergency, 6
26. Report of the United Nations High Commissioner for Human Rights and Follow-up to the World Conference on Human Rights Effective Functioning of Human Rights Mechanisms (E/CN.4/2004.4, annex 1)
27. E/CN.4/2004.4, annex 1
28. Christian Mouhanna, 'State of emergency, state of affairs: police abuse and democratic wear and tear', <https://journals.openedition.org/sociologie/3389>, accessed 04 September 2020
29. 'Counterterrorism and Fundamental rights in France', <https://ipcan.org/wp-content/uploads/2017/09/170727-EN-Plaqueette-Actions-EU-Press.pdf>, accessed 04 September 2020
30. Committee of Experts on Terrorism (CODEXTER) profiles on counter-terrorist capacity: France, September 2013, [https://www.legislationline.org/download/id/5405/file/Codexter\\_Profiles%202013%20France\\_EN.pdf#:~:text=as%20amended%20by%20Article%208,the%20Code%20of%20Criminal%20Procedure.&text=29%20Article%20230%20of%20the%20Code%20of%20Criminal%20Procedure](https://www.legislationline.org/download/id/5405/file/Codexter_Profiles%202013%20France_EN.pdf#:~:text=as%20amended%20by%20Article%208,the%20Code%20of%20Criminal%20Procedure.&text=29%20Article%20230%20of%20the%20Code%20of%20Criminal%20Procedure), accessed 02 September 2020
31. CODEXTER profiles on counter-terrorist capacity: France, September 2013
32. CCPR/C/FRA/CO/5; Act No. 2011-392 of 14 April 2011
33. CCPR/C/FRA/CO/5, 9 and 14
34. Act No. 2014-1353 of 13 November 2014
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