



International Utopia MUN'20

United Nations Human Rights Council

Safeguarding the Rule of Law in Emergency Provisions taken to control the spread of COVID-19

ABOUT THE COMMITTEE

The Human Rights Council is an inter-governmental body within the United Nations responsible for the promotion and protection of human rights around the globe, addressing situations of human rights violations and making recommendations on them. It has the ability to discuss all thematic human rights issues and situations that require its attention throughout the year. The council convenes at the UN Office at Geneva.

The Council is made up of 47 United Nations Member States which are elected by the UN General Assembly. The Human Rights Council replaced the former United Nations Commission on Human Rights.

The Council was created by the United Nations General Assembly on 15 March 2006 by resolution 60/251. Its first session took place from 19 June to 30 June 2006. A year later, the Council adopted its "Institution-Building Package" to guide its work and outline its procedures and mechanisms.

Among them were the Universal Periodic Review mechanism which serves to assess the human rights situations in all United Nations Member States, the Advisory Committee which serves as the Council's "think-tank" by providing it with expertise and advice on thematic human rights issues and the Complaint Procedure which allows individuals and organizations to bring human rights violations to the attention of the Council.

The Human Rights Council also works with the UN Special Procedures established by the former Commission on Human Rights and now assumed by the Council. These are made up of special rapporteurs, representatives, independent experts and working groups that monitor, examine, advise and publicly report on human rights situations in specific countries.

When creating the Human Rights Council in March 2006 the United Nations General Assembly decided that the Council's work and functioning should be reviewed five years after it had come into existence at the level of the General Assembly.

The Human Rights Council holds no fewer than three regular sessions a year, for a total of at least ten weeks. They take place in March (four weeks), June (three weeks) and September (three weeks).

If one third of the Member States request so, the Human Rights Council can decide at any time to hold a special session to address human rights violations and emergencies.

The work of UN Human Rights Council encompasses three broad areas: human rights standard setting, monitoring and supporting the implementation of human rights obligations by the member states. Substantive and technical support is provided to the various UN human rights bodies as they undertake their standard-setting and monitoring duties.

Knowledge and awareness of all human rights, whether civil, cultural, economic, political or social, are deepened and the capacity of rights-holders and duty-bearers are strengthened through applied thematic research and analyses, methodologies, development and training. International human rights experts are also deployed to field offices and other missions, including in situations of crisis, to assist countries that are working to fulfil their human rights obligations.

The work of UN Human Rights Council is based on the Office's Management Plan (OMP), which guides implementation of the Human Rights Programme of the Secretary-General's Strategic Framework. By aligning the whole Office to a common set of results connected with the various components of its mandate, the OMP enhances the Office's effectiveness in implementing the Strategic Framework, increasing synergies across functions and ensuring the best possible use of available resources.

WHAT IS THE RULE OF LAW

To understand the agenda of this committee and discuss it effectively, one must have a strong grasp on the concept of rule of law and its applications to the society.

Since the term 'rule of law' was first coined by English jurist A.V. Dicey, there have been several definitions and interpretations attached to it. At the very core of the concept lies the idea that all governance should be through law and not discretion. There are several elements which contribute to effective rule of law in a system of governance and ensure the safeguard of democratic government. Broadly speaking, we can consider 6 such elements as given by Lord Tom Bingham:

1. **The Accessibility of Law:** This stipulates that the law must be accessible and so far as possible intelligible, clear and predictable. There are 2 reasons for this. First, if a person is liable to be prosecuted, fined and/or imprisoned for doing or failing to do something, that person is entitled to find out what it is that s/he must or must not do without undue difficulty. A very important facet of law is to discourage illegal behaviour. This objective fails if we cannot know what it is that is illegal. The second reason is that if citizens are to claim their rights which the law guarantees, it is important for the law to be accessible so that the citizens can know what their rights are. If citizens are unable to claim their rights, the situation is analogous to the law not granting any rights in the first place.
2. **Law Not Discretion:** This stipulates that questions of legal right and liability should ordinarily be resolved by application of intelligible, clear and predictable law and not the exercise of discretion. In situations where discretion may be used, the power of discretion must be attributed to the person or office by the law and the circumstances of its exercise must also be prescribed by the law.
3. **Equality Before the Law:** This is the most important element of the rule of law and is the pillar of democratic order. It stipulates that laws must apply to all equally and as far as possible, objectively.
4. **The Exercise of Power:** The relation between the exercise of power and the rule of law is of tantamount importance with respect to the agenda of this committee. In a

situation where the rule of law exists effectively, ministers and public officers at all levels must exercise the powers conferred upon them in good faith, fairly, for the purpose for which the powers were conferred, and without exceeding the limits of such power. Most violations of the rule of law during the Coronavirus pandemic have been due to the exercise of emergency powers beyond the limits prescribed in law, and in bad faith for purposes contrary for the purposes for which such powers have been conferred.

5. Human Rights: This element is the most foundational and basic to the rule of law. A government functioning on the rule of law must afford adequate protection of fundamental human rights.
6. A Fair Trial: Effective exercise of the rule of law must ensure that all adjudicative procedures provided by the state must be fair and in keeping with the aforementioned elements of the rule of law.

While researching for this committee, it is important that these six elements of the rule of law are understood well and are applied logically to new provisions implemented during the coronavirus pandemic. Delegates may, therefore, use these elements as a test to analyse whether the rule of law has been upheld and how it can be safeguarded in light of the emergency situation.

While researching or creating strategies to safeguard the rule of law, it will be helpful for delegates to tackle each of the elements individually, analysing how they can be violated and how can such violation be discouraged.

VIOLATIONS OF THE RULE OF LAW IN EMERGENCY PROVISIONS

The nature of emergency powers is inherently such that it expands the discretionary powers of the executives in the government. This expanded discretion allows the executive to enforce measures which may sometimes be *ultra vires* or outside the scope which the law allows.

There are several examples of provisions that have been implemented in recent times, which although are implemented in the name of curtailing the spread of the coronavirus, serve ulterior motives of the government. This means that in such acts the executive has exercised powers of public office in bad faith and with malicious intent. The 'good faith' test is of utmost importance in determining when an emergency provision has violated the rule of law. Safeguarding against such violations, therefore, requires solutions on how to determine, diagnose and restrict provisions implemented in bad faith.

Often, emergency has also been a justification for curtailing foundational human rights, thus making certain provisions be in violation of the rule of law. However, in an emergency which requires curtailing public movement and gatherings, curtailing fundamental rights such as the right of public assembly may be justified. It is, therefore, necessary to investigate and understand which rights may be subject to curtailment given the current scenario. Safeguarding against violations of the rule of law would therefore involve understanding how certain fundamental rights function in the society and to what degree and with what intent certain rights can be limited during the coronavirus pandemic.

It is also important to note that with the current crisis, courts and other adjudicative procedures have been severely hindered. With case loads increasing and years of case backlogs persisting, courts have struggled to manage its workload. It has caused on several occasions not only inefficient trials, but also miscarriages of justice due to rushed hearings. Courts have also struggled in adapting to a coronavirus-safe format of hearings and this has created its own problems. The rule of law cannot exist without the courts of law. Law is always disputed and without an effective court system to adjudicate upon these disputes, the machinations of the legal system is bound to rust and eventually break down. To secure and safeguard the rule of law during the coronavirus pandemic, therefore, it is of utmost

importance that the committee assesses the situation of court systems around the world and suggest frameworks to make court systems more adapted to the pandemic and more effective in its role of ensuring human rights and equality before the law.

QUESTIONS TO CONSIDER

1. What is my country's outlook towards what constitutes the rule of law?
2. Which elements of the rule of law are to be given most priority and hold most relevance to the agenda at hand?
3. How has the meaning and application of the rule of law changed in light of the urgent need to provide increased discretionary power to governments all around the world?
4. In what ways can safeguards against bad faith be created and is there any way to formulate a method to determine intent consistently with respect to emergency pandemic provisions?
5. How has the balance between granting rights and securing the safety of the people changed and to what extent such a shift in balance be acceptable?
6. How can alternate dispute resolution methods be enhanced and incentivized so as to decrease the case load of courts and to deliver an efficient and just resolution?