Keeping Emergency Powers Temporary, Targeted, and Reviewable under Article 22 ICCPR

Executive Summary

This submission proposes clear guidance for the Human Rights Committee on how emergency measures that affect freedom of association should operate. The core proposition is simple: such measures must be temporary, narrowly targeted, and subject to timely and effective review. This flows from the structure of the International Covenant on Civil and Political Rights, the text of Article 22, the derogation regime in Article 4, and settled principles of legality, necessity, and proportionality. The Committee should set concrete guardrails: strict sunset clauses, geographic and activity-specific tailoring, reasoned decisions published at once, swift judicial and parliamentary oversight, and a prohibition on generalised network shutdowns that disable association. Where States seek to restrict trade unions, student bodies, or professional associations, the measures must preserve the core of the right. Any derogation must be exceptional, time-bound, non-discriminatory, and notified, with burdens of proof resting on the State throughout. Recommendations are framed below as model interpretive text for inclusion in General Comment No 38 and as practical benchmarks for States and courts.

I. Legal Framework

Article 22 protects the right to freedom of association, including the right to form and join trade unions for the protection of interests.[1] Restrictions are permitted only if prescribed by law and necessary in a democratic society for specified aims.[2] Article 4 permits derogation only in a publicly proclaimed emergency which threatens the life of the nation, and only to the extent strictly required by the exigencies of the situation, with all other conditions met.[3] General Comment No 29 on States of Emergency and General Comment No 37 on Peaceful Assembly supply relevant principles: lawfulness, legitimate aim, strict necessity, proportionality, and non-discrimination, as well as the need for transparency and review.[4] Soft-law instruments, including the Siracusa Principles and the Joint Guidelines on Freedom of Association of the European Commission for Democracy through Law and the Office for Democratic Institutions and Human Rights, reinforce these standards.[5] Article 22(3) also anchors the nexus with International Labour Organization Convention No 87.[6]

II. The Principle of Temporariness

A. Sunset clauses: Any emergency measure that affects association should contain a clear end date. Short default periods guard against inertia. For local orders, the default should be no more than fourteen days. For national measures, the default should be no more than thirty days. Renewal must never be automatic. It should require new evidence, updated reasons, and, for national measures, an affirmative legislative act.[7]

B. Evidence for renewal: The burden rests on the State to show that the specific risk persists and that no less intrusive measure will suffice. General claims of "tension" or "unrest" are not enough. The authorities should set out the concrete facts, the indicators used, and why a lighter tool would not meet the need.[8]

C. Derogations: Where a State invokes Article 4, temporariness is even more exacting. The measure must be strictly required and limited in time. Regular, fixed-interval review should be mandatory, and the State must notify the Secretary-General of the United Nations of the derogation and its precise scope.[9]

III. The Principle of Targeting

A. Scope by place, people, and conduct: Measures must be narrowly drawn to the places where risk is shown, the categories of conduct that cause the risk, and the actors who pose it. Blanket, nationwide limits that affect unrelated associations are not compatible with Article 22.[10]

B. Least-restrictive means: Authorities must prefer conditions over bans. Examples include time, place, and manner adjustments; numerical caps for specific venues; safety marshals; notification requirements with short lead times; and routing measures for marches that allow the event to proceed. A ban is the last resort.[11]

C. Digital association: The right to associate includes the use of digital tools to form, join, and run associations. Total network shutdowns or platform-wide blocks are, in general, disproportionate. If any digital restriction is considered, it must be precise (such as to a specific feature tied to the concrete risk), time-limited, and justified by evidence.[12]

IV. The Principle of Reviewability

A. Reasons and publication: Orders should be in writing, reasoned, and published at once. Reasons should cite the legal basis, the evidence relied upon, the harm sought to be averted, and why no lesser measure would suffice.[13]

B. Judicial review: A fast track to court is essential. A person or association affected should be able to seek review within forty-eight to seventy-two hours. Interim relief should be available where irreparable harm is likely. The burden remains with the State to prove legality, necessity, and proportionality.[14]

C. Legislative oversight: For national measures, parliament should be required to debate and, where appropriate, approve renewals. Ex post scrutiny should assess necessity, effectiveness, rights impacts, and lessons learned.[15]

D. Data safeguards: If data are gathered under emergency powers, they should be minimised, access-controlled, independently overseen, and deleted when no longer strictly necessary.[16]

V. Special Settings

A. Trade unions and collective action: The essence of the right to form and join trade unions must be preserved. Any emergency limits on strikes or union activity should be time-bound, tied

to concrete risks, and accompanied by alternatives that preserve meaningful worker representation.[17]

B. Public servants, police, and armed forces: Lawful restrictions may be imposed on members of the police and armed forces, but they must still be evidence-based, narrowly tailored, and reviewable. Blanket bans are inconsistent with Article 22(2).[18]

C. Students, minority and migrant groups, and small associations: Neutral rules may have indirect discriminatory effects. If a measure disproportionately burdens such groups, the State must provide special justification and, where possible, accommodations that mitigate harm.[19]

VI. Derogation versus Ordinary Restriction

States must not treat emergency rhetoric as a substitute for Article 4 compliance. Where the situation does not meet the threshold of a public emergency which threatens the life of the nation, only the ordinary Article 22(2) test applies. That test requires legality, pursuit of a listed aim, necessity, and strict proportionality with credible evidence. Where Article 4 is engaged, the additional safeguards on proclamation, notification, strict necessity, time-limits, and non-discrimination apply.[20]

VII. Remedies and Accountability

A. Prompt and effective remedies: Courts should be able to order suspension or modification of measures, and to grant costs or compensation where unlawful harm has been caused.[21]

B. Transparency: Authorities should publish datasets on the use of emergency powers that affect association, including the number of orders made, durations, geographic coverage, arrests, injuries, complaints, and outcomes of reviews.[22]

C. Independent audit: After the emergency ends, an independent body should audit the use of powers and report to parliament and the public, with recommendations for reform.[23]

VIII. Model Interpretive Guidance for Inclusion in General Comment No 38

1. **Temporariness:** Any emergency measure that limits freedom of association shall include a sunset clause. Local orders shall not exceed fourteen days. National measures shall not exceed thirty days. Renewals require demonstration, by current and specific evidence, that the risk persists and that no less intrusive measure would suffice. Renewals of national measures require legislative approval.[24]
2. **Targeting:** Measures shall be geographically, temporally, and materially specific. They shall identify the locations, actors, and activities restricted. The least-restrictive means shall be used, with reasons given why milder measures would not meet the need.[25]
3. **Digital environment:** Freedom of association protects the use of digital tools for forming, joining, and running associations. Generalised network shutdowns and platform-wide

blocks are, in general, incompatible with Article 22. Any digital restriction must be precise, time-limited, evidence-based, and subject to immediate review.[26]

4. **Reviewability:** Affected persons and associations shall have access to expedited judicial review within seventy-two hours, with interim relief where appropriate. Orders shall be reasoned in writing and published at once.[27]
5. **Derogation:** Invocation of Article 4 requires a public proclamation, international notification, and regular review at fixed intervals. Measures must be strictly required by the exigencies of the situation, time-bound, and non-discriminatory.[28]
6. **Protected cores:** The core of trade union freedom, and the ability of associations to maintain internal governance and membership, shall be preserved. Any restrictions on members of the police or armed forces must be narrow, evidence-based, and reviewable.[29]
7. **Data and transparency:** Data gathered under emergency powers shall be minimised, overseen by an independent body, and deleted when no longer strictly necessary. Authorities shall publish periodic statistics on the use, review, and impact of measures.[30]

IX. Worked Example

Following serious violence in three streets of a city district, authorities restrict outdoor gatherings above two hundred persons in those streets only, for ten days. They set a short notification period for other events to enable police facilitation. They require trained marshals and fixed routes for marches in those streets. The order is reasoned and published with the incident data, the assessed risk, and the rejection of a full-district ban as disproportionate. Affected associations may seek judicial review within forty-eight hours, with interim relief available. The order lapses at ten days unless renewed by new evidence and, if extended city-wide, by legislative approval. No internet services are shut down; a specific "live-streaming geofencing" condition is rejected as unnecessary.

X. Conclusion

Emergency powers can protect life and public order. They should not disable the democratic fabric that freedom of association sustains. The proposed guardrails—temporariness, targeting, and reviewability—translate the Covenant's standards into operational rules. They protect both efficacy and legitimacy. The Committee can entrench them by adopting the model guidance set out above.

Footnotes

1. International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 22(1).
2. ICCPR, art 22(2).
3. ICCPR, art 4.
4. Human Rights Committee, 'General Comment No 29: States of Emergency (Article 4)' (2001); Human Rights Committee, 'General Comment No 37: Right of Peaceful Assembly (Article 21)' (2020).

5. United Nations Commission on Human Rights, 'Siracusa Principles on the Limitation and Derogation Provisions in the ICCPR' UN Doc E/CN.4/1985/4 (1985); European Commission for Democracy through Law (Venice Commission) and OSCE Office for Democratic Institutions and Human Rights, 'Joint Guidelines on Freedom of Association' (2014).
6. Convention concerning Freedom of Association and Protection of the Right to Organise, International Labour Organization Convention No 87 (1948); ICCPR, art 22(3).
7. HRC GC No 29 (n 4) para 2; see also the Siracusa Principles (n 5) paras 51–57 on duration and review.
8. HRC GC No 37 (n 4) paras 36–39 on evidence and necessity in closely related context; Siracusa Principles (n 5) paras 10–12.
9. ICCPR, art 4(1)–(3); HRC GC No 29 (n 4) paras 3–7.
10. HRC GC No 37 (n 4) paras 22–24 (by analogy to assembly); Venice Commission/ODIHR Guidelines (n 5) paras 104–113.
11. HRC GC No 37 (n 4) paras 40–44 on least-restrictive means; Siracusa Principles (n 5) para 11.
12. HRC GC No 37 (n 4) para 34 (generalised network shutdowns are not compatible with the Covenant); see also UN Human Rights Council Res 32/13 (2016) on the internet and rights.
13. HRC GC No 29 (n 4) para 16; Venice Commission/ODIHR Guidelines (n 5) paras 132–140.
14. European Court of Human Rights, *Brogan v United Kingdom* (1988) 145-B ECHR (prompt judicial control, by analogy to urgency and review); HRC GC No 29 (n 4) para 16.
15. HRC GC No 29 (n 4) paras 7–8; Siracusa Principles (n 5) paras 58–60.
16. HRC GC No 16: Right to Privacy (Article 17) (1988) paras 3–10; HRC GC No 37 (n 4) para 62 (surveillance safeguards, by analogy).
17. European Court of Human Rights, *Demir and Baykara v Turkey* (2008) 48 EHRR 54; ILO Committee on Freedom of Association, 'Digest of Decisions and Principles' (latest ed) paras 521–560.
18. ICCPR, art 22(2) second sentence; ILO CFA Digest (n 17) paras 720–736.
19. ICCPR, art 2(1); HRC GC No 18: Non-Discrimination (1989); HRC GC No 28: Equality of Rights between Men and Women (2000).
20. ICCPR, arts 4 and 22; HRC GC No 29 (n 4) paras 2–5; HRC GC No 37 (n 4) paras 36–39.
21. ICCPR, art 2(3) (effective remedy); see also ECtHR, *A and Others v United Kingdom* (2009) 49 EHRR 29 (remedies and review in emergency context).
22. HRC GC No 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant (2004) para 15.
23. HRC GC No 29 (n 4) paras 7–8; Siracusa Principles (n 5) paras 58–60.
24. Proposed on the basis of ICCPR art 4 and GC No 29 (n 4) paras 2–8.
25. Proposed reflecting GC No 37 (n 4) paras 40–44 and the Siracusa Principles (n 5) para 11.
26. Proposed reflecting GC No 37 (n 4) para 34 and HRC practice on digital rights.
27. Proposed reflecting GC No 29 (n 4) para 16 and the right to an effective remedy under art 2(3).
28. ICCPR, art 4(1)–(3); GC No 29 (n 4) paras 3–7.
29. ICCPR, art 22(2) second sentence; ILO CFA Digest (n 17).
30. Proposed reflecting GC No 31 (n 22) para 15 and general transparency duties in emergency contexts.