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## **The Legality of State of Emergency Status Imposed by France following Terrorist Attack**

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### **Abstract**

*A series of terrorist attacks occurred in Paris, France, on 13<sup>th</sup> November 2015. In response to those terrorist attacks, French President declared a state of emergency no less than 24 hours after the attacks. Under state of emergency, French government is allowed to take any measures derogating human rights, for instance, conducting a search without a warrant and restricting an individual's freedom. Later on 14<sup>th</sup> July 2016, another attack occurred in Nice. French government then extended the state of emergency, and the extension itself was undertaken up to five times, meaning that the state of emergency was imposed up to six terms. As for the extension of the state of emergency, the authority of French government to exercise the derogation of human rights was also extended. State of emergency is permissible under international law provided that it is carried out consistent with the principles of human rights. This article aims to analyze the standards and limitations that bind States to implement state of emergency, particularly derogation measures. In this regard, France has failed to comply with the principles prescribed by international law taking into account that several derogation measures taken by France were inconsistent with the limitations set out under state of emergency.*

*Keywords: Derogation of human rights, state of emergency, terrorism*

### **Legalitas Status Keadaan Darurat yang Diberlakukan Perancis pasca Serangan Teroris**

#### **Abstrak**

Pada tanggal 13 November 2015, telah terjadi rangkaian serangan teroris di kota Paris, Prancis. Akibat dari serangan teroris tersebut, maka Presiden Prancis mendeklarasikan bahwa Prancis dalam keadaan darurat. Dalam keadaan darurat tersebut pemerintah Prancis dapat melakukan tindakan-tindakan yang mengesampingkan HAM seperti melakukan penggeledahan tanpa surat perintah dan pembatasan terhadap kebebasan individu. Belum selesai masa keadaan darurat atas serangan teroris di kota Paris, munculah serangan teroris lainnya di kota Nice, Prancis pada tanggal 14 Juli 2016. Sebagai reaksi atas kejadian teror tersebut, Presiden Prancis kembali memperpanjang masa keadaan darurat. Oleh sebab itu, perpanjangan keadaan darurat dilakukan sebanyak lima kali yang berarti keadaan darurat diberlakukan dalam enam tahap. Dengan perpanjangan keadaan darurat maka pemerintah juga memperluas kewenangannya untuk melakukan tindakan yang mengesampingkan HAM warga Prancis. Keadaan darurat dapat diberlakukan berdasarkan hukum internasional dengan memperhatikan prinsip-prinsip HAM. Artikel ini bertujuan untuk menganalisis standar dan batasan-batasan yang mengikat negara untuk memberlakukan keadaan darurat, terutama dalam mengambil langkah-langkah pengesampingan HAM. Dalam hal ini, Prancis telah gagal untuk mematuhi prinsip-prinsip hukum internasional mengingat beberapa langkah pengesampingan HAM tersebut tidak sejalan dengan batasan-batasan yang diatur dalam keadaan darurat.

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## A. INTRODUCTION

As a response to terrorist attacks, France declared a state of emergency on 14<sup>th</sup> November 2015. France exercised this exceptional measure based on its national legislations, namely Law No. 55-385 dated 3 April 1995 (*Loi no 55-385 du 3 avril 1955 Instituant un état D'urgence et en Déclarant L'application en Algérie*), French Constitution of 1958 (*Constitution Française du 4 Octobre 1958*), and Law dated 3 April 1978 concerning State of Siege (*Loi du 3 Avril 1878 Relative à l'état de Siege*). The attacks included suicide bombs and shootings in public facilities such as cinema and café/restaurants.<sup>1</sup> It was reported that there were more than 120 casualties, and 200 people were badly injured.<sup>2</sup> Soon after, The Islamic State of Iraq and Syria (ISIS) claimed that they are the perpetrator of these attacks.<sup>3</sup> At that time after the attacks, the President of France, Francois Hollande, declared a state of emergency in the territory of France. State of emergency subsequently was extended by French government until 26 July 2016.<sup>4</sup> On 14<sup>th</sup> July 2016, coinciding with the Bastille celebration Day in Nice, another attack occurred. A 19-tonne cargo truck was deliberately driven into crowds of people celebrating Bastille Day.<sup>5</sup> The attack resulted in the deaths of 84 people. The French government then extended the state of emergency for 6 months. France

pretexted that the extension of state of emergency aimed to find the perpetrators and avoid future attacks.<sup>6</sup>

Based on state of emergency, the French government is authorized to undertake any measure which derogates people's rights. Law No. 55-385 asserts that French authorities may restrict people's movement, prohibit gatherings and demonstrations, and conduct a search on people without a warrant. Furthermore, the government may also declare a house arrest, close public places, and oversee the media, such as limiting the broadcasts or publications. French authorities may conduct searches without a warrant, prohibit demonstration, close several mosques and places alleged to be used as radicals meetings, shut down websites, and place people under house arrest without court proceedings.<sup>7</sup> However, in conducting searches, French authorities often committed acts of discrimination, particularly against Muslims.<sup>8</sup> After the attack in Nice, the government extended France's state of emergency for a significant period and expanded the existing powers of search, seizure, and detention. In response to French authorities, many French citizens protested that their rights had been violated.

States are obliged to take any measures to combat terrorism. Nonetheless, States must adhere to the principles of human

<sup>1</sup> Human Rights Watch, "France: Multiple Attacks Kill over 100", 2015, <https://www.hrw.org/news/2015/11/14/france-multiple-attacks-kill-over-100>, accessed on 29 September 2016.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

<sup>4</sup> Human Rights First, "French State of Emergency Should not be Extended Again", 2016, <http://www.humanrightsfirst.org/blog/french-state-emergency-should-not-be-extended-again>, accessed on 5 October 2016.

<sup>5</sup> Human Rights Watch, "France: Despicable Attack in Nice", 2016, <https://www.hrw.org/news/2016/07/15/france-despicable-attack-nice>, accessed on 3 October 2016.

<sup>6</sup> French Government, <https://www.gouvernement.fr/en/reinforcing-the-state-of-emergency-act>, accessed on 5 October 2016.

<sup>7</sup> Human Rights Watch, "France: Prolonged Emergency State Threatens Rights", 2016, <https://www.hrw.org/news/2016/07/22/france-prolonged-emergency-state-threatens-rights>, accessed on 19 July 2016.

<sup>8</sup> Human Rights Watch, "Dispatches: Will France's State of Emergency Ever End?", 2016, <https://www.hrw.org/news/2016/04/20/dispatches-will-frances-state-emergency-ever-end>, accessed on 4 October 2016; see also Amnesty International, "France: Disproportionate Emergency Measures Leave Hundreds Traumatized", 2016, <https://www.amnesty.org/en/latest/news/2016/02/france-disproportionate-emergency-measures-leave-hundreds-traumatized/>, accessed on 5 October 2016.

rights and not infringe human rights.<sup>9</sup> General Assembly Resolutions 60/288 states that in combating terrorism, States must be subject to as well as respect international human rights law.<sup>10</sup> State of emergency has been acknowledged as one of the special measures to combat terrorism. An international legal instrument, namely the International Covenant on Civil and Political Rights (ICCPR), stresses that States are allowed to impose state of emergency.

State of emergency may be an internal discretion of a State. However, in order to implement a state of emergency, States shall comply with international law. Imposing a state of emergency requires limitations to ensure that States will abide by the principles of human rights.<sup>11</sup> In this case, France was confronted with its commitment to protecting human rights, taking into account that France is the State Party and has ratified several human rights conventions, including ICCPR. This article begins with the elaboration of the state of emergency under international law. It further identifies the principles and limitations required for States to implement such emergency powers. This article will be closed with the view on the existence of violations of international law committed by France in implementing its state of emergency.

## **B. STANDARDS OF STATE OF EMERGENCY AS REQUIRED UNDER INTERNATIONAL LAW**

In the international framework, state of emergency is regulated under ICCPR, particularly in Article 4 paragraph (1), stating:

*“In time of public emergency which threatens the life of the*

*nation and the existence of which is officially proclaimed, the States Parties to the present Covenant 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.”*

State of emergency is also regulated under several regional human rights conventions, such as the European Convention on Human Rights (ECHR). State of emergency in ECHR is regulated under Article 15 paragraph (1), stating:

*“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.”*

International conventions such as ICCPR do not explicitly address the standards of State of Emergency. The text of Article 4 of ICCPR may be interpreted only to the requirements to impose state of emergency, which are the existence of public emergency that threatens the life of the nation and official proclamation. Nevertheless, the author believes that the

<sup>9</sup> Olivier De Schutter, *International Human Rights Law: Cases, Materials, Commentary 2<sup>nd</sup> Edition*, Cambridge: Cambridge University Press, 2014, p. 620.

<sup>10</sup> General Assembly of the United Nations Resolution No. 60/288, *The United Nations Global Counter-Terrorism Strategy*, A/RES/60/288, 20 September 2006.

<sup>11</sup> Helen Duffy, *The War on Terror and the Framework of International Law*, New York: Cambridge University Press, 2005, P.290.

state of emergency has standards and limitations that require States to comply.

### 1. The Existence of Public Emergency that Threatens the Life of the Nation

The ICCPR specifically addressed the condition to declare a state of emergency, namely public emergency threatens the life of the nation. However, ICCPR does not provide a clear definition of state of emergency, particularly the threshold of public emergency that threatens the life of the nation. The Human Rights Committee in its General Comment No. 29 states that not every disturbance or catastrophe qualifies as a public emergency which threatens the life of the nation, as required by Article 4 paragraph (1).<sup>12</sup>

The interpretation of public emergency that threatens the life of the nation as stated in article 4 paragraph (1) of ICCPR, in general, can be found in the Siracusa Principles on Limitation of Provisions in the International Covenant on Civil and Political Rights (Siracusa Principles). A public emergency that threatens the life of the nation must (a) affect the whole of the population and either part of the territory of the States and (b) threatens the physical integrity of the population, the political independence or the territorial integrity of the state or the existence or basic functioning of institutions indispensable to ensure and protect the rights recognized in the ICCPR.<sup>13</sup>

Further interpretation of public emergency that threatens the life of the nation can be seen in the case law of

European Court of Human Rights (ECtHR) and European Commission, specifically referring to Article 15 paragraph (1) of ECHR. The ECtHR gives its interpretation of public emergency in *Lawless Case*, which refers to an exceptional situation of crisis or emergency that affects the whole population and constitutes a threat to the organized life of the community of which the State is composed.<sup>14</sup> The European Commission in *Greek Case* also elaborates that public emergency that threatens the life of the nation shall meet four characteristics, namely (a) the emergency must be actual or imminent; (b) its effect must involve the nation as a whole rather than a segment of it; (c) the emergency must threaten the organized life of the community; and (d) it must be exceptional so that measures and restrictions permitted by the ECHR are inadequate.<sup>15</sup>

Another interpretation comes from the Paris Minimum Standard. It constructed a precise definition that state of emergency is an exceptional situation of crisis or public danger, actual or imminent, which affects the whole population or the whole population of the area to which the declaration applies and constitutes a threat to the organized life of the community of which the state is composed.<sup>16</sup>

Based on the interpretation of Siracusa Principles, ECtHR, European Commission, and Paris Minimum Standard, it is safe to conclude that there are three criteria as to what constitutes a public emergency situation. First, public emergency is a situation that is

<sup>12</sup> United Nations Human Rights Committee, *General Comment No. 29, States of Emergency (Article 4)*, CCPR/C/21/Rev.1/Add.11, 31 August 2001, adopted at the 1950<sup>th</sup> meeting, 24 July 2001, para. 3.

<sup>13</sup> Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, U.N. Doc. E/CN.4/1984/4, para. 39.

<sup>14</sup> *Lawless v. Republic of Ireland* (No.3), ECtHR, 1961, § 28, p. 273; see also A.H Robertson and J.G Merrills, *Human Rights in Europe: A Study of the European Convention*

*on Human Rights 3<sup>rd</sup> edition*, Manchester: Manchester University Press, 1993, p. 184.

<sup>15</sup> *The Greek Case*, European Commission on Human Rights, Yearbook of the ECHR, Vol. 12, No.1; see also Claire Macken, *Counter-Terrorism and the Detention of Suspected Terrorists: Preventive Detention and International Human Rights Law*, New York: Routledge, 2011, pp. 82-83.

<sup>16</sup> Paris Minimum Standard of Human Rights Norms in a State of Emergency, 1984, section A, para. 1 (b).

actual and imminent; second, a public emergency must threaten the life of the people or community; and third, public emergency must affect the whole population of the State concerned or the area of which state of emergency is imposed.

## 2. Official Proclamation and Notification as Procedural Obligation

After States manage to establish the existence of public emergency as mentioned above, the next step is to officially declare that such a situation exists, which is specifically regulated under Article 4 paragraph (1) of ICCPR. A proclamation of a public emergency shall be made in good faith based upon an objective assessment of the situation in order to determine to what extent, if any, it poses a threat to the life of the nation.<sup>17</sup> A proclamation of a public emergency, and consequent derogations from Covenant obligations, that are not made in good faith are violations of international law.<sup>18</sup> States are empowered to derogate from human rights only when the existence of an emergency is officially proclaimed.<sup>19</sup> In other words, even though an emergency situation may be readily apparent, the derogation of rights under ICCPR constitutes a violation of international law so long as the emergency has not been officially announced by the authorized State organ.<sup>20</sup>

In *Silva and Others v. Uruguay*, the Human Rights Committee (HRC) stressed that States must provide comprehensive information in announcing state of emergency.<sup>21</sup> The official proclamation has a few criteria namely, people must

know the exact material, territory and scope, as well as the implementation of state of emergency and its effect on human rights.<sup>22</sup> Furthermore, the obligation of official proclamation constitutes procedural obligation regulated under the Optional Protocol, which serves to provide relevant facts to demonstrate the situation regulated under Article 4 paragraph (1) of ICCPR.<sup>23</sup> Followed by official proclamation is notification. Article 4 paragraph (3) states:

*“Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.”*

Based on the said Article, States that declare state of emergency must notify the other States Party of ICCPR to the Secretary General of the United Nations. The HRC stated that such notification is essential not only for the discharge of the committee’s functions, in particular in assessing whether the measures taken by the State party were strictly required by the exigencies of the situation, but also to permit other States parties to monitor compliance with the provisions of the Covenant.<sup>24</sup>

<sup>17</sup> Siracusa Principles, *Op.cit.*, para. 62.

<sup>18</sup> *Ibid.*

<sup>19</sup> Manfred Nowak, *UN Covenant on Civil and Political Rights: CCPR Commentary 2<sup>nd</sup> Revised Edition*, Vienna: N.P. Engel Publisher, 2005, p. 92.

<sup>20</sup> *Ibid.*

<sup>21</sup> Communication No. R. 8/34, *J. Landinelli Silva and Others v. Uruguay* (Views adopted on 8 April 1981), UN doc. GAOR, A/36/40, p. 132.

<sup>22</sup> Manfred Nowak, *Op.cit.*, p. 92.

<sup>23</sup> Communication No. R. 8/34, *J. Landinelli Silva and Others v. Uruguay*, *Loc.cit.*

<sup>24</sup> United Nations Human Rights Committee, *General Comment No. 29*, *Op.cit.*, para. 17.

The Secretary General of the United Nations has been provided with notifications of state of emergency, for instance, Guatemala on 20<sup>th</sup> November 1998,<sup>25</sup> Thailand on 28<sup>th</sup> January 2014,<sup>26</sup> Ukraine on 16<sup>th</sup> July 2015,<sup>27</sup> and Turkey on 21 July 2016.<sup>28</sup> That being the case, the HRC has been confronted with various notifications of state of emergency due to the existence of civil war, public disturbances, economic destabilization, natural disasters, terrorist acts, and so on.<sup>29</sup>

Similar to ICCPR, at the European regional level, Article 15 paragraph (3) of ECHR also requires the State Party to notify the Secretary General of the Council of Europe regarding measures it has taken, reasons for such measures, and the duration for such measures. Article 15 paragraph (3) of ECHR states:

*“Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.”*

In light of the above, notification of state of emergency is essential as it serves as supervision towards States in implementing measures taken to derogate from human rights. Besides,

notifications may serve as considerations for the HRC or other international supervisory bodies in assessing whether or not such measures have complied with international law.

### 3. The Existence of National Legislation Regulating State of Emergency

States generally have legislation or constitution that regulates state of emergency. The existence of such legislation becomes the legal basis for derogating human rights and obligations under ICCPR. As previously noted in the notifications made by Guatemala, Thailand, Ukraine, and Turkey, measures under state of emergency were carried out based on their respective national laws. The HRC also stated that States shall act within the constitution and other provisions of law that govern such proclamation and implementation of state of emergency.<sup>30</sup>

Furthermore, the International Commission of Jurists recommends state constitutions should clearly set out the conditions under which states of emergency may be declared and exercised so that authorities that resort to emergency clauses will know in advance the extent and limit of their emergency powers, and authorities not disposed to respect the limits of such powers may be judged according to the extent to which they live up to these specific rules.<sup>31</sup> Furthermore, the International Commission of Jurists stated that constitutions specify that emergency measures may not affect

<sup>25</sup> Notification from Guatemala to the Secretary General of the UN, 20 November 1998, <https://treaties.un.org/doc/Publication/CN/1998/CN.866.1998-Eng.pdf>.

<sup>26</sup> Notification from Thailand to the Secretary General of the UN, 28 January 2014, <https://treaties.un.org/doc/Publication/CN/2014/CN.49.2014-Eng.pdf>.

<sup>27</sup> Notification from Ukraine to the Secretary General of the UN, 16 July 2015, <https://treaties.un.org/doc/Publication/CN/2015/CN.416.2015-Eng.pdf>.

<sup>28</sup> Notification from Turkey to the Secretary General of the UN, 21 July 2016, <https://treaties.un.org/doc/Publication/CN/2016/CN.580.2016-Eng.pdf>.

<sup>29</sup> Ana D. Bostan, “The Right to a Fair Trial: Balancing Safety and Civil Liberties”, *12 Cardozo J. Int’l & Comp. L. 1*, 2004, p. 12.

<sup>30</sup> Report of the Human Rights Committee, UN doc. GAOR, A/56/40 (vol.I), para. 2, p. 202.

<sup>31</sup> Linda Camp Keith and Steven C. Poe, “Are Constitutional State of Emergency Clause Effective? An Empirical Exploration”, *Human Rights Quarterly Vol. 26* (2004) 1071–1097, 2004, pp. 1073-1074.

those rights recognized as non-derogable in international law, and that they should spell out the effects of states of emergency on the rights of citizens and the powers of the various branches of government.<sup>32</sup>

The author believes that national law or legislation is crucial since it provides a guarantee that States do not arbitrarily implement a state of emergency, and it is within the scope of legal framework.

#### 4. Duration of State of Emergency

International law recognizes the principle of proportionality, which limits the implementation of state of emergency.<sup>33</sup> In the ICCPR context, the proportionality principle discusses that the degree of interference and the scope of the measure (both territoriality and temporally) must stand in a reasonable relation to what is actually necessary to address the exigencies situation threatening the life of the nation.<sup>34</sup> The HRC further states that derogation under state of emergency relates to the duration, geographical coverage and material scope of the state of emergency, and any measures of derogation resorted to because of the emergency.<sup>35</sup>

Basically, state of emergency is a temporary exceptional measure. The duration of state of emergency is important to measure that States would not derogate from human rights arbitrarily. The ICCPR does not explicitly regulate as to how long a state of emergency may be implemented. Subsequently, this gives room for States to extend the initial duration of state of emergency, meaning that States might

take derogation measures for an indefinite period.

Paris Minimum Standard asserts that extension of the initial period of emergency shall be supported by a new declaration made before the expiration of each term for another period to be established by the constitution, and every extension shall be subject to the prior approval of the legislature.<sup>36</sup> The HRC further elaborates that States should notify the Secretary General of the United Nations to conduct any relevant measures, including the extension of state of emergency.<sup>37</sup>

In the ECHR contexts, ECtHR views that in exercising its supervision, the ECtHR must give appropriate weight to such relevant factors as the nature of the rights affected by the derogation, the circumstances leading to, and the duration of, the emergency situation.<sup>38</sup> In other words, ECtHR may determine whether or not such extension is proportional. Therefore, it is safe to conclude that the extension of state of emergency shall be given a review by related bodies, such as human rights bodies and/or judicial bodies of the States in order to oversee the measures taken by States.

#### 5. Non-Derogable Rights

Article 4 paragraph (2) of ICCPR regulates rights under the ICCPR that cannot be derogated (non-derogable rights), namely right to life (Article 6); freedom from torture (Article 7); freedom from slavery (Article 8); freedom from detention for inability to fulfil a contractual obligation (Article 11); prohibition of retroactive criminal laws (Article 15); right to recognition of legal

<sup>32</sup> *Ibid.*

<sup>33</sup> United Nations Human Rights Committee, *General Comment No. 29, Op.cit.*, para.4.

<sup>34</sup> Manfred Nowak, *Op.cit.*, p. 98.

<sup>35</sup> United Nations Human Rights Committee, *General Comment No. 29, Loc.cit.*

<sup>36</sup> Paris Minimum Standard of Human Rights Norms in a State of Emergency, *Op.cit.*, Section A, para. 3.

<sup>37</sup> Report of the Human Rights Committee, UN doc. GAOR, A/56/40 (vol.I), para. 17.

<sup>38</sup> *Brannigan and McBride v. the United Kingdom*, European Court of Human Rights, judgment of 26 May 1993, Series A, No. 258-B, pp. 49-50, para. 43; *Aksoy v. Turkey*, European Court of Human Rights, Application no. 21987/93, 18 December 1996, p. 2280, para. 68

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personality (Article 16); and freedom of thought, conscience, religion, and belief (Article 18). Similar to ICCPR, ECHR in Article 15 (2) also regulates non-derogable rights in time of state of emergency, namely right to life (Article 2); freedom from torture (Article 3); freedom from slavery (Article 4 paragraph (1)); and prohibition of punishment without law (Article 7).

Under state of emergency, there are a few rights that shall not be derogated, although they are not stipulated under Article 4 paragraph (2) of ICCPR. The right to liberty and security regulated under Article 9 of ICCPR may be derogated under state of emergency measures. However, Article 9 paragraph (4) of ICCPR constitutes non-derogable right. Article 9 paragraph (4) of ICCPR states:

*“Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.”*

The principle embodied in the said Article is called Habeas Corpus. Habeas Corpus is a right of a detainee to be subject to review by the court.<sup>39</sup> Habeas

corpus shall be upheld and cannot be derogated even in times of public emergency. Such principle has been endorsed in several cases.<sup>40</sup> The same opinion can be seen in the Inter American Court of Human Rights, stating that habeas corpus right cannot be derogated, taking into account that habeas corpus is an essential judicial guarantee to protect non-derogable rights and humane treatment.<sup>41</sup>

In addition to habeas corpus, the right to a fair trial as regulated under Article 14 paragraph (1) of ICCPR also constitutes non-derogable right. The HRC in General Comment No. 29 states that the right to a fair trial shall be respected during state of emergency.<sup>42</sup> Furthermore, in General Comment No. 32, HRC stresses that guarantees stipulated under the right to a fair trial are not subject to derogation measures.<sup>43</sup> The right to a fair trial in all suits at law and criminal matters is the core of “due process of law”.<sup>44</sup> Therefore, non-derogable rights under state of emergency includes *habeas corpus* and right to a fair trial.

**C. DEROGATIONS UNDER STATE OF EMERGENCY IMPOSED BY FRANCE**

<sup>39</sup> United Nations Human Rights Council, *Report of the Working Group on Arbitrary Detention in its 58th Session*, 2014, U.N.Doc.A/HRC/27/47; see also United Nations Commission on Human Rights, *Habeas Corpus*, U.N. Doc. E/CN.4/RES/1992/35 (1992); see also Andrea Bianchi (ed.), *Enforcing International Law Norms Against Terrorism*, Oxford: Hart Publishing, 2004, p.59.

<sup>40</sup> *Mr. Ali Saleh Kahlah Al-Marri v. United States of America*, Opinion of the Working Group on Arbitrary Detention No. 43/2006, U.N.DOC. A/HRC/7/4/Add.1 (2007), para. 36; *Mr. Mohammed Abdul Rahman Al-Shimrani v. United States of America*, Opinion of the Working Group on Arbitrary Detention No. 2/2009, U.N.Doc. A/HRC/13/30/Add.1 (2010), para. 33; *Mr. Sanad Ali Yislam Al-Kazimi v. United States of America*, Opinion of the Working Group on Arbitrary Detention No. 3/2009, U.N.DOC. A/HRC/13/30/Add.1 (2010), para. 36.

<sup>41</sup> I-A Court HR, Advisory Opinion OC-8-87, January 30, 1987, *Habeas Corpus in Emergency Situations (arts. 27(2), 25(1) and 7(6) American Convention on Human Rights)*, Series A, No. 8, paras. 20-21 and paras. 35-36; see also Brian R. Farrell, *Habeas Corpus in International Law*, New York: Cambridge University Press, 2017, pp. 181-182; Roza Pati, *Due Process and International Terrorism: An International Legal Analysis*, Leiden: Martinus Nijhoff Publishers, 2009, p. 273.

<sup>42</sup> United Nations Human Rights Committee, *General Comment No. 29, Op.cit.*, para. 16

<sup>43</sup> United Nations Human Rights Committee, *General Comment No. 32: The Right to Equality Before Courts and Tribunals and to a Fair Trial (Art. 14 of the Covenant)*, 27 July 2007, U.N. Doc. C/PR/C/GC/32(2007), paras. 6 and 59.

<sup>44</sup> Manfred Nowak, *Op.cit.*, p. 314; see also Louise Doswald-Beck, *Human Rights in Times of Conflict and Terrorism*, Oxford: Oxford University Press, 2011, p. 98.

## VIOLATED INTERNATIONAL HUMAN RIGHTS LAW

As France has derogated its obligations under ICCPR or might as well ECHR in which France is a State Party, it is noted that some measures taken by France have violated international law and human rights law principle. Measures and violations made by France will be elaborated below.

### 1. The Requirement of State of Emergency Has Been Fulfilled

Before discussing the derogations made by France relating to its obligation under international law, it is important to note whether or not France has fulfilled the conditions mentioned in Article 4 paragraph (1) of ICCPR. First, with regard to the existence of public emergencies threatens the life of the nation.

#### a. Terrorist Attacks Constitute Public Emergency that Threatens the Life of the Nation

##### 1) Actual or Imminent Threat

State of emergency was firstly declared following several terrorist attacks that occurred in Paris on 13<sup>th</sup> November 2015 and later on 14<sup>th</sup> July 2016 in Nice. As previously elaborated, it is safe to conclude that a threat that may be categorized under public emergency must have a significant disturbance, not a low-level civil disturbance. Terrorist attacks can be categorized as significant disturbance as it is also a threat to national security. In *Lawless*, the ECtHR found that the actual threat to Ireland existed due to terrorism and thus, the measures taken by Ireland to derogate from human rights were justified.<sup>45</sup> Furthermore, Manfred Nowak in ICCPR Commentary also states that

terrorism is one of the grounds to declare state of emergency, and it shall be justified.<sup>46</sup> Therefore, the first criterion to establish public emergency that threatens the life of the nation has been met.

#### 2) Threat to the Organized Life of the Community

The terrorist attacks in France had caused many deaths, in particular more than 120 people in the attacks in Paris and more than 80 people in Nice, not to mention many were injured as well. The degree of threat of terrorism is very significant since it may threat national security. The terrorist attack also threatened the public in France, considering that the main target of terrorist attacks is civilians. In the case of *A and Others v. the United Kingdom*, several people suspected of being a terrorist network are considered a threat to national security; hence, the ECtHR ruled that there existed a state of emergency.<sup>47</sup> Therefore, the second criterion for the existence of this emergency has also been fulfilled by France.

#### 3) Affect the Entire Population

The terror attacks that took place in Paris and Nice caused fear to everyone in French territory. The ECtHR in *Lawless Case* also states that an emergency can be seen by a threat that causes real fear to the public.<sup>48</sup> As it has been elaborated in the previous point, the threat of terrorism targeted French society on a large scale. Such circumstance means that the threat had an impact on the entire population of people in French territory. The death tolls and the number of people who were injured were also significant. Thus,

<sup>45</sup> *Lawless v. Republic of Ireland* (No.3), *Op.cit.* para. 36.

<sup>46</sup> Manfred Nowak, *Op.cit.*, pp. 89-91; see also M. Ranstrop and P. Wilkinson, (eds.), *Terrorism and Human Rights*, New York: Routledge, 2008, pp. 121-125.

<sup>47</sup> *A and others v the United Kingdom* [2009] European Court of Human Rights, Application no. 3455/05.

<sup>48</sup> *Lawless v. Republic of Ireland* (No.3), *Op.cit.* para. 36.

the third criterion for imposing a state of emergency was fulfilled by France.

Based on the above elaborations, the existence of a public emergency that threatens the life of the nation may be based on the ground of terrorist attacks. The jurisprudence of ECtHR also ruled that terrorism constituted a justification for States to impose state of emergency.<sup>49</sup> In practice, the HRC also has been provided with notifications from States due to the threats of terrorism. Therefore, the author believes that terrorist attacks that occurred in France shall be deemed as a justification for France to derogate from human rights under state of emergency.

**b. France Has Fulfilled the Procedural Obligation**

Procedural obligation as elaborated above includes official proclamation and notification. In this case, the France President declared a state of emergency following the terrorist attacks on 13<sup>th</sup> November 2015. Also, France has notified the Secretary General of the United Nations and Council of Europe regarding measures taken during the state of emergency. As for the extension of the state of emergency, France also has provided notifications. Furthermore, in every notification, France has stipulated measures in derogation and duration of state of emergency.<sup>50</sup>

**2. Derogations from Human Rights Carried Out by France**

**a. Right to Liberty and Security**

One of the French authorities' measures concerning the deprivation of liberty is to place people whose actions have been proven dangerous for public safety and order on house arrest.<sup>51</sup> The house arrest period was limited to 12 months, beyond which the Minister of Interior must seek permission from the judge to extend the house arrest by three months if any behavior is found to threaten state security and public order.<sup>52</sup>

An arrest is a form of deprivation of the right to liberty and security guaranteed in Article 9 of ICCPR. Deprivation of liberty is justified so long as it is in line with the principle of legality and the prohibition of arbitrariness.<sup>53</sup> The principle of legality stresses that deprivation of liberty is permissible provided that it is prescribed by law.<sup>54</sup> On the other hand, arbitrariness contains the elements of injustice, unpredictability, unreasonableness, capriciousness and disproportionality, as well as the principle of due process of law.<sup>55</sup> Nonetheless, deprivation of liberty may be derogated under state of emergency, considering that the right to liberty is derogable right under ICCPR.

The same principle is also adopted in ECtHR cases, namely *Sher and Others v. United Kingdom*<sup>56</sup> and *Brannigan and McBride v. United*

<sup>49</sup> *Lawless v. Republic of Ireland* (No.3), *Loc.cit.*; *A and others v the United Kingdom*, *Loc.cit.*; *Ireland v. the United Kingdom*, European Court of Human Rights, judgment of 18 January 1978, Series A, No. 25.; *Aksoy v. Turkey*, *Loc.cit.*; *Brannigan and McBride v. the United Kingdom*, *Loc.cit.*

<sup>50</sup> Notification from France to the Secretary General of the UN, 23 November 2015 (for extension of state of emergency), <https://treaties.un.org/doc/Publication/CN/2015/CN.703.2015-Eng.pdf>.

<sup>51</sup> French Government, <https://www.gouvernement.fr/en/state-of-emergency-in-metropolitan-france-what-are-the-consequences>, accessed on 2 March 2017.

<sup>52</sup> French Government, <https://www.gouvernement.fr/en/reinforcing-the-state-of-emergency-act>, accessed on 2 March 2017.

<sup>53</sup> Manfred Nowak, *Op.cit.*, pp. 223-228.

<sup>54</sup> *Ibid.*

<sup>55</sup> *Ibid.*

<sup>56</sup> *Sher and Others v. United Kingdom*, ECtHR, (application no. 5201/11).

*Kingdom*<sup>57</sup>. The ECtHR further emphasized that deprivation of liberty is justified during a state of emergency, mainly when it has been found that the people concerned are likely to cause threats. Thus, house arrest carried out by the French authorities is justified.

#### b. Freedom of Expression

The French government strictly blocked websites that were deemed condoning terrorism or inciting acts of terrorism and prohibited public demonstration activities.<sup>58</sup> The actions taken by the French government were exceptional measures to derogate from freedom of expression or opinion. Freedom of expression is regulated in the ICCPR and ECHR and constitutes derogable rights under state of emergency.

However, the restrictions of this right are regulated explicitly under Article 19 paragraph (13) of ICCPR, particularly for the interests and protection of state security and public order. Article 10 paragraph (2) of ECHR also sets out restrictions to this right, including national security, territorial integrity, or public safety. The measures of banning websites that contain radical contents that may trigger hate speech as well as the prohibition of demonstrations that would disturb public order constitute an implementation of restrictions on this right, namely on the basis of national security and public order.

Therefore, derogation from freedom of expression is justified.

#### c. Right to Privacy or Respect of Private Life

The derogation measures of the right to privacy, in this case, can be seen from searches of people, luggage, and vehicles without a warrant and court decision, as well as confiscating personal data, and allowing intelligence services to analyze electronic data belonging to people identified as threats or associated with a threat.<sup>59</sup>

However, as regulated in Article 4 paragraph (2) of ICCPR and Article 15 paragraph (2) of ECHR, the right to privacy is not included in non-derogable rights. Furthermore, in contrast to Article 17 paragraph (1) of ICCPR concerning the right to privacy, Article 8 paragraph (2) of ECHR regulates the limitations of the right to privacy, namely: in the interests of national security, public safety, or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

The application of such restrictions can be seen in the case of *Segerstedt-Wiberg and Others v. Sweden*. ECtHR stated that interference with the right to privacy is permissible as long as there is a legitimate purpose, such as terrorism.<sup>60</sup> Therefore, the French

<sup>57</sup> *Brannigan and McBride v. the United Kingdom*, *Loc.cit.*

<sup>58</sup> French Government, <https://www.gouvernement.fr/en/state-of-emergency-in-metropolitan-france-what-are-the-consequences>, accessed on 2 March 2017.

<sup>59</sup> French Government, <https://www.gouvernement.fr/en/state-of-emergency-in-metropolitan-france-what-are-the-consequences>, accessed on 2 March 2017; see also Amnesty International, "Counter Terror Report: Dangerously Disproportionate The Ever-Expanding

National Security State in Europe", Eur 01/5342/2017, <https://www.amnesty.org/en/documents/eur01/5342/2017/en/>, p. 14.

<sup>60</sup> *Segerstedt-Wiberg and Others v. Sweden* [2006] European Court of Human Rights, Application no. 62332/00, para.79; see also *Amann v. Switzerland* [2000] European Court of Human Rights, Application no. 27798/95, para.61; *Malone v. The United Kingdom* [1984] European Court of Human Rights, Application no. 8691/79, para. 67.

authorities' intervention on the right to privacy can be justified in a state of emergency, taking into account terrorism as the ground.

**d. Freedom of Movement**

Freedom of movement is regulated under Article 12 of ICCPR and Article 2 of Protocol No 4 of ECHR. This right is not listed as a non-derogable right in Article 4 paragraph (2) of ICCPR and Article 15 paragraph (2) of ECHR. Moreover, Article 12 paragraph (3) of ICCPR specifically regulates restrictions to this right, such as to protect national security and public order. Similar to ICCPR, Article 2 paragraphs (3) and (4) of Protocol No. 4 of ECHR provides limitations, such as the interest of national security or public safety and maintenance of public order.

Actions taken by France in restricting freedom of movement included (1) restricting liberty to come and go by imposing special defense and security zones and prohibiting movement in certain places (curfew); (2) prohibiting any person suspected of creating a disturbance of public order from residing in certain parts of French territory; (3) placing anyone under residence order or house arrest; and (4) the ban from French territory of foreigners convicted for a terrorism-related offense under French law.<sup>61</sup>

In the case of *Celepli v. Sweden*<sup>62</sup> and *Salah Karker v. France*<sup>63</sup>, the HRC accepts measures taken to limit the right to freedom of movement

against suspected terrorists who were a threat to national security. Similarly, in this case, the restrictions imposed by France were aimed at people suspected of disturbing public order and even terrorists, as well as protecting the security of France from acts of terrorism. Therefore, derogation from the freedom of movement taken by France is justified.

**e. Freedom of Assembly and Association**

Freedom of assembly is regulated under Article 21 of ICCPR, whereas freedom of association is regulated under Article 22 of ICCPR. Both provisions do not constitute non-derogable rights as set out in Article 4 paragraph (2) of ICCPR. Furthermore, Article 21 and Article 22 paragraph (2) of the ICCPR regulate limitations on the right to assembly and association, such as the interests of national security or public safety and public order. In ECHR, Article 11 paragraph (2) also provides the same restrictions to this right, namely the interests of national security or public safety.

Actions taken by France under state of emergency relating to this right are prohibiting certain public meetings and provisionally closing certain meeting places, and banning public demonstrations without any prior notification on the basis that such demonstrations could not ensure public orders and security.<sup>64</sup> As freedom of assembly and

<sup>61</sup> French Government, <https://www.gouvernement.fr/en/state-of-emergency-in-metropolitan-france-what-are-the-consequences>; Amnesty International, "Counter Terror Report: Dangerously Disproportionate The Ever-Expanding National Security State in Europe", *Loc.cit.*  
<sup>62</sup> *Celepli v. Sweden*, Communication No. 456/1991, U.N. Doc. CCPR/C/51/D/456/1991 (1994).

<sup>63</sup> *Salah Karker v. France*, Communication No. 833/1998, U.N. Doc. CCPR/C/70/D/833/1998 (2000).  
<sup>64</sup> French Government, <https://www.gouvernement.fr/en/state-of-emergency-in-metropolitan-france-what-are-the-consequences>; see also Amnesty International, "Counter Terror Report: Dangerously Disproportionate

association is strictly restricted by national security and public order, therefore derogation measures relating to this right under state of emergency implemented by France can be justified.

### 3. There Was No Derogation from Freedom of Religion

According to a report from Human Rights Watch, the French government closed several mosques believed to be the places for spreading hate speech and radicalism as well as supported the terrorism movement<sup>65</sup>. The closure of mosques in several areas of France raised the question of whether such measure was a form of derogation of freedom of religion as regulated in Article 18 of the ICCPR and Article 9 of the ECHR. The freedom of religion entails freedom to hold or not to hold religious beliefs and to practice or not to practice a religion.<sup>66</sup> In addition, individual and collective manifestation of a religion or belief includes worship, observance, practice, and teaching.<sup>67</sup> Freedom of religion is a non-derogable right as regulated in Article 4 paragraph (2) of ICCPR.

In contrast, this right constitutes a derogable right in Article 15 of the ECHR. In this regard, France is a State Party to the ICCPR. Thus, freedom of religion as a non-derogable right remains in effect.

Both provisions also regulate the limits and interference of the States with certain conditions, namely prescribed by law, necessary to protect public safety, public order, health or morals, and fundamental rights and freedom of others. However, "national security" is not included among the aims listed in such limitations.<sup>68</sup> Such formulation exists because States shall not use the need to protect national security as the sole basis for restricting the exercise of the right of a person or a group of persons to manifest their religion.<sup>69</sup>

The ECtHR in several cases stressed that States are entitled to verify whether a movement or association carries on, ostensibly in pursuit of religious aims, activities which are harmful to the population or to public order.<sup>70</sup> Furthermore, in *Boodoo v. Trinidad and Tobago*, the HRC found a violation of the applicant's right to manifest Muslim religion because he was not allowed to participate in worship.<sup>71</sup> On the other hand, in this case, there was no prohibition against worshiping or practicing one's religion. In the author's opinion, the closure of the mosques intended to avoid hate speech or radicalism associations is a form of limiting the freedom of assembly and association. Moreover, closing mosques does not necessarily limit one's religious practice or worship as a manifestation of

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The Ever-Expanding National Security State in Europe", *Loc.cit.*

<sup>65</sup> Human Rights Watch, "France: Prolonged Emergency State Threatens Rights", *Loc.cit.*; Amnesty International, "France: Disproportionate Emergency Measures Leave Hundreds Traumatized - new report", 2016, <https://www.amnesty.org.uk/press-releases/france-disproportionate-emergency-measures-leave-hundreds-traumatized-new-report>, accessed on 25 April 2017.

<sup>66</sup> European Court of Human Rights, *Guide to Article 9 Freedom of Thought, Conscience, and Religion*, [http://www.echr.coe.int/Documents/Guide\\_Art\\_9\\_EN](http://www.echr.coe.int/Documents/Guide_Art_9_EN)

[G.pdf](#), p.6.; see also *Kokkinakis v. Greece*, ECtHR, 1993, Application No. 14307/88; *Buscarini and Others v. San Marino*, ECtHR, 1999, Application No. 24645/94.

<sup>67</sup> Manfred Nowak, *Op.cit.*, p. 419.

<sup>68</sup> European Court of Human Rights, *Guide to Article 9 Freedom of Thought, Conscience, and Religion*, *Op.cit.*, pp. 13-14.

<sup>69</sup> *Ibid.*

<sup>70</sup> *Manoussakis and Others v. Greece*, ECtHR, 1996, Application No. 18748/9, para. 40; *Metropolitan Church of Bessarabia and Others v. Moldova*, ECtHR, 2001, Application No. 45701/99, para. 105.

<sup>71</sup> Communication No. 721/1996, U.N. Doc. CCRP/C/74/D/721/1996 (2002).

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freedom of religion. Violation of this right would arise if every Muslim in France was prohibited from praying, either at a worship place/public or at home/private.

**4. France Committed Violations of Human Rights**

**a. The Extension of State of Emergency Infringed the Principle of Proportionality**

France declared its first state of emergency on 14<sup>th</sup> November 2015 due to Paris Attacks under Law no. 55-385 and Decree No. 2015-1475 in which the state of emergency was valid for 12 days. It is then noted that France extended its state of emergency five times, meaning that state of emergency was imposed in six terms. The details of such extensions are as follows:

- The first extension on 20<sup>th</sup> November 2015 was for a period of 3 months, with effect from 26<sup>th</sup> November 2015 (by Law No. 2015-1501)<sup>72</sup>
- The second extension on 19<sup>th</sup> February 2016 was for a period of 3 months, with effect from 26<sup>th</sup> February 2016 (by Law No. 2016-162)<sup>73</sup>
- The third extension on 20<sup>th</sup> May 2016 was for a period of 2 months, with

effect from 26<sup>th</sup> May 2016 (by Law No. 2016-629)<sup>74</sup>

- The fourth extension on 21<sup>st</sup> July 2016 (Nice Attack) was for a period of 6 months, with effect from 22<sup>nd</sup> July 2016<sup>75</sup>
- The fifth extension on 19<sup>th</sup> December 2016 was for a period of 6 months, with effect from 21<sup>st</sup> December 2016 (by Decree No. 2016-1767)<sup>76</sup>

It is also noted that the last extension of the state of emergency for a period of 6 months which became effective until 15<sup>th</sup> July 2017 was aimed at securing the Presidential election held in May 2017. According to Human Rights Watch and Amnesty International, the extension of the state of emergency could potentially cause human rights violations.<sup>77</sup> In addition, on 19<sup>th</sup> January 2016, the United Nations Special Rapporteurs also asked France not to extend the state of emergency after 26<sup>th</sup> February 2016 due to reports of measures taken by French authorities in conducting searches and residence orders were disproportionate.<sup>78</sup> Therefore, it is safe to conclude that the extension of the state of emergency carried out by France is not proportional.

<sup>72</sup> Notification from France to the Secretary of the UN, 23 November 2015, <https://treaties.un.org/doc/Publication/CN/2015/CN.703.2015-Eng.pdf>

<sup>73</sup> Notification from France to the Secretary of the UN, 25 February 2016, <https://treaties.un.org/doc/Publication/CN/2016/CN.538.2016-Eng.pdf>.

<sup>74</sup> Notification from France to the Secretary of the UN, 22 July 2016, <https://treaties.un.org/doc/Publication/CN/2016/CN.565.2016-Eng.pdf>.

<sup>75</sup> *Ibid.*

<sup>76</sup> Notification from France to the Secretary of the UN, 21 December 2016, <https://treaties.un.org/doc/Publication/CN/2016/CN.984.2016-Eng.pdf>.

<sup>77</sup> Human Rights Watch, "France: Prolonged Emergency State Threatens Rights", *Loc.cit.*; see also Amnesty International, "France: Renewal of State of Emergency Risks Normalizing Exceptional Measures", 2016, <<https://www.amnesty.org/en/latest/news/2016/12/france-renewal-of-state-of-emergency-risks-normalizing-exceptional-measures/>>, accessed on 25 April 2017.

<sup>78</sup> Office of the High Commissioner for Human Rights, "UN Rights Experts Urge France to Protect Fundamental Freedoms while Countering Terrorism," 19 January 2016, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?LangID=E&NewsID=16966>, accessed on 25 April 2017.

**b. Discriminatory manners**

Basically, the suspension, limitation, and derogation of human rights can be done as long as it does not violate the fundamental principles of human rights law. One of the fundamental principles is the prohibition of discriminatory treatment, as explicitly addressed in Article 4 paragraph (1) of ICCPR. The report of Amnesty International described that there had been at least 4,292 house searches, and 612 people were forced to stay, as 434 people have been affected by such measures.<sup>79</sup> In addition, there were also 95 people put under the residence orders.<sup>80</sup> Moreover, reports from Human Rights Watch and Amnesty International also noted that police searches were often carried out in discriminatory manners, particularly against Muslims.<sup>81</sup>

Based on the said Amnesty International report, it was also stated that there were searches at several mosques, and one of them was at the La Fraternité mosque in the Aubervilliers area. One of the members of the mosque who was the target of the police search stated that the search was carried out through violent acts and resulted in material loss of around 3000 to 4000 Euros. In addition, some searches were mainly targeted at Muslims in whom there

was no evidence of their participation in the alleged crime.

The ECtHR in its jurisprudence emphasizes that the competent authorities must avoid discriminatory acts: “...It is for this reason that the authorities must use all available means to combat racism, thereby reinforcing democracy’s vision of a society in which diversity is not perceived as a threat but as a source of enrichment.”<sup>82</sup> In the case of *A and Others v. United Kingdom*, the ECtHR found discriminatory treatment against foreign citizens regarding their detention.<sup>83</sup> The ECtHR then ruled that such detention as derogation measures taken under state of emergency cannot be justified.<sup>84</sup> Therefore, the discriminatory treatment against Muslims in France on the ground of national security constitutes a form of violation of the rights guaranteed under human rights conventions.

**c. Violent treatment**

Reports from Human Rights Watch and Amnesty International described several acts of violence committed by the police and other authorities in carrying out searches.<sup>85</sup> In those reports, it is found that the violent acts included beatings or physical violence and the destruction of property.<sup>86</sup> This circumstance has drawn the attention of the United

<sup>79</sup> Amnesty International, “Counter Terror Report: Dangerously Disproportionate The Ever-Expanding National Security State in Europe”, *Loc.cit.*

<sup>80</sup> *Ibid.*

<sup>81</sup> Human Rights Watch, “France: Abuses Under State of Emergency”, 2016, <https://www.hrw.org/news/2016/02/03/france-abuses-under-state-emergency>, accessed on 25 April 2017; see also Amnesty International Report, “The Disproportionate Impact of France’s State of Emergency”, EUR 21/3364/2016,

[https://www.amnesty.org/download/Documents/EUR\\_2133642016ENGLISH.pdf](https://www.amnesty.org/download/Documents/EUR_2133642016ENGLISH.pdf), accessed on 25 April 2017.

<sup>82</sup> *Nachova and Others v. Bulgaria*, ECtHR, 2005, Application Nos. 43577/98 and 43579/98; *Timishev v. Russia*, ECtHR, 2005, Applications Nos. 55762/00 and 55974/00.

<sup>83</sup> *A and others v the United Kingdom*, *Loc.cit.*

<sup>84</sup> *Ibid.*

<sup>85</sup> Human Rights Watch, “France: Absues Under State of Emergency”, *Loc.cit.*; Amnesty International Report, “The Disproportionate Impact of France’s State of Emergency”, *Loc.cit.*

<sup>86</sup> *Ibid.*

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Nations Committee against Torture, particularly concerning the search by the police.<sup>87</sup> Several acts of violence have also come to the attention of the independent administrative organization for Human Rights Defenders in France (*Défenseur des droits*). This organization made a number of recommendations to the French authorities, such as the police must refrain from performing violent acts.<sup>88</sup>

In addition, violence may constitute a violation of Article 10 of ICCPR and Article 3 of ECHR concerning the prohibition of torture and punishment or other inhuman and degrading treatment. Moreover, Article 3 of the ECHR is a right that cannot be derogated in an emergency situation. The element of violence in the actions taken by the police showed that France violated human rights in implementing a state of emergency.

**D. CONCLUSION**

International law permits States to derogate from human rights obligations under exceptional circumstances named state of emergency. Several standards may become a framework in implementing state of emergency. First is the existence of a public emergency that threatens the life of the nation, which shall be actual and imminent, threatens the organized life of the community and affects the entire population. Second, the official proclamation made by authorized state organ and notification to the Secretary General of the United Nations which serve

as procedural obligations. Third, the duration of state of emergency shall comply with the principle of proportionality. Fourth, national law or legislation regulating state of emergency. Lastly, the existence of non-derogable rights in times of state of emergency, particularly habeas corpus and the right to a fair trial.

The aforementioned standards are further applied in assessing the state of emergency imposed by France in 2015 until 2017. France established the existence of public emergency threatens the life of the nations with terrorist attacks in the territory of France. After officially declaring a state of emergency, France notified both the Secretary General of the United Nations and Council of Europe regarding measures taken under state of emergency. As France managed to comply with the provisions in Article 4 paragraph (1) of ICCPR as well as Article 15 paragraph (1) of ECHR, France took necessary measures to derogate from its human rights obligations, namely right to liberty and security, right to privacy or respect of private life, freedom of expression, freedom of movement and freedom of assembly and association. Such derogations of human rights are justified under state of emergency. Besides, France took any measures relating to freedom of religion, which falls under the list of non-derogable rights. However, such measures were not taken to the extent it prohibits one's manifestation of their freedom of religion. Hence, no violation of freedom of religion was found.

However, in conducting such derogations, French authorities were reported to be inconsistent with the fundamental principles of human rights law. Furthermore, the duration of state of

<sup>87</sup> Office of the High Commissioner for Human Rights, "UN Rights Experts Urge France to Protect Fundamental Freedoms while Countering Terrorism," *Loc.cit.*

<sup>88</sup> Amnesty International Report, "The Disproportionate Impact of France's State of Emergency", *Loc.cit.*; see

also *Défenseur des droits*, <https://www.defenseurdesdroits.fr/fr/letat-durgence>, accessed on 25 April 2017.

emergency was not proportional, taking into account it was prolonged and extended based on the ground to secure the presidential election. Moreover, the French authorities carried out measures prescribed under state of emergency in discriminatory manners, particularly towards Muslims. The French authorities were also reported to do violent acts in conducting searches and arrests. In conclusion, France has violated human rights in implementing a state of emergency.

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