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TO WHAT EXTENT THE DECLARATION OF A STATE OF EMERGENCY IS CONSISTENT WITH THE PALESTINIAN BASIC LAW DURING THE COVID-19 PANDEMIC

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ABSTRACT

The COVID-19 pandemic has raised consciousness across the globe of how constitutions respond to crises. This article examines the issue of the Palestinian President declaring a state of emergency in Palestine on March 5, 2020, under Presidential Decree No. 1 of 2020, to confront the spread of the Coronavirus. However, the President continues to extend the thirty-day state of emergency ten times. In addition, the article discusses a crucial issue associated with the extent to which the extended constitution of emergency in Palestine lasts, as the Basic Law only allows him to declare the state of emergency for a one-time limit. The article aims to clarify the constitutionality of the extension of the state of emergency in Palestine, in addition to placing some legal alternatives to avoid the President's breach of the Basic Law. To achieve the objectives of the article, socio-legal research

using a qualitative approach and face-to-face interviews was adopted. Accordingly, findings show the inconsistency of the extension of the state of emergency with the Basic Law due to the suspension of the role of the Legislative Council in Palestine. The article emphasizes and recommends that the role of the Legislative Council shall be activated to oversee the presidential decrees extending a state of emergency issued by holding the legislative elections in Palestine.

Keywords: State of emergency, COVID-19 pandemic, Palestinian Basic Law, exceptional circumstances, Coronavirus.

INTRODUCTION

In light of the spread of the Coronavirus in several countries around the globe (Kapitsinis, 2020), and with the appearance of the first infections in Palestine, the Palestinian President issued on March 5, 2020, the Presidential Decree No. 1 of 2020, which declared a state of emergency for 30 days in all Palestinian territories to confront the threat of Coronavirus and prevent its spread (Presidential Decree No. 1 of 2020).

All of that is based on the emergency provisions contained in chapter seven of the Basic Law of 2003 from Articles 110-114. The Emergency Law is defined by Article 110 of the Palestinian Basic Law of 2003 as “A law regulating the state of emergency, and it is an exceptional system specified in time and place announced by the President, to confront emergency and unusual circumstances that threaten the country or part of it, by urgent measures and unusual methods under specific conditions and until the end of the threat” (Palestinian Basic Law of 2003, Article 110-114).

Therefore, a state of emergency was declared for the first time in Palestine due to the spread of the Coronavirus on March 5, 2020. However, in light of the suspension of the function of the Palestinian Legislative Council due to dissolution, it was done based on the interpretative decision of the Supreme Constitutional Court in 2018. On April 3, 2020, the Palestinian President issued a decree extending the state of emergency for an extra 30 days, and this was followed by the extension of the renewal of the state of emergency for a second time (Presidential Decree No. 3 of 2020).

The Palestinian President issued a third decree declaring the extension of the state of emergency for another 30 days on May 5, 2020 (Presidential Decree No. 4 of 2020). It should be well known that the Palestinian President continued to extend the state of emergency for 30 days to 10 times (Al-Sharif, 2011).

In this context, the declaration of a state of emergency due to the spread of Coronavirus is the third declaration since the establishment of the Palestinian National Authority. Given that the state of emergency was declared for the initial time on October 5, 2003, under Presidential Decree No. 18 of 2003 on the entire Palestinian land as a result of the increase in Israeli violations against the Palestinian people, it has led to the formation of an “Emergency Government” (Presidential Decree No. 18 of 2003).

Besides, the second state of emergency was declared on all Palestinian lands according to Presidential Decree No. 9 of 2007, dated June 14, 2007, to confront the Palestinian division, and it also resulted in the formation of a “Government of Emergency Enforcement” (Presidential Decree No. 9 of 2007).

Since the circumstances require the President to declare an extension of the state of emergency to confront the spread of the Coronavirus, a question arises as to the constitutionality of this extension of the state of emergency in light of what Article 110/2 of the Basic Law stipulates that “The state of emergency may be extended for another period of thirty (30) days if a two-thirds majority of the members of the Legislative Council vote in favour of the extension”. Besides, there is another question of how this extension of the state of emergency and the spread of the Coronavirus affect the Palestinian community.

METHODOLOGY

This article purely employed and adopted socio-legal research using a qualitative approach and face-to-face interviews. The primary and secondary data were utilized in this research to help answer the questions of the research. The primary data were acquired from the laws, legislations, regulations, official statements, guidance, governmental reports, and case law. Secondary data, on the other hand, were gathered from journals, books, and online sources such as

websites, blogs, magazines, newspapers, dictionaries, encyclopaedias, as well as theses (Al Amaren, 2020).

Both primary and secondary data were critically and analytically examined in this study using the content analysis approach. For the interview, the article used semi-structured interviews, and the interviewees included two academicians, the ministry, and a group of society. The selection of the interviewees was based on their experience and knowledge about the topic (Cho & Lee, 2014).

RESULTS AND DISCUSSIONS

The Concept of the State of Emergency

Initially, the provisions of the Palestinian Basic Law of 2003 did not include a specific definition of the state of emergency, but they have included general rules for its regulation. On the other hand, Civil Defence Law No. 3 of 1998 defines a state of emergency as “A state of imminent danger that threatens or hinders the normal practice of matters” (Civil Defence Law No. 3 of 1998, Article 1).

To demonstrate the concept of the state of emergency, it is necessary to present the jurisprudential definitions regarding it. It should be noted that the jurists of constitutional law did not agree on a specific definition of the state of emergency.

Richard B. Lillich has defined a state of emergency as “As an exceptional situation created by an exceptional circumstance, where it is declared due to the presence of a dangerous situation that threatens the security, safety, and stability of the state, and aimed to maintain security and public order within the state, according to which the public freedoms of individuals within the state are restricted” (Lillich, 1995).

According to Al-Sharif (2011), he defined a state of emergency “As an exceptional system imposed by the supreme authority in the state during the occurrence of an internal, external, or imminent danger that threatens the constitutional institutions in the state or the security and safety of citizens, and this system aims to impose order and public tranquillity.”

Armitage (2002), on the other hand, has defined a state of emergency “As exceptional circumstances arising from the existence of dangers that could threaten the future of the state.”

Thus, these circumstances impose the declaration of a state of emergency to save the state, and this is done at the expense of the general freedoms of individuals, where the civil authorities are granted exceptional and wide powers that allow them to restrict the exercise of some freedoms to confront the threat of the public regime (Armitage, 2002).

A similar term has been defined by Ahmed Mahmoud Taha “As a legal system that gives administrative control bodies exceptional powers to face the emergency circumstances that are the cause of their declaration, and the state of emergency ends when it is the reason for its declaration or at the end of the period specified for it, also administrative control bodies, in their exercise of exceptional powers, which are subject to oversight by Parliament and the Judiciary” (Taha, 2007).

Based on what is stated in the definitions, the authors define the state of emergency as realistic exceptional cases such as armed disobedience, invasion, war, or natural disasters that lead to the suspension of the legal rules in force in the country and the application of rules from a special nature to deal with exceptional cases.

In addition, the state of emergency is declared by the President of the state and the Executive authorises to take exceptional measures to prevent and repel those dangers facing the state and its interests; this case ends with the termination of these dangers and the achievement of the purpose for which the state of emergency was declared or its legal term expired. Besides, the decree declaring a state of emergency shall clearly state the objective, the region to which it applies, and its duration by following the provisions of the Basic Law.

Moreover, Article 110 of the Palestinian Basic Law of 2003 states that “The President of the National Authority may declare a state of emergency by decree when there is a threat to national security caused by war, invasion, armed insurrection, or in times of natural disaster, for a period not to exceed thirty (30) days. Second, the state of emergency may be extended for another period of thirty (30) days

if a two-thirds majority of the members of the Legislative Council vote in favour of the extension. Third, the decree declaring a state of emergency shall state its purpose, the region to which it applies, and its duration. Fourth, the Legislative Council shall have the right to review all or some of the procedures and measures adopted during the state of emergency at the first session convened after the declaration of the state of emergency or in the extension session, whichever comes earlier and to conduct the necessary interpellation in this regard” (The Palestinian Basic Law of 2003, Article 110).

The Constitutional Regulation of the State of Emergency

Countries differ in regulating the state of emergency, as some countries regulate it in the constitution or the Basic Law and others regulate it by ordinary and independent laws. While the Palestinian legislator regulated the state of emergency in chapter seven of the Basic Law, all provisions regulating states of emergency that were applicable or in force in Palestine before issued of the Basic Law shall be cancelled (McQuillan, 2011).

Therefore, Article 114 of the Basic Law stipulates that “All provisions regulating states of emergency that were applicable in Palestine before issued of the Basic Law shall be cancelled, including the [British] Mandate Defence Emergency Regulations issued in the year 1945” (The Palestinian Basic Law of 2003, Article 114).

The state of emergency is an application of the theory of exceptional circumstances, which was created and judicially established by the French Council of State. Under this theory, the administration grants and authorises sufficient exceptional powers to deal with exceptional circumstances that the applicable legal texts cannot confront (Hooper, 2020).

According to the Palestinian Basic Law, the declaration of a state of emergency requires certain legal conditions, namely:

1. The existence of severe danger is the first condition of the declaration of a state of emergency, and Article 110 defines it as the one that threatens the state’s existence, vital interests, and nationwide security, by war, invasion, armed defiance, or natural disasters. The authors note that this provision defines the

cases that are considered a severe danger with the availability of any of them to make a President have the right to declare a state of emergency. Therefore, it is not necessary to search for a criterion to determine whether the danger is severe or not, as this article has specified the cases of this severe danger (The Palestinian Basic Law of 2003, Article 110).

2. The severe danger is imminent; the realization and occurrence of the severe danger is the second condition of the conditions for declaring a state of emergency. This severe danger is intended to be real and imminent, and there is no way to prevent it by legal means in force. Therefore, the potential future threat is not sufficient to declare a state of emergency. It is useless to declare a state of emergency if the serious and imminent danger is removed. Rather, this danger shall have an impact on the state and its interests for the declaration of a state of emergency to be valid (Alsarghali, 2020).
3. The impossibility of preventing or facing a severe danger by the legal means available, normal, or in force in the country: This condition is considered very significant for declaring a state of emergency. Accordingly, if the state can face a severe danger that is imminent or achieved by the legal means in force, then there is no need to declare a state of emergency” because it is necessary to meet the three conditions for the validity of “declaring a state of emergency (Khalil, 2018).

Besides, according to Article 110/1 of the Basic Law, the President of the state may declare a state of emergency for a period not to exceed 30 days. However, Article 110/2 permits “The extension of the state of emergency for an extra 30 days, provided that the Palestinian Legislative Council approves a two-thirds majority of its members”. Article 110/3 also clarifies that “The decree declaring a state of emergency shall state its purpose, the region to which it applies, and its duration.”

Article 110/4 stipulates that “The Legislative Council shall have the right to review all or some of the procedures and measures adopted during the state of emergency, at the first session convened after the declaration of the state of emergency or in the extension session, whichever comes earlier, and to conduct the necessary interpellation in this regard” (The Palestinian Basic Law of 2003, Article 110/1,2,3,4).

Moreover, Article 111 of the Basic Law affirms that it is impermissible to impose restrictions on fundamental rights and freedoms except to the extent that is necessary to fulfill the goal declared in the decree declaring a state of emergency (The Palestinian Basic Law of 2003, Article 111). This is as indicated in Article 112 of the Basic Law to some guarantees of detention during the validity of the state of emergency in the country (The Palestinian Basic Law of 2003, Article 112).

Furthermore, Article 113 of the Basic Law clarifies that the Palestinian Legislative Council may not be dissolved or suspended during the period of the state of emergency, or the provisions of this chapter may be suspended (The Palestinian Basic Law of 2003, Article 113).

Based on the foregoing, it is necessary to point out that the Palestinian Legislative Council at present has dissolved, based on the interpretative decision issued by the Supreme Constitutional Court in 2018. Here, the authors raise the question about the constitutionality of the extension of the state of emergency in Palestine, which will be clarified by the authors as follows:

To what extent is the Constitutionality of the Extension of a State of Emergency under the Presidential Decrees to Confront the Coronavirus?

The Basic Law of 2003 regulates the provisions of declaring a state of emergency in Articles 110-114, where Article 110 stipulates that “The President of the Palestinian might declare a state of emergency by decree when there is a danger to national security began by war, invasion, armed insurrection, or in times of natural tragedy, for a period not to exceed 30 days; The state of emergency might be extended for an additional period of 30 days if a two-thirds majority of the Legislative Council vote in favour of the extension; The decree announcing a state of emergency shall state the purpose, the region to which it applies and, its duration” (The Palestinian Basic Law of 2003, Article 110).

In January 2020, the World Health Organisation issued an appeal to all countries around the world to be prepared to prevent the threat of the international spread of the emerging Coronavirus (World Health Organisation, 2020). In light of this, as well as the emergence

of some cases of Coronavirus in the West Bank city of Bethlehem in early March 2020, Palestinian President Mahmoud Abbas issued Presidential Decree No. 1 of 2020 on March 5, 2020, regarding the declaration of the state of emergency for 30 days as part of efforts to contain the risk of the spread of the virus in all Palestinian territories (Mustafa, 2020).

In addition, after the end of the 30 days, Palestinian President issued the decree declaring the state of emergency, and in light of the recommendations of the Palestinian Prime Minister, Muhammad Shtayyeh that the state of emergency should be extended to continue the efforts made to prevent and deal with the spread of the virus, the President declared on April 3, 2020, the extension of the state of emergency for extra 30 days according to the Presidential Decree No. 3 of 2020 (Presidential Decree No. 3 of 2020).

The Presidential Decree is based in a preamble on the provisions of the Basic Law, which is contradicted by its essence, and the President's decision is also in his declaration on his constitutional duties to fully care for the interests of the Palestinian people in breach of the provisions of Article 110/2 of the Basic Law, which requires the approval of a two-thirds majority of the members of the Legislative Council to extend the state of emergency. Article 110/2 of the Basic Law stipulates that "The state of emergency may be extended for another period of 30 days if a two-thirds majority of the members of the Legislative Council vote in favour of the extension" (The Palestinian Basic Law of 2003, Article 110/2).

However, as long as the Palestinian Legislative Council is dissolved according to an interpretative decision of No. 2018/10 issued by the Supreme Constitutional Court, it is not constitutionally valid to extend the state of emergency by the President according to Article 110/2 of the Basic Law (Badir, 2020).

Moreover, the President went further on May 5, 2020, when a declaration of a state of emergency was renewed for an extra 30 days under Presidential Decree No. 4 of 2020 without any specific constitutional reference under the Basic Law (Presidential Decree No. 4 of 2020). Then, on June 25, 2020, a state of emergency was extended for another 30 days, according to the Presidential Decree No. 5 of 2020 (Presidential Decree No. 5 of 2020).

In addition, on July 22, 2020, a state of emergency was declared for extra 30 days, according to the Presidential Decree No. 6 of 2020 (Presidential Decree No. 6 of 2020). Next, on August 8, 2020, the President extended the state of emergency for another 30 days, according to the Presidential Decree No. 8 of 2020 (Presidential Decree No. 8 of 2020).

Subsequently, on September 24, 2020, the declaration of a state of emergency was renewed for an extra 30 days, and this was according to Presidential Decree No. 9 of 2020 (Presidential Decree No. 9 of 2020).

After that, on October 20, 2020, the President extended a state of emergency for another 30 days, according to Presidential Decree No. 10 of 2020 (Presidential Decree No. 10 of 2020). Furthermore, on November 25, 2020, the declaration of a state of emergency was renewed for further 30 days, according to the Presidential Decree No. 12 of 2020 (Presidential Decree No. 12 of 2020). Later, on December 24, 2020, the President extended a state of emergency for another 30 days under Presidential Decree No. 13 of 2020 (Presidential Decree No. 13 of 2020).

The issuance or declaration of previous presidential decrees related to the renewed or extension of the state of emergency has raised many questions about their constitutionality and the legal basis for it. The Palestinian Basic Law of 2003, which represents the constitution of Palestine, has stipulated the possibility of declaring a state of emergency for 30 days by a presidential decree, and it may be extended for another 30 days with the approval of two-thirds of the members of the Legislative Council, which was not achieved because the Legislative Council was suspended and dissolved. Therefore, opinions have differed, and there was a wide legal debate about the constitutionality of these decrees (Slot & Adel, 2020) which can be viewed as follows.

Some Palestinian constitutional jurists have said that the decree extending a state of emergency by the President for more than one time is legal and does not contradict and breach the emergency provisions in the Basic Law, and this argument is based on the primacy of the higher public interest over any other consideration (Dunia al-Watan, 2020).

On the other hand, many, including academic professors in constitutional law and human rights organizations, have opposed the renewal and extension of a state of emergency based on their breach of the Basic Law, which does not grant the President the power to extend a state of emergency. When Article 110 of the Basic Law granted the Legislative Council exclusively the extension of a state of emergency, with the approval of a two-thirds majority of its members, it did not grant any power to the President to extend a state of emergency (Human Rights and Democracy Media Centre Shams, 2020).

In the same context, according to what experts said, including Rashad Al-Tawam and Asim Khalil, professors of public law at Birzeit University, there could be no legitimate legal alternative to Legislative Council approval to consider the extension constitutional. The two former experts instilled their beliefs in a study published for them that it is certain for the Palestinian official authorities to take the necessary measures to confront the existing exceptional crisis in a manner that preserves health and public interest (Slot & Adel, 2020).

However, it must be without prejudice to or restrict rights and freedoms except to the extent sufficient to confront the crisis, according to the principle of proportionality, and that these restrictions are declared and defined by a legislative provision while ensuring a parliamentary and judicial review of all measures taken during the crisis (Slot & Adel, 2020).

In addition, the human rights expert, Issam Abdin, Advocacy Coordinator at Al-Haq Foundation in Ramallah, who has consultative status at the United Nations, has said that the declaration of the extension of a state of emergency due to the spread of the Coronavirus is unconstitutional, and without reducing the risk of the virus spreading, this declaration does not fall within the constitutional cases that allow the extension of a state of emergency, which makes this extension a breach of the Basic Law (Hammad, 2020).

Furthermore, the authors emphasize that the matter of controversy appears when the provision does not exist, as there is no debate when the provision exists. Therefore, the authors find that the text of Article 110/2 was clear in granting the power to extend a state of emergency to the Legislative Council. At the same time, the same article added another condition related to the approval of two-thirds of the members of the Legislative Council.

Additionally, the Basic Law in Article 110/2 stipulates that the extension is for one time, which means that the will of the constitutional legislator is devoted to the inadmissibility of the extension for more than one time.

In other words, for the sensitivity of a state of emergency and its impact on public freedoms and human rights, it is not allowed for the Palestinian territories to remain under the scope of a state of emergency for more than 60 days, which is the 30 days when the President declared the state of emergency, and then another 30 days to extend a state of emergency by the Legislative Council. When both are finished, it signifies the end of the opportunity to be granted to declare a state of emergency under the Basic Law.

In this matter, one of the respondents of academicians, by Shabir, 2021, stated that:

The extension of a state of emergency is unconstitutional because the Basic Law does not allow the President to extend a state of emergency more than one time, which makes this extension breach the Basic Law.

In addition, another respondent academician, Abu Mater, 2021, provided that:

The extension of a state of emergency is illegal due to the Basic Law that does not allow the President to extend a state of emergency more than one time.

However, one of the respondents from the ministry, Haniyeh, 2021, stated that:

The presidential decrees that extend a state of emergency by the President for more than one time are legal and do not contradict and breach the emergency provisions in the Basic Law, and this is based on the primacy of the higher public interest over any other consideration.

The authors confirm that the extension of the state of emergency by the President does not breach the Basic Law only formally but breaches the essence of the restriction contained in the Basic Law. This matter is considered dangerous in reality if it is used for purposes other than the public interest, which might violate public rights and freedoms.

Besides, many legal alternatives could have been resorted to by the President instead of extending a state of emergency. A leader needs to rely on the existing and ordinary laws in effect. In this context, two laws stand out. First, Public Health Law No. 20 of 2004, Article 14 stipulates that by a decision of the Minister, the Ministry may impose quarantine in Palestine to prevent the transmission of epidemic diseases to and from it.

Article 9 also affirms the authority to combat infectious, non-communicable, and hereditary diseases by all means and in coordination with the competent authorities (Public Health Law No. 20 of 2004, Article 14). Second, the Palestinian Civil Defence Law No. 3 of 1998, Articles 1 and 26 clarify the possibility of taking extensive measures to deal with crises, especially in states of emergency (Palestinian Civil Defence Law No. 3 of 1998, Articles 1 and 26).

Therefore, these ordinary laws constitute a legal path sufficient to confront the pandemic, making this alternative the strongest without prejudice to the Basic Law and its status. There is no need to issue a decree to extend a state of emergency, which makes the extension of a state of emergency useless. These ordinary laws constitute an important alternative in applying the fundamentals of the public interest without affecting the legitimacy of the Basic Law (Twam & Khalil, 2020).

The second alternative is that the Palestinian President could have issued decrees that have the power of law according to Article 43 of the Basic Law instead of presidential decrees despite the requirement of Article 110 of the Basic Law of 2003 for a state of emergency to be declared through a presidential decree.

However, Article 43 of the Basic Law grants the President the right to issue decrees that have the power of law in cases of necessity that cannot be delayed and other than the sessions of the Legislative Council. Since the state of necessity is achieved by the outbreak of the Coronavirus, along with the condition of the suspension of the Legislative Council in Palestine, accordingly, the President should have applied the provision of Article 43 to achieve its conditions instead of applying Article 110, which then breached the Basic Law regarding the extension of a state of emergency (Eid, 2020).

The Impact of Extending the State of Emergency to Prevent the Coronavirus over the Rights of the Palestinian Community.

Coronaviruses are a broad family of viruses that may cause disease in animals and humans. It is known that several Coronaviruses in humans cause respiratory diseases ranging from the common cold to more severe diseases such as the Middle East Respiratory Syndrome (MERS) and acute respiratory syndrome (SARS), and the recently discovered Coronavirus causes COVID-19 disease (Chan et al., 2015).

The COVID-19 disease is an infectious disease caused by the last discovered virus of the Coronavirus strain. There was no knowledge of this new virus before its outbreak began in the Chinese city of Wuhan in December 2019. COVID-19 has turned into a pandemic affecting many countries of the world, including Palestine (Awadasseid et al., 2019).

In addition, the most common symptoms of COVID-19 disease are fever, fatigue, and a dry cough. Other symptoms that are less common but may be experienced in some patients include pains, nasal congestion, headache, conjunctivitis, sore throat, diarrhea, and loss of taste or smell (Park, 2020).

With the spread of the Coronavirus in Palestine, the Palestinian President declared a state of emergency to confront the spread of the virus, and usually, in cases of emergency, the basic rights of citizens, including freedom of movement, mobility, and peaceful assembly, are restricted.

However, the President breached the text of Article 110 of the Basic Law when he extended a state of emergency for ten consecutive times to confront the Coronavirus, which negatively affected the rights of the Palestinian community (Amayreh, 2021). Meanwhile, during the extension periods, the Independent Commission for Human Rights in Palestine received many complaints from citizens about the violation of their basic rights by state authorities, for example, arbitrary detention, abuse of power, and other violations (Ziadeh, 2020).

Additionally, the extension of a state of emergency in Palestine led to the general closure of the state, which directly affected the economic and social rights of the Palestinian community, such as high unemployment and poverty rates, a decrease in the level of GDP, government revenues and expenditures (Abu Amsa, 2020).

Moreover, the authors conducted several mobile interviews in Palestine with several groups of society, such as merchants, workers, and restaurant owners, and some questions were asked about the impact of the extension of a state of emergency and the Coronavirus on their rights and freedom. They stated that there was a consensus among the respondents that the continued extension of a state of emergency and the Coronavirus in Palestine had a direct and negative impact on their economic and social rights and their general freedoms as well.

Guarantees of the Protection of Human Rights and Freedoms during the State of Emergency

To ensure the protection of human rights and freedoms during a state of emergency, the state should provide fair that enable individuals to appear before the judiciary in the event of a violation, as the judiciary shall follow up on all complaints related to any violations of human rights and freedoms during the said situation as well as holding all authorities concerned with enforcing the provisions of the law accountable if they exceed the legal limits, based on national legislative provisions and international standards and rules that regulate and protect human rights and freedoms (Helbich & Jabr, 2021).

However, the restrictions imposed on human rights and freedoms in Palestine during a state of emergency to prevent the spread of the Coronavirus exceeded the basic purpose of its declaration, which is to restrict the right to movement and peaceful assembly. This is under the declaration submitted by the State of Palestine to the Secretary-General of the United Nations and based on its international obligations, which resulted from its consent to the International Agreement on Civil and Political Rights. These abuses include other rights related to property, education, freedom of opinion and expression, and others (Iqtaish & Wang, 2020).

Moreover, despite the efforts made to ensure respect for human rights and freedoms during a state of emergency, authorities concerned with enforcing the law in the Palestinian territory have at times overstepped their limits and violated many rights, whether related to the rights of peaceful assembly and movement or all other rights protected by national legislation and international conventions (Badir, 2020).

Finally, all authorities concerned with implementing presidential decrees regarding the declaration of a state of emergency shall respect

the constitutional and legal system and the relevant international agreements to which the State of Palestine is a party.

In addition, they also need to respect the international standards issued by the World Health Organisation and the competent international bodies in this context and work without delay to implement all the basic international human rights and freedoms conventions to which the State of Palestine acceded without making any reservations, ensuring their superiority over domestic legislation, and publishing them in the official gazette, in respect of its relevant international obligations.

Therefore, do not rush in issuing legislation related to the current state of emergency so as not to constitute a future approach through which it is easy to restrict human rights and freedoms, as well as limit their quantity.

CONCLUSION

The first presidential decree of declaring a state of emergency, which is set for 30 days in the Palestinian territory, No. 1 of 2020, is consistent with the provisions of the Palestinian Basic Law of 2003, which governs a state of emergency. Meanwhile, extending a state of emergency, declaring it ten times, and extending it is inconsistent with the provisions of the Palestinian Basic Law.

It is clear from the foregoing that the extension of a state of emergency, although it is necessary to preserve the public interest, is unconstitutional, and there is no legal basis for it, especially since the Palestinian Basic Law granted the President the right to extend a state of emergency under the provisions of chapter seven of it for only one time and with the approval of a two-thirds majority of its members. Therefore, these previous extensions breach the will of the constitutional legislator.

Moreover, facing the threat of the spread of the virus requires dealing with it according to ordinary laws, as they are sufficient to take emergency measures to confront the Coronavirus crisis. The President shall be urged to end the declared state of emergency to respect the provisions of the Palestinian Basic Law, which shall remain inviolable and not be breached under any circumstances, and this leads to not a

comparison of the right to health with the supremacy of the Palestinian Basic Law.

When declaring a state of emergency, the state shall respect its international obligations under international human rights law, arising from its contractual obligations under accession to international human rights treaties. Besides, the measures taken by the state to restrict individuals' exercise of their rights in a state of emergency are commensurate with the requirements of declaring a state of emergency, in terms of regional application, its substantive content, and the period it includes. Despite the efforts made to ensure respect for human rights and freedoms during a state of emergency, authorities concerned with enforcing laws in the Palestinian territory sometimes overstepped their restrictions and violated many rights, whether related to the rights of peaceful assembly and movement or all other rights protected by national legislation and international conventions acceded to by the State of Palestine.

The authors of this article recommend that the role of the Palestinian Legislative Council shall be activated to oversee the Executive authority, including the presidential decrees extending a state of emergency, which is issued or declared by the President, through the conducting of legislative elections in Palestine.

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REFERENCES

- Abu Amsha, M. K. (2020). Tathir Jayihat Korona Alaa Alqitaat Alaiqtisadiat Walmaliat Fe Dawlat Felsetyen. Seyasat Centre, Palestine.
- Abu Mater, M. (2021). Interview. Associate Prof in the constitution law, Al Azhar University in Palestine –Gaza.
- Alsarghali, S. (2020). State of Emergency 'or the 'State of Exception'? Bahrain and COVID-19, global discourse: *An Interdisciplinary Journal of Current Affairs*, 10(4), 445-454.

- Al-Sharif, F. (2011). Halat Altwar'e Wathrha 'Ela Alhqwq Walhryat Al'eamh Llmwatnyn. *Journal of Human Sciences, 22(11)*, 188-201.
- Amayreh, O. I. M., Zakri, I. M. M., Tehrani, P. M., & Shandi, Y. M. (2021). The pre-contractual duty of disclosure in the Palestinian civil code draft and its role in maintaining economic contractual equilibrium. *UUM Journal of Legal Studies, 12(1)*, 119-156.
- Al Amaren, E. M., Hamad, A. M., Al Mashhour, O. F., & Al Mashni, M. I. (2020). An introduction to the legal research method: To clear the blurred image of how students understand the method of legal science research. *International Journal of Multidisciplinary Sciences and Advanced Technology, 1(9)*, 50-55.
- Armitage, J. (2002). State of emergency: An introduction. *SAGE Journals, 19(4)*, 27-38.
- Awadasseid, A., Wu, Y., Tanaka, Y., & Zhang, W. (2020). Initial success in the identification and management of the Coronavirus disease 2019 (COVID-19) indicates human-to-human transmission in Wuhan, China. *International Journal of Biological Sciences, 16(11)*, 1846-1866.
- Badir, N. (2020). Mda Ansjam E'elan Halat Altwar'e M'e Alqanon Alasasy Alfelsteni Walatfaquat Aldwlyh Lhqwq Alensan Lmwajhh Antshar Fyrws Kwrwna Kwfyd 19. *Al-Haq Foundation, Palestine*.
- Chan, J. F., Lau, S. K., To, K. K., Cheng, V. C., Woo, P. C., & Yuen, K. Y. (2015). Middle East respiratory syndrome Coronavirus: Another zoonotic betacoronavirus causing SARS-like disease. *Clinical Microbiology Reviews, 28(2)*, 465-522.
- Cho, J. Y., & Lee, E. H. (2014). Reducing confusion about grounded theory and qualitative content analysis: Similarities and differences. *Qualitative Report, 19(32)*, 1-20.
- Dunia al-Watan. (2020). *Enha' Halat Altwar' Fe Felsetyen*. <https://www.alwatanvoice.com>
- Eid, O. (2020). *The State of Emergency in the Palestinian Territories, between Legality and Nullity*. <https://ssrn.com/abstract=3774553>
- Haniyeh, M. (2020). "Interview". Former Minister of Justice. Palestine - Gaza.
- Helbich, M., & Jabr, S. (2021). Analysis of the mental health response to COVID-19 and human rights concerns in the occupied Palestinian territories. *International Journal of Human Rights in Healthcare, 1(1)*, 1-15.

- Hamad, A. M., Indriyani, R., Al Ramadan, A. M. M., & Fitriyono, R. A. (2022). Separation of powers in the Palestinian law: Does it reflect the democratic system? (A Comparative Approach with Indonesia). *Lex Scientia Law Review*, 6(2), 265-298.
- Hammad, S. (2020). *Aleja'ehh Fe Aldifh Algherbeyh: Keyf Tedyer Alesleth Aleflesteneyh Azemt Keruwnah?* <https://www.7iber.com/politics-economics>
- Ahmed M A. Hamed, Haslinda Mohd Anuar, & Rohizan Halim. (2021). The Judiciary in Islamic law, Palestinian legislation, and guarantees of its independence. *Samarah: Jurnal Hukum Keluarga dan Hukum Islam*, 5 (1), 1-22. <https://jurnal.ar-raniry.ac.id/index.php/samarah/article/view/8927>
- Hooper, H. J. (2021). Legality, Legitimacy, and Legislation: The Role of Exceptional Circumstances in Common Law Judicial Review. *Oxford Journal of Legal Studies*, 41(1), 142-168.
- Human Rights & Democracy Media Centre Shams. (2020). *Hewl Altmedyed Alethane Almuhtmel Le'elan Halt Altwar' Fey Felsetyen*. <https://www.shams-pal.org/?p=3424>
- Iqtaish, A., & Wang, S. (2020). The Constitutionality of Emergency Laws in Light of the Emerging Pandemic of the Coronavirus: A Comparative Study. *JL Pol'y & Globalization*, 1(102), 13-30.
- Kapitsinis, N. (2020). The underlying factors of the COVID-19 spatially uneven spread. Initial evidence from regions in nine EU countries. *Regional Science Policy & Practice*, 12(6), 1027-1045.
- Khalil, A. (2018). Halat Aldrwrh Mn Mnzwr Dstory Mqarn. *Constitutional Law Unit, Birzeit Uni, Palestine*.
- Kwang, H. P., Sabaruddin, J. S., & Dhanapal, S. (2017). An overview of the rule of law values within Malaysia's anti-terror law: A legal perspective from India and the United Kingdom. *UUM Journal of Legal Studies*, 1(8), 57-85.
- Lillich, R. B. (1985). The Paris minimum standards of human rights norms in a state of emergency. *The American Journal of International Law*, 79(4), 1072-1081.
- Lobera, J., Santana, A., & Gross, C. (2023). Are we looking at crises through polarized lenses? Predicting public assessments of the official early responses to the COVID-19 pandemic in eight countries. *European Sociological Review*, JCAD016.
- McQuillan, C. (2011). The real state of emergency: Agamben on Benjamin and Schmitt. *Studies in Social and Political Thought*, 1(18), 96-108.

- Mustafa, B. (2020). Mwajhit Waba' Fyrws Kurona Byn E'elan Halt Altwar'e Walaktfa' Bejra'at Aldbt Aledary. *Ijtihad Journal for Legal and Economic Studies*, 9(4), 94-117.
- Organization, W. H. (2020). *Coronavirus disease 2019 COVID-19*. (Report No. 29). WHO., Occupied Palestinian Territory.1-8
- Park, S. E. (2020). Epidemiology, virology, and clinical features of severe acute respiratory syndrome-coronavirus-2 (SARS-CoV-2; Coronavirus Disease-19). *Clinical and Experimental Pediatrics*, 63(4), 119-140.
- Shabir, M. (2021). Interview with Associate Prof in the constitution and administration law, Al Azhar University in Palestine -Gaza.
- Slot, B. & Adel, I. (2020). *Teqdeyr Mawqef Hewl Ale'elan Althaney Lhalt Altwar' Fe Felsetyen*. <https://stgcenter.org>
- Taha, A. M. (2007). Athr Halat Altwar'e 'Ela Ma Tmlkh Alslat Alamnyh Walqda'eyh Mn Slahyat Estthna'eyh Mt'elqh Bhqwq Almwatn. *Journal of Justice and Law*, 1(7), 248-260.
- Twam, R. & Asem, K. (2020). *The aftermath of the Declared State of Emergency in Palestine against Coronavirus outbreak: Predicted Scenarios and Risks*. <https://ssrn.com/abstract=3564350>
- Ziadeh, M. (2020). 'Iemal Alhuquq Fi Zili Fayrus Korona Wahalat Altawari. *ICHR, Board of Grievances, Palestine*.

APPENDIX

| No. | Interview Guide |
|-----|---------------------------------------------------------------------------------------------------------------------------|
| 1. | How constitutional is the extension of the state of emergency? |
| 2. | Do the Presidential Decrees consist of the Palestinian Basic Law? |
| 3. | What is the extent of the impact of “the extension of the state of emergency” on the rights of the Palestinian community? |
| 4. | To what extent the Coronavirus affect the economic and social rights and general freedoms in Palestine? |