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# ADMINISTRATION OF JUSTICE, RULE OF LAW AND DEMOCRACY

## Question of human rights and states of emergency

## List of States which have proclaimed or continued a state of emergency

## Report of the Office of the High Commissioner for Human Rights submitted in accordance with Commission on Human Rights decision 1998/108

GE.05-14776

**Summary**

The present report is prepared pursuant to decision 1998/108 of the Commission on Human Rights, in which the Commission requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to submit to the fifty-first session of the then Sub-Commission on the Prevention of Discrimination and Protection of Minorities, and every second year thereafter, a list of States in which a state of emergency was proclaimed or continued during the reporting period. The present report contains an updated list.

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## Introduction

1. The present report is prepared pursuant to decision 1998/108 of the Commission on Human Rights, in which the Commission requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to submit to the fifty-first session of the then Sub-Commission on the Prevention of Discrimination and Protection of Minorities, and every second year thereafter, a list of States in which a state of emergency was proclaimed or continued during the reporting period.

2. Under article 4 (3) of the International Covenant on Civil and Political Rights (the Covenant), States parties availing themselves of the right of derogation are to inform the other States parties immediately, through the Secretary-General, of the derogations they have made, including the reasons therefore and the date on which the derogations are terminated. However, for the period between June 2003 and May 2005, only some notifications were received by the Secretary-General.

3. OHCHR has relied exclusively on information provided by United Nations sources, based on information provided by States, to draw up the requested list of States. It should be understood accordingly that the list cannot purport to be complete.

## I. COUNTRIES OR TERRITORIES IN WHICH A STATE OF EMERGENCY HAD BEEN PROCLAIMED BEFORE JUNE 2003 AND CONTINUED THEREAFTER

### Algeria

The President of the High State Council issued Presidential Decree No. 92-44 of 9 February 1992, decreeing a state of emergency throughout the national territory for a duration of 12 months, in accordance with articles 67, 74 and 76 of the Algerian Constitution.

OHCHR has requested information from the Government as to the current status of the state of emergency, but a response had not been received as of the date of submission of the present report.

*Sources:* Notification of the Government to the United Nations Secretary-General dated 13 February 1992; list of States which have proclaimed or continued a state of emergency submitted to the Sub-Commission at its fifty-third session (E/CN.4/Sub.2/2003/39).

### Egypt

A state of emergency was declared in 1981. OHCHR has requested information from the Government as to the current status of the state of emergency, but a response had not been received as of the date of submission of the present report.

*Source:* List of States which have proclaimed or continued a state of emergency submitted to the Sub-Commission at its fifty-third session (E/CN.4/Sub.2/2003/39).

### Israel

The Government of Israel notified that the state of emergency proclaimed in May 1948 has remained in force. As the situation constitutes a public emergency within the meaning of article 4 (1) of the Covenant, the Government found it necessary to take measures to the extent strictly required by the exigencies of the situation for the defence of the State and for the protection of life and property, including the exercise of powers of arrest and detention. Insofar as any of these measures are inconsistent with article 9 of the Covenant, Israel derogates from its obligations under that provision.

In 2003 the Government informed the United Nations Human Rights Committee of its decision to review the need to maintain the declared state of emergency and to prolong it on a yearly rather than an indefinite basis.

*Sources:* Notification of the Government to the United Nations Secretary-General received on 3 October 1991; Concluding observations of the Human Rights Committee, 21 August 2003.

### Syrian Arab Republic

Legislative Decree No. 51 of 9 March 1963 declared a state of emergency. OHCHR has requested information from the Government as to the current status of the state of emergency, but a response had not been received as of the date of submission of the present report.

*Source:* "List of States which have proclaimed or continued a state of emergency submitted to the Sub-Commission at its fifty-third session (E/CN.4/Sub.2/2003/39).

## II. COUNTRIES OR TERRITORIES IN WHICH A STATE OF EMERGENCY WAS PROCLAIMED BETWEEN JUNE 2003 AND MAY 2005

### Iraq

On 7 November 2004, the Government of Iraq decided, based on article 1 of the law on national security, to declare a state of emergency in all of Iraq, with the exception of the province of Kurdistan, for a period of 60 days and with immediate effect. The state of emergency was subsequently renewed for 30-day periods, including a renewal on 13 May 2005.

*Source:* United Nations.

### Jamaica

On 28 September 2004, the Secretary-General received from the Government of Jamaica a notification, made under article 4 (3) of the Covenant, transmitting a proclamation declaring a state of emergency in the island. The proclamation was to remain in effect for an initial period of 30 days, unless the Governor-General was advised to repeal it or an extension was granted by the

House of Representatives. In a note received on 22 October 2004, the Government of Jamaica informed the Secretary-General that during the state of emergency, the provisions from which it may have derogated were articles 12, 19, 21 and 22 (2) of the Covenant.

On 27 October 2004, the Secretary-General received from the Government of Jamaica a notification, made under article 4 (3) of the Covenant, transmitting text of sections 26 (4) to 26 (7) of the Constitution, by which the proclamation of a state of public emergency issued by the Governor-General on 10 September 2004 terminated on 8 October 2004. Furthermore, the Government of Jamaica informed the Secretary-General that the possible derogation from the rights guaranteed by Articles 12, 19, 21 and 22 (2) by Jamaica ceased on 8 October 2004. *Source:* Notifications of the Government to the United Nations Secretary-General.

**Nepal**

On 16 February 2005 the Secretary-General received from the Government of Nepal a notification, made under article 4 (3) of the Covenant, informing him that in view of "a grave emergency threatening the sovereignty, integrity and security of the Kingdom of Nepal, His Majesty the King has, in accordance with clause (1) of Article 115 (1) of the Constitution of the Kingdom of Nepal, 1990 (2047), issued an order of a State of Emergency in respect of the whole of the Kingdom of Nepal on 1 February 2005 with immediate effect. As the situation in the country had reached a point where the survival of multiparty democracy and the nation's sovereignty had been seriously threatened and the people of Nepal had to go through a miserable period of time due to untold sufferings brought about by the rise in terrorist activities throughout the country, and as the governments formed during the past few years had not been serious enough about initiating a dialogue with terrorists, His Majesty as the protector of the Constitution and the symbol of national unity, had no alternative but to declare a state of emergency to meet the exigencies in exercise of His State authority and in keeping with the spirit of the Constitution of the Kingdom of Nepal, 1990 and taking into account Article 27 (3) of the Constitution, to protect and preserve the sovereignty of the Nation. His Majesty the King has also, in accordance with clause (8) of Article 115 of the Constitution, suspended sub-clauses (a) freedom of thought and expression, (b) freedom to assemble peaceably and without arms, and (d) freedom to move and reside in any part of Nepal, of clause (2) of Article 12; clause (1) of Article 13 press and publication right which provides that no news item, article or any other reading material shall be censored; and Article 15: right against private detention; Article 16: right to information; Article 17: right to property; Article 22: right to privacy; and Article 23: and the right to constitutional remedy (with the exception of the right to the remedy of habeas corpus) of the Constitution of the Kingdom of Nepal, 1990 (2047)."

The Government further informed the Secretary-General that "such measures are not inconsistent with Nepal's other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin." The Government also informed the Secretary-General that "the non-derogable rights as set forth in Articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 of the International Covenant on Civil and Political Rights, which are guaranteed by the Constitution of the Kingdom of Nepal, 1990, have been kept intact."

On 29 March 2005, the Government informed the Secretary-General that "…. following the declaration of a State of Emergency throughout the Kingdom of Nepal on 1 February 2005,

[the Government of Nepal] has derogated itself from the obligations under the articles, mentioned below, of the International Covenant on Civil and Political Rights (ICCPR) for a period of the State of Emergency in the country. 1. Derogation from Article 19 of the ICCPR following the suspension of sub-clause (a) of Clause 2 of Article 12, Clause (1) of Article 13 and Article 16 of the Constitution (freedom of opinion and expression, right to press and publication and right to information respectively). 2. Derogation from Articles 12.1 and 12.2 of the ICCPR following the suspension of sub-clause (d) of Clause 2 of Article 12 of the Constitution (freedom to move and reside in any part of the Kingdom of Nepal). 3. Derogation from Article 17 of the ICCPR following the suspension of Article 22 of the Constitution (right to privacy). 4. Derogation from Article 2.3 of the ICCPR following the suspension of Article 23 of the Constitution (right to constitutional remedy except the writ of habeas corpus)."

On 5 May 2005, the Secretary-General received from the Government of Nepal a notification, dated the same, informing him, as required by Article 4 (3) of the Covenant, that "His Majesty the King has, in accordance with clause (11) of Article 115 of the Constitution of the Kingdom of Nepal, 1990 (2047), revoked the Order of State of Emergency proclaimed on 1 February 2005 in respect to the whole of the Kingdom of Nepal."
*Source:* Notifications of the Government to the United Nations Secretary-General, received on 16 February, 29 March and 5 May 2005.

## Peru

Between 30 May 2003 and 24 May 2005, the Secretary-General. received from the Government of Peru 19 notifications made under article 4 (3) of the Covenant, of which some concerned declarations of states of emergency in specified areas, others concerned extensions of states of emergency, and others concerned terminations of states of emergency. The Government specified that the provisions from which it had derogated were articles 9, 12, 17 and 21 of the Covenant.

*Source:* Notifications of the Government to the United Nations Secretary-General.

## United Kingdom of Great Britain and Northern Ireland

The Secretary-General received from the Government of United Kingdom of Great Britain and Northern Ireland a notification, dated 15 March 2005, which said, "The provisions referred to in the 18 December 2001 notification, namely the extended power of arrest and detention in the Anti-terrorism, Crime and Security Act 2001, ceased to operate on 14 March 2005. Accordingly, the notification is withdrawn as from that date, and the Government of the United Kingdom confirms that the relevant provisions of the Covenant will again be executed as from then."

*Source:* Notification of the Government to the United Nations Secretary-General.

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