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## **New Zealand's unprecedented "lockdown" should be carefully monitored**

Kingsley Abbott

In New Zealand, swimming at the beach is [prohibited](#), an activity so entrenched in the Kiwi psyche that for many it is like being asked to go without oxygen.

The New Zealand Government has asked everyone to "[unite against COVID-19](#)" by living under the severest restrictions on fundamental freedoms the country has ever known.

On 25 March, a one-week [State of Emergency](#) was declared, which was [renewed](#) for another seven days on 31 March.

New Zealand is also experiencing a "lockdown" under a Government-imposed "[COVID-19 Alert System](#)", which means that, under the current Alert Level 4, nearly everyone must stay at home for at least four weeks unless they are purchasing groceries, medical supplies or enjoying exercise locally, [among other restrictions](#).

This situation has taken New Zealand into uncharted territory and Kiwis should monitor the actions of our Government carefully.

Restrictions are being enforced by the police, who now enjoy extensive, broadly worded, powers under the [Civil Defence Emergency Management Act](#) and the [Health Act](#).

And the police have been active, including by setting up checkpoints to screen peoples' movements, asking Kiwis to [report on their neighbours who break the rules](#), and requesting people in non-managed self-isolation give [consent to the police to track their movements](#) using their cellular devices.

The Government's response to COVID-19 appears to have the general support of most people.

Kiwis have good reason trust their Government, with New Zealand's strong [track record](#) of upholding human rights and the rule of law.

And it should be commended for its swift implementation of a [range of special actions](#) taken to alleviate peoples' suffering at this time, including the most vulnerable, such as by providing a wage subsidy scheme, leave and self-isolation support, business cash flow and tax measures, a mortgage repayment holiday scheme and a business finance guarantee scheme.

Establishing a bi-partisan [Epidemic Response Committee](#) to oversee the Government's response was also a positive step, and should serve as a [model](#) to other states.

That said, we should not be complacent about the magnitude of what we are being asked to endure, and what it already means for the "Kiwi way of life", our communities and the Nation.

Lessons learned from around the world where living under limitations on rights and states of emergency has become a way of life for many (such as in [Thailand](#) where I live and work), include that without constant scrutiny, restrictions put in place to respond to an emergency can be [abused](#) and sometimes linger long after they are required, assuming they were ever required in the first place.

Another, global, example is how in the post-September 11 context, different limitations which were put in place to combat the specific threat of terrorism – including enhanced powers of state surveillance - [remain in place today](#), altering the trajectory of whole societies around the world.

So, what does monitoring our Government's response to COVID-19 mean for New Zealand and what can we use as a yardstick?

It is not widely known that an international human rights legal framework exists which applies to precisely this situation, and that it is legally binding on New Zealand.

The Government – including the Police – cannot simply do whatever it wants to combat the pandemic, even in good faith.

Rather, the framework requires New Zealand to place human rights and the rule of law at the forefront of its response.

Among other things, the Government must ensure that each and every restriction on our rights and freedoms has a clear legal basis; is described in specific terms so that people know how their rights are being limited, under which law, and precisely what they are (and are not) permitted to do; and is subject to the review of the courts, if necessary.

In combating COVID-19, all states, including New Zealand, are confronted with the challenge of ensuring that the whole protective fabric of human rights (civil, political, economic, social and cultural) and the rule of law is applied coherently and consistently.

New Zealand has a duty to respect, protect and fulfil a cluster of rights, including the right to life and the right to health.

These duties have a range of sources in national and international law, including under treaties to which New Zealand is a State Party, such as the [International Covenant on Civil and Political Rights](#) (ICCPR) and the [International Covenant on Economic, Social and Cultural Rights](#) (ICESCR).

For example, Article 12 of the ICESCR – which deals with the right to health - recognises New Zealand's duty to respect, protect and fulfil "*the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*" and the obligation to take effective steps for the "*prevention, treatment and control of epidemic, endemic, occupational and other diseases.*"

At the same time, New Zealand has a duty to respect, protect and fulfil another range of interrelated and interdependent rights including the rights to free movement, expression, assembly and association found in our domestic law (such as the [New Zealand Bill of Rights Act](#)) and the ICCPR.

Article 12 of the ICCPR states that "*Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.*"

This is the Article that protects, for example, our right to travel between cities or go for a swim at the beach.

Subsection 3 allows certain restrictions on the right to movement but only in limited circumstances, including to protect public health: "*The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.*"

And by declaring a State of Emergency, New Zealand has entered into another, quite specific, legal territory that has its own framework for dealing with public emergencies, should it seek to derogate (suspend or restrict obligations in certain emergency situations) from its obligations under the ICCPR, which it does not appear to have done so far.

Whether through normal limitation or emergency derogation, there are certain conditions to restricting rights that must always be observed under international human rights law and standards.

The [Siracusa Principles](#) and the jurisprudence of the UN treaty bodies (tasked with monitoring the implementation of the core international human rights treaties) set out what these requirements mean in practice.

In particular, any restrictions should, at a minimum, be:

- provided for and carried out in accordance with the law;
- directed toward a legitimate objective, as provided under the ICCPR (in this case public health);
- strictly necessary in a democratic society to achieve the objective;
- the least intrusive and restrictive available to reach the objective;
- based on scientific evidence and be neither arbitrary nor discriminatory in application; and
- of limited duration, respectful of human dignity, and subject to review.

While we should, of course, obey the current range of restrictions, we should also be aware of the Government's obligations and our rights.

Government accountability, transparency and the rule of law – always necessary – is vital in these extraordinary times.

For example, we should welcome how initial confusion about the precise scope of restrictions, their legal basis and how they are being policed is now being addressed, including through a new, detailed, [Health Act Order](#), and release of the Police's [Operational Policing Guidelines](#), both issued [after questions were raised](#) before the Epidemic Response Committee on Friday.

As the COVID-19 pandemic continues to rage around the world, many governments are struggling with an appropriate reaction.

New Zealand should continue to establish itself as a global leader on what a response grounded in human rights and the rule of law looks like.

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