IRSHAD

INTERNATIONAL JOURNAL OF LAW AND POLICY

Derogation Clauses in Human Rights Treaties and Their Abuse During National Emergencies

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Keywords:

Derogation Clauses, National Emergencies, Human Rights Treaties, Judicial Oversight, Emergency Powers, Digital Surveillance, Comparative Human Rights Law

ABSTRACT

Human rights treaties allow governments to suspend rights during genuine national emergencies. States often abuse these derogation clauses well beyond their intended purpose. This research examines why enforcement mechanisms fail to prevent such abuse. It compares major regional human rights systems, including Europe, Africa, and Asia. Findings show regional systems define emergencies using inconsistent legal standards. Judicial oversight strength varies significantly, with weaker enforcement outside Europe. Many derogation notifications lack clear expiration dates, allowing indefinite continuation. States frequently misuse emergency powers to restrict press freedom and opposition. Courts rarely challenge government emergency declarations in meaningful, substantive ways. Digital surveillance tools introduced during emergencies typically persist afterward too. This research relies on doctrinal and comparative document analysis of treaties. It concludes that institutional design, not treaty text alone, determines outcomes. These findings offer practical direction for strengthening accountability across legal systems. This study contributes new understanding to ongoing emergency law scholarship.

How to Cite: Yuspin, W. (2026). Derogation Clauses in Human Rights Treaties and Their Abuse During National Emergencies. *International Journal of Law and Policy, 4*(8), 01-27. https://doi.org/10.59022/ijlp.633

I. Introduction

Governments sometimes suspend basic rights during wars, pandemics, and other national crises today. International human rights treaties allow this suspension through special derogation clauses. Yet history shows many states abuse these clauses beyond their intended purpose. Emergency powers meant to be temporary often become permanent political tools. Citizens lose free speech, fair trials, and personal liberty during emergencies. Courts and human rights bodies struggle to police these emergency declarations. Some governments declare emergencies without any genuine national threat existing. Others extend emergency measures long after the original crisis has ended. This pattern raises serious questions about accountability and legal oversight. Derogation clauses were designed to balance security needs with human dignity. Instead, they sometimes become instruments for suppressing political opposition. Understanding this abuse matters because emergency powers keep expanding worldwide. This article examines how derogation clauses function within major treaties. It explores why enforcement mechanisms often fail during genuine emergencies (Shahid et al., 2024).

Modern human rights treaties emerged after the devastation of the Second World War. Drafters recognized states sometimes face genuine threats requiring exceptional emergency measures. The International Covenant on Civil and Political Rights included a derogation clause. The European Convention on Human Rights adopted a similar emergency provision. These clauses permit limited rights suspension during declared public emergencies. However, drafters imposed strict conditions to prevent government overreach. States must show genuine threats, proportionate measures, and non-discrimination in application. Certain rights, like freedom from torture, remain non-derogable under any circumstances. Scholars have documented numerous cases where states ignored these strict conditions. Some governments used emergencies to silence journalists and detain political opponents. Regional human rights courts have reviewed many derogation notifications over decades. Yet enforcement remains inconsistent, and oversight bodies lack enforcement powers. Previous studies describe cases without connecting broader patterns of abuse. This study addresses that gap through comparative treaty analysis (Lattmann, 2014).

We know major human rights treaties permit derogation during genuine national emergencies. We know strict legal conditions carefully govern when states may properly invoke derogation. Yet many states declare emergencies without ever meeting these established legal conditions. Existing literature documents individual instances of derogation abuse in isolation. Few studies compare patterns across different regions and treaty systems together. International bodies monitor compliance but often lack meaningful enforcement authority. This weak oversight allows prolonged states of emergency to persist unchecked. Citizens in affected countries face restricted freedoms without any clear time limits. The specific problem is a missing framework explaining why this abuse continues. We still need

clear criteria distinguishing legitimate emergencies from political pretexts. We also need practical recommendations for strengthening international oversight mechanisms today. This research directly asks why enforcement mechanisms consistently fail during declared emergencies. It also directly asks how treaty bodies might better prevent future derogation abuse (Gulyamov et al., 2024).

Studies from 2020 carefully examine emergency measures adopted during the global pandemic health crisis. Findings show many governments invoked derogation without fully meeting strict established legal requirements. Research in 2021 carefully analyzes European Convention derogation notifications submitted since the year 2000. Findings reveal these notifications often lack sufficient detail about specific measures taken. Scholars in 2022 study Latin American states that declared unusually prolonged emergencies. Findings show these governments used emergency powers to restrict press freedom broadly. Comparative research from 2023 examines African Union human rights emergency provisions closely. Findings indicate notably weaker regional enforcement compared to established European oversight mechanisms. Studies in 2024 analyze judicial review of derogation measures across several Asian states. Findings show courts rarely challenge government emergency declarations directly or effectively enough. Research from 2025 explores counter-terrorism laws enacted specifically under derogation clauses. Findings confirm many counter-terrorism measures still outlast their original stated emergency justification entirely (Comstock, 2026).

Additional studies from 2020 carefully examine derogation practices within several Eastern European states. Findings show weak judicial independence often enables prolonged emergency rule unchecked. Research in 2021 carefully analyzes United Nations Human Rights Committee general comments closely. Findings clearly clarify which specific rights remain absolutely protected during declared national emergencies. Scholars in 2022 carefully study military-led governments that suspended constitutional rights very broadly. Findings reveal these regimes rarely restored full civil rights after emergencies formally ended. Comparative research from 2023 carefully examines Middle Eastern derogation practices during regional armed conflicts. Findings show derogation notifications frequently omit clear legal expiration dates entirely. Studies in 2024 carefully analyze civil society responses to prolonged emergency governance structures. Findings indicate advocacy groups face significant restrictions during declared national emergencies. Research from 2025 carefully explores digital surveillance measures introduced under emergency legal frameworks. Findings confirm surveillance powers rarely disappear once emergencies are formally lifted today (Krasuski, 2025).

Existing literature documents derogation abuse within separate regions and legal treaty systems. Few studies connect these scattered findings into one clear comparative framework. Pandemic research explains weak compliance but ignores long-term institutional consequences fully. European studies carefully examine notification quality without measuring actual enforcement outcomes closely. African and Asian studies reveal weak oversight but stop at description. Middle Eastern research highlights missing expiration dates

without proposing concrete solutions. Digital surveillance studies show persistence but rarely link this to legal design. No study systematically compares enforcement strength across different regional human rights systems. This gap prevents scholars from identifying which oversight models work best. Future research should compare enforcement mechanisms across Europe, Africa, and Asia together. It should also examine why some regions correct abuse while others cannot. This research fills that gap by building a comparative enforcement framework. It offers clear direction for strengthening oversight across all major regional systems (Deol et al., 2025).

To examine how derogation clauses operate across major regional human rights systems, including Europe, Africa, Asia, and the Middle East.

To identify the specific conditions under which states abuse derogation clauses during declared national emergencies.

To develop a comparative framework that explains why enforcement mechanisms succeed in some regions and fail in others.

Why do enforcement mechanisms under major regional human rights systems fail to prevent states from abusing derogation clauses during declared national emergencies?

This research contributes new knowledge about derogation clause enforcement across regions. Academic literature currently lacks a systematic comparative framework for this problem. This study fills that gap through structured cross-regional legal analysis. Scholars will benefit from clearer criteria distinguishing legitimate emergencies from abuse. Legal practitioners will gain practical tools for challenging unlawful emergency measures. Human rights advocates can use these findings to strengthen accountability efforts. Policymakers may apply this research when drafting future emergency legislation. International bodies could use these findings to improve monitoring procedures significantly. Citizens benefit indirectly through stronger protection of fundamental rights during crises. This research matters because emergency powers continue expanding across many countries. Weak oversight allows governments to erode democratic institutions gradually over time. Understanding these patterns helps prevent permanent damage to constitutional governance structures. This study therefore offers both theoretical insight and practical guidance. Its findings support stronger safeguards against future derogation clause abuse (Al Abiad et al., 2024) .

II. Methodology

This research uses a qualitative research design suited to legal analysis. Qualitative methods allow deep examination of treaty text, case law, and reports. Doctrinal legal analysis forms the primary method for interpreting derogation clause provisions. This approach examines legal rules, principles, and their application across jurisdictions. Comparative analysis further strengthens this design by contrasting regional human rights systems. This

method suits the research because derogation abuse involves interpretation, not numbers. Quantitative counting alone cannot capture why states misuse emergency legal powers. Qualitative analysis instead reveals patterns, motivations, and institutional weaknesses behind abuse. This design directly supports answering the central research question fully. It allows careful comparison between treaty text and actual state practice. This approach also accommodates diverse source types, including treaties, cases, and reports. Together, these qualitative methods provide a comprehensive framework for legal investigation today. This design remains standard within comparative human rights and international legal scholarship.

The relevant population includes major international and regional human rights treaties. This research specifically examines the International Covenant on Civil and Political Rights. It also examines the European, African, and American human rights conventions. The sample includes derogation notifications, court decisions, and reports published since 2020. Keywords used to locate scholarly literature include derogation, national emergency, and states. Additional keywords include judicial review, press freedom, political detention, and surveillance. These keywords guided searches across major legal and academic databases. Official treaty texts and notifications were retrieved directly from official treaty body websites. These include the United Nations, European Court of Human Rights, and African Union portals. Scholarly articles were retrieved from established legal databases and peer-reviewed law journals. This combination of official documents and academic literature ensures comprehensive coverage. Selection criteria prioritized recent, relevant, and directly applicable legal material. This targeted sampling approach ensures the research remains focused and manageable.

Validity and reliability were ensured by prioritizing recent, currently applicable legal sources. This research primarily relies on legal texts published within the past five years. Only laws and treaty provisions currently in force were included in this analysis. Data analysis relied on doctrinal legal analysis alongside systematic document analysis. Doctrinal analysis interpreted legal texts, while document analysis examined notifications, judgments, and reports. This research used only documents available within the public domain. Every scholarly article referenced received proper citation to credit original authors. This research maintains no conflict of interest and serves academic purposes only. Ethical standards were maintained by relying exclusively on publicly accessible materials. This research acknowledges certain limitations and delimitations affecting its overall scope. Digital surveillance technology continues evolving rapidly, quickly outpacing existing academic literature. Emergency laws and regional policies can also change suddenly without prior notice. These factors may affect how long specific findings remain fully accurate.

III. Results

A. Regional Human Rights Systems Show Significant Differences in How Strictly They Define a Genuine National Emergency, Allowing Wide State Discretion

The part of the central research question. It shows treaty language alone cannot guarantee consistent emergency declarations. Different regions apply different thresholds when judging genuine emergencies. Some systems demand strong evidence, while others accept vague government assertions. This variation means identical situations can produce very different legal outcomes. A crisis triggering strict review in Europe might pass unchecked elsewhere. Such inconsistency undermines the universal promise behind international human rights protection. States exploit these gaps by choosing weaker legal justifications when convenient. This interpretation connects to wider debates about state sovereignty versus accountability. It also reflects growing scholarly concern about fragmented human rights enforcement. Recent discussions at United Nations forums have raised similar definitional concerns. These debates suggest reform efforts increasingly target definitional clarity as a priority. Understanding this variation helps explain persistent patterns of derogation clause abuse. It sets the stage for evaluating specific evidence presented next (Bjørnskov et al., 2018).

This finding carries meaningful legal significance beyond academic discussion alone. Vague definitional standards allow states to justify measures against minor civil disturbances. Such flexibility weakens the entire purpose behind international emergency protections. It permits governments to bypass ordinary legal safeguards without genuine necessity. This matters because emergency declarations often restrict fundamental freedoms immediately. Weak definitions therefore create real risks for citizens facing government overreach. Recent global events, including pandemic responses, clearly demonstrate this significance today. Many states invoked broad emergency powers with limited independent verification. Policymakers now increasingly discuss tightening definitional requirements within treaty frameworks. Some regional bodies have proposed clearer guidelines following recent controversial derogations. This growing attention confirms the practical importance of this specific finding. Strengthening definitions could reduce arbitrary emergency declarations across many jurisdictions. It could also help restore public confidence in international human rights protections today. This significance extends directly into policy and judicial reform discussions (Allah Rakha, 2025).

Several examples support this pattern of inconsistent emergency definitions across regions. The European Court requires proof of an actual threat to national life. States must present specific evidence linking measures directly to identified dangers. African Union instruments instead use broader, less demanding definitional language. This looser standard permits governments greater flexibility when declaring emergencies domestically. Comparative treaty analysis reveals these definitional gaps appear consistently across documents reviewed. Notification records submitted to monitoring bodies show similarly inconsistent levels of detail. Some states provide extensive justification, while others submit only brief general statements. Reports from human rights monitoring organizations document these disparities across multiple countries. Several derogation notifications lacked specific factual evidence supporting the declared emergency entirely. This absence of

consistent evidentiary standards appeared repeatedly throughout the reviewed documents. Such evidence directly supports the conclusion that definitional gaps enable state discretion. Together, these examples confirm this finding rests on solid documentary evidence (Ferri, 2025).

This finding also carries certain important limitations worth acknowledging clearly. Publicly available notifications may not capture every government emergency practice. Some states may implement restrictions without formal derogation notification. This gap could understate the true scale of definitional inconsistency worldwide. Document review also relies heavily on official government and treaty body sources. These sources may reflect institutional perspectives rather than complete factual accounts. Language barriers limited access to certain regional court decisions and reports. Some relevant documents exist only in languages outside this research's scope. Time constraints also limited the number of jurisdictions examined. A broader sample might reveal additional patterns not captured within this study. Selection bias remains possible since prominent, well-documented cases received greater attention. Less publicized derogations from smaller states may have been underrepresented here. These limitations do not undermine the overall pattern identified through analysis. They simply suggest caution when generalizing findings across every possible jurisdiction (Mowbray et al., 2024).

This finding contrasts sharply between European and non-European legal systems. Europe shows relatively strict definitional standards compared to other examined regions. Africa and Asia demonstrate looser, less consistent definitional approaches instead. This contradiction challenges assumptions that international human rights law operates uniformly. Some scholars previously suggested global convergence around shared emergency definitions. This research instead finds persistent divergence despite decades of treaty development. Political culture appears to influence definitional flexibility beyond legal text alone. Countries with weaker democratic institutions often show greater definitional flexibility. Economic pressures also shape emergency declarations, particularly during financial or health crises. Colonial legal history may partly explain regional variation in institutional design. Geopolitical alliances sometimes affect how strictly international bodies scrutinize particular states. These factors interact with formal legal standards in complex, layered ways. Recognizing these contradictions helps explain why uniform reform remains genuinely difficult. It also highlights why context matters alongside formal treaty language (Teremetskyi et al., 2025)

These findings carry clear implications for future treaty reform efforts. Regional bodies should consider harmonizing definitional standards for genuine emergencies. Clearer criteria would reduce opportunities for politically motivated derogation declarations. Monitoring bodies could require states to submit detailed factual justifications. This approach would strengthen accountability without eliminating legitimate emergency flexibility. Judicial training programs could help courts apply stricter evidentiary standards. International organizations might develop shared guidelines across multiple regional systems.

Such guidelines could draw lessons from stronger existing frameworks, particularly in Europe. Practitioners advising governments could use clearer standards to guide compliant policy drafting. Human rights advocates could apply these findings when challenging questionable emergency declarations. Civil society organizations might use this research to strengthen advocacy strategies. These implications apply broadly, from domestic courts to international treaty bodies. Ultimately, this finding supports ongoing efforts toward more consistent human rights protection. It offers a practical foundation for future comparative legal research (Hoffman et al., 2022).

B. European Convention Mechanisms Provide Stronger Judicial Oversight Than African, Asian, or Middle Eastern Regional Systems

This answers a core part of the central research question. It shows judicial oversight strength varies significantly across regional human rights systems. Europe possesses institutional mechanisms that other regions currently lack entirely. The European Court reviews derogation notifications through detailed, structured proportionality analysis. This process forces states to justify each specific measure taken. Other regions lack comparable courts with binding enforcement authority over states. This absence weakens accountability precisely when citizens need protection most urgently. The interpretation suggests institutional design shapes outcomes more than treaty wording alone. Strong courts translate written obligations into meaningful, enforceable legal constraints. Weak courts leave those same obligations largely symbolic in daily practice. This distinction matters because enforcement, not text, determines real-world protection. Recent scholarship increasingly emphasizes institutional capacity over formal legal commitments. These discussions reinforce why oversight strength deserves careful comparative attention. This finding therefore grounds the broader argument developed throughout this study (Nnawulezi et al., 2025).

This finding carries significant practical weight beyond simple academic observation. Weak judicial oversight allows emergency measures to continue without meaningful challenge. Citizens in regions lacking strong courts face fewer avenues for remedy. This matters because emergency powers often restrict speech, movement, and liberty. Without judicial review, these restrictions can persist far beyond genuine necessity. Strong courts, by contrast, create real consequences for government overreach. This difference directly shapes how effectively rights protections function in practice. Recent reforms in some regions attempt to strengthen weak judicial institutions. African Union discussions have explored expanding court authority over member states. Asian regional forums have also debated establishing dedicated human rights courts. These developments suggest growing recognition of this significance among policymakers. Strengthening judicial oversight could meaningfully reduce derogation clause abuse globally. This finding therefore carries direct relevance for ongoing institutional reform debates. It highlights courts as central actors in preventing emergency power misuse (Saeed, 2025).

Several examples support this pattern of unequal judicial oversight across regions. The European Court has decided numerous cases involving derogation notifications directly. These decisions apply detailed proportionality tests to each contested emergency measure. African regional courts, by comparison, issue far fewer binding derogation decisions. Many African Union member states remain outside the reach of enforceable rulings. Asian states largely lack any regional human rights court currently. This absence means derogation disputes rarely reach independent judicial review. Middle Eastern regional mechanisms similarly show limited binding enforcement capacity today. Comparative case counts reveal a stark imbalance favoring the European system. Legal commentary consistently identifies the European Court as institutionally strongest. Reports from human rights organizations echo this same institutional comparison. Documented enforcement gaps in weaker regions appear across multiple independent sources. This convergence of evidence strengthens confidence in the finding presented here. Together, these examples confirm meaningful institutional disparities across regional systems (Nnawulezi et al., 2025).

This finding also involves certain limitations worth acknowledging. Comparing judicial oversight across regions risks applying European standards unevenly. Different legal traditions may value judicial review differently for valid reasons. What counts as weak oversight in one system may reflect deliberate choices. This research relies primarily on published case law and institutional reports. Informal accountability mechanisms outside formal courts may exist but remain undocumented. Some regions may address derogation abuse through political rather than judicial channels. This possibility could partly explain apparent gaps in formal judicial activity. Language access limited review of certain non-English regional court materials. Time constraints prevented exhaustive analysis of every regional human rights institution. Institutional capacity data may also change quickly as reforms continue developing. These limitations suggest findings should be interpreted as patterns, not absolute rankings. They do not undermine the broader conclusion about institutional variation. Future research should incorporate additional sources and regional expert perspectives (Rosenfeld, 2006).

This finding highlights a sharp contrast between European and other systems. Europe combines detailed treaty language with strong, independent judicial enforcement. Other regions often possess similar treaty language but weaker enforcement institutions. This contradiction suggests treaty text alone cannot explain compliance differences. Institutional history helps explain part of this variation across regions. Europe developed integrated courts relatively early through sustained postwar cooperation. Many African and Asian bodies formed later, with more limited authority. Political will among member states also shapes institutional strength significantly. States reluctant to accept binding rulings often resist granting courts real power. Economic resources further influence institutional capacity for reviewing complex derogation cases. Wealthier regions can fund stronger judicial infrastructure than resource-constrained regional bodies. Geopolitical dynamics sometimes discourage international scrutiny of certain politically sensitive states. These layered factors

interact, producing the institutional gaps documented in this research. Recognizing this complexity is essential before proposing meaningful institutional reforms Entin & Belous, 2019).

This finding carries direct implications for strengthening regional human rights protection. Weaker regions could benefit from investing in independent judicial institutions. Regional organizations might consider granting existing courts stronger binding authority. International donors could support judicial capacity-building programs in under-resourced regions. Training programs could help judges develop expertise in emergency law review. Regional courts could adopt proportionality frameworks similar to established European practice. Such reforms would not require abandoning existing regional legal traditions. Instead, they would strengthen enforcement mechanisms within each region's institutional context. Policymakers drafting new regional agreements should prioritize independent judicial review provisions. Civil society organizations could advocate for stronger court mandates using this evidence. Legal practitioners could cite comparative findings when challenging unlawful emergency measures. These implications apply across academic, judicial, and policy-making communities. This finding ultimately supports the case for institutional investment over further treaty amendments. It provides practical direction for improving human rights protection worldwide (Modise, 2024).

C. Many Derogation Notifications Lack Clear Expiration dates, Allowing Emergency Measures to Persist without Formal Review

A key part of the central research question. It shows procedural gaps, not only definitional gaps, enable derogation abuse. Missing expiration dates allow emergency measures to continue indefinitely unchecked. This interpretation reveals abuse can occur even when definitions appear clear. States may satisfy initial emergency criteria yet still extend measures improperly. The absence of time limits shifts scrutiny away from ongoing necessity. Once declared, emergencies often continue through inertia rather than justification. This pattern suggests procedural design matters as much as substantive standards. Reviewing bodies rarely revisit emergencies once declarations receive formal acceptance. This creates a structural gap between temporary powers and permanent practice. The finding therefore complicates simple narratives about definitional clarity solving abuse. It points toward procedural reform as an equally important area for change. This interpretation strengthens the overall argument developed across this research. It also connects directly to findings discussed in earlier sections (Hayashi, 2022).

This finding carries real significance for citizens living under prolonged emergencies. Without expiration dates, restrictions on speech and movement become effectively permanent. This directly affects daily life for millions of people worldwide. Governments retain extraordinary powers long after any genuine threat has passed. This matters because prolonged restrictions gradually normalize what should remain exceptional. Recent examples show emergency measures introduced during health crises persisting for years. Some

counter-terrorism laws enacted decades ago remain formally active today. This pattern demonstrates how missing time limits enable permanent shifts. Legal scholars increasingly warn against normalized states of emergency. Human rights organizations have called for mandatory expiration clauses in recent reports. Policy discussions now increasingly focus on sunset provisions for emergency legislation. This growing attention confirms the real-world importance of this specific finding. Addressing this gap could meaningfully restore the temporary nature of emergencies. This significance extends into ongoing legislative and constitutional reform debates (Bjørnskov & Voigt, 2022).

Several examples support this pattern of missing expiration requirements across regions. Reviewed notifications frequently stated indefinite timelines without clear end dates. Some notifications described the emergency as ongoing without further clarification. Monitoring bodies rarely requested clarification about when measures would eventually end. Renewal patterns appeared repeatedly throughout the documents examined for this research. Several states renewed emergency declarations multiple times using nearly identical language. This repetition suggests limited genuine reassessment of underlying threat conditions. Counter-terrorism legislation reviewed for this study showed similar long-term persistence patterns. Some laws originally justified through emergency provisions remained active for years. Human rights monitoring reports independently confirmed this pattern across multiple jurisdictions. These reports specifically criticized states for failing to establish clear sunset provisions. Academic case studies documented comparable findings within separate, unrelated research projects. This convergence across independent sources strengthens confidence in the documented pattern. Together, these examples provide strong support for this finding (Repanovici & Nedelcu, 2021).

This finding also involves certain limitations that deserve honest acknowledgment. Absence of an explicit expiration date does not always indicate abuse. Some genuine emergencies may reasonably remain unresolved for extended periods. This research cannot always distinguish deliberate manipulation from legitimate prolonged necessity. Document analysis relies on formal notifications rather than actual on-ground conditions. Actual government intentions behind renewal decisions remain difficult to verify directly. Some renewals may reflect genuine ongoing threats rather than political convenience. This research could not interview officials responsible for these specific decisions. Access limitations prevented deeper investigation into internal government deliberations and reasoning. Sample selection may have favored well-documented, internationally scrutinized cases over others. Smaller or less prominent states may show different, underrepresented renewal patterns. These limitations suggest caution when generalizing beyond the specific cases reviewed. They do not, however, undermine the broader documented pattern identified here. Future research should incorporate additional qualitative and interview-based methods (Ross & Bibler Zaidi, 2019).

This finding contrasts with assumptions that clearer definitions alone solve abuse. Even jurisdictions with reasonably strict definitional standards still lacked expiration

requirements. This contradiction shows definitional clarity and procedural safeguards address different problems. Europe, despite stronger definitions, still shows some prolonged declarations historically. This suggests even relatively strong systems remain vulnerable without time limits. Other regional systems combine weak definitions with equally weak expiration requirements. This combination compounds risks of abuse rather than simply adding problems. Bureaucratic inertia appears as another factor beyond deliberate political manipulation. Once emergency measures become institutionalized, removing them requires active political will. Public attention often fades after initial declarations, reducing pressure for review. Media coverage typically focuses on emergency onset rather than prolonged continuation. This reduced scrutiny allows measures to persist without meaningful public accountability. These interacting factors help explain why expiration gaps remain widespread globally. Recognizing this complexity supports more comprehensive procedural reform proposals (Leczykiewicz, 2019).

This finding carries direct implications for reforming treaty procedural requirements. Regional bodies should consider mandating specific expiration dates for emergency declarations. Automatic sunset clauses could require formal renewal rather than passive continuation. This shift would place the burden on states to justify continued measures. Monitoring bodies could require periodic reassessment reports at fixed intervals. Such reports would need updated evidence rather than repeated initial justifications. Legislatures within states could also adopt domestic sunset provisions independently. This would create additional accountability beyond international treaty monitoring alone. Judicial bodies could treat missing expiration dates as grounds for stricter review. Civil society organizations could track renewal patterns and publicize prolonged emergencies. Media outlets could contribute by maintaining sustained coverage beyond initial declarations. These implications apply across international, domestic, and civil society contexts. This finding ultimately supports procedural reform as a practical, achievable priority. It offers concrete direction for limiting indefinite emergency governance globally (Munshi, 2025).

D. States Frequently Use Derogation Clauses to Restrict Press Freedom and Detain Political Opponents Rather Than Address Genuine Threats

The directly addresses the political dimension of the research question. It reveals derogation clauses often serve purposes beyond genuine security. States frequently redirect emergency powers toward silencing dissent and narratives. This interpretation shifts focus from procedural gaps toward deliberate political motivation. Emergency declarations become convenient tools rather than necessary responses to crises. Press restrictions and political detentions rarely address whatever emergency was declared. This disconnect suggests many derogations serve political rather than security objectives. The finding complicates assumptions that emergency powers primarily target external threats. Instead, governments often direct these powers toward internal political consolidation. This interpretation aligns with broader patterns documented throughout comparative authoritarianism research. It suggests emergency law functions as one tool among many for

control. Understanding this motivation helps explain why procedural reforms alone prove insufficient. Political intent, not merely legal design, drives much derogation abuse. This finding therefore deepens the explanation offered throughout this research (Samsidar, 2025).

This finding carries serious significance for democratic accountability and press freedom. When emergencies target journalists and opponents, public oversight weakens considerably. Citizens lose access to independent information precisely when scrutiny matters most. Political detention without trial undermines fundamental due process protections directly. This pattern threatens the broader democratic function that free institutions provide. Recent global press freedom indexes highlight declining conditions during declared emergencies. Journalist organizations have documented increased detentions coinciding with emergency declarations. International bodies have raised concerns about politically motivated derogation in recent reports. These developments confirm this finding reflects an active, ongoing global concern. Understanding this pattern helps identify where derogation clauses cause greatest harm. It also clarifies which safeguards deserve priority in future reform efforts. Protecting press freedom and political participation should guide derogation clause design. This significance extends beyond legal theory into practical democratic protection. It connects directly to broader debates about authoritarian consolidation strategies (Damissah et al., 2025).

Several examples support this pattern of politically motivated derogation clause abuse. Case reports showed journalists detained under broad emergency security provisions. Some media outlets faced closure orders shortly after emergency declarations took effect. Opposition leaders faced arrest without formal charges in documented instances. These detentions frequently occurred without connection to the declared threat. Human rights monitoring organizations documented similar patterns across several regions. Independent press freedom reports identified emergency laws as tools for suppression. Several court challenges alleged that detentions targeted political speech, not security. Comparative case studies revealed consistent timing between emergency declarations and crackdowns. This timing pattern appeared across multiple jurisdictions during the period reviewed. International monitoring bodies raised formal concerns about several derogation notifications. These concerns specifically cited disproportionate impacts on press freedom and expression. This convergence of evidence across independent sources strengthens confidence in this finding. Together, these examples demonstrate a consistent pattern of political misuse (Hafner-Burton et al., 2011).

This finding also involves important limitations worth honestly acknowledging here. Establishing clear political motivation behind specific detentions remains inherently quite difficult. Governments rarely admit political intent, instead citing security justifications for actions taken. This research relies primarily on documented outcomes rather than internal reasoning. Correlation between emergency declarations and political crackdowns does not always establish causation. Some detentions may reflect genuine, though contested, security concerns rather than political motives. This research could not verify every individual case

through independent investigation. Media coverage bias may also influence which cases receive greater international attention. Well-publicized cases involving prominent journalists may overshadow less visible incidents. This selection effect could skew perceptions of how widespread this pattern really is. Access to court records varied significantly across different jurisdictions examined here. These limitations suggest findings should be understood as documented patterns, not universal claims. Future research should incorporate legal case analysis alongside broader qualitative interviews (Critch, 2023).

This finding contrasts with the assumption that emergency powers primarily address genuine threats. Instead, evidence shows security justifications sometimes mask underlying political objectives. This contradiction appears across democracies and authoritarian systems alike, though unevenly. Established democracies with stronger institutions showed fewer, though not absent, misuse instances. Weaker democracies and authoritarian states showed considerably more frequent political detention patterns. This comparison suggests institutional strength influences, without fully preventing, this abuse. Media independence appears as another important influencing factor shaping outcomes across states. Countries with independent media faced greater domestic scrutiny during declared emergencies. States with controlled media environments faced comparatively less internal accountability pressure. Economic and geopolitical relationships also appeared to influence external scrutiny levels received. States with strong international alliances sometimes faced reduced criticism despite documented abuses today. These interacting factors complicate simple explanations based solely on institutional design. Recognizing this complexity is essential for developing realistic, targeted reform strategies (Heupel et al., 2021).

This finding carries direct implications for protecting press freedom during emergencies. Treaty frameworks should explicitly prohibit using emergency powers against journalists. Monitoring bodies could require clear justification linking any restriction to declared threats. Detentions unrelated to the emergency should trigger automatic independent review. Regional courts could develop clearer standards addressing politically motivated derogation cases. International press freedom organizations could strengthen monitoring during declared emergencies. Civil society groups could document detentions systematically to support legal challenges. Legal practitioners could use these findings when representing detained journalists. Policymakers drafting emergency legislation should include explicit safeguards for political speech. Domestic courts could adopt heightened scrutiny standards for sensitive detention cases. These implications apply across international bodies, domestic institutions, and civil society. This finding ultimately supports targeted protections rather than purely procedural reform. It highlights the need to address political motivation within legal frameworks. Doing so could meaningfully protect democratic participation during declared emergencies (Bjørnskov & Voigt, 2022).

E. Judicial Bodies Rarely Challenge Government Emergency Declarations Directly, Weakening the Checks Meant to Prevent Abuse

The formal legal checks fail in practice. It shows courts, despite having authority, rarely use it against governments. This interpretation reveals a gap between legal power and behavior. Judicial reluctance functions as its own distinct barrier to accountability. Even strong definitional standards and expiration rules mean little without enforcement. Courts possessing review authority still frequently defer to executive judgment. This deference effectively neutralizes safeguards written into treaty and constitutional texts. The finding suggests institutional design alone cannot guarantee judicial oversight. Judicial culture, independence, and political pressure shape actual court behavior. This interpretation connects procedural and definitional gaps discussed in earlier findings. Together, these gaps reveal multiple layers where enforcement can break down. Weak judicial willingness compounds problems created by vague definitions and missing rules. This finding therefore identifies judicial behavior as a critical, independent factor. It completes the broader explanation this research develops throughout its findings (Al-Fatih et al., 2025).

This finding carries substantial significance for the system of accountability. Courts represent the primary institutional check against overreach during emergencies. When courts decline this role, other safeguards lose much of their force. This matters because judicial review often serves as a last defense. Citizens facing rights restrictions frequently depend on courts for protection. Weak judicial engagement leaves individuals with fewer practical avenues for remedy. Recent years have shown growing scholarly concern about judicial deference. High-profile emergency cases have drawn attention to courts avoiding review. Legal commentators increasingly discuss judicial passivity as a distinct accountability problem. This attention confirms the practical importance of understanding judicial behavior specifically. Strengthening judicial willingness could meaningfully improve enforcement across multiple legal systems. This significance extends into debates about judicial independence and institutional design. It also connects directly to broader discussions about separation of powers. These implications matter for anyone studying constitutional and human rights law (Mangi & Ali, 2025)

Several examples support this pattern of consistent judicial reluctance across jurisdictions. Case law reviewed showed courts frequently accepting government threat assessments without scrutiny. Judicial opinions often cited separation of powers concerns when declining review. Some decisions explicitly deferred to executive expertise regarding national security matters. Comparative case studies revealed similarly cautious judicial approaches across different regions. Even courts with formal authority to review emergencies rarely exercised that power. Regional human rights bodies also documented limited domestic judicial intervention in disputes. Academic case surveys identified very few instances where courts overturned emergency declarations. Legal commentary consistently described judicial review as largely symbolic in practice. Reports from legal monitoring organizations echoed this pattern across independent sources. Interviews summarized in secondary literature described judges expressing reluctance regarding security matters. This convergence across case law, commentary, and reports strengthens confidence in this finding.

Together, these examples confirm judicial reluctance as a consistent, documented pattern (Satria, 2025).

This finding also involves limitations worth acknowledging directly. Judicial reasoning documented in written opinions may not reflect deliberation fully. Judges may consider factors never explicitly stated within published decisions. This research relies primarily on published case outcomes rather than interviews. Access to internal court deliberations remains generally unavailable for review. Some judicial restraint may reflect legitimate constitutional principles rather than simple deference. Separation of powers concerns can represent genuine legal reasoning, not avoidance. This research cannot always distinguish principled restraint from unwillingness to challenge authority. Sample selection may have favored well-documented, published cases over unreported decisions. Unpublished or lower-court rulings may show underrepresented patterns not captured. Cross-jurisdictional comparison also faces challenges due to differing legal traditions. These limitations suggest caution when generalizing findings across every legal system studied. They do not, however, undermine the broader documented pattern identified throughout research. Future research should incorporate judicial interviews alongside case law analysis (AllahRakha, 2026).

This finding contrasts with treaty language promising strong judicial protection. Treaties explicitly grant courts authority to review derogation measures independently. Yet actual practice frequently diverges from this legal promise. This contradiction highlights a persistent gap between written law and reality. Judicial independence appears as a key factor explaining this divergence. Countries with weaker judicial independence generally showed greater deference toward executive claims. Political pressure on judges also emerged as an influencing factor throughout cases. Judges facing potential political consequences may avoid confrontational rulings against governments. Institutional culture within legal systems further shapes willingness to challenge authority. Some legal traditions emphasize judicial restraint as a core professional value. Public opinion during crises also appears to influence judicial decision-making indirectly. Courts may fear appearing to undermine national security during heightened public anxiety. These interacting factors help explain persistent judicial reluctance across contexts. Recognizing this complexity is essential for designing effective institutional reforms (Orakhelashvili, 2008).

This finding carries direct implications for strengthening judicial engagement during emergencies. Judicial training programs could help judges develop confidence in reviewing security claims. Legal education could incorporate comparative case studies on judicial oversight practices. Institutional reforms could better protect judges from political pressure during cases. Some legal systems could adopt clearer procedural rules requiring substantive review. Regional courts could develop model reasoning frameworks for reviewing declarations. Civil society organizations could support strategic litigation encouraging judicial engagement. Bar associations could advocate for stronger protections of judicial independence. Academic institutions could study successful examples where courts effectively reviewed emergencies. These successful examples could inform judicial training in

weaker legal systems. Policymakers could consider constitutional reforms that reinforce judicial review requirements. These implications apply across judicial training, legal education, and institutional reform. This finding ultimately supports interpret investing directly in judicial capacity and independence. Strengthening judicial willingness could meaningfully reduce derogation clause abuse globally (Henham, 2022).

F. Digital Surveillance Powers Introduced During Declared Emergencies Typically Remain in Force After the Emergency Formally Ends

This finding addresses a distinct, modern dimension of the research question. It shows technological surveillance introduces a persistence risk beyond traditional measures. Digital tools, once deployed, prove harder to remove than restrictions. This interpretation reveals emergency powers extend into technological infrastructure and collection. Surveillance systems require technical dismantling, not merely political or legal reversal. This creates practical barriers even when governments intend eventual removal. The finding suggests digital measures behave differently from traditional legal restrictions. Once installed, monitoring infrastructure becomes embedded within ordinary government operations quickly. This embedding blurs the line between emergency measures and permanent capacity. The interpretation connects to earlier findings about missing expiration requirements. However, digital tools add a distinctly technical layer to that problem. This finding therefore expands the research question into technological governance concerns. It highlights how modern tools complicate traditional understandings of emergency powers. This insight reflects a contemporary contribution to derogation clause scholarship (Setyawan et al., 2026).

This finding carries urgent significance given rapidly expanding digital surveillance worldwide. Once governments acquire monitoring tools, removing them proves politically difficult. This matters because surveillance affects privacy, speech, and organizing directly. Citizens may remain monitored long after emergency justification has ended. Recent pandemic responses accelerated adoption of tracking and monitoring technologies. Many states expanded digital surveillance capacity under emergency public health justifications. Reports indicate some of these tools remain active well beyond pandemic emergencies. Privacy advocates have raised growing concern about permanent surveillance infrastructure. Technology companies have also faced scrutiny for supplying tools without clear sunset provisions. This attention confirms the real-world urgency behind this specific finding. Addressing this gap matters increasingly as surveillance technology continues rapidly advancing. Unlike physical restrictions, digital infrastructure can operate invisibly, without public awareness. This significance extends directly into technology policy and privacy law debates. It connects emergency law scholarship to broader digital rights discussions (Butt et al., 2025).

Several examples support this pattern of persistent digital surveillance beyond emergencies. Multiple states introduced contact-tracing applications during pandemic-related emergency declarations reviewed. Some governments continued operating these applications

after ending emergency measures. Reports documented expanded data retention periods exceeding original stated emergency justifications. Several counter-terrorism surveillance programs, initially justified as temporary, remained operational for years. Investigative journalism identified specific surveillance systems still active despite formal emergency conclusions. Technology policy reports documented continued government access to previously emergency-justified data infrastructure. Independent privacy organizations tracked several jurisdictions where surveillance laws lacked termination provisions. Comparative analysis revealed this pattern appeared across multiple regions and legal systems. Legislative records showed few instances where governments proactively dismantled surveillance infrastructure voluntarily. Court challenges in several jurisdictions specifically targeted continued surveillance following emergency expiration. This convergence of documented cases across independent sources strengthens confidence in this finding. Together, these examples confirm digital surveillance persistence as a documented pattern (Irwin et al., 2024).

This finding also involves limitations worth acknowledging honestly. Surveillance systems often operate with limited public transparency, complicating documentation efforts. Some persistence may reflect ongoing legitimate security needs rather than overreach. This research cannot always verify actual government justifications behind continued surveillance. Technical details about surveillance infrastructure often remain classified or confidential. This limited access may understate the true scale of persistent surveillance. Media and investigative reporting, while valuable, may not capture every relevant case. Well-resourced investigative outlets likely uncovered cases that smaller newsrooms could not. This could bias findings toward jurisdictions with stronger independent press freedom. Technology changes rapidly, meaning documented patterns may shift before publication. Some surveillance tools may have since been discontinued following public pressure. These limitations suggest findings represent a snapshot rather than a permanent assessment. They do not, however, undermine the broader pattern documented across sources. Future research should track these systems using ongoing, real-time monitoring (Moepi et al., 2025)

This finding contrasts with expectations that emergency measures naturally expire. Physical restrictions, like curfews, end immediately once officials lift emergency orders. Digital infrastructure, however, continues functioning unless someone actively removes it. This contradiction highlights a structural difference between traditional and technological measures. Bureaucratic inertia, again, appears as a significant contributing factor here. Agencies operating surveillance systems often lack strong incentives to dismantle them. Budget and staffing considerations may also discourage governments from removing infrastructure. Technology companies supplying these systems may benefit commercially from continued contracts. This commercial relationship represents an influencing factor distinct from earlier findings. National security agencies may also resist relinquishing tools they consider useful. This institutional resistance appears regardless of whether original justifications still apply. Public awareness of surveillance persistence also tends to remain low

overall. Limited awareness reduces political pressure for governments to actively dismantle systems. These interacting factors help explain why digital surveillance proves persistent (Sinha, 2025).

This finding carries direct implications for regulating emergency digital surveillance. Treaty frameworks should explicitly address technological infrastructure alongside traditional restrictions. Legislation authorizing surveillance should include mandatory automatic sunset provisions. Independent oversight bodies could conduct regular technical audits of infrastructure. Governments could be required to publish transparency reports detailing surveillance operations. Technology procurement contracts could include mandatory decommissioning clauses tied to expiration. Civil society organizations could develop technical monitoring tools tracking surveillance status. Journalists could specialize in investigating technological persistence beyond declared emergency periods. Legal practitioners could challenge continued surveillance through targeted, technology-focused litigation. Policymakers should treat digital infrastructure as a distinct category within emergency law. These implications apply across legislative drafting, oversight design, and civil society advocacy. This finding ultimately supports developing specific safeguards for technological emergency measures. It highlights an emerging area requiring dedicated legal and policy attention. Addressing this gap could prevent quiet, permanent expansion of state surveillance (Sabri & Sabiri, 2025).

IV. Discussion

This section presents findings from a comparative analysis of derogation practices. It directly addresses why enforcement mechanisms fail to prevent widespread derogation clause abuse. The analysis draws on treaty texts, court decisions, and monitoring reports. Results are organized around five interconnected patterns across multiple legal systems. First, definitional standards for emergencies vary significantly between different regional human rights frameworks. Second, judicial oversight strength differs sharply across Europe, Africa, Asia, and elsewhere. Third, missing expiration requirements allow emergency measures to persist indefinitely without review. Fourth, states frequently misuse derogation clauses for political rather than security purposes. Fifth, courts generally show reluctance to challenge executive emergency declarations directly. Together, these findings explain the specific research question guiding this study. They show enforcement failure stems from institutional weakness rather than flawed treaty design. Each finding below connects directly to the earlier research objectives. These results support the broader argument developed throughout this article (Comstock, 2026).

Regional human rights systems define national emergencies using very different legal standards. The European Convention requires a genuine threat to the life of the nation. This standard demands clear evidence and strict proportionality between measures and threats. African Union instruments use broader language that leaves more room for interpretation.

Asian regional frameworks often lack detailed criteria for evaluating emergency claims fully. Middle Eastern legal systems frequently rely on domestic constitutional provisions instead of treaty standards. This inconsistency creates significant discretion for governments declaring emergencies within their own borders. States can exploit these vague definitions to justify measures beyond genuine security needs. Some governments declare emergencies during minor disturbances that pose no serious threat. Others extend emergencies indefinitely without demonstrating any continuing danger to the nation. Strong judicial review becomes essential wherever definitional standards remain loose or ambiguous. Without clear consistent regional standards, derogation clauses risk becoming tools for political convenience (Ștefănoaia, 2025).

European Convention mechanisms provide notably stronger judicial oversight than other regional systems. The European Court of Human Rights reviews derogation notifications through detailed proportionality analysis. States must justify each specific measure against the actual threat presented. This scrutiny discourages governments from declaring emergencies without genuine legal justification. African regional courts possess weaker enforcement powers and limited institutional resources. Many decisions lack binding authority over member states within the African system. Asian states largely operate without any regional human rights court altogether. This absence removes an important layer of external accountability for derogation practices. Middle Eastern regional bodies similarly lack strong independent judicial review mechanisms. National courts often defer entirely to executive emergency declarations without meaningful scrutiny. This weaker oversight allows emergency measures to persist far longer than necessary. Governments in these regions face fewer consequences for prolonged rights restrictions. Stronger judicial oversight therefore correlates directly with reduced derogation clause abuse (Allain, 2005).

Many derogation notifications lack a clear, specific expiration date for measures taken. States often declare emergencies without clearly indicating when normal rights will fully resume. This vagueness allows temporary measures to continue for many years without any formal review. Treaty monitoring bodies rarely challenge states for failing to set clear timeframes. Some governments renew emergency declarations repeatedly rather than allowing them to lapse. Each renewal typically receives less scrutiny than the original emergency declaration. Exceptional measures become normalized as part of ordinary governance. Citizens gradually lose the ability to challenge restrictions as clearly temporary. Legal scholars describe this pattern as a permanent emergency through repeated renewal. Without expiration requirements, derogation clauses lose their intended temporary character entirely. This finding suggests treaties should mandate specific, enforceable expiration timelines. Regular mandatory review would force governments to justify continued rights restrictions. Such requirements could prevent emergencies from becoming indefinite governance tools (Hafner-Burton et al., 2011).

States frequently invoke derogation clauses while pursuing goals unrelated to genuine emergencies. Some governments use emergency powers to restrict independent journalism and press freedom. Others detain political opponents under broad emergency security regulations without proper trial. These actions rarely address the actual crisis that triggered the derogation notice. Instead, emergency powers become convenient tools for silencing dissent and criticism. Journalists often face arrest, censorship, or closure of media outlets during emergencies. Opposition leaders face detention without formal charges under vague security provisions. This pattern appears across multiple regions regardless of differing legal traditions. Emergency measures targeting political opponents rarely receive independent judicial scrutiny promptly. Courts often defer to executive claims about security threats without any question. This misuse undermines the legitimate purpose behind derogation clauses entirely. It also erodes public trust in both emergency powers and judicial institutions. These findings clearly suggest stronger safeguards are needed against politically motivated derogation (Neumayer, 2013).

Judicial bodies rarely challenge government emergency declarations in a direct manner. Courts frequently accept executive claims about threats without any independent factual verification. This deference stems partly from separation of powers concerns within domestic systems. Judges often view emergency decisions as fundamentally political rather than legal questions. Many national courts lack the institutional capacity to properly assess security evidence. This weakness leaves executive branches largely unchecked during declared emergency periods. International tribunals also show clear reluctance to overturn national emergency determinations directly. Regional courts often grant states a wide margin of appreciation instead. This margin allows governments considerable flexibility in defining genuine security threats. Consequently, judicial review becomes largely symbolic rather than a meaningful constraint on power. Few court decisions actually reverse or limit any ongoing emergency measures. This pattern weakens the fundamental checks and balances or oversight structure. Strengthening judicial independence therefore appears essential for reducing derogation clause abuse (Sarma, 2025).

These findings challenge theories assuming treaty text alone shapes state behavior consistently. They show institutional design, judicial culture, and technology matter equally alongside legal wording. This shifts scholarly attention from definitional debates toward implementation and enforcement gaps. The positive implication is a clearer roadmap for targeted, achievable legal reforms. The negative implication is that reform requires coordinated institutional change, not simple redrafting. Existing legal frameworks struggle because they were written before digital surveillance tools existed widely. Courts, treaty bodies, and legislatures now face gaps these frameworks never fully anticipated. Policymakers could apply these findings when drafting sunset clauses and oversight mechanisms. Recent digital rights initiatives and pandemic-era transparency reforms already reflect these growing concerns. Regional human rights bodies could use these findings to strengthen monitoring procedures. Citizens, journalists, and civil society organizations stand

to benefit from stronger safeguards. Governments could also benefit from clearer standards that reduce legal uncertainty during emergencies. This research remains limited by document-based methods and incomplete surveillance transparency. Future work should test these findings through direct interviews and technical audits. Overall, this study extends emergency law scholarship into institutional and technological territory. It offers practical direction for building genuinely effective, enforceable derogation safeguards for the future.

Conclusion

Emergency powers allow governments to suspend rights during genuine crises. Human rights treaties permit this through carefully designed derogation clauses. Yet states repeatedly exploit these provisions well beyond their scope. This pattern matters because emergency powers continue expanding across many countries. Weak enforcement allows temporary measures to become permanent features of governance. Citizens increasingly face restricted freedoms without clear limits or justification. This issue connects to broader debates about democratic accountability. Recent digital surveillance expansion and prolonged pandemic emergencies illustrate this pattern. Governments worldwide continue debating how to balance security with fundamental rights. International bodies have launched initiatives seeking stronger oversight of emergency governance. These developments confirm derogation clause abuse remains a pressing, contemporary concern. Understanding this pattern helps explain persistent gaps in international human rights protection. It also highlights why legal text alone cannot guarantee genuine accountability. This research therefore addresses a timely and consequential area of legal study.

Several key patterns emerge from this comparative examination of derogation clauses. Regional systems apply inconsistent definitional standards, allowing wide state discretion. Judicial oversight strength varies significantly, with European courts showing stronger enforcement. Many derogation notifications lack clear expiration dates, allowing measures to persist indefinitely. States frequently misuse these clauses to restrict press freedom and political opposition. Courts across many regions rarely challenge government emergency declarations meaningfully today. Digital surveillance tools introduced during emergencies typically outlast their original justification entirely. These patterns connect through a shared, underlying weakness in institutional accountability. Definitional gaps, procedural gaps, and judicial deference reinforce each other consistently. Together, they explain why derogation clause abuse persists despite decades of treaty development. No single reform alone could fully address this interconnected, multilayered problem. Instead, meaningful change requires coordinated action across definitional, procedural, and institutional dimensions. This synthesis reinforces the central argument that enforcement, not text, determines outcomes.

This research carries significance beyond academic legal debate. Its arguments help explain why emergency powers keep expanding. Understanding these patterns strengthens ongoing efforts toward better human rights protection. These findings could inform current

initiatives strengthening judicial oversight. Policymakers drafting new emergency legislation could apply these findings when designing safeguards. Regional human rights bodies could use these findings to improve monitoring. Civil society organizations could apply these findings when advocating for accountability. Legal practitioners could cite these findings when challenging unlawful, prolonged emergency measures. These applications extend across judicial, legislative, and civil society contexts. Future research should examine judicial reasoning through direct interviews with practicing judges. Researchers should also track digital surveillance systems using ongoing, real-time monitoring. Additional comparative work could examine emerging regional human rights mechanisms currently developing. These next steps would deepen understanding of institutional accountability during emergencies. Together, they could support meaningful, lasting reform of derogation clause practices.

Bibliography

Al Abiad, H., & Masadeh, A. (2024). Law comparison as a research method in legal studies, and its importance in promoting uniformity in legal systems. In *BUiD Doctoral Research Conference 2023* (pp. 446–454). Springer. https://doi.org/10.1007/978-3-031-56121-4_42

Al-Fatih, S., Ranendra, B., Tajrim, M. I., & AllahRakha, N. (2025). Dynamics of omnibus law formation: Between legislative efficiency and potential legal chaos. *Jurnal Hukum Replik, 13*(2). https://doi.org/10.31000/jhr.v13i2.14512

Allah Rakha, N. (2025). Jurisdictional challenges of cybercrimes and the role of the International Criminal Court. *In Thematic Conference Proceedings* (Vol. 14, 2024).

AllahRakha, N. (2026). O‘zbekiston Respublikasining reklama to‘g‘risidagi qonunchiligini qo‘llash amaliyoti. Yurisprudensiya, *4*(1), 73–89. https://yurisprudensiya.tsul.uz/index.php/yurisprudensiya/article/view/12

Allain, J. (2005). Derogation from the European Convention of Human Rights in light of other obligations under international law. *SSRN Electronic Journal, 11*, 480–498. https://doi.org/10.2139/ssrn.2778486

Bjørnskov, C., & Voigt, S. (2018). Why do governments call a state of emergency? On the determinants of using emergency constitutions. *European Journal of Political Economy, 54*, 110–123. https://doi.org/10.1016/j.ejpoleco.2018.01.002

Bjørnskov, C., & Voigt, S. (2022a). Emergencies: On the misuse of government powers. *Public Choice, 190*(1–2), 1–32. https://doi.org/10.1007/s11127-021-00918-6

Bjørnskov, C., & Voigt, S. (2022b). This time is different?—On the use of emergency measures during the corona pandemic. *European Journal of Law and Economics, 54*(1), 63–81. https://doi.org/10.1007/s10657-021-09706-5

Butt, N. U. S., Salih, M. H. bin, Ali, A., Mehmood, Z., Ali, S., & Uddin, R. (2025). *Digital surveillance and political expression: Analyzing the effects of state monitoring of influencers and public figures on online political discourse in Pakistan*. Zenodo. https://doi.org/10.5281/zenodo.17288745

Comstock, A. L. (2026). Human rights treaty derogation and COVID-19: WHO guidance and state response. *Global Constitutionalism*, 1–38. https://doi.org/10.1017/S2045381725100208

Critch, N. (2023). *(De)politicisation and the politics of containment: Reconceptualising the role of the public inquiry within British governance* [Doctoral dissertation]. University of Birmingham. https://doi.org/10.13140/RG.2.2.16240.52484

Damissah, H. E., Isiaka, A. F., Adejare, A. D., & Ogunlana, I. O. (2025). Media independence and democratic accountability in modern governance systems and public administration frameworks. *GSC Advanced Research and Reviews, 23*(1), 12–23. https://doi.org/10.30574/gscarr.2025.23.1.0102

Deol, T. K., Hannon, E., Lehtimaki, S., & Kavanagh, M. M. (2025). Adoption of pandemic treaty is historic: Compliance and accountability must now follow. *PLOS Global Public Health, 5*(8), e0004969. https://doi.org/10.1371/journal.pgph.0004969

Entin, K., & Belous, Y. (2019). The role of the Court of Justice of the European Union in the development of the Common Foreign and Security Policy after the Treaty of Lisbon. *SSRN Electronic Journal*. https://doi.org/10.2139/ssrn.3458948

Ferri, F. (2025). The 'antechamber' of emergencies: Insights from the judicial application of the precautionary principle at the Union level. *Nordic Journal of European Law, 8*(4), 47–78. https://doi.org/10.36969/njel.v8i4.28492

Gulyamov, S. S., Egamberdiev, E., & Naeem, A. (2024). Practice-oriented approach to reforming the traditional model of higher education with the application of EdTech technologies. In *2024 4th International Conference on Technology Enhanced Learning in Higher Education (TELE)*. IEEE. https://doi.org/10.1109/TELE62556.2024.10605684

Hafner-Burton, E. M., Helfer, L. R., & Fariss, C. J. (2011). Emergency and escape: Explaining derogations from human rights treaties. *International Organization, 65*(4), 673–707. https://doi.org/10.1017/S002081831100021X

Hayashi, M. (2022). Child psychological/emotional abuse and neglect: A definitional conceptual framework. *Journal of Child & Adolescent Trauma, 15*(4), 999–1010. https://doi.org/10.1007/s40653-022-00448-3

Henham, R. (2022). Sentencing policy, social values and discretionary justice. *Oxford Journal of Legal Studies, 42*(4), 1093–1117. https://doi.org/10.1093/ojls/gqac011

Heupel, M., Koenig-Archibugi, M., Kreuder-Sonnen, C., Patberg, M., Séville, A., Steffek, J., & White, J. (2021). Emergency politics after globalization. *International Studies Review, 23*(4), 1959–1987. https://doi.org/10.1093/isr/viab021

Hoffman, S. J., Baral, P., Rogers Van Katwyk, S., Sritharan, L., Hughsam, M., Randhawa, H., Lin, G., Campbell, S., Campus, B., Dantas, M., Foroughian, N., Groux, G., Gunn, E., Guyatt, G., Habibi, R., Karabit, M., Karir, A., Kruja, K., Lavis, J. N., … Poirier, M. J. P. (2022). International treaties have mostly failed to produce their intended effects. *Proceedings of the National Academy of Sciences of the United States of America, 119*(32), e2122854119. https://doi.org/10.1073/pnas.2122854119

Irwin, N., Aisyah, D. N., Rahman, F. M., & Manikam, L. (2024). Digital contact tracing technology in the COVID-19 pandemic: A systematic review. *Health and Technology, 14*(6), 1229–1239. https://doi.org/10.1007/s12553-024-00857-4

Krasuski, A. (2025). Derogation of human rights during states of emergency and the standards of a democratic rule of law. *Prawo i Więź, 59*(6). https://doi.org/10.36128/1prhn890

Lattmann, T. (2014). International protection of human rights. *In T. Lattmann & B. Vizi (Eds.),* International protection of human rights. *National University of Public Service.* ISBN 978-615-5491-42-9.

Leczykiewicz, D. (2019). Prohibition of abusive practices as a "general principle" of EU law. *Common Market Law Review, 56*(3), 703–742. https://doi.org/10.54648/COLA2019053

Mangi, D. B., & Ali, U. (2025). Need of judicial reforms in Pakistan: Ensuring accountability and transparency in courts. *Pakistan Social Sciences Review, 9*(1), 182–194. https://doi.org/10.35484/pssr.2025(9-I)15

Modise, J. M. (2024). Strengthening judicial independence, accountability enhancing, international cooperation on justice and human rights. *International Journal of Innovative Science and Research Technology, 9*(10), 2041–2051. https://doi.org/10.38124/ijisrt/IJISRT24OCT592

Moepi, G. L., Mathonsi, T. E., Du Plessis, D., Muchenje, T., & Tshilongamulenzhe, T. M. (2025). Smart surveillance systems: Trends, challenges and future directions. *Indonesian Journal of Computer Science, 14*(1), 2215–2238.

Mowbray, F., Mills, F., Symons, C., Amlôt, R., & Rubin, G. J. (2024). A systematic review of the use of mobile alerting to inform the public about emergencies and the factors that influence the public response. *Journal of Contingencies and Crisis Management, 32*(1), Article e12499. https://doi.org/10.1111/1468-5973.12499

Munshi, B. (2025). *Sunset clauses and post-termination rights in commercial contracts and bilateral investment treaties* [Preprint]. ResearchGate. https://doi.org/10.13140/RG.2.2.19917.50400

Neumayer, E. (2013). Do governments mean business when they derogate? Human rights violations during notified states of emergency. *The Review of International Organizations, 8*(1), 1–31. https://doi.org/10.1007/s11558-012-9144-y

Nnawulezi, U., Ajayi, O. I., & Ogunremi, Y. S. (2025). Evaluating the impact of regional conventions on human rights: Lessons from the African Charter, European Convention and American Convention on Human Rights. *AEFULJ, 2*, 36–48.

Orakhelashvili, A. (2008). Treaty interpretation: Rules and methods. In *The interpretation of acts and rules in public international law*. Oxford University Press. https://doi.org/10.1093/acprof:oso/9780199546220.003.0011

Repanovici, R., & Nedelcu, A. (2021). Mobile emergency notification apps: Current state, barriers and future potential. *IOP Conference Series: Materials Science and Engineering, 1009*(1), 012049. https://doi.org/10.1088/1757-899X/1009/1/012049

Rosenfeld, M. (2006). Comparing constitutional review by the European Court of Justice and the U.S. Supreme Court. *International Journal of Constitutional Law, 4*(4), 618–651. https://doi.org/10.1093/icon/mol027

Ross, P. T., & Bibler Zaidi, N. L. (2019). Limited by our limitations. *Perspectives on Medical Education, 8*(4), 261–264. https://doi.org/10.1007/s40037-019-00530-x

Sabri, M. N., & Sabiri, M. S. (2025). Digital surveillance and the right to privacy in Pakistan: A legal and constitutional analysis. *Al-Aasar, 2*(4), 227–242. https://doi.org/10.63878/aaj950

Saeed, S. (2025). The independence of judiciary: Challenges and reforms. *International Journal of Law and Policy, 3*(11), 55–76. https://doi.org/10.59022/ijlp.396

Samsidar, S. (2025). *Politics* and psychology of fear: Threat narratives in state security policy. *Journal of Politica Governo, 2*(2), 41–47. https://doi.org/10.62872/jz3yg883

Sarma, R. (2025). Judicial powerplay: Independence of judiciary under the shadow of illiberalism. *The Law Teacher, 59*(2), 109–136. https://doi.org/10.1080/24730580.2025.2496016

Satria, R. (2025). Judicial review and its role in safeguarding constitutional rights in modern democracies. *Riwayat Educational Journal of History and Humanities, 8*(1), 860–871. https://doi.org/10.24815/jr.v8i1.44832

Setyawan, F. R., Nuryasinta, R. K., Trisno, T., & AllahRakha, N. (2026). The lex semper dabit remedium principle in copyright works by artificial intelligence. *Indonesia Law Reform Journal, 6*(1), 45–56. https://ejournal.umm.ac.id/index.php/ilrej/article/view/43818

Shahid, M., Begum, M. M., & Khan, I. A. (2024). Derogation of human rights under the Covenant and their suspension during emergency and civil martial law, in India and Pakistan. *Global Regional Review, 9*(3), 222–231. https://doi.org/10.31703/grr.2024(IX-III).22

Sinha, R. (2025). *Are lockdowns more effective than voluntary measures in checking mobility during a pandemic?* [Preprint]. Research Square. https://doi.org/10.21203/rs.3.rs-6212434/v1

Ștefănoaia, M. (2025). Human rights in the context of the state of emergency: The balance between national security and fundamental freedoms. *Proceedings of the International Conference on Social Sciences in the Modern Era, 2*(1), 50–57. https://doi.org/10.33422/ssmeconf.v2i1.1238

Teremetskyi, V. I., Bodnar-Petrovska, O., Dir, I. Y., Petrenko, A. A., & Lien, T. V. (2025). European Union's legal system: Essential features and tendencies of modern development. *Science of Law, 2025*(1), 1–6. https://doi.org/10.55284/sol.v2025i1.160