

# Nijmegen Principles and Guidelines on Interim Measures for the Protection of Human Rights

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## General observations

Convinced of the importance of preventive as well as protective measures in international human rights proceedings, and aware of the gaps and obstacles to the implementation of such measures, a cross-regional group of scholars and practitioners\* have joined forces to discuss and formulate common principles underlying the practices of various judicial and quasi-judicial bodies in human rights cases, reinforcing the obligations of States also under interim measures decided upon by quasi-judicial bodies, and listing good institutional, judicial and lawyering practices.

## Development of the Principles and Guidelines

This group of experts in international human rights law developed the Principles and Guidelines on Interim measures for the protection of human rights based on a concern about ongoing urgent situations in the context of international human rights adjudication, with a risk of irreparable harm to persons. The Principles and Guidelines flow from an expert seminar in Nijmegen in 2015 on Urgency and Human Rights, the conclusions based on the book *Urgency and Human Rights: The Protective Potential and Legitimacy of Interim Measures*, edited by Eva Rieter and Karin Zwaan, Asser Press 2021, the discussions at the book launch (on February 5, 2021) followed by an online drafting process, and concluded with an online meeting on April 29 and May 26, 2021, convened by Radboud University Nijmegen.

## Terminology

Different international adjudicators use different phrasings and in the literature ‘provisional measures’ and ‘interim measures’ are used interchangeably. The African Court of Human and Peoples’ Rights, the African Commission on Human and Peoples’ Rights and the Inter- American Court of Human Rights refer to ‘provisional measures’ (for the latter: *medidas provisionales*) and the European Committee of Social Rights refers to ‘immediate measures’. The International Court of Justice and the International Tribunal for the Law of the Sea equally refer to provisional measures. The Inter-American Commission on Human Rights refers to precautionary measures (*medidas cautelares*). The European Court of Human Rights and the UN

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treaty bodies refer to interim measures. Throughout these Principles and Guidelines the phrase interim measures is used.

Various terms are also used for the party bringing a petition or complaint and requesting interim measures, such as applicant, petitioner, complainant, requesting party. These Principles and Guidelines use complainant and requesting party.

Throughout these Principles and Guidelines the phrase 'international adjudicator' refers to competent independent human rights treaty monitoring bodies with a (quasi) judicial function, encompassing courts, commissions and committees.

In some systems, only the alleged victim can be the complainant. In other systems (the African and Inter-American) third parties, such as NGOs, can also bring a case on behalf of an alleged victim or group of victims, and request interim measures for a wide group of people. This group of rights holders is generally referred to as beneficiaries (*beneficiarios*).

In these Principles references to 'human rights treaties' encompass other treaties which afford human rights protection.

### Scope

While interim measures are the main focus of these Principles and Guidelines, the expert group wishes to confirm the importance of various other urgent measures, such as so-called 'protection measures', or other urgent interventions where an adjudicator responds to reprisals for a person's communication with it. Sometimes such measures are taken before there is a case, or upon conclusion of a case. To some extent these Principles and Guidelines also relate to those urgent measures. Yet the focus is on interim measures.

### Need for these Principles and Guidelines

The group considers that at this point there is a need to focus on the interim measures of protection granted by international adjudicators pending human rights proceedings. It is concerned about the failure by certain States, including their domestic courts, to understand the nature of interim measures of protection, which are to be respected whether they originate from international courts or from quasi-judicial bodies.

It also considers that the legitimacy of urgent adjudication is enhanced when it is done in conformity with recognised principles, both procedural and substantive, and when there is internal consistency between the general jurisprudence of international adjudicators and their practice of using interim measures in similar cases. It observes that specific interim measures are often firmly rooted in the international human rights jurisprudence worldwide.

The group observes several common features of the urgent human rights decision-making of the various international adjudicators, and is inspired by their respective practices. In agreement on the importance of certain good judicial practices enhancing the legitimacy of interim measures in urgent human rights cases, it wishes to acknowledge and affirm these approaches as developed by the various international adjudicators.

In light of the above, this international group of scholars and practitioners puts forward the Principles and Guidelines below, setting out the existing obligations of States and listing good institutional and judicial practices, as well as good lawyering practices.

## 1. The legal obligations of States

- a) All States have a legal obligation to respect, protect, and ensure compliance with human rights. In addition to customary law, States parties to human rights treaties have a legal obligation to respect, protect, and ensure compliance with human rights law as provided in the treaty.
- b) States parties to a human rights treaty that provides a *complaints procedure* have a legal obligation to cooperate with this procedure in good faith.
- c) Good faith compliance by a State with its treaty obligations implies, at a minimum, that it:
  - Acts to prevent irreparable harm to the guaranteed rights of individuals and groups;
  - Acts to prevent aggravation of disputes arising under the treaty;
  - Respects the authority of courts or treaty monitoring bodies established pursuant to the relevant human rights treaty to interpret what constitutes irreparable harm, whether or not they perform an adjudicatory role;
  - Respects decisions by international adjudicators when these decisions are aimed at guaranteeing the proper conduct of the complaint procedure and the fair and proper administration of justice;
  - Ensures that the above obligations are complied with by all organs of the State;
  - Disseminates interim measures, and other decisions on urgent measures that they receive from an international adjudicator, to relevant organs of the State, in order to enhance awareness of the obligations concerned and inform the public.
- d) Immediately on receipt of interim measures decisions indicated by international adjudicators, States shall promptly forward them to the relevant national authorities whose action may be required to fulfil them. A designated co-ordinating authority should ensure that all the relevant national authorities are promptly and fully informed of the interim measure and the legal obligations entailed in it and should follow up on it as appropriate.
- e) When a complaint is pending against State parties to treaties that have an individual complaint system, those States shall comply with any interim measures granted by the competent body, and shall implement such measures promptly and in full, so as to ensure both the integrity of the proceedings and a meaningful outcome to those proceedings.
- f) Even in cases where the *final* decisions or views of the bodies concerned are not regarded as strictly speaking legally binding, the legally binding nature of decisions granting *interim* measures is beyond question. This is due to the important role of such measures in preserving the rights of the alleged victim from irreparable damage in a pending dispute. This consideration applies both

when the treaty's individual or inter- state complaint mechanism expressly provides for the issuance of such measures and where the mandate to issue such measures is found in the rules of procedure authorized by the treaty.

- g) Especially in the face of structural or systemic violations, States are obliged to investigate and report on such violations, or allow and facilitate fact-finding missions to help prevent new violations or halt their continuation. This obligation also applies to anticipated or pending international adjudication and the relevant international adjudicator may remind States of this through interim measures or other urgent measures.
- h) States shall avoid any interference with the proper functioning of the competent international adjudicator.
- i) While, as part of a judicial process, the State involved may make requests to restrict the scope of interim measures, or to withdraw them, States may not pressure adjudicators to undertake either type of limitation.

## 2. Institutional good practices

- a) Processes concerning the application for interim measures must be made user- friendly, always available, and use cost-effective technology.
- b) Information about interim measures must be provided in a user-friendly manner, with decisions to be made publicly available in accessible communication formats.

## 3. Good judicial practices

- a) An international adjudicator may develop rules for requesting a State to undertake urgent measures prior to, or – if this is part of the international adjudicator's treaty monitoring competency – independent of, the filing of a complaint and the issuance of a formal interim measure. It could do so in response to requests by an individual or group, or in response to credible information of structurally urgent situations involving a class or group of persons.
- b) In the face of harm that is immediately pending, an *ex parte* interim measure is warranted, if authorized by a single member or by the entire body as a whole. Adjudicators have the authority to grant interim measures immediately, *ex parte*, in order to ensure their effectiveness to prevent irreparable harm to persons.
- c) All interim measures decisions are immediately communicated to the addressee State(s) and to the requesting party.
- d) If there is no *immediate* risk to persons, advance notification of the State(s) is advisable.
- e) If an *ex parte* interim measure is warranted, subsequent decision-making on confirming, lifting or expanding the measure should meet all procedural requirements, pursuant to a procedure where both parties have ample

opportunity to present arguments and responses to those, thereby ensuring material equality of arms.

- f) In any interim measures granted, there must be at least an indication of the right invoked and of the risk of violation of that right.
- g) At the stage of requesting interim measures, it is sufficient that a complainant bring evidence to establish a *prima facie* risk of irreparable harm. For interim measures to be applied there should be at least some likelihood of a real risk of violation of the right that is claimed on the merits; for the use of other, more flexible, urgent measures there should be some credible information of such a risk and a foundation in the applicable treaty rights.
- h) International adjudicators should avoid denying or ordering interim measures in a manner that could adversely affect consideration of the substance of the case and thereby prejudice the merits.
- i) International adjudicators should specifically indicate that States must report in a timely manner on their prompt implementation of interim measures and other urgent measures. The complainant and, if applicable, (other) representatives of the beneficiaries should have the opportunity to comment on the State's report. The international adjudicators should also indicate how they will monitor a State's compliance with such measures while the case is pending.
- j) Interim and other urgent measures granted and rejected by international adjudicators should be transmitted to the State and the requesting party and published.
- k) Interim measures shall be periodically reviewed and lifted when no longer needed.
- l) International adjudicators should facilitate access to information about the use of interim measures and provide reasons for ordering or rejecting them, thus providing guidance to (potential) parties.
- m) International adjudicators should make public, clear and sufficient information on the use of and reasoning underlying interim measures, as appropriate in the context of the case.
- n) The substantive scope of the measures required should be clear, and the measures should build on the existing protective system.
- o) Urgent measures may in principle, and depending on the rights contained in the applicable treaty, be granted in appropriate cases concerning any civil, political, economic, social or cultural rights, and any other protected right whether claimed individually or collectively. They aim at protecting persons or peoples against irreparable harm, in particular by protecting against such harm to their lives, health or personal integrity, cultural survival, or the right of access to court and counsel (*habeas corpus*). Yet urgent measures may also seek to safeguard against irreparable harm to other rights, or to safeguard parties beyond the scope of a specific complaint, especially in the context of structural, systematic, or widespread human rights violations and in the face of irreversible risks to the rule of law.

- p) The measures ordered should be responsive to the alleged situation of the victims, and sufficiently specific about what the States are expected to do. They should show sensitivity to structural contexts and to persons in situations of particular vulnerability. International adjudicators may draw on diverse sources beyond the scope of a specific complaint, in order to determine the breadth and specificity of necessary interim measures to prevent irreparable harm, including those brought *proprio motu*, rather than strictly in response to a complaint.
- q) In the face of societal controversy or indifference, or in the face of State security abuses or armed conflict, there is a heightened need for creative and situation-specific approaches by international adjudicators. These approaches *may* include precisely formulated interim measures, especially aimed at preserving and securing evidence (including facilitating an international fact-finding mission), or aimed at the provision of urgent access to humanitarian aid.
- r) A situation-specific approach in a context of general respect for the rule of law may imply giving discretion to the State to determine, in consultation with the complainant/beneficiaries, the manner in which it will implement the interim measures or urgent measures. Then international adjudicators should leave the choice of means to the State itself, unless the State does not properly consult the complainant/beneficiaries or is otherwise unable or unwilling to respect less directive interim measures.
- s) International adjudicators should indicate legal consequences of non-compliance and the type of remedy required for such breach.
- t) International adjudicators should also clarify how such a breach could play an evidentiary role in finding violations of rights on the merits, or in some cases in finding an aggravated breach in that respect.

#### **4. The professional responsibility of lawyers**

- a. Lawyers should pursue interim measures with due diligence where these may be necessary to prevent irreparable harm.
- b. Lawyers requesting interim measures should provide the international adjudicator with full and accurate information, to the extent feasible at the time, as to the nature and extent of the irreparable harm to the alleged victim(s).
- c. Lawyers should urge domestic courts to interpret domestic law in conformity with international human rights law, including the law on interim measures, taking fully into account pertinent judgments and decisions of international adjudicators.
- d. Lawyers should insist at the domestic level that interim measures decisions be considered part of the corpus of international human rights law. They should urge domestic courts to take pertinent international judgments and other merits decisions, discussing the obligations under interim measures and other urgent decisions, fully into account.