

CHAPTER III

**THE IMPLEMENTATION AND THE EXTENSION OF STATE OF
EMERGENCY AFTER PARIS ATTACK 2015**

Having been evacuated, Hollande held a cabinet meeting at Ministry of Interior to deliberate the response for Paris Attack. Subsequently, Hollande as the president of French Republic planned to shut down the border and declared state of Emergency to counter the terrorist attack. The authorities' plan to implement closed border is to possess the terrorist from leaving France and to prevent other terrorism attempt. Moreover, Francois Hollande ensured the public security by mobilizing the security officer and ordered army to do so.⁵⁵ It is reported that 115000 officers-soldiers and polices disposed by French Government to secure the country.⁵⁶ This chapter, will further elaborate about the policy of State of Emergency by French Government, the legal framework, the practice of the policy, and the critiques of this policy.

A. Historical Context

The state of Emergency has been executed several times in the history of France. The cause of the executions are different. It was firstly applied in 1955, when Algerian seek for an independence from French Republic, known for Algerian Revolution. The

⁵⁵ "Paris Attack prompt State of Emergency in France," The Wall Street Journal, Retrieved December 12, 2016, <http://www.wsj.com/articles/france-declares-national-state-of-emergency-after-paris-attacks-1447457010>.

⁵⁶ "Paris Attacks: France Deploys 115,000 Soldiers and Police to Secure Country," Newsweek LTD, Retrieved December 12, 2016, <http://europe.newsweek.com/paris-attacks-france-deploys-115000-soldiers-and-police-secure-country-395333?rm=eu>.

decision to order State of Emergency at that time was caused by the crisis in France during the political turmoil against *Front de Libération National* (Front of National Liberation) of Algeria. The inclination of Algerian Society to get an Independence leads to several 'necessary' action from French Government, which is legally accepted by the 1955 Statute.

In 1 November 1954, Algeria's Front of National Liberation conducted a series of attack towards French and Moslem Algerian who support the colonial. The incident was called as *Toussaint Sanglant* ("Bloody All-Saints' Day").⁵⁷ Hence, the parliament held a meeting that resulted a scheme to prevent further action from FLN that might conduct another massacre. Therefore, in 3 April 1955, bill of 55/385 about State of Emergency was passed in French Assembly. It was first applied only in area of Constantine and later, expanded into the east. However, it only lasted for two months after the dissolution of national assembly.

The other implementations were in 1958 and 1961. France was executing State of Emergency in 1958, when the Algerian attempted to *coup* Gaulle, who took again the power as President of France in July 1958⁵⁸. In 23 April of 1961, after the Fifth Constitution was upheld by French Republic another implementation of State of

⁵⁷ Gerrard Emmanuel, "The Origin and Development of Emergency Regimes in Cameroon," *Fundamina (Pretoria)* 21 (2015), Retrieved, Decemeber 18, 2016, http://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S1021-545X2015000200005#back_fn24.

⁵⁸ Charles de Gaulle was the French General and Statesmen. He served as the head of Provisional Government of the French Republic from 1944 until 1946.

Emergency was happened. It lasted until 29 September 1961.⁵⁹ In 1961, de Gaulle activated the policy to response Four Generals intention to overthrow the president. At that time, President Gaulle tried to negotiate with FLN but the generals wanted to cancel it.

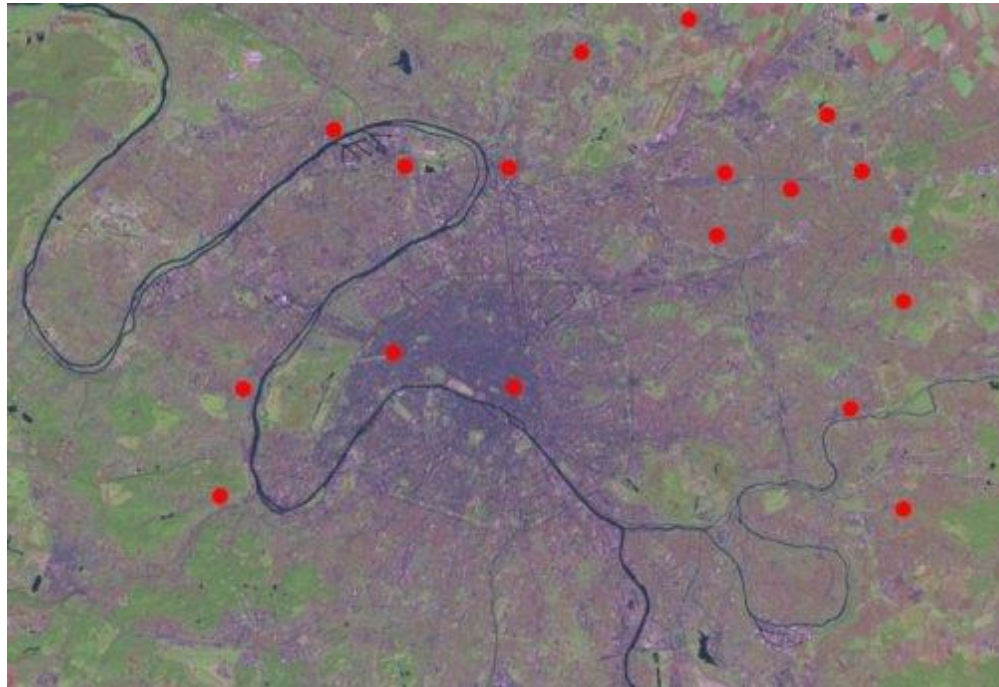


Figure 5 Riot area on 8 November 2005

Long after the implementation in 1961, the policy was activated in 8 November 2005 when Jacques Chirac, the 22nd President of French Republic (1995-2007), declared the State of Emergency during the civil unrest resulted by the protest for high unemployment in France. It was sparked by the death of two youths as they ran from police investigation and hid in power plant. In October and November 2005, several

⁵⁹ Gerard Emmanuel, Op.Cit.

cities in France underwent riots (see the picture above) and most of the rioters were unemployed teenagers. The incident was publicly known as French Intifada.

B. Legal Framework of Current State of Emergency

The policy was taken as the security of the state was threatened. The law legally accepted the decision of the French Government, which is stated in the fifth constitution. Compared to other terrorist attacks experienced by France, the number of casualties in the Paris attack is the highest with at least 130 dead and hundreds were injured. In the Charlie Hebdo incident, January 2015, 12 people died and the security of France was at the level of Scarlet. In exceptional situations, when the government is in danger, this condition may give the president an exceptional authority to take measures against certain circumstances. Provided in the French Constitution of 1958 Article 16.⁶⁰

When the institutions of the Republic, the independence of the Nation, the integrity of its territory or the fulfillment of its international commitments are threatened in a serious and immediate manner and the regular functioning of the constitutional public authorities is interrupted, the President of the Republic shall take the measures required by these circumstances, after official consultation with the Prime Minister, the Presidents of the Assemblies and the Constitutional Council.

As the consultation is necessary to be done, François Hollande -soon after his evacuation- conducted a cabinet meeting to have an agreement on what action should be engaged. Similarly, French Constitution Article 36 suggests that, “The state of siege

⁶⁰ Constitution du 4 octobre 1958 (JORF n° 0238 du 5 octobre 1958, page 9151)” (Constitution of 4 October 1958 (JORF No. 0238 of 5 October 1958, page 9151)), Legifrance, Retrieved, December 12, 2016, https://www.legifrance.gouv.fr/Droit-francais/Constitution/Constitution-du-4-octobre-1958#ancre2178_0_3_16.

is decreed in council of ministers.”⁶¹ Moreover, Article 6 oblige the executive to announce the activation publicly to the people.⁶²

The implementation of State of Emergency by French Government was declared under three decrees, decree 14 November, 18 November, and 20 November.⁶³ The decree of 14 November declared the state of emergency and its implementation. By the decree of 18 November, the realization of State of Emergency was expanded into overseas areas-Guadeloupe, Guyana, Martinique, Reunion Island, Mayotte, Saint-Barthélemy and Saint-Martin.⁶⁴ Then, through the act of 20 November, State of emergency was extended. In conducting the policy, the government act was framed by Law 55-385 3 April 19 1955, the constitution before Fifth Republic. The law is similar with Etat de Siege (State of Siege) in the current constitution, but State of Emergency is conducted under President’s order not military. The permission to declare state of emergency, Stated in the article one of Law 55-385 3 April 19 1955.

A state of emergency may be declared in all or part of the metropolitan territory, the overseas departments, overseas collectivities governed by article 74 of the Constitution and in New Caledonia, of imminent danger resulting from serious breaches of public order, or in the case of events which, by their nature and seriousness, are a public calamity.⁶⁵

⁶¹ Ibid. (Translated by Google Translate)

⁶² Ibid. (Translated by Google Translate)

⁶³ “Opinion on the Draft Constitutional Law on “Protection of the Nation” of France,” Venice Comission, retrieved December 11, 2016, [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)006-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)006-e).

⁶⁴ “Reinforcing the State of Emergency,” Republique Francaise Government, Retrieved December 11, 2016, <http://www.gouvernement.fr/en/reinforcing-the-state-of-emergency-act>.

⁶⁵ “Loi n° 55-385 du 3 avril 1955 relative à l'état d'urgence. [Law number 55-385 of 3 April 1955 instituting a state of emergency and declaring its application in Algeria],” Legifrance, Retrieved

In the implementation, the Minister of Interior, in which area of State of Emergency established, may restrict the activity of certain places on the assumption that it is dangerous. Stated in Statute of 1955 Article 8

The Minister of the Interior, for the whole territory where a state of emergency is established, and the prefect in the department, may order the provisional closure of theaters, drinking places and meeting places of any Nature, in particular places of worship in which statements are made which constitute a provocation to hatred or violence or provoke or justify acts of terrorism in areas determined by the decree provided for in Article 2.⁶⁶

Then, not only area that can be restricted by the authorities, the individual could be controlled if it is suspected to be dangerous and threatening. Stated in the article 6 about the authority of Ministry of Interior to perform house arrest under the state of emergency policy⁶⁷ “The Minister of the Interior may order the house arrest, at a place to be determined by the Minister, of any persons residing in the area established by the decree mentioned in article 2.” Article 2 stated, “When there are serious reasons to believe that their behaviour poses a threat to security and public order in the territorial divisions mentioned in the same article 2.”

Thus, by the amendment of 20 November, the subject of House arrest have an obligation to report their activity regularly to the police depends on the schedule regulated by the ministry of interior under the article 6.⁶⁸ However, it should be no

December 12, 2016

<https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000695350>.

⁶⁶ Ibid. (Translated by Google Translate)

⁶⁷ Ibid. (Translated by Google Translate)

⁶⁸ “International Covenant on Civil and Political Rights,” United Nations, Retrieved December 15, 2016, <https://treaties.un.org/doc/publication/cn/2015/cn.703.2015-eng.pdf>.

more than three times a day. Additionally, the Ministry Interior may hold the passport and other identity of person under house arrest. As they are considered as a public threat, ministry interior can also restrict the subject from connecting certain person. Should the Ministry of Interior needs to shut down or control the use of online media and press, the article should be mentioned in the decree to enable the action.

Under the article 9 of State of Emergency, the Ministry of interior can array the return of several class of weapons, first, fourth, and fifth class. The fifth class will be exchanged by receipt so it can be given back to the owner. Weapon included into the fifth class weapon is shotgun with rifled barrel and smooth-bore hunting rifle, and the others that are not counted as fourth class weapon.

Beside those capabilities of the policy, State of emergency only last for twelve days. Should the government wants to extend, the approval of parliament is required. Contained in Article 2 of State of Emergency law. “The extension of the state of emergency beyond twelve days may be authorized only by law.”⁶⁹ Then, in the French constitution Article 36 of State of Siege, “Its extension beyond twelve days may be authorized only by Parliament.”⁷⁰

As the measurement of State of Emergency should be obliged by the target, “the Violations of articles 5, 8 and 9 shall be punishable by six months’ imprisonment and

⁶⁹ “Loi n° 55-385 du 3 avril 1955 relative à l'état d'urgence.” Legifrance, Op.Cit. (Translated by Google Translate)

⁷⁰ Ibid. (Translated by Google Translate)

a fine of €7,500” regulated by the amendment 20 November of article 13. Then, “Violations of the first paragraph of article 6 shall be punishable by three years’ imprisonment and a fine of €45,000” and “Violations of the second and the last five paragraphs of article 6 shall be punishable by one year’s imprisonment and a fine of €15,000.”⁷¹

C. The practice of State of Emergency

Until the end of January, more than 350 people were subjected into residence order. They had the need of reporting to police station every day and did not have any permission to leave their residence as they were treated as a public threat by authorities.⁷² As the impact, Karim, who had been assigned residence order since 15 November 2015, could not go to work as he has an obligation to report his activity three times a day.⁷³

Under the State of Emergency, Ministry of Interior and the authorities performed House Search without Judicial Authorization. Stated by media, 3,242 raid discharged in the past few month.⁷⁴ Police raid the suspected people houses without any warrant, whether in the day or night. However, the implementations were considered violent and too far. Interviewed by Amnesty International, Marc said that the Police Officers

⁷¹ “LOI n° 2015-1501 du 20 novembre 2015 prorogeant l'application de la loi n° 55-385 du 3 avril 1955 relative à l'état d'urgence et renforçant l'efficacité de ses dispositions” (Act No. 2015-1501 of 20 November 2015 extending the application of Act No. 55-385 of 3 April 1955 concerning the state of emergency and enhancing the effectiveness of its provisions), Retrieved December 14, 2016, <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000031500831&categorieLien=id>.

⁷² Amnesty International, Op Cit. Page 6

⁷³ Ibid. Page 7

⁷⁴ Ibid. Page 10

used force; they punched him, and handcuffed him and his wife during the house search in 17 November 2015. Moreover, several Mosques also being targeted of searches. On November 16, 2015, Mosque “La Fraternite” in Aubuvillers was subjected by Police. They damaged the door, got in to the mosque with their shoes on, and threw Qur’an to the floor.⁷⁵

The implementation of house searches under the State of Emergency was not without flaw. Most of subjected person interviewed by Amnesty International told that the authorities were lack of information. The justification of house arrest toward subjected person was not clear. Amar, whose house was searched in 16 November 2016, was targeted due to possibility of threatening and having a connection with Terrorism.⁷⁶ In another occasion, a 64-year-old of disabled Frenchman of Moroccan became a victim of wrong target. Mr Alami house was burst on 25 November 2015 by Police officers. He was punched until four of his teeth broke and pushed to the floor. After the officer asked for their identity, they were released as their arrest turn to be a mistake.⁷⁷ It can be seen that the reason of house arrest has no validity and clear information.

More than that, French Authorities could ban all the public assembly that might cause a public threat, at the time when State of Emergency is implemented. For instance, before the Conference of Parties (COP21) began, the Authorities banned all the

⁷⁵ Ibid. Page 11-12

⁷⁶ Ibid. Page 13

⁷⁷ Human Rights Watch, Op.Cit.

scheduled demonstration.⁷⁸ Moreover, 26 activists of Climate Change were assigned House arrest by Ministry of Interior.

D. The Controversial Extension of State of Emergency

After twelve days of implementation, Hollande request to extend State of Emergency for 3 months to the parliament was approved. Therefore, the policy will be legally performed until 26 Februari 2016 under the act of 20 November 2015.

As the State of Emergency extension was granted under the act of November 2015, the act that supposed to end in 26 February 2016 was extended. Moreover, the act 20 November modified the act of 55-385 3 April 19 1955 to make it more effective.⁷⁹ Before 26 February 2016, again, the execution of State of Emergency was extended into 26 May 2016 and another two months extension was approved until 26 July 2016.

There are several provisions after the amendment. First, the Government is allowed to use electronic tags to locate suspected person whom sentenced of doing a terrorism in the past. Then, the de facto association or organisation proven to be involved and to facilitate the committed public threat could be dismantled. The increase of penalties to disobey the law of house arrest was added. Afterward, Ministry Interior could take any necessary measure to control the media that inclines terrorist act,⁸⁰ and other additional paragraphs to certain article and the removal of several article.

⁷⁸ Amnesty International, Op.Cit. Page 25-26

⁷⁹ Republique Francais Government, Op.Cit.

⁸⁰ Ibid.

Before the first implementation end Hollande seek for another extension in January 2016, which led to the critiques from several rights organisations. Regardless of that condition, the notion to extend the State of Emergency in February was supported by several parties in the government. Interior Minister Bernard Cazeneuve stated that the terrorism threat in France remained high.⁸¹ French Prime Minister Manuel Valls said, “The state of emergency is efficient, indispensable.”⁸² Therefore, he supported the plan to extend the policy as long as it was necessary to do.⁸³ He also believed that any measurement should be used to counter the terrorist group. Stephane la Foll, government spokesperson, said that the extension of the state of emergency was necessary due to high threat of terrorism in France and Europe.⁸⁴

By the support of certain parties and approval of National Assembly, the policy was extended again until May 26, 2016. Then, with several reasons proposed, Francois Hollande was asking for another continuation of State of Emergency for two months. Again, parliament agreed the proposal. Accordingly, the policy will remain active until 26 July 2016.

⁸¹ France 24, Op.Cit.

⁸² “French PM Defends State of Emergency Extension, new power,” Deutsche Welle, Retrieved December 21, 2016, <http://www.dw.com/en/french-pm-defends-state-of-emergency-extension-new-powers/a-19029888>.

⁸³ “Migrant crisis: EU at grave risk, warns France PM Valls,” BBC News, Retrieved December 20, 2016, <http://www.bbc.com/news/world-europe-35375303>.

⁸⁴ “French Government calls for State of Emergency Extension,” Deutsche Welle, retrieved December 21, 2016, <http://www.dw.com/en/french-government-calls-for-state-of-emergency-extension/a-19025191>

E. The Critique of State of Emergency

In certain situation where fundamental threat is imposed to the country, like an armed action against the state, natural disaster, or economic crisis. Certain civil liberties might be suspended and human rights are limited. Stated on International Covenant on Civil and Political Rights article 4.

In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation...

However, there are non-derogable human rights according to European Convention of Human Rights and Fundamental Freedom (ECHR), and the International Covenant on Civil and Political Rights (ICCPR): the right to life, the right to be free from torture and other inhumane or degrading treatment or punishment, the right to be free from slavery that should be embraced. As the state of emergency was implemented by French Government, the civil liberties of society was suspended. Ministry of Interior had done house arrest, assigned residence order, and banned the public activity that threaten the security of the state. However, the implementation considered went too far.

Lot of critiques were directed to French Government due to the practice of State of Emergency. Human Rights Watch considered France abusing the State of Emergency. Izza Lehgtas, a western researcher of Human Rights watch said that France supposed to ensure the public safety from further attack, instead of performing abusive and discriminative act. Therefore, Human Rights Watch also urge the parliament not to

extend the policy, as there was no justifying evidence to continue the State of Emergency.

Following the condition of discrimination and maltreatment by Police Officer and the intention of Government to extend the state of emergency, Amnesty International refrained the parliament to consent the request. They also asked French Government to withdraw the extension proposal after February.⁸⁵ At this point, Amnesty International criticised the implementation of house search due to arbitrary action of the authorities that raid the alleged person's house with vague information. The disproportionate impact on Human Rights were also a concern of Amnesty International, seeing that the target were handcuffed and received an abusive treatment. Moreover, the raids were sometimes caused material damage.⁸⁶ The last point of assessment is the abuse of power by the authorities using the state of emergency for other purposes, which is not the basis of the policy's implementation.

Along with HRW and Amnesty International, the intention of French Government to extend the policy was decried by UN Rights expert. Independent expert⁸⁷ criticised the practice of State of Emergency that lack of clarity. Besides, similar with the critique of Amnesty International, they questioned the government response towards the demonstrator of environmental Issue for the agenda of COP 21, which is not the

⁸⁵ Amnesty International, Op Cit. Page 8

⁸⁶ Ibid. Page 32

⁸⁷ Independent Experts of UN are working on voluntarily basis in the system called Special Rapporteur on the Special Procedures of Human Rights council. They are not UN staff and do not get any salary for their work. They are independent from any government and institution as they work as individual.

fundamental reason of policy implementation. On the other hand, the UN rights expert counsel the French Government to have Judicial Control over the counter-terrorism measure.⁸⁸

In addition to that, Council of Europe insisted French government to reconsider the extension of State of Emergency.⁸⁹ As the Secretary General of Council Europe, Thorborn Jagland sent a letter to Francois Hollande related to French Government's intention to extend State of Emergency. He emphasised the risk of the policy if it is not accompanied with the respect of fundamental freedoms.⁹⁰

It cannot be denied that the implementation of State of Emergency triggered several rights organisations to send critique and advise Francois Holland who asked the parliament to extend the policy. Amnesty International, Human Rights Watch, UN rights expert, and Council of Europe were the one that ask the French Government to refrain the proposal of extension. Most of the reasons were similar, the abusive power of the government during the practice of the policy.

The unpopular decision of Francois Holland, coming from Socialist Party, was also strongly opposed by political left -which was his ally in National Assembly- when discussing the discourse of extending the State of Emergency.⁹¹ Noel Mamere, the

⁸⁸ UN Rights experts Urge France to Protect Fundamental Freedoms while Countering Terrorism, Opcit.

⁸⁹ "France State of Emergency Undergrowing Criticism," euobserver, Retrieved December 18, 2016, <https://euobserver.com/justice/131994>.

⁹⁰ Ibid.

⁹¹ "Francois Hollande Own's Personal State of Emergency," The Spectator, Retrieved January 03, 2017, <http://www.spectator.co.uk/2016/02/francois-hollandes-own-personal-state-of-emergency/>.

representative of Begles in National Assembly from Green Party, argued “The state of emergency leads to both the judge’s marginalization and increased attack of liberty”.⁹² Ligue des Droits de l’Homme (LDH or France’s Human Rights League) also disagreed with the decision of the government by leading the protest against the government. They argued that the policy cannot be rationalized. The petition started by LDH was also supported by 400 university teachers, professors, one of the police unions, and the judges’ union.⁹³

There are lot of organisations or even individual criticising the execution of State of Emergency. The policy issued by the government is phenomenal as it is discussed by many elements and parties, Amnesty International; UN rights experts; Human Rights Watch; and even the left-wing Politicians. Human rights, which is the fundamental values owned by every human being, should be limited as the consequence of emergency situation announced by French Government.

⁹² Victoria Lecomte, “On the Justification of States of Exception in Liberal Democracies” (Thesis, Lund University, 2016).

⁹³ The Spectator, Op.Cit.