



## Rule of Law Promotion in Times of Covid-19

No. 5:

### Global Perspectives for Rule of Law Promotion after the Pandemic

July 2020

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#### I. Introduction

The current paper series seeks to illustrate the effects of the measures taken against the spread of Covid-19 on the rule of law.

While the pandemic has already overloaded health systems of wealthier countries around the globe, fear of the effects of the crisis in the Global South has increased. Responding to this threat, governments have taken drastic measures, which do not always comply with the rule of law. As of 16 July 2020, emergency declarations have been imposed in 88 countries, which in some cases means that parliaments and other democratic control mechanisms have been suspended. Measures that affect the freedom of expression have been enacted in 41 countries, measures that affect the freedom of assembly in 120 countries, and measures that affect privacy rights in 41 countries, with growing tendencies. In some countries, the line between civilian and military means is blurred when armed forces are used to execute orders aimed at preventing the spreading of the disease. There are also cases where political rights are curtailed, and the freedom of the media is restricted. The global justice gap is increasing as people face more justice problems and find it harder to resolve them.

RSF Hub has developed two scenarios each for three different types of statehood and compared them with actual developments in several countries. Mali and Afghanistan are examples of extremely fragile statehood; both face violent insurgencies that continue unabatedly. In Mali, the widespread mistrust of the government has further increased, as many people seem to believe that Covid-19 is not real. Religious and

traditional leaders fill the resulting power vacuum. In Afghanistan, mainly migrant workers returning from Iran spread the disease, which has severely aggravated socio-economic problems. Both countries have some of the lowest Covid-19 testing capacities in the world.

Myanmar and Venezuela represent authoritarian rule. In Myanmar, the civilian government and the military both formed task forces to contain the spreading of the virus, which might lead to a re-balancing of the distribution of power between them. Ceasefires with some of the country's ethnic armed groups have enabled the continuation of the peace process. On the other hand, the situation of IDPs seems to be particularly grave. In Venezuela, the struggle between government and parliament continues. Meanwhile, independent media and research institutions have come under additional pressure.

Tunisia and Brazil can both be considered contested democracies. In both, civil society actors play an important role in preventing the erosion of the constitutional order. In Brazil, the Supreme Federal Tribunal thwarted efforts of the president to impede measures aimed to prevent the spreading of the virus, which shows that checks and balances between the branches of government are still functioning. In Tunisia – just like in Mali and Venezuela – the state of emergency declared due to the pandemic adds to a pre-existing state of emergency; in all these cases, the constitutional bases of these acts of government are doubtful. Papers on the developments in Tunisia, Mali and Myanmar are available on the RSF Hub website (<http://www.fu-berlin.de/rsf-hub>).

This paper examines the impacts of the pandemic on a global scale and analyses the implications for rule of law promotion going forward. It is based on research carried out by the RSF Hub team and a public expert talk held on 8 July 2020, excerpts of which can be watched on the above-mentioned website.

## **II. Constitutional order and democracy**

In some world regions, the pandemic's effects on political systems and societies have been even greater than its effects on public health systems. In Oceania for example, states shut down their borders before the pandemic hit, due to health systems that are stretched already without any Covid-19 cases. In Africa and some parts of Asia, too, the outbreak has so far not hit as hard as expected, with most states having nonetheless chosen harsh prevention measures such as curfews and the closing of public buildings, schools, houses of worship and businesses.

In many Global Southern countries, government communication to some extent depends on word of mouth and is often in need of improvement. During the pandemic, this has been complicated by distancing and lockdown rules which in turn amounted to confusion about what laws apply. Citizens often mistrust their governments and believe that the pandemic is used in order to deploy resources, reallocate money and appeal for donor support. Lack of coordination can in many countries also be seen on an inter-governmental level, impairing the efficacy of containment measures, consolidated further by general institutional ineffectiveness.

In many of these countries, the functioning of the legislative and judicial organs have been reduced to a minimum due to declarations of state emergency and lockdown measures, thereby strengthening the executive branch of government and unsettling the balance of powers. In a number of countries, presidents have assumed the role of quasi "supreme commanders" in a war against the coronavirus,

ordering containment measures and their enforcement accordingly. This strengthening of the executive has further been reinforced by a growing power of security forces, with the military supporting police actions of enforcing containment measures or even leading the Covid-19 response in some cases. Citizens violating these measures have in some instances been met with drastic sanctions such as public whipping and imprisonment. Killings of people accused of not respecting these rules have been reported from South Africa, Kenya and Nigeria.

### **III. State-citizen relations and human rights**

In fragile states, there appears to be a tendency to take advantage of the lockdown by containing civil society activism and hindering opposition. This, however, has in turn led to the contestation of presidents' legitimacy and a heightening of the general deficit of trust in the government. In a number of African countries, this led to general opposition to lockdowns with citizens protesting publicly. In turn, to some governments, political instability seems to be a greater concern than the virus itself. Some of these protests have been successful, with governments starting to relax the introduced measures even though this is not supported by decreasing case numbers or increased capacity to respond to protect public health.

In some countries, governments are deliberately withholding information about the pandemic. People who are reporting on the virus or criticising their governments' response are either criticised, silenced or arrested. Cases of arrests have for instance been reported from China and Bangladesh.

Lack of internet access in many countries further impacts the states' capacity to inform its citizens about prevention measures, weakening efforts to contain the virus.

More generally, the pandemic has highlighted the existing digital divide in many countries in the world. Internet in times of lockdowns and social distancing provides access to vital activities such as work, education, communication but also entertainment. Women and children are disproportionately affected, both in Global Southern and Northern states. Limiting internet access has also been used as a political tool to silence minorities. Cases of this kind have been reported in Myanmar and the Kashmir region in India.

With regard to the general human rights situation, one can observe that refugees, migrant workers, women and other non-dominant groups are under threat: In refugee camps, the situation has worsened due to the confined living conditions, and refugees are now confronted with the additional fear of spreading the virus. Human Rights Watch has reported the example of 300 Rohingya refugees who were rescued from the sea by Bangladeshi forces but then put onto an island to quarantine, where they still were after two months. Many migrant workers have been deported or had their wages withheld due to economic closures. As a result, many have made their way back to their home countries. Also within countries, there have been flows of people returning to rural areas. On the one hand, these movements of people further increase the risk of a spread of the virus. On the other hand, there have been new land and family disputes emerging, with state authorities often not having the capacity to handle them. UN Women has coined the global spike in domestic violence due to lockdowns as a "shadow pandemic" and evidence points to a significant increase in many parts of the world. Dealing

with gender-based violence is oftentimes left to activists, whose capacity is also limited due to containment measures.

#### **IV. Access to justice**

Even before the lockdowns and subsequent increase of obstacles regarding access to justice, the Global Justice Gap meant that universally 5.1 billion people do not have meaningful access to justice, 1.5 billion of which face justice problems they cannot resolve. In this regard, the pandemic has triggered important trends. While “more” state can be seen in executive action, courts have in large parts been sent into lockdowns. Digital tools can only to a small extent bridge the gap. Simultaneously, new disputes and justice problems have been rising, such as domestic violence, land disputes and unemployment. In many cases, non-state actors have been stepping in where the state has been unable to provide justice for all.

The wide closure of courts has resulted in an increase of remote sessions and live broadcasts. Innovations that had been worked on for years and seemed impossible to mainstream have become a reality almost overnight. While these innovations are a promising development for future access to justice, they have also led to an aggravation of the digital divide. In addition, technical problems, privacy concerns and surveillance risks impinge on the effectiveness of the judicial systems. Moreover, backlogs of cases are growing fast. These impairments on state justice systems will likely remain challenges for years to come.

In every country of the world, the justice system comprises a mix of state and non-state or hybrid justice institutions. Although sometimes described as “informal” justice institutions, these non-state justice providers are often highly organised. Especially in remote rural areas where the influx of people has been accompanied by an increase of justice problems and state actors being tasked with containment measures, non-state actors step in. In Oceania, for example, informal justice actors resolve most of the justice problems. They appear in different forms, such as small committees made up of leaders of local families, traditional village councils or hybrid assemblies of police and customary leaders. Available and accessible non-state justice institutions are vital for access to justice in every country in the world. Moreover, they often follow a restorative approach, focusing on repairing the relationships between the parties. This is particularly important during Covid-19 as communities are more dependent on each other. Furthermore, this approach is independent of imprisonment, thereby preventing further overcrowding of prisons, which is especially problematic in the current circumstances. Nonetheless, one has to keep in mind that non-state systems are often prone to biases against non-dominant groups, in particular women.

#### **V. The future of global rule of law promotion**

The effects of lockdowns have been harshly felt economically, with a rise of unemployment, poverty and evictions, adding to the justice problems people had already been experiencing. For example, a recent report by the UN Economic Commission for Latin America and the Caribbean (ECLAC) has estimated that 2.7 million businesses will have to close as a consequence of the pandemic in Latin America alone. This, in turn, might lead to 8.5 million people losing their jobs in the region. Economies depending on tourism as a source of revenue have been hit especially hard. Some legal matters have

become more urgent, for example establishing mechanisms to deal with insolvency. Any action going forward will also have to include strategies to mitigate problems caused or aggravated by regression and support economic recovery.

Prospectively, all experts in the talk agreed that business as usual will not be enough in the future. Justice institutions need to be better at anticipating demands and enabling non-court solutions. Comprehensive legal and policy emergency frameworks that include oversight mechanisms to ensure adherence to rule of law and human rights standards are urgently needed. For these and other processes, different stakeholders such as parliaments, ministries, justice providers and civil society should be cooperating.

On a more practical level, states need to ensure food security in order to mitigate potential emergency measures, and they must properly prepare for the handling of future public health emergencies. All these measures must focus on the needs of people, with particular regard for those most at risk.

This will be impossible without continued advocacy for, and support to the rule of law and the provision of equal access to justice for all. To enable recovery and socio-economic development in a sustainable manner, legitimate leadership as well as stable justice responses are needed. It is time to adapt digital solutions in order to provide secure access to justice to more and more people. Governments and donors should also accept the existence of non-state justice systems and develop modes of collaborating with them while maintaining human rights standards. For all of this, partnerships and broad participation remain crucial. Local actors, in particular, should be taken seriously. *People-centred justice* will be the way forward to finding fair and sustainable solutions.

## VI. Contributors

This paper is based on the expert talk “Global Perspectives for Rule of Law Promotion after the Pandemic”, which was held on 8 July 2020. On behalf of RSF Hub, Tilmann J. Röder (moderation) and Johannes Socher (public liaison) participated. RSF Hub is grateful to all scholars and practitioners who contributed to this paper:

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## About RSF Hub

RSF Hub is a project-based think tank funded by the German Federal Foreign Office fostering knowledge transfer between politics, academia and field practice in the area of rule of law promotion and related topics such as transitional justice. RSF Hub organises, in collaboration with various partners, expert talks and round tables. Team members teach at universities and train ministry staff, speak

at events, contribute to blogs and publish academically. For more information on the Hub's activities see <http://www.fu-berlin.de/rsf-hub>.

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## Proposed Citation

RSF Hub: Global Perspectives for Rule of Law Promotion after the Pandemic. Covid-19 Paper No. 5, July 2020.

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