

## **COVID 19 and the RULE OF LAW**

**By Alexandre Zouev**

The unprecedented threat from COVID-19 has caused unimaginable suffering around the world. This year also triggered a much-needed discussion on the role of law enforcement in societies. While the pandemic is first and foremost a public health crisis, there are related challenges that are consequential for containing it and for promoting a rapid and sustainable recovery. The struggle to uphold the rule of law and the role of law enforcement in societies are among them.

Where governments have responded to the pandemic with an expanded role and the forceful presence of police and other security actors, challenges have emerged, including perceptions of bias, disproportionate use of force, and other human rights issues. There is also a risk that some states may be utilizing emergency powers to consolidate executive authority at the expense of the rule of law, suppressing dissent, and undermining democratic institutions, especially where courts and other oversight bodies struggle to perform due to COVID-related restrictions.

Some countries have seen a sharp increase in arrests. This runs counter to the need to decongest prisons, which have suffered disproportionately high infection rates, both among inmates and staff, spreading to surrounding communities and potentially triggering violence.

The distribution of emergency aid, medical supplies, and economic stimuli to counter the effects of the pandemic, while necessary, also provide ample opportunity for corruption and fraud. Without effective institutions that ensure transparency, accountability, and oversight, much of it will not reach intended beneficiaries, deepening the social, medical, and economic crisis and compromising and delaying recovery.

The pandemic also provides opportunities for armed groups, including terrorist organizations, to discredit state institutions, exploit gaps in public services and capitalize on public outrage, for example, over the closure of places of worship. As some security personnel face reduced operational capacity because of their unavoidable exposure to the virus and competing new responsibilities, some armed groups are consolidating and extending control over territory.

These challenges can severely undermine the legitimacy of governments, which is critical for effective mitigation and containment strategies during public health crises, as observed in some countries when they battled the 2018–19 Ebola outbreak. It is therefore in the interest of governments to ensure that emergency restrictions on rights are necessary, proportionate, legal, and time bound.

The United Nations has reacted quickly to provide immediate assistance to national rule of law and security institutions in a number of countries, including the Democratic Republic of the Congo. Peacekeepers have been active in distributing emergency medical supplies in Darfur and Mali, including to former combatants, helping to build confidence among warring factions. Together with partners, we have also developed practical tools to mitigate the spread of COVID-19 in prisons, guidance to decongest prisons, and a manual for holding virtual court hearings. These efforts should be sustained and built upon while COVID-19 is still spreading.

When the pandemic wanes, governments should undertake after-action reviews, including of performance under emergency powers, to inform future practices and reform where appropriate. The UN's support, based on decades of best practices, can be useful in this regard, particularly in police sectors.

In the longer-term, the pandemic—as any crisis—may also offer opportunities to make needed changes to legal systems and law enforcement practices.

In the criminal justice sector, for example, we should analyze the impact of practices developed in response to the pandemic on state budgets, communities and rehabilitation prospects with a view towards their institutionalization. This should include the potential release of non-violent prisoners, adjusting arrest and prosecution strategies and non-custodial sentencing. It should also include e-filing and virtual judicial hearings as possible. While presenting challenges to some fair trial rights, these practices can make justice systems more accessible and efficient. As the digital divide narrows, they can enhance access to justice in remote areas, increase legal representation and the participation of witnesses, clear backlogs and reduce pre-trial detention.

As world leaders discuss joint action to contain and overcome the pandemic, it is essential that the need to avoid enduring harm to rule of law principles and fundamental freedoms be taken into consideration. This will help to avoid aggravating social tensions, grievances, and underlying causes of conflict. Preventing conflict is perhaps an imperative now more than ever, as prospects for large-scale investment in conflict management and post-conflict recovery fall victim to scarce resources.

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