



CONCEPT NOTE

The fifth Melbourne Forum on Constitution Building in Asia and the Pacific Jointly organised by International IDEA and the Constitution Transformation Network

Online webinars: 3, 10, 17 and 24 September 2020, 2-4 pm AEST

“REPRESENTATION IN DEMOCRACIES DURING EMERGENCIES”

Representation is critical, both in Constitution-making processes and in the institutions for democratic government that Constitutions put in place. In both theory and practice, representation raises a host of questions for constitutional arrangements, however. These include, but are not confined to: the relationship between representatives and the represented; the roles and responsibilities of representatives; the options for choosing representatives; the ways in which representatives are held accountable; the relationship between representative and direct democracy, where the latter is used; the relationship between representatives at different levels of government; the impact of internationalisation on democratic representation; the implications of different choices in the constitutional, legal and political framework of the system of government for the effectiveness of representation and the way it works in practice.

The Melbourne Forum 2020 tackles issues for democratic representation from the standpoint of emergencies. Representation faces particular challenges in times of emergency. Emergencies come in a wide variety of forms, however, potentially affecting representation in different ways. The Melbourne Forum 2020 uses as its lens into the impact of emergencies on democratic representation the Covid-19 pandemic, which has given rise to both health and economic emergencies of major proportions in countries across the world. These two linked emergencies, in turn, have called for an effective response by states, with results that have varied from impressive success to significant failure. To examine these dynamics and their links with representation, Melbourne Forum 2020 will draw on the experiences of states across Asia and the Pacific, as a vast and diverse region of the world that represents a substantial component of global constitutional experience.

Goals of the Forum

The goals of the Forum are to explore the implications of culture for constitution building across Asia and the Pacific in order to:

- Better understand whether, why, how and to what effect constitutional emergency procedures have been used to respond to the pandemic and associated economic conditions;
- Understand the range of governance mechanisms other than constitutional emergency procedures that have been used to respond to the pandemic and to what effect.

- In either case, examine and evaluate the role played by representation in authorising or scrutinising the steps that were taken, in conjunction with other institutions of government.
- Examine the impact of the emergencies on the operation of representative government including: the impact on elections; on the respective roles of the legislature and the executive in relation to law-making and spending; on transparency; on legislative and other means of scrutiny of executive action.
- Identify both innovations in managing representative government during the emergency and pitfalls to be avoided.
- Understand how systems of multi-level democracy functioned during the emergency and, in particular, whether having multi-level government was positive or negative in responding to the emergency; whether governments worked collaboratively or independently or both; the effect of the emergency on representation at each level.
- Place representation in broader context by understanding the roles that other institutions of government played in responding to the emergency, including courts and fourth branch institutions.
- Explore the relationship between states and international institutions in responding to the emergency and evaluate the relative contributions of both.

Methodology and logistics

The Forum is organised under the auspices of the Asia and the Pacific and Constitution Building Programs of International IDEA in collaboration with the Constitutional Transformation Network at Melbourne Law School.

This year's Forum will take place virtually, using zoom or another platform. It will comprise four sessions, held over four successive Thursdays in September, beginning on 3 September. Each session will begin at 2 pm AEST and finish by 4 pm. The theme for each session will be explored through up to four case studies from across the Asia-Pacific region, by experts from the case study countries. The experts will speak briefly to the experiences of their own country, after which discussion will take place, moderated by a chair from the International IDEA/ConTransNet team. Brief written materials providing background on each of the cases will be prepared by experts, responding to questions set by the organisers, and distributed to participants in advance.

Each session will address a distinct theme, enabling it to stand alone. The sessions also will be linked conceptually, however, so that collectively they can offer a broad understanding of the impact of the Covid-19 emergency on representation across the region. It is hoped that all the invited experts will join and participate actively in all sessions, together with the teams from ConTransNet and International IDEA. Interested members of the public also are encouraged to join and to add to the insights from the discussion.

Session Themes

1. Emergency powers and Covid-19: 3 September

This session will examine the use and effectiveness of constitutional emergency powers, the alternatives to them and the role of representation in either case.

Questions to be considered in relation to each case include:

- What were the main mechanisms used to handle the COVID 19 challenges, both health and economic? With what effects on 'normal' government?
- Was a constitutional emergency power available? If so, was it used? If not, why not?
- Were other forms of emergency power used? Did they fit within the constitutional framework?
- In either case, were representatives involved in the approval or scrutiny of the measures taken?
- Were there other forms of oversight of the responses to the pandemic; for example, through courts?
- Is there an end in sight to the use of emergency measures?
- How well did the measures taken work?
- What positive or negative lessons can be taken from the experiences in this case?

Case studies: Solomon Islands, Thailand, Timor Leste, Philippines

Register here: <http://go.unimelb.edu.au/79ij>

2. Law-making and accountability in responding to the pandemic: 10 September

This session deals with the operation of representation in the course of responding to the pandemic and the manner in which decision-makers were held to account

Questions to be considered in relation to each case include:

- Is representation confined to the legislature, or is there also a separately elected executive?
- To what extent were responses to the pandemic influenced by the context of a parliamentary or presidential system?
- How were the legislative functions of law-making, representation and holding the government to account managed during this time?
- If elections were due, were they held or postponed? If they were held, what concessions were made to the emergency conditions? If they were postponed, with what constitutional consequences?
- Did legislatures meet during the height of the pandemic? What procedural changes were made?
- What role did executives play in responding to the pandemic? What role for Cabinets?
- Was legislative power delegated to the executive and to what extent was its exercise scrutinized?
- How were decisions about spending made and what oversight has there been over spending policies and their execution in practice?
- What effect did the impact of the emergency on the operation of legislatures have on other initiatives, of a constitutional or legislative kind?
- What positive or negative lessons can be learnt from the experiences in this case?

Case studies: New Zealand, South Korea, Singapore, Papua New Guinea

Register here: <http://go.unimelb.edu.au/g9ij>

3. Multi-level government and Covid-19: 17 September

The theme of this session is the ways in which systems of multi-level government have operated in responding to the emergency. Multi-level government for this purpose includes all states with significant devolution, whether formally federal, unitary with special autonomy for parts of the country, or regionalised with a measure of constitutional protection.

Questions to be considered in relation to each case include:

- What form does multi-level government take?
- Did emergency conditions change the normal arrangements for multi-level government?
- Were both/all levels of government involved in responding to the pandemic?
- Did governments work together, separately, or both?
- How effective was action by the centre? How effective was action by sub-state levels of government?
- On balance, was multi-level government a positive, negative, or neutral factor in responding to this emergency?
- What positive or negative insights can be gained from experience with multi-level government during this emergency in this case?

Case studies: Australia, India, Nepal, Pakistan

Register here: <http://go.unimelb.edu.au/99ij>

4. Beyond representation: independent and international institutions: 24 September

This session puts the theme of representation in broader context, by examining the role of other institutions in responding to the pandemic, both domestic and international. In terms of domestic institutions, the session focusses on courts and fourth branch institutions. Internationally, it explores the respective roles of states and the international order in dealing with an emergency of this kind, and focusses in particular on the WHO and the UN.

Questions to guide discussion include:

- What other features of the constitutional system affected the state's response to the emergency?
- What role did 'independent' institutions play during this period? Did they have a plan for carrying out their roles in these circumstances?
- What role did experts play and within what organizational/structural framework?
- What role did courts play in responding to the emergency? Were courts inhibited/precluded from review by the facts of the emergency?
- What role did international institutions play in responding to the emergency?
- What does the experience of this pandemic suggest about the respective roles of states and international institutions and the relationship between them?

Case studies: World Health Organisations, United Nations, Taiwan, Sri Lanka

Register here: <http://go.unimelb.edu.au/k9ij>