MECHANISMS OF DEMOCRACY & FUNDAMENTAL RIGHTS
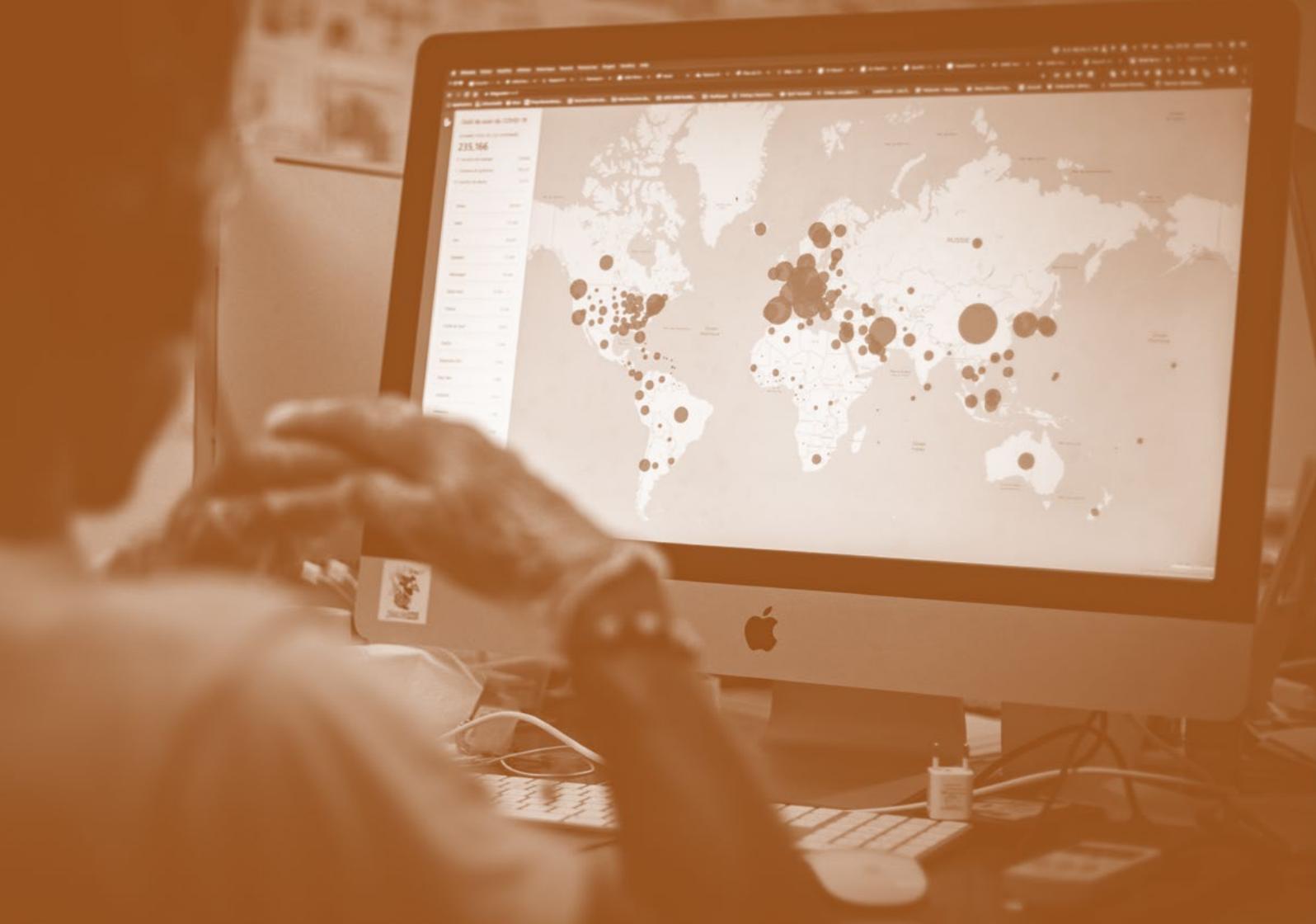
Working Group 1 of the Global Commission on Democracy and Emergencies

1. INTRODUCTION

The Global Commission on Democracy and Emergencies was established in 2021 following the outbreak of the COVID-19 pandemic, with the aim to help democracies enhance their resilience to emergencies as well as their ability to deliver in uncertain times. The Global Commission and its three Working Groups seek to formulate actionable policy recommendations within the thematic areas of "Mechanisms of democracy and fundamental rights" (WG1), "Social Inclusion in emergency response" (WG2) and "Effective leadership in times of emergencies" (WG3).

WG1 was entrusted to map and summarize the impact of the COVID-19 pandemic on the mechanisms of democracy, understood as democratic institutions (parliaments, courts, electoral authorities, etc.) and processes (elections, campaigns etc.) as well as on fundamental rights.

This issues paper aims to summarize the key outcomes of the first WG 1 meeting as well as previous supporting documents[1], in order to guide the discussion of the second meeting of the Working Group.

The objective of the second Working Group meeting is to agree on a set of thematic areas on which policy recommendations could be developed to enhance the ability of democracies to deliver before, during, and after emergencies, whilst protecting democratic institutions, rights, and principles.

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1. Global Commission on Democracy and Emergencies – Background paper (12 May 2021), Working Group 1 Meeting Minutes (10 June 2021), Defining Emergencies - background paper (21 June 2021).

2. DEFINING EMERGENCIES

The discussions of the first Working Group meeting drew attention to the importance of defining which types of emergencies the Global Commission wished to include in its analysis and address in its policy recommendations. After reviewing emergency definitions prevalent in the humanitarian community and exiting rule of law networks, the "Defining Emergencies Background Paper" (Club de Madrid, June 2021) proposes that the Global Commission adheres to the following definition:

"Situations in which an abnormal event (or series of events) causes human suffering or poses an imminent threat to human lives or livelihoods, dislocating community life and exceeding the remediation capacity of the state within the regular legal framework. Not all shocks become emergencies, and which ones do may vary across time and geography; it depends on each government's capacity to offer remedy."

This definition brings together the humanitarian focus on human lives and livelihoods, with the dimensions of imminence, community impact, and insufficiency of normal response measures, which the rule of law community considers essential for a state of emergency declaration.

Earlier discussions, including during the first plenary session of the Global Commission in late April as well as the Background Paper of the Global Commission further narrow down the definition to primarily focus on rapid-onset emergencies which are summarized as:

"Pandemics, natural disasters, industrial accidents and international terrorist attacks have all affected large parts of the globe in this century. Migration flows, when concentrated in time and space, have also triggered situations where the capacity of governments to protect human lives has been exceeded. Cybersecurity failures could also give rise to new types of emergencies as digital technologies play an ever-greater role in our communities." (Global Commission Background Note p. 1)

In addition, the mandate of the Global Commission, as stated on p. 16 of the Background Paper, is also explicit on the need for the Commission to *"extend its vision beyond the emergency situation into the recovery period ahead"*. In its final report the Global Commission should therefore also go beyond the acute phase of emergency situations and include recommendations to strengthen resilience after, or regardless of, state of emergency declarations.

3. IMPACT OF COVID-19 ON DEMOCRACY AND FUNDAMENTAL RIGHTS

Although the full impact of the COVID-19 pandemic on democracy and fundamental rights will become evident (several years) after the pandemic, the evidence collected until now already identifies several democratic trends, challenges, and opportunities brought about by the pandemic. The ones listed below feature in International IDEA's Global Monitor on the impact of COVID-19 on Democracy and Human Rights, which tracks the impact of adopted COVID-19 measures on 29 aspects of democracy in 162 countries.

The analysis has also been enriched by findings from International IDEA's Global State of Democracy (GSoD) Report 2021, which maps the impact of COVID-19 on democracy and human rights in 165 countries around the world, across 116 indicators. The data underpinning the GSoD is based on 12 data sources of which the Varieties of Democracy (V-Dem) constitutes the majority (70%). Finally, this section also includes findings and examples from other global reports and relevant resources.

General trends of democratic performance during the pandemic

The COVID-19 pandemic accelerated and exacerbated the trend of democratic deterioration, most visible after 2015. Already fragile or backsliding democracies were particularly affected but democratic performance also declined in established democracies, including some of the world's largest economies such as India, Brazil, and the United States. Many government measures implemented during the pandemic had a direct negative impact on the functioning of democratic institutions, media, and civil society as well as on the adherence to fundamental rights and freedoms. Women, minorities, and socio-economic vulnerable groups were particularly hard hit by the economic and social fallout of the crisis. The first year of the pandemic also saw a surge in deepened authoritarianism and a record low when it comes to clean elections due to government intimidations and restrictions on campaigning which, combined with limitations to the media, favoured several incumbent governments.

Nearly half of the world's democracies introduced COVID-19 related measures which were concerning from a democracy and human rights perspective. These measures were either disproportionate, illegal, indefinite, or unnecessary in relation to the health threat. 48 democracies also implemented measures to curb the pandemic that violated democratic principles. In most cases (71%), the democracies that experienced concerning developments were ailing already prior to the pandemic. Similar to individuals, the pandemic affected the countries with pre-existing conditions the hardest. This said, the pandemic also drastically deteriorated the health of previously healthy democracies such as Argentina, El Salvador, Panama, Malaysia, Mongolia, Burkina Faso, Israel, or Slovakia.

Key areas of concern

Elections

Disrupted election calendars and postponed or annulled elections were one of the first signs of how the COVID-19 pandemic affected democracies around the world. Half of the electoral processes scheduled for 2020 were postponed due to the pandemic, particularly in the first months, before good examples, such as the South Korean elections, paved the way for how democratic elections could be held amid an ongoing health emergency.

Interestingly, democratic and hybrid regimes were more likely to postpone their elections than authoritarian regimes. This can partially be explained by the fact that democracies wanted to ensure the legitimacy of their elections through sufficient voter turnout and the ability of the opposition to conduct electoral campaigns. For incumbents with authoritarian tendencies, holding elections during the pandemic provided an opportunity to sideline and silence political opponents, civil society, critical media, and human rights advocates.

Although many countries have legal provisions that allow for the postponement of elections under certain circumstances, the COVID-19 pandemic revealed gaps in existing legal and constitutional frameworks to take such decisions. Particularly in polarized political contexts, postponed elections also led to democratic or institutional deterioration, as was the case in Ethiopia, where the government was accused of using the pandemic as a pretext to consolidate its power while restricting democratic rights.

On the other hand, choosing to hold elections during COVID-19 was also controversial and undermined trust in the electoral processes. In some places, the pandemic was used as a pretext to disregard electoral norms and processes, curtail the participation of opposition and media, and disregard public health provisions leading to decreased turnout, legitimacy, and trust in the elections. In Serbia for example, the government disregarded popular calls to postpone the vote and held elections in June 2020. The opposition chose to boycott the elections, leading to an incumbent landslide that was sorely lacking in credibility.

The pandemic also substantially increased the costs of holding elections as new procedures, such as special voting arrangements (i.e. early voting, proxy voting, postal voting) and health safety measures, had to be introduced before, during, and after the vote. To give an example, the South Korean legislative election in 2020 came with an extra cost of 16 million US dollars.

Voter turnout also declined substantially during the pandemic. In more than half of the elections (63%) that were held during the pandemic, voter turnout was lower than in previous elections. For these elections, the mean decline in voter turnout was nearly 10%. The declining trend was noticeable for example in France where the first round of the municipal elections saw a record-low turnout of 46%.

In the end, the majority of countries that had initially postponed their elections decided to hold them, as more knowledge and good practices about holding elections during a health emergency became available.

States of emergency

In the first half of 2020, 59% of countries in the world declared a national State of Emergency, with a greater share of democracies (72%) than non-democracies evoking them.

Whilst states of emergency are a legitimate tool of democratic governments to deal with crises, their usage needs to be proportionate, time-bound, and subject to periodic review and judicial oversight. Moreover, a set of rights, outlined under Article 4 of the International Covenant on Civil and Political Rights (ICCPR) such as the right to life, prohibition of torture, inhuman or degrading punishment, freedom of thought, conscience and religion, cannot be suspended or limited, including during states of emergency.

Some of the democratic challenges linked to the usage of States of Emergencies during the pandemic included the lack of adequate parliamentary oversight in the approval or extension of States of Emergency, the concentration of power in the executive, and the inclusion of disproportionate or pandemic unrelated measures.

As an example, democracies evoked States of Emergency that were extraordinarily long, with an average length of 8 months, with some countries, such as Argentina, the Philippines, and Togo extending their states of emergency for more than 1.5 years.

Long-term states of emergencies risk becoming part of the ordinary governance and can normalize and indefinitely prologue limits on fundamental rights, legislative oversight, and democratic processes.

In some cases, such as Egypt, the Dominican Republic, the Gambia, Niger, and Thailand, States of Emergencies were declared and extended by presidential decrees and executive orders, thereby also drastically reducing the oversight capacity of parliaments, and risking leading to executive overreach and democratic deterioration.

The role of security forces also increased as part of the pandemic response. At least 85 countries expanded law enforcement capacities and 38 countries also called in the military to manage the health crises which in some cases led to excessive use of force (including in 48 democracies). Although justifiable in cases where the military's infrastructure was needed for swift logistical and personnel response, it was deeply concerning when it was used to enforce COVID-19 rules and detain citizens. Increased militarization is problematic from a democracy perspective since security forces operate at arm's length from democratic institutions and may be subject to fewer restrictions and scrutiny which can undermine the principle of civilian oversight.

Restrictions on fundamental freedoms and democratic rights

All countries in the world have imposed some restrictions on fundamental rights and freedoms during the COVID-19 pandemic. Although the severity of restrictions greatly varied, the most affected areas were related to personal integrity, security, freedom of expression, and media integrity.

Questions around personal integrity and data protection were raised when (42% of) countries introduced contact tracing apps monitoring citizens' infections status, movement, and contacts - but also their adherence to COVID-19 regulations. Although these apps were more commonly introduced in democracies, their (compulsory) use as well as issues related to data sharing between app providers and the government presented dilemmas from a democracy perspective. As an example, serious privacy concerns were raised as 19 contact tracing apps, with 4 million downloads in total, did not have a dedicated privacy policy. Contact tracing apps without adequate privacy policies have been used in countries such as Bahrain and Indonesia.

Such apps are particularly problematic in hybrid and authoritarian regimes where they have been used for political surveillance, as was the case in Belarus.

Certain fundamental freedoms were also predominantly affected by the pandemic. In certain countries, freedom of movement was one of the first and most severely affected civic liberties.

Following the introduction of COVID-19 vaccines, several countries have also introduced regulations such as vaccine passports or vaccine requirements for state employees which have been perceived as making inoculation mandatory, leading to intense debates about personal freedom and integrity. Other opponents have highlighted the risk of creating divided societies in which vaccinated citizens enjoy basic democratic freedoms and non-vaccinated citizens (often the most marginalized ones) do not.

More than half the countries in the world also restricted freedom of expression with the justification of trying to limit the spread of disinformation related to the virus.

In many cases, such as Turkey, Vietnam, and Hungary, these laws were used to harass, fine, and arrest journalists, close down news sites, and try to silence citizens, medical staff, activists or the political opposition for reporting, sharing information or expressing personal opinions about the handling of the pandemic in their countries. Although such actions occurred across all regions and regimes, the most concerning cases were reported in non-democratic regimes, where actions to restrict freedom of expression were roughly 1.5 times more common than in democracies.

The curtailing of some democratic rights and freedoms during the pandemic can to some extent be acceptable if fully restored once the immediate health emergency has ceased. The danger lies in the prolongation and normalization of these restrictions and, in the long run, the acceptance of those infringements by the general public.

Checks and balances

In many countries both parliaments and the judiciary were impeded by the pandemic, leading to weaker checks and balances on the executive.

Although the vast majority of parliaments continued to function, in several countries the shift towards COVID-19 safe working modalities such as remote/teleworking and digitalization caused 35 parliaments

to suspend parliamentary sessions, either for a specific period or indefinitely. In some cases, such as Croatia, Guyana, North Macedonia, Serbia, and Sri Lanka, parliaments were either adjourned or dissolved. Worryingly, almost a third of legislatures did not have direct oversight of the government's initial response to the pandemic.

Even when they were operational, parliaments were sidelined in the approval and extension of State of Emergency regulations, which in their turn shifted power to the executive branches of government. The diminished parliamentary oversight was also used as an opportunity to pass legislation that would not otherwise have survived proper parliamentary scrutiny, such as in Cambodia, where a bill was passed allowing the government to restrict people's rights, freedom of movement, gatherings, and employment as well as deploy all other measures deemed necessary in response to the state of emergency.

In some countries, the pandemic was also used as a pretext to enfeeble the judiciary and erase judicial independence. 111 countries introduced restrictions on courts, including 78 democracies. Due to imposed health restrictions, the activity of courts was limited. Some of the courts were fully closed while others focused on dealing with "urgent" cases only. This, in combination with increased executive power, weakened the ability to oversee the government's actions.

The executive overreach and sidelining of parliaments and oversight bodies led to increased tensions and conflicts between different branches of government, as was seen in Guatemala or El Salvador. A greater share of authoritarian and hybrid regimes decided to suspend parliamentary sessions at some point during the pandemic as compared with democracies.

Women's rights and gender equality

Women and their rights have been disproportionally affected by the COVID-19 pandemic, resulting in increased levels of domestic violence, care duties, unemployment, and poverty.

At least 38 countries reported an increase in gender-based violence, a number that most likely is even higher in reality. The limitations posed by the pandemic, including the ability to conduct private phone conversations and access helplines but also disrupted

public services within the police, social services, and the judiciary, have contributed to this surge. In Tunisia for example, there was a fivefold increase in helpline calls in the first days of lockdown.

Reports also show women's care duties increased significantly from already high levels, (women were responsible for three-quarters of all unpaid care work) leading to a disproportionally high burden, due to homeschooling and caring for sick and older relatives. In some countries, such as Peru and Venezuela, schools were closed for more than 41 weeks.

Women were also severely impacted by the economic and social fallout as they were heavily represented in industries that were particularly hard hit during the pandemic, such as domestic services, health care services, and the informal sector. The pandemic pushed 47 million women and girls into poverty and it is estimated that around 435 million women and girls worldwide will be living with less than 2 US dollars per day by the end of 2021.

The pandemic has also affected women's sexual and reproductive health, as women in need of family planning services experienced major difficulties accessing them since the pandemic began. Women from underprivileged socio-economic backgrounds, minority groups and women of colour were particularly hard hit by the pandemic.

In Poland, a ruling on tightened abortion legislation was postponed for months due to a public outcry, particularly among women. However, in late 2020, the Constitutional Tribunal decided to impose the ruling despite significant protests.

Democratic openings and opportunities

Amidst the challenges and concerning developments caused by the pandemic, there have also been a few signs of hope, particularly related to democratic innovation, transparency, and participation. Overall, elections and electoral processes managed to quickly adapt and thereby enable one of the most fundamental elements of democracy to function in the most challenging circumstances. Civic action and democratic activism were reinvigorated by the crisis, with young people taking the lead. Most importantly is

the fact that most democracies coped and managed to handle the health crisis whilst still preserving democracy and the rule of law.

Democratic innovation

The restrictions imposed by the pandemic spurred the development and increased usage of new or non-traditional forms of political participation, voter engagement and alternative working modalities. Many measures implemented by democratic institutions and political actors were linked to an increased use of technology to engage with citizens (e.g. digital citizen assemblies, referenda, political campaigns) but also seek their input through participatory budgeting or enable their oversight on pandemic spending.

Innovative working modalities were also implemented due to the pandemic. As an example, many parliaments did not only adapt by operating online or in hybrid forms, but also by reducing plenary or committee attendance whilst safeguarding proportional representation, introducing proxy or electronic voting. This was the case for instance in the United States where the state legislature of Oklahoma introduced proxy voting to facilitate remote working. In the United Kingdom, the House of Lords introduced online voting allowing the members to vote on a smartphone, laptop or other devices.

Particularly in the **elections** field, democratic innovation was turbo-charged by the pandemic. Special Voting Arrangements, which prolonged the voting period and increased the number and type of polling stations, introduced post, remote, or online voting, led to increased accessibility and participation. An illustrative example is the simplification of proxy voting in France, a measure that was swiftly enforced by the government to guarantee voter safety.

Another example are the local elections in Bavaria, Germany, where a switch to all-postal voting was made. For these elections, it was concluded that *"even with limited campaigning opportunities directly before the first election round and for the runoff election, and given the exceptional voting circumstances, a competitive electoral environment was evident with no particular electoral advantage for the incumbent parties."*

The pandemic forced a rapid learning process, which together with the adoption of special voting arrangements enabled many countries to hold

elections despite the difficult circumstances posed by the crisis. Electoral management bodies proved resilient, resourceful, creative and innovative. Although many elections were postponed at the outset of the pandemic, half of all national and local elections scheduled for 2020 were held on time, and three quarters of the postponed ones were eventually held.

Lessons learned from employing Special Voting arrangements during the pandemic are important for the future, so that regardless of which methods are employed, they can ensure integrity, trust, and fairness alongside an increased efficiency and voter turnout.

Digitalization

The pandemic has accelerated **e-government processes** in both the Global North and South, with governments putting in place digital tools to facilitate communication and the continuation of services during the pandemic. Examples of such tools include dedicated COVID-19 information portals, hackathons, e-services for the supply of medical goods, virtual medical appointments, self-diagnosis apps, and e-permits for curfews. For instance, in Estonia, local governments can share COVID-19 related information directly with their constituents through a community engagement app.

Parliaments were also forced to adapt and innovate, primarily by transferring their working modalities to virtual means. For example, the Hellenic Parliament in Greece started to hold the formal committee meetings by virtual means and in Brazil, both houses of parliament swiftly adopted measures to enable remote work during the pandemic until return to in-person proceedings could be resumed.

Many of the new working modalities adopted by parliaments also led to increased transparency and access to information for the general public as parliaments' agendas became public and meetings were live-streamed as was the case of Brazil, Ecuador and Mexico.

Political parties, which already before the pandemic had started implementing new (virtual) means to engage with voters, accelerated their efforts to find new, innovative methods to conduct campaign rallies, voter outreach and dialogue, and political town-hall meetings through virtual means. For instance, in the United States, both major political parties made use of digital tools to arrange virtual political party conventions.

Participation and civic activism

While concerns over the pandemic deepening autocratization and democratic backsliding remain very serious, the pandemic has also paved the way for potential democratic openings and increased civic activism. Despite restrictions on movement and assembly, street protests took place in at least 133 countries, provoked by a range of issues including dissatisfaction with governments' handling of the pandemic (e.g. Brazil, Thailand, Serbia), frustrations with deteriorating living conditions and corruption (i.e. Colombia, Cuba, South Africa, Tunisia) as well as diverse concerns unrelated to the pandemic such as racial discrimination (Black Lives Matters) or mass protests about agricultural prices in India.

The massive protests in Belarus for example, while not yet successful in their attempt to put the country on a democratization path, are a clear example of how dissatisfaction with government handling of the pandemic (President Lukashenko has consistently downplayed the risks of the COVID-19 pandemic), in combination with simmering discontent over decades of dictatorship and electoral fraud, has triggered mass mobilization to overturn Europe's only remaining dictator.

Thailand also saw massive anti-government protests demanding democratic reforms, leading to a heavy-handed government response and the imposition of a strict lockdown in the capital city Bangkok. The protests testify to massive civic discontent and demands for democratic openings that are likely to flare up again.

In summary, the pandemic has accelerated democratic innovation and pushed the boundaries for how political processes and actors writ large can conduct their work in a more participatory, inclusive, transparent, cost-efficient, and environmentally friendly way.

4. LEARNING FROM THE COVID PANDEMIC TO BUILD MORE RESILIENT DEMOCRACIES

The COVID-19 pandemic has exposed a wide range of shortcomings in democracies alike for efficiently dealing with a global emergency whilst also safeguarding democratic processes and fundamental rights. This paper cannot do justice to all the policy areas that would have to be addressed to fully prepare democracies for future crises, but it can attempt to point out crucial lessons learned and areas of improvement that can enhance the resilience and ability of democracies to deliver during emergencies without circumventing democratic institutions, processes, and fundamental rights.

The areas identified below, although non-exhaustive, are based on previous analysis on democratic challenges and opportunities triggered by the pandemic. They are meant to provide thematic clusters for subsequent policy recommendations and include guiding questions to facilitate their drafting.

- How can democratic institutions increase their coordination and work on collaborative risk prevention, assessment, and crises management?

- Should there be a specific body within the state that can lead the coordination and implementation of crisis management?

- What fiscal provisions and other institutional capacities need to be in place (at a minimum) to ensure that democracies can continue to deliver (services) during an emergency?

- How can changes to the budget, meant to address an ongoing emergency, be made efficiently and transparently whilst ensuring democratic processes and practices?

Ensuring institutional resilience and capacity to deal with crises

Some of the most alarming democratic challenges revealed by the COVID-19 pandemic are linked to insufficient institutional capacity and the misuse of State of Emergencies. Based on good practices from countries that successfully managed the (health) emergency in line with democratic rights and principles, the following questions are designed to help identify some guiding principles that allow democracies to enhance their institutional capacity to deal with future emergencies.

- What kind of emergency preparedness needs to be put in place by democratic institutions to deal with global, national, or regional crises?

- How can democratic institutions ensure that risk analysis and emergency plans are established and adhered to during emergencies?

Protecting checks and balances and fundamental rights

The COVID-19 pandemic, similar to other emergencies, has challenged institutions to respond quickly and effectively to an unexpected crisis, resulting in the (temporary) employment of extraordinary measures and States of Emergency. In some cases, incumbent leaders also saw the health crisis as an opportunity to expand their power, restrict the ability of oversight bodies to carry out their duties or curtail fundamental rights and freedoms under the guise of the exceptional situation caused by the pandemic. Considering the many examples where this has been the case, despite the limitations set out by State of Emergency regulations, other mechanisms need to be developed to protect a country's checks and balances as well as the fundamental rights of its population.

- What legal (constitutional/international normative) provisions should be in place to protect fundamental rights, including those related to personal integrity and freedom of speech, under a State of Emergency declaration?

- What guidelines and deliberation processes should be developed for democratic governments to deal with dilemmas that impinge on fundamental rights such as the need for data collection vs privacy, freedom of speech vs disinformation, public safety (and in the case of COVID-19 mandatory vaccinations) vs personal integrity?

- What legal (constitutional) provisions and safeguards should be in place with regards to States of Emergency to

    prevent abuse of executive powers,

    ensure the maximum amount of legislative oversight, and

    protect the deliberative dimension of democracy?

- Who should ensure that States of Emergency don't exceed their limitations with regards to proportionality, duration, adequacy, etc.?

- What regulations need to be put in place so that oversight bodies, such as parliaments and the judiciary can continue to carry out their oversight function even during crises and when State of Emergency provisions are being evoked?

- How can governments ensure that women, marginalized groups, and immigrants are considered when emergency measures are being developed and deployed?

- What parameters should be respected when using the military or security institutions in the response to non-military crises?

Counteracting disinformation during emergency situations

The abundant and pervasive spread of dis- and misinformation related to the pandemic constituted a huge challenge for democracies when trying to contain the virus and implement the necessary measures to protect their population and overcome the crisis. On the other hand, mis- and disinformation contributed to eroding trust in government measures, further widening the gap between citizens and their representatives.

- How can state institutions ensure the integrity of public information during emergencies? Do emergency situations, in which disinformation can cost lives, justify a tighter state control on information?

- What improvements/changes need to be implemented by democratic institutions to increase/maintain trust and provide updated, adequate, transparent, and accurate information about the ongoing crisis?

- How can social media platforms, the private sector, and state institutions work together to create extraordinary mechanisms and self-regulation aimed at countering disinformation during emergencies?

- What public information mechanisms can be adopted to highlight disinformation campaigns, debunk conspiracy theories, and create open dialogue platforms for concerned citizens?

Rethinking institutional design and political participation – including elections (new forms of voting), political party structure and interaction, youth involvement etc.

The democratic innovations propelled by the COVID-19 pandemic provided good examples of how democratic processes, such as elections, can be renewed to be better fit for purpose for the 21st century. Similarly, political actors and institutions discovered new ways of operating which resulted in increased participation, inclusion, and transparency. Whilst some of these innovations will be incorporated into common practices in democracies, it is also worth re-evaluating if the current institutional design, writ large, could undergo a similar transformation process to rebuild the social contract and overcome some of the challenges linked to voter disengagement, loss of trust, decreasing membership in political parties and the perception that democracy doesn't deliver for ordinary people, to name but a few.

- When it comes to institutional (re-)design, which mechanisms and/or current democratic institutions should be prioritized to increase the effectiveness in responding to crises?

- What are the options to establish institutionalized processes of social and political dialogue that can enable societies to reform their social contract?

- What short, middle, and long-term actions should be taken to rebuild public trust in democratic institutions? What do high-trust societies have in common?

Protect & promote gender equality through emergency preparedness & response

Women and girls, alongside marginalized and socio-economic vulnerable groups were most heavily affected by the pandemic and its socio-economic consequences. Women's and girls' precarious situations will have to be taken into consideration in the planning and development of strategies to deal with future emergencies. As such, women's active and equal involvement will need to be ensured during all stages of emergency planning and response – from risk assessments development, implementation, and information of emergency measures.

- What clauses can be adopted which would ensure that emergency legislation cannot be passed unless a critical gender balance has been ensured in the decision-making process?

- How can a gender perspective be ensured in the development and implementation of emergency responses and who can provide this oversight?

5. POLICY RECOMMENDATIONS

The Covid-19 pandemic has highlighted the need for democracies to bolster their resilience ahead of future global or regional emergencies, by building on the lessons learned from the current crisis. The pandemic has shown that delivery, especially during uncertain times, is particularly important, as governments need to provide their population with the necessary help and support to navigate through difficult times. Governments must also create forward-looking strategies and protocols to better deal with future emergency situations, whilst protecting democracy in the process. Democratic institutions must be sufficiently robust to be able to withstand attempts to use emergency powers to weaken democracy or infringe on democratic principles and human rights.

The recommendations below are based on deliberations held within Working Group 1 (WG1) of the Global Commission on Democracies and Emergencies, as well as the input collected from third parties (such as OSCE/ODIHR, WFD, the Venice Commission, Reuters Institute, World Justice Project, Brookings, ECLAC, etc.) and International IDEA´s upcoming Global State of Democracy Report 2021. The policy recommendations are linked to the thematic areas identified under point 4 in this paper and aim to assist democracies to address key policy areas which could enhance their preparedness ahead of future emergencies.

1

Strengthening institutional resilience

Democratic institutions – parliaments, courts, electoral management bodies, political parties, etc. – should amend their rules of procedure to enable continued functioning (deliberation and/or decision-making) in case of emergency. Often, the extraordinary modus operandi will involve making greater use of digital technologies, which will enable working from home or from remote locations. The new working modalities should adhere to the principles of necessity and proportionality. Transparency in decision-making should be guaranteed at all times.

Democratic institutions should design and adopt emergency preparedness protocols, strategies and clear rules on how and when to activate them. These protocols should ensure that extraordinary modus operandi adopted during emergencies consider a) the needs of vulnerable persons and different social groups (eg. women, minorities), b) the impact of the crisis on other actors involved (eg. service providers), and c) that any extraordinary use of digital technologies come with guarantees for personal data protection.

Parliaments should have rules of procedure that allow remote participation in parliamentary sessions. This is imperative in emergency situations but can also have benefits under normal circumstances in order to facilitate participation by parliamentarians from remote areas and/or to make parliamentary duties and family life more compatible.

Democratic institutions should adopt digital technologies as part of their normal working modalities. This could enable institutions (e.g. legislatures and courts) to continue their operations during emergencies, boost the inclusivity of legislative processes at all times and become more transparent and efficient.

Democratic institutions should comply with international legal obligations and human rights standards when an emergency response is applied and provide timely notification about derogations from rights included in ratified treaties. Any measure taken to limit (non-derogable) human rights must be necessary, proportionate, temporary, rooted in the law, and applied with equality.

Electoral Management Bodies (EMBs), legislatures and other authorities making election-related decisions should prepare plans, strategies and roadmaps that ensure a consultative and transparent process during emergency situations, especially when electoral calendars are changed.

Electoral management bodies should adopt rules and guarantees for special voting arrangements, online communication about electoral processes, and remote electoral observation.

In countries with multi-level governance structures, a review of the constitutional provisions on shared-

rule and self-rule matters shall be done to mitigate challenges related to overlapping jurisdiction, clarify the distribution of powers, and strengthen both vertical and horizontal intergovernmental coordination.

2

Protecting checks and balances

The domestic legal framework for emergencies must be clear, accessible and publicly available in advance. If it allows for several emergency response categories, the differences between them (e.g. as to causes, extraordinary executive powers, levels of parliamentary oversight, etc.) should also be clear. In addition, the State should always opt for the least radical emergency response category available in the given circumstances. It should also emphasize the principles of proportionality and necessity, as well as the importance of sunset clauses for emergency measures.

Governments should refrain from framing ordinary legislation so flexibly as to cover all the measures necessary to deal with a large-scale emergency. This carries the danger of bringing about long-lasting deterioration of fundamental rights and the balance of power.

Democracies must ensure parliamentary oversight over emergency responses, whether ex-ante or post hoc. Special parliamentary committees, featuring a diverse set of legislators and senior figures, including women and vulnerable groups, should be established to oversee the actions of the executive during an emergency. Post-crisis parliamentary commissions should also be set up to assess the country's response.

Rapid assessments mechanisms could be considered whilst the regular legal review processes are carried out. Courts should review the constitutionality and legality of any declaration of a state of emergency while evaluating the proportionality of the restrictions and assessing the procedural fairness of the emergency legislation.

Constitutional frameworks should be reviewed in order to assess a) whether grounds for emergency declarations should include public health emergencies and b) whether

constitutional emergency provisions (or implementing organic laws) adequately provide both procedural safeguards and substantive constraints to mitigate risks to democracy from abuse of emergency powers.

Governments must ensure that all state institutions intended to check executive power are given enough political, legal and human resources to perform their duties and that laws and regulations facilitate congressional and judicial oversight.

Democratic institutions and agencies should buttress the independence of the judiciary to protect their population against executive overreach and ensure that the government upholds its obligations under constitutional and international law. Judicial bodies should review the rules of standing (i.e. the capacity to bring a suit in court) to ensure that individuals, civil society organizations, and independent oversight and integrity institutions can legally pursue issues of executive overreach and inaction.

Governments should avoid the militarization of emergency responses. Deploying the military to enforce emergency measures, the use of military surveillance technology to monitor media and political opponents, and the ad hoc appointment of active or former senior military officials to civilian administration roles increase the risk of disproportionate use of force and other human rights violations and may undermine the principle of civilian control over the security sector. Particularly in conflict-affected and transitioning states, it also risks enabling the (re) emergence of the security state and undermining transitions.

3

Counteracting disinformation during emergency situations

Governments should take affirmative action to "fill the information space" with facts and evidence-based information about the ongoing emergency. They should make this information available in multiple formats, languages and for specific audiences while promoting transparency over government decision making and actions.

Democratic institutions should support responsible journalism and media, to enable a free and safe environment for journalists and media workers during emergency situations.

Governments should engage community actors and citizens in the fight against disinformation while empowering civil society organizations to fight disinformation and hate speech.

Democratic institutions should invest in digital literacy programmes to enhance their populations´ ability to discern between real news and fake news.

Political parties, media and network platforms should create and sign codes of conduct that commit signatories to reduce polarization and prevent the use of disinformation.

Governments must work with social media platforms, human rights experts, technology experts and civil society organizations to develop regulatory practices that balance free speech principles with the need to combat harmful content, hate speech and disinformation.

Government agencies and the private sector must recognize, protect and facilitate civil society´s role as watchdogs and more systematically include these groups in policy dialogue and strategic plans.

Democratic institutions should use online platforms to allow for greater interaction with civil society, including women's organisations and movements, indigenous peoples, rural populations, grassroots organizations, and the scientific and research community, among others, to ensure they are included in deliberation about emergency responses.

Governments should establish mechanisms for ongoing public dialogue (ahead of an emergency) to enhance trust, deepen understanding and accumulate collective intelligence to tackle crises when they emerge. They should also identify groups who are likely to be affected by future emergencies and include them in the political processes for emergency preparedness.

Governments should redesign political institutions and processes in a way that incentivize democratic actors and reward decision-making processes that are more inclusive, citizen-centred, accountable and responsive in terms of their decision-making processes and service delivery.

EMBs should develop the capacity to improve the integrity of special voting arrangements ahead of future crises, especially those able to facilitate participation for historically marginalized groups, to enhance their effectiveness and inclusion and strengthen trust in them.

4

Rethinking institutional design and political participation

Governments should facilitate civic engagement by sharing as much information as possible about emergency responses. This includes publicizing official documents describing their course of action during emergencies, enabling virtual meetings with government representatives, and creating communication channels for civil society to request information from public bodies.

5

Promoting gender equality

Governments should set up disaggregated data collection structures to better understand the needs of vulnerable groups, including women, in emergency situations. Based on this information, governments should create strategies and proactive measures that guarantee the distribution of basic necessities and proactively empower and integrate the perspectives of vulnerable groups during emergencies.

Governments should put gender equality at the core of parliamentary oversight over emergency response. This involves gender-balanced parliamentary structures

for emergency oversight, having a gender equality mandate for parliaments, and checking emergency response laws to be gender-responsive.

Governments need to set up mechanisms to actively involve women in national and local planning processes for public service delivery, including those related to emergency preparedness. Social protection policies and public service delivery must be informed by the lived reality of women, particularly those from the most vulnerable groups, as they have not been integrated systematically into social protection responses.

Political parties and legislatures should prioritize gender equality and broad inclusion, facilitating women´s participation and representation to ensure more responsive policies. Civil society and media have a key role to play in monitoring progress, suggesting reforms and facilitating debate around progress on equality.

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