



The Impact of the COVID-19 Pandemic on Constitutionalism and the Rule of Law in the Horn of Africa

Analytical report, Webinar, 25 June 2020



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1. Introduction

A webinar on the impact of the COVID-19 pandemic on constitutionalism and the rule of law in the Horn of Africa took place on 25 June 2020. Participants included invited panellists from the region and individuals from the African Union Commission (AUC), the International Institute for Democracy and Electoral Assistance (International IDEA) and other experts and participants from the region. The session was guided by a programme (Annex A) and a concept note (Annex B).

The webinar was organized as one of the final sessions in a series of subregional engagements arranged in partnership with the AUC's Department of Political Affairs. The session took place in a context where there is a recognition that the situation in the Horn of Africa is distinct from that of many other parts of the African continent. The COVID-19 pandemic has further exacerbated the fragile political and socio-economic conditions in the Horn of Africa and has compounded challenges related to governance and democratization in the region. COVID-19 has spread in the region at a time when several countries are deeply engrossed in managing protracted security and political transitions. Some countries, such as Somalia and South Sudan, continue to struggle and remain in a state of 'permanent' transition. Others, such as Ethiopia and Sudan, continue in transitions from a relatively authoritarian system to wider democratization, which has involved the introduction and intensification of measures directed at strengthening the rule of law and constitutionalism.

Responses to COVID-19 have had a direct impact on ongoing democratization and related transitional efforts, and there is concern that the responses to the virus could derail efforts directed at stabilizing governance and securing human rights in the region. The virus and measures to curb its spread have also had a direct impact on the holding of national elections and on the functioning of political parties.

While the formal impact on politics and elections is pronounced, there has been limited reflection on the impact of COVID-19 and related measures on the commitment and adherence to constitutionalism and the rule of law. The webinar was therefore arranged at a critical moment, as it provides stakeholders in the region and beyond with an opportunity to reflect on key trends and to assess measures that need to be taken to avoid governance reversals and a return to an authoritarian form of governance under the guise of the need to respond to the spread of the virus.

The webinar was broadly directed at sharing information and enhancing knowledge to inform experts, academics, journalists, citizens and those involved in decision-making in an effort to sustain constitutionalism and the rule of law in the context of a complex health crisis. It provided a platform for the systematic exchange of experience and learning among stakeholders.

The webinar went beyond a formalistic approach to constitutionalism by providing a forum for dialogue on the ultimate goals associated with securing the rule of law, which includes guaranteeing respect for the fundamental rights and freedoms of citizens. The focus was holistic, as it moved beyond civil and political rights by also incorporating discussion on the economic and social rights of citizens in the context of the COVID-19 crisis. In keeping with this, the webinar included a focus on the following four overlapping terrains of engagement:

- An overview of state-of-emergency regulations, including their conformity with constitutional provisions as well as regional, continental and international norms and standards. This includes measures to oversee executive actions taken in response to the emergency.
- The impact of emergency regulations on vulnerable groups—particularly women, young people, children, the elderly, refugees and internally displaced persons (IDPs)—as well as their effects on state–society relationships.
- The socio-economic impacts of state-of-emergency regulations and the related impact on access to basic public services—mainly health services—and the overall functioning of the delivery systems for public services.
- The impact of COVID-19 and responses to the disease on peace, security and political transitions.

The webinar report serves as an interpretative, analytical summation of the issues discussed and not as a verbatim transcript of the inputs or related discussions. The report thus provides a consolidated overview of the challenges and potential future scenarios outlined during the seminar in relation to the impact of COVID-19 on constitutionalism and the rule of law in the Horn of Africa. The information and viewpoints included in the report are presented within the framework of the core issues discussed; the report also includes a section that summarizes future-oriented perspectives and related interventions. The countries in the Horn of Africa have instituted a variety of measures to prevent the spread of COVID-19. These measures have had different impacts on each country at different times. Therefore, it is not easy to paint a single picture of the region and related responses.

Nonetheless, there are several commonalities in terms of the overall impact of COVID-19 and related responses in respect of governance and the socio-economic challenges confronting countries in the region. The webinar and this summary report hence provide a generalized overview of the impact of COVID-19 on governance and development more broadly. All of the content in this report was taken directly from the inputs and discussions that took place during the session.

2. Securing constitutionalism and the rule of law

Even before the onset of the COVID-19 pandemic, countries in the Horn of Africa were undergoing a variety of political transitions that involved some level of unpredictability, uncertainty and general volatility. Measures instituted to stabilize governance arrangements were yet to crystallize. Coupled with the transitional challenges they are facing, the countries are struggling to pursue a human rights-centred approach to combating COVID-19. In addition, governance oversight entities and civil society remain generally weak.

Legitimacy of government

The legitimacy of all governments is contingent on the popular will as expressed through elections. The holding of elections continues to be a challenge in the region; one country has had to postpone elections, and it has become impossible for political parties to function effectively. Existing restrictions make it difficult for political activity to take place as expected, and this will impact planned elections in countries of the region. Prior to the outbreak of COVID-19, many of these countries had anticipated holding elections over the next two years. Popular legitimacy is already a challenge for some countries, as they are in a state of transition, and the ongoing COVID-19 situation is likely to exacerbate challenges associated with having legitimate governments.

Beyond the current crisis and the postponement of elections, there are several challenges associated with the conduct of elections and free engagement in politics. A longer-term perspective is needed in the region and should include reforming existing election structures and procedures. More effort also needs to be focused on enhancing legitimacy through wider forms of participation. There is a need to move away from elections, in which people participate only at regular intervals, to processes that encourage more profound, continuous and broader forms of participation. The capacity of civil society organizations in the region needs to be enhanced in order to establish the foundations for deeper forms of political contestation and to promote the value of elections. There is an entrenched history of authoritarianism in the region, and it will take time to establish a democratic culture. Oversight institutions that facilitate free political activity and manage elections are weak and need to be rebuilt for the future. During the ongoing pandemic, attention should be focused on building institutions and constitutionalism to improve trust in the ‘rules of the game’, so that the results of elections are deemed legitimate.

Security-sector transition

The history of the Horn of Africa region indicates that the security sector has played, and will continue to play, a substantial role in and in turn be affected by the ongoing transition processes. Measures introduced to prevent the spread of the virus have further enhanced this role. A rapid assessment conducted in the region indicates that there has been substantial abuse of the emergency powers given to security agencies. This includes heavy-handed approaches towards the movement of people and the detention of journalists. In terms of security, it is imperative to recognize that the virus and related measures have created the space for armed groups and other actors to reassert themselves. There is some evidence to suggest that armed groups have expanded their recruitment efforts as the impact and responses to COVID-19 expand.

All indications are that law-enforcement bodies have often exceeded their powers in a context of limited oversight and accountability. Some detention measures are contributing to the spread of the virus, as people are held in poor conditions that serve to exacerbate infection rates. The virus has also had a direct impact on the movement of security forces, including those associated with peace missions. All indications are that security is spread thin and that this could lead to further challenges in the future.

The security sector has generally not been under democratic civilian control in many parts of the region. Some countries do not have national security policies to guide actions. Oversight of security forces and the existence of armed groups were an issue prior to COVID-19, and chances are high that many reforms and peace initiatives will stall. In the region, there has been more investment in conventional security needs and less in human security. COVID-19 provides an opportunity to refocus the security sector towards more humanitarian efforts.

Legality and constitutionalism

As many countries in the Horn of Africa are in a state of transition, some of the measures introduced to fight the virus have increasingly been taken in haste and without a proper legal basis. While the situation is exceptional, the large and glaring legal gaps pose significant challenges. Many countries have intervened in a variety of ways, including using specific legislation and executive orders or decrees. However, there is a lot of uncertainty as to whether such steps comply with broader constitutional and rule-of-law requirements. In some instances, countries have adopted measures that were not in line with existing legal provisions. Given the range of uncertainties and the need to respond immediately, with limited capacity, there were likely to be many shortcomings in the rule-of-law foundations for a range of interventions and in the oversight measures in place to avoid the abuse of authority.

Many countries in the region are struggling to ensure that all measures introduced to fight the virus have a basis in law and are established for a specified period. Very often, the scope of extraordinary powers and related limits have not been established fully, which creates a variety of challenges. Very few countries have also introduced measures to ensure that there is oversight and public recourse when there are challenges. In Kenya, for example, the judiciary has been used to intervene to ensure accountability. In the case of Ethiopia, the Human Rights Commission receives reports on any abuse of power or any excessive use of force. Ethiopia has also established a State of Emergency Inquiry Board to monitor emergency measures.

During the ongoing pandemic, there is an urgent need to ensure that people in the region can secure some level of oversight of, and recourse against, government actions deemed

inappropriate and illegal. While there are many variations across countries, there is limited separation of powers; hence, many have inadequate access to institutions to claim and enforce rights.

There is a general concern that the constitutional separation of powers and oversight of the executive are limited in the region. There is limited or weak oversight by legislatures in Djibouti, Ethiopia, South Sudan and Sudan. In many instances, the judiciary has come under strain and is unable to maintain its authority in the face of executive actions. There is a need for an enhanced focus on the reality that, even with emergency powers, governments need to be held accountable, with limitations on their use of authority. It is essential that governments in the region appreciate that there is a delicate balance between being empowered for the purposes of taking rapid action and the imperative of ensuring accountability and oversight of institutions. While several countries in the region have parliamentary committees and other structures to provide oversight, these structures are struggling to secure accountability. In addition, there are rising tensions surrounding matters relating to the authority and responsibility of the central state relative to decentralized governance structures.

Oversight and accountability

The region is not known for a tradition of constitutionalism. In the main, governments exercise centralized authority and power with limited oversight or accountability. In many instances, such as in Djibouti, Ethiopia, South Sudan and Sudan, judicial and legislative oversight is either weak or dysfunctional, for a few historical and institutional design reasons. One consequence of such weaknesses is that state power is being used arbitrarily and often without any questioning or contestation of the measures taken or their manner of implementation. In view of these contexts, it is essential to focus attention on the added role of civil society actors and the media.

In several countries, civil society and the media are weak and often associated with the executive. While nascent civil society and media may be emerging, notably in Ethiopia and Sudan, they have yet to establish themselves as trustworthy and influential. This creates considerable limitations on their accountability. Even while local institutions and wider civil society should be encouraged to engage governments on measures adopted to tackle the ongoing pandemic, it is essential to reflect on the opportunity presented by regional structures, including the African Union (AU). There needs to be more active monitoring of governance in each of the countries in the region, by domestic, continental and international actors; and for there to be engagements on optimal approaches that serve to ensure proper oversight and accountability. Human rights commissions and institutions are essential to securing rights. The Ethiopian commission, for example, has issued guidelines to defend people's rights during the ongoing pandemic; this serves as an example to be emulated.

Securing human rights

The general perspective is that adherence to global and African human rights standards was already a considerable challenge before the outbreak of COVID-19. The initial period of the emergency response to the disease suggests a rapid decline in respect for human rights and a propensity to revert to approaches which characterized authoritarian governments. Given the unfolding challenges and in an effort to prevent human rights abuses, the African Commission on Human and Peoples' Rights issued a statement in March 2020 to affirm member states' obligation to adopt measures to safeguard the public and, at the same time, to ensure that the constitutional system and executive authority are not abused. There is concern that human rights institutions in the region are weak and have not been able to

establish procedures to respond to the crisis or to facilitate public access to claim and enforce fundamental rights.

There are many challenges associated with the imposition of curfews and lockdown measures in much of the region. There are many pastoral communities as well as individuals who travel to earn a living. Pastoral communities often need to move during the night to reach marketplaces, and the measures that have been taken to combat the spread of COVID-19 often fail to consider these realities. The replication of strategies applicable to urban areas or copied from other countries has created many tensions with local communities that are far removed from broader global developments and have little knowledge of the virus. Some measures are also insensitive to local cultures and often create further tension between governments and communities where there has historically been little trust. In general, more engagement is needed to ensure the participation of local communities in the adoption and implementation of policies.

Civil society participation and engagement

Civil society has not played an important role in the fight against COVID-19. In part, this is because governments in the region do not recognize the role that non-state institutions can play in the process. Direct engagement with civil society has generally been weak and often absent. Civil society in the region has historically faced several constraints, including regulations on funding sources. Governments in the region have traditionally not been eager to share power or to engage with civil society as capable delivery partners. In some countries, many civil society organizations are closely linked to the state and are thus unable to organically build and draw on an independent and popular base. Therefore, they are often unable to engage government in a manner that gives the people a voice. An audit of civil society in the region has also revealed that there are numerous challenges concerning the functioning of many organizations. Traditional organizations, including religious institutions and neighbourhood associations, are playing a significant role in the fight against the virus, and stakeholders need to appreciate their role and influence in shaping the overall trajectory of democratic governance.

3. Access to services and the impact on vulnerable groups

Responses to COVID-19, or the lack thereof, serve to highlight the central challenges associated with the performance of the state in general and, more specifically, of the institutions responsible for the delivery of basic services. The Horn of Africa is particularly vulnerable to COVID-19, as it is home to many refugees and IDPs. The impact of COVID-19 on women and other vulnerable groups remains a matter of grave concern. The response to the disease therefore requires an understanding of the specific challenges confronting vulnerable groups and the measures that can be instituted to overcome some of the difficulties they experience.

Performance legitimacy and health delivery

Aside from popular legitimacy, governments in the region have generally struggled to deliver public services. In general, public services are often confined to urban centres, with major challenges in rural regions. The absence of essential public services, including access to the courts, is particularly evident in the instance of communities in many of the border areas in the region. COVID-19 has given rise to challenges relating to the authority of different levels of governance and the related distribution of resources. In many instances, there is an ongoing debate concerning responsibilities in relation to the associated allocation of resources. This debate is bringing to the fore issues related to the division of authority and responsibility as outlined in each country's constitution and related issues surrounding the collection and distribution of resources.

As the region struggles to fight the virus, it is evident that resources are being shifted, which is having a direct impact on many routine health services. For example, many girls and young women are now unable to access sexual and reproductive health services. Central to the challenges associated with delivery are capacity and resource limitations. The state and government institutions have been neglected for decades, and this is now more evident in the context of COVID-19. Governments have also not established optimal systems for revenue collection and hence often rely on development partners. There is a concern that much of the aid provided by such partners is being lost due to corruption. Accountability systems for the use and distribution of aid are often weak, and there appears to be a growing illicit market for medical supplies and equipment.

Many countries in the region have invested, to some degree, in the establishment of clinics and other facilities. However, evidence suggests that there have been limited investments in the human capabilities needed for these medical services to function appropriately. Many

specialists and other professionals have left because of conflict and related governance challenges.

There is also a need to ensure a careful balance between a focus on health and a focus on livelihoods. A blanket approach is not the best option, and countries may need to consider identifying hotspots and acting accordingly. Lockdowns and curfews should ideally be progressively lifted to facilitate some level of normality.

Refugees and internally displaced communities

The Horn of Africa is a source of many refugees and one of the largest hosts of refugees and IDPs in Africa and the world. All indications are that many refugees are young people under the age of 18. These refugees and IDPs are very vulnerable to the spread of the virus and are also strongly impacted by measures established globally to fight COVID-19. Many forcibly displaced people are reliant on feeding schemes and are, hence, facing immense challenges. As there is a great deal of misinformation about the spread of the virus, refugees and the displaced often face further discrimination and stigmatization in local communities.

Medical services for refugees and the displaced have historically been weak; therefore, these communities face even more risks than others. In many instances, the support provided to such communities has been scaled back. Many now do not have access to basic medical services. The risk for refugees has been steadily growing. More attention needs to be focused on civil society and on finding ways to ensure that the virus does not spread rapidly within these communities. More attention needs to be focused on ensuring peace and stability so that people can return to their homes. However, governments in the region need to avoid using force against refugees and the internally displaced.

One of the factors impacting refugees and others is the slowing down of remittances from diasporas to the region because of global developments. Many across the world are no longer able to send money home, which makes many people more vulnerable to the virus, as it forces some to seek out other opportunities.

Women and other vulnerable groups

The United Nations has described the challenges facing women, and governments have been advised to ensure that they consider a gender perspective in their response to COVID-19. The reality in the region is that women and girls remain the most marginalized groups in society and have been the most vulnerable as a result of COVID-19 and the response to it. The response has exacerbated existing risk, and women and girls are now more at risk of abusive relationships and other harmful, discriminatory practices. Many who have to stay at home due to the responses to COVID-19 face high levels of domestic violence with few options to get away from their abusers.

Many girls and women are often involved in work as caregivers and hence face a higher risk of infection. Much of their work involves direct personal interactions and therefore makes it exceedingly difficult to practise social distancing. Many women economic migrants have lost their jobs during the pandemic, which has had a negative impact on their families. The loss of productive employment, coupled with the responsibilities of homeschooling children, places an immense burden on women in the region. The gender division of labour has a very negative impact on women, as they also must often face the reality of the closure of essential services, such as schools and day-care centres.

Families in remote areas face the risk that their children will drop out of school entirely. Children are also at risk psychologically and at risk of violence, abuse and exploitation. Many young people do not have access to basic education, and this is likely to have a lasting impact in the region. Many in rural areas do not have access to electricity or the Internet. Much

more reflection is required concerning the establishment of stimulus packages that focus on women and young people. These marginalized groups will be central to a recovery in the future; they need to be involved directly in planning processes and decision-making for the future. Response plans must accommodate the specific realities confronting women in the region. In addition, current challenges provide governments with an opportunity to reflect carefully on the needs of the disabled and other vulnerable groups, which means it is possible to disrupt social norms surrounding gender-based care roles and flexible working conditions.

Political unrest and regional security

COVID-19 and the measures adopted to tackle it could also lead to a surge in the loss of livelihoods, which could increase crime and, potentially, civil unrest. Some of these challenges are reflected in the growth in illicit trade, increased recruitment by extremist groups and debates about the democratic process, which could lead to civil disobedience. Some formations are using restrictions on religious activities to mobilize or to assert that the virus is a form of divine intervention to punish segments of society. Competition for scarce resources and for securing livelihoods in the context of COVID-19 is deepening historical divisions at a time when unity of purpose is essential to securing the health and welfare of the larger population in the region.

Given the challenges and the propensity to focus inwardly, the crisis is leading to the neglect of dialogue between different groups and interactions among countries in the region. This internal orientation is reflected in a propensity for unilateralism and self-interest. The role of regional organizations, such as the Intergovernmental Authority on Development (IGAD) and the AU, is being diluted in the current state of affairs, and this may have a considerable impact on regional stability. The failure to build a consensus concerning the opening of the Grand Ethiopian Renaissance Dam remains a matter of concern and may, in part, be because of COVID-19 measures and the propensity to focus internally.

To avoid a downward spiral, governments should identify needs and ensure the provision of basic services and amenities to the most vulnerable. Central to this focus would be to pay attention to human security and thus to incorporate the IGAD's emphasis on a humanitarian developmental approach. Linking the humanitarian and security imperatives would also require the strengthening of the role of multilateralism and of debt relief and financial assistance.

4. Long-term social and economic implications

The security and transitional challenges in the region, including the difficulties associated with securing the rule of law and constitutionalism, tend to dominate discussions about the Horn of Africa. It is generally recognized that, without an added focus on governance issues, the downward economic spiral is likely to continue. The region was experiencing substantial economic challenges even before COVID-19. The situation has, in many respects, become much more difficult because of sanctions and high levels of reliance on funding from development partners. In thinking about recovery, the broader emphasis has been on more localized strategies to accommodate the recovery process, including the imperatives of facilitating continuous productivity through informal sectors of the economy and rural trade-related interactions.

Deepening economic crisis

The economic situation in the region was extremely weak even before the onset of COVID-19. It should be recognized that many countries in the region continue to be affected by a locust plague and by flooding. These overlapping challenges, coupled with complex geopolitical realities, have made matters even more difficult for governments in the region. Many of the countries in the Horn of Africa also face challenges relating to competition between great powers and insecurity. There has also been a disruption in efforts directed at securing peace in specific areas of countries in the region.

Many of the countries have been focusing on security issues; hence, little attention has been paid to economic recovery. Many of the countries in the region also rely on external resources, and there has been a major disruption in the utilization of finances for developmental initiatives. Resources are increasingly directed at fighting the virus in a context of scarce and diminishing public funds. Without considerable additional income, including fundamental debt relief, it is difficult to see how governments and countries are going to recover from the Coronavirus crisis.

Many of the measures introduced to support economic growth and recovery are focused on the formal sectors in the region. This is often contrary to the reality that faces many in rural areas and in informal sectors of the economy. Many people are driven by local realities to continue to search for ways to survive despite the restrictions imposed. Government actions have not accommodated the specific needs and related realities of the many pastoral communities in the region. Recovering from the economic crisis will require a much better focus on rural livelihoods and, more specifically, on the economic activities that women are involved in.

Transition and sanctions

The situation in South Sudan and Sudan is even more challenging because of sanctions and the fact that they recently launched a series of transitional measures to facilitate a degree of political stability. Sudan, for example, created several structures to facilitate more detailed work directed at securing peace and facilitating economic recovery. Many of these structures have only just started their work and are now faced with the challenges related to COVID-19 without having established a working momentum.

The more significant challenge during transition processes is the rapid shift away from transitional consultative structures towards more centralized government actions. This shift poses many challenges and is likely to result in numerous setbacks for peace and security in the region. Just as governments were beginning to establish more trust, they were forced to become more inward-looking to respond to the crisis. It is anticipated that many transitional arrangements may be delayed and therefore lead to increased instability in some parts of the Horn of Africa.

The situation in Sudan is illustrative. Many in urban centres are not being paid; in some instances, such as the security sector, including the police, people have been forced into informal modes of work to make a living. The crisis in congested urban centres seems worse than in more open rural areas. Traditional authorities are facing immense pressure, and there is a general lack of trust between the military and the civilian components of Sudan's transitional government. This situation is made even more difficult by the fact that the government is unable to freely access outside technical capacity and resources. The transition will be even more challenging to manage if Sudan continues to remain under some form of sanctions, which precludes it from accessing funds from financial institutions, while facing high levels of debt.

Rural trade and the informal economy

All indications are that governments will continue to focus on recovery in urban centres through employment initiatives in the formal economy. However, experiences in the region suggest that rural economies and local trade have continued in many parts of the Horn of Africa. While some have been severely affected by the lockdown and movement restrictions, indications are that many people have had no option but to continue working in order to earn a living. A more targeted approach to lockdowns and related travel restrictions would serve to ensure that pastoral communities and others involved in local trade can continue to survive. The informal economy is likely to be significant for any future recovery; hence, it is imperative that it be a focus of attention on the part of policymakers and others.

Social instability

There are high levels of poverty in the region, which is compounded by low levels of public service and the absence of substantial social protection. People in urban slums and those in rural areas who have historically not been included in development efforts are likely to experience increased difficulties that could lead to further frustration and disputes with the authorities. Evidence suggests that there is already some agitation in response to lockdown measures and related detentions. When these developments are coupled with the postponement of elections and a rise in crime, there is likely to be an increase in frustration, anxiety and possibly civil disobedience and unrest. It is difficult to see how further disorder can be prevented. To avoid a spiral towards violent conflict, much more needs to be done to ensure engagement at the local level through social formations and civil society.

5. Thoughts about the future and needed action

Many of the perspectives that webinar participants shared about potential future scenarios were rooted in a critique of current realities and hence not articulated as firm recommendations. The discussion nevertheless pointed to several issues that are specific to the countries in the region. Beyond more generic views on the imperatives of building a culture of constitutionalism and securing the rule of law, there was an emphasis on the role of civil society, particularly those rooted in community organizations, as a possible key driver of change and recovery. Coupled with this, many suggested that the measures adopted to combat the pandemic should take note of local realities. Such measures include a focus on human capacity requirements and the need to rebuild trust through continuous political dialogue and efforts to deliver on the part of governments.

Strengthening human rights and the rule of law

The region has an extremely difficult history when it comes to constitutionalism and the rule of law. Many countries are in a state of transition, and it will likely take much more time to firmly establish a culture of constitutionalism and the rule of law. To facilitate more positive action, considerable attention should be focused on building institutions, such as human rights commissions, so that they can support communities in securing their rights. Such commissions and similar institutions often serve as channels for people to understand, adapt and respond to the measures introduced by governments. A key strategy in the region might be to build such institutions and ensure that they are accessible. Providing such a channel would ultimately serve to enhance constitutionalism and a commitment to the rule of law. Institutions of democracy, including relevant commissions and similar structures, such as public protectors, can be central in articulating the limitations that are necessary in the context of emergencies.

Strengthening the role of civil society

The role of civil society in the region requires much more careful reflection and discussion. While civil society has long been dominated by government, there is evidence to suggest that there is a much wider array of civil society organizations that can be instrumental in recovery by championing the voices of many of those who have been marginalized. Civil society organizations must be mobilized to play a more active role in the recovery process and in the implementation of measures to tackle the challenges of COVID-19. The region has historically been very weak in recognizing and benefiting from the role of civil society. The COVID-19 situation provides an opportunity to rethink the active role local organizations

can play in mobilizing communities and facilitating positive actions for the future. Governments in the region must be encouraged to build different types of consultative arrangements that facilitate the rebuilding of trust and thus establish a different pathway to recovery.

A larger concern in the region is the low level of popular and civil society trust in governments that exists and the absence of a constitutional culture. To understand and respond to this reality of low trust, emphasis needs to be placed on building more opportunities for dialogue and engagement among people and key stakeholders. In the context of delays in elections and possible further postponements in some countries, it may be prudent for some regional organizations, including the AU, to consider ways to encourage more inclusive approaches to governance that incorporate all actors into wider power-sharing arrangements.

Empowering women and disrupting social norms

COVID-19 provides the region with an opportunity to reflect carefully on the role of women and the imperative of disrupting social norms associated with the division of labour. In line with United Nations pronouncements, it would be prudent to increase the focus on the further empowerment of women and girls. Women are often central to maintaining livelihoods, and measures are needed that ensure a speedy recovery from the ongoing crisis. Support measures must be introduced that focus on women's needs and that ensure that they can engage in productive activity. Access to health services and childcare facilities will be essential to ensuring that women's rights are safeguarded.

Responding pragmatically and contextually

Many of the measures that have been introduced in the region to combat the spread of COVID-19 are not very pragmatic and do not accommodate local realities. While it is imperative to address health issues and prevent the spread of the virus, these should be balanced with the realities of having to enable the population to maintain their livelihood. These imperatives can be addressed by using a different approach to the pandemic. Rather than adopting a blanket approach in each country, considerations should focus on ensuring that hotspots are identified to prevent the spread of the disease. This will also allow for the progressive lifting of lockdown measures and ensure that people are able to move around to maintain their livelihood. More engagement is needed with local communities so that their specific realities may be incorporated into established emergency measures. Many pastoral communities move around; hence, it is vital that their movement be tracked so that the spread of the virus may be limited without disrupting their livelihood. Similar measures may be introduced for vehicle drivers and persons responsible for transporting goods within and between countries in the region.

Cooperation in border areas

Governments in the region have historically neglected border communities. These communities remain vital for the fight against the virus and for the recovery process. To facilitate positive action, governments in the region need to focus greater attention on building more direct cooperation in these areas. While there may well be cooperation at the national level, this must translate into more expansive local actions to prevent the virus from spreading between countries in a much more sustainable manner. International actors and regional communities can play a more active role in facilitating better local cooperation. The

risk in border areas is much higher and hence requires more concerted efforts on the part of governments in the region.

Human security and stability

The reality of this region in transition is that much of the focus has been on security and the deployment of police, peacekeepers and the military. A shift is needed so that the approach is more comprehensive and incorporates a significant focus on securing people's livelihoods and ensuring that they have access to essential services, especially healthcare and education. Much more work is needed to prevent violence at the local level through the provision of some form of social protection. These measures could take the form of localized economic stimulus packages that focus on the needs of women and girls. Local dialogue and internal interactions are central to stability and securing a collective approach to fighting the virus and establishing a new and collectively owned strategy for the future. While many governments in the region have established disaster management policies and related strategies, the ongoing crisis suggests an urgent need to revise them given the vulnerabilities that COVID-19 has exposed. Success in human security and stability efforts is also contingent on regional and continental structures finding new ways to intervene and add value. Establishing procedures to strengthen structures in view of the continuing COVID-19 situation is essential to securing stability and to building on transitional and regional cooperation agreements.

State performance and capacity

It is evident that the region faces enormous problems when it comes to the performance legitimacy of government. The major challenge here is to get governments to focus more attention on enhancing the state's capacity and on attracting much-needed professionals for public institutions. In general, many countries have lost capacity to the rest of the world. Measures should be established to entice individuals to return to their countries of origin so that they can play a part in rebuilding efforts as countries move towards a post-COVID-19 world. Since there is much uncertainty about the virus and a potential cure, more reflection is needed concerning measures that can be put in place to facilitate some level of normalization in a context where the virus remains a reality for the immediate future.

Annex A. Programme

Webinar on the Impact of the COVID-19 Pandemic on Constitutionalism and the Rule of Law in the Horn of Africa, 25 June 2020, 14:00–16:45 East African time.

Programme

14:00–14:05 **Welcoming remarks**

- **Prof. Adebayo Olukoshi**, Regional Director for Asia and West Africa, International IDEA

14:05–14:10 **Introductory remarks**

- **H. E. Minata Cessouma Samate**, Commissioner for Political Affairs, African Union Commission

14:10–15:00 **Presentations by panellists**

- **Dr Mahari Maru**, ‘Overview of State-of-Emergency Regulations, Including Their Conformity with Constitutional Provisions as well as Regional, Continental and International Norms and Standards’
- **H. E. Ms Hasna Daoud**, former Minister and Advisor to the Prime Minister of Djibouti, ‘Impact of Emergency Regulations on Vulnerable Groups—Particularly Women, Youth, Children, the Elderly, Refugees and IDPs’
- **Amb. Mahboud Maalim**, former IGAD Secretary General, ‘Impact of the COVID-19 Pandemic and Emergency Regulations on Security and Peace’
- **Dr Solomon Dersso**, Chairperson, African Commission on Human and Peoples’ Rights, ‘Oversight of the Executive under Emergency Regulations’
- **Prof. Munzoul Assal**, Director of the Peace Research Institute, University of Khartoum, ‘COVID-19: Transition Processes and Long-Term Prospects’

- **Prof. Ruth Iyob**, Professor of Political Science, University of Missouri–St. Louis, ‘Impact of Emergency Regulations on State–Citizen Relations’

15:00–15:15 **Questions for panellists**

15:15–16:30 **Responses from panellists**

16:30–16:45 **Conclusions and closing of the webinar**

Annex B. Concept note

Webinar on the Impact of the COVID-19 Crisis on Constitutionalism and the Rule of Law in the Horn of Africa

The COVID-19 pandemic has exacerbated the fragile socio-economic situation in the Horn of Africa and has compounded existing, and created new, challenges to democratization in the region. It has also arrived at a time when four of the six countries in the region are in a protracted security and political transition process. Somalia and South Sudan remain in a state of ‘permanent’ transition, and Ethiopia and Sudan, the region’s biggest countries, have a generational window of opportunity to put an end to authoritarianism and the securitization of politics. Therefore, it is critical to understand the impact of COVID-19 on the creation, maintenance and nurturing of an environment for building stable frameworks for constitutionalism and the rule of law in this region in transition in both the short and long term.

While some efforts have been made to understand and plan for the impacts of COVID-19, these efforts have been isolated and lacked a comprehensive approach. Against this backdrop, International IDEA is organizing, in partnership with the Department of Political Affairs of the African Union Commission, a webinar on the subject of the impact of the COVID-19 crisis on constitutionalism and the rule of law in the Horn of Africa.

Based on a retrospective and forward-looking practical analysis, the aim of the webinar is to inform and inspire decision-makers and shape the thinking of experts, academics, researchers, journalists and citizens on this subject. It also aims to provide a platform for a systematic exchange of experience and learning among stakeholders in the Horn of Africa region. More specifically, the discussion will consider not only challenges in terms of the sociopolitical dynamics induced by the COVID-19 crisis and its impact on constitutionalism and the rule of law in the Horn of Africa but also the opportunities it presents for their democratic development.

The webinar will be based on two premises: first, the need to consider constitutionalism and the rule of law in terms of their ultimate goals, which are to guarantee respect for the fundamental rights and freedoms of citizens in both ordinary and extraordinary situations; second, the adoption of a holistic perspective that enables the consideration not only of civil and political rights but also of the economic and social rights of citizens in the context of the COVID-19 crisis in the countries concerned.

The following issues will be discussed:

- An overview of state-of-emergency regulations, including their conformity with constitutional provisions as well as regional, continental and international norms and standards.
- The impact of emergency regulations on vulnerable groups—particularly women, young people, children, the elderly, refugees and IDPs.
- The impact of the COVID-19 pandemic and emergency regulations on security and peace.
- Oversight of the executive under emergency regulations.
- COVID-19, transition processes and long-term prospects.
- The impact of emergency regulations on state–Citizen relations.

About International IDEA

The International Institute for Democracy and Electoral Assistance (International IDEA) is an intergovernmental organization with the mission to advance democracy worldwide, as a universal human aspiration and enabler of sustainable development. We do this by supporting the building, strengthening and safeguarding of democratic political institutions and processes at all levels. Our vision is a world in which democratic processes, actors and institutions are inclusive and accountable and deliver sustainable development to all.

What do we do?

In our work we focus on three main impact areas: electoral processes; constitution-building processes; and political participation and representation. The themes of gender and inclusion, conflict sensitivity and sustainable development are mainstreamed across all our areas of work.

International IDEA provides analyses of global and regional democratic trends; produces comparative knowledge on democratic practices; offers technical assistance and capacity-building on reform to actors engaged in democratic processes; and convenes dialogue on issues relevant to the public debate on democracy and democracy building.

Where do we work?

Our headquarters are located in Stockholm, and we have regional and country offices in Africa, Asia and the Pacific, Europe, and Latin America and the Caribbean. International IDEA is a Permanent Observer to the United Nations and is accredited to European Union institutions.

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A webinar on the impact of the COVID-19 pandemic on constitutionalism and the rule of law in the Horn of Africa took place on 25 June 2020. Participants included invited panellists from the region and individuals from the African Union Commission (AUC), the International Institute for Democracy and Electoral Assistance (International IDEA) and other experts and participants from the region.

The webinar was organized as one of the final sessions in a series of subregional engagements arranged in partnership with the AUC's Department of Political Affairs. The session took place in a context where there is a recognition that the situation in the Horn of Africa is distinct from that of many other parts of the African continent. The COVID-19 pandemic has further exacerbated the fragile political and socio-economic conditions in the Horn of Africa and has compounded challenges related to governance and democratization in the region. COVID-19 has spread in the region at a time when several countries are deeply engrossed in managing protracted security and political transitions. Some countries, such as Somalia and South Sudan, continue to struggle and remain in a state of 'permanent' transition. Others, such as Ethiopia and Sudan, continue in transitions from a relatively authoritarian system to wider democratization, which has involved the introduction and intensification of measures directed at strengthening the rule of law and constitutionalism.



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