

Post COVID-19: Expert Views on the Way Forward for Ghana

Introduction

Containing and mitigating the impact of the COVID-19 virus has been the number one preoccupation of governments, businesses, and communities around the world since the deadly virus started to spread from Wuhan, China, at the beginning of the year. Declared a [pandemic](#)¹ by the World Health Organization (WHO) on March 11, 2020, COVID-19 has altered the way we move, live, work and socialize. Governments around the world have instituted measures to control the spread of the virus and “flatten the curve” of the epidemic in order to bring life back to normalcy.

As this publication went to press, there were 4,254,302 recorded cases [worldwide](#)², 67,957 in [Africa](#)³ and 5,127 in [Ghana](#)⁴. Like other countries, Ghana has implemented a raft of measures designed to stem the spread of the virus. These include a ban on public gatherings, closure of the country's international borders, quarantining incoming international travelers, compulsory wearing of face masks, social distancing in public places, and contact tracing and testing. Measures taken to mitigate the social and economic impact of COVID-19 in Ghana include a Coronavirus Alleviation Program, which will see the release of a minimum of GH¢1 billion by government to households and businesses; the establishment of a COVID-19 Fund to receive contributions and donations from the public to assist in the welfare of the needy and the vulnerable; government's absorption of water bills for all households and 50% cut in electricity bills for April,

May and June; supply of water to all vulnerable communities; soft loan scheme totalling GH¢600 million with a one-year moratorium and two-year repayment period for micro, small and medium scale businesses etc.

In this COVID-19 special edition of CDD-Ghana's Democracy Watch newsletter, the Center's Democracy and Development Fellows, each writing from their distinctive professional vantage points, provide analysis and recommendations on how Ghana can get back on track and strengthen its systems to enhance the quality of life of citizens in the aftermath of COVID-19. These analyses and recommendations cover a range of fields and sectors, including biomedical/clinical research, health policy and healthcare delivery, economic policy, energy, state capacity/governance, legal/judicial/gender and civil society.

Biomedical/Clinical Research Perspective

The ongoing COVID-19 pandemic is causing funding agencies to re-allocate previously earmarked funds to the fight of the pandemic – with conceivable future consequences to other biomedical research imperatives. In the clinical trial subsector, the pandemic has significantly reduced participation, created logistical and operational challenges and caused major data gaps. These observations and their after-effects offer Ghana opportunities to re-evaluate

1 <https://time.com/5791661/who-coronavirus-pandemic-declaration/> (accessed May 15, 2020)

2 <https://coronavirus.jhu.edu/map.html> (accessed May 15, 2020)

3 <https://africacdc.org/covid-19/> (accessed May 15, 2020)

4 <https://www.ghanahealthservice.org/covid19/> (accessed May 15, 2020)

its biomedical/clinical research strategy to ensure that resources are strategically harnessed to advance healthcare. A few points for consideration are briefly mentioned herein.

Revaluating & Updating Disease Surveillance Approaches: A proactive disease surveillance approach that collaboratively pools resources and incentivizes the existing diagnostics service providers to better prepare the nation for future outbreaks. The current pandemic challenges the existing diagnostic service providers to consider updating their capabilities to further enhance an active national disease surveillance agenda as observed in other parts of the world. Many of these updates could be facilitated by technological adaptations, collaborative research efforts, incentivized capital investments through tax-breaks and subsidies.

Regulatory and Ethical Guidance Updates: Prior to the ongoing outbreak, regulatory and ethical guidance on the collection, distribution and use of human bio-specimens for genetic and genomic research leading advancement of treatment options were areas in need of updates. The impact of genetic variability remains an area of considerable interest as researchers continue to investigate the patterns of viral spread and factors influencing case rates and disease severity. To ensure that Ghana fully participates in the post-COVID-19 research enterprise, extensive health system strengthening from a biomedical ethics governance perspective in-step with global standards, and which is adequately informed by cultural and national preferences needs to be undertaken.

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Enhancing Public Understanding of the Drug Development & Clinical Research Process: Several institutional voids can be cited for the gross under-representation of African countries (including Ghana) in the global drug discovery process. However, misinformation and myths about clinical research as highlighted by recent social media postings contribute to the lack of interest and participation. Increasingly, the global drug development industry is heading towards more personalized or precise treatment options. The next generation of medicines require extensive knowledge about the genomic information of would-be patients. As COVID-19 continues to disrupt the development of new medicines, the industry will be exploring new ways for engagement and enhanced participation. Addressing the Ghanaian public's lack of interest in the participation of clinical research using fact-based discussions informed by our cultural norms may position us to effectively tap into the global drug development industry and ensure access to safer and new medicines.

Overarching National Biomedical Research Policy & Implementation Strategy: The current pandemic has placed a strain on the global biomedical industry. In Ghana, the health and scientific sectors have mobilized and responded admirably despite the limited resources. An anticipated after-effect of the current pandemic will be a severely restricted availability of research-funding particularly directed towards African countries. It is therefore imperative that a national biomedical dialogue involving all stakeholders be held to lay out a coordinated national plan of biomedical advancement. This dialogue must result in an actionable national blueprint that prioritizes research focus, identifies innovative funding streams, fully integrates the insights generated in our tertiary institutions, supports a vibrant biosciences industry to solve immediate health challenges and anticipate future ones.

Health Policy and Healthcare Delivery Perspective

It is now widely accepted that the global economy after the COVID-19 pandemic will shrink significantly. Currently, Ghana's GDP growth forecast has been downgraded by the International Monetary Fund (IMF) to 1.5%. With a population growth rate of 2.2%, the result is that Ghana's GDP per capita is predicted to decrease. Health expenditure is always calculated as a percentage of GDP and will thus be affected.

In 2019, Ghana's health expenditure to GDP ratio was 3.3%. Assuming that this appreciates by 1.5% in line with Ghana's growth forecast it can be estimated that post-COVID-19, Ghana's expenditure on health as a percentage of GDP will be approximately 3.35%. This is a far cry from the Abuja Declaration on health which set African countries a target of spending 15% of GDP on health.

On this basis, it is safe to expect that Ghana's Health Expenditure per capita will drop from the 2019 figure of USD67 further away from the World Health Organization's (WHO) figure of USD88 required to provide citizens with optimal health care. However, one thing this pandemic has brought to the fore is that global investments in health have not been adequate to ensure the collective human security in almost every country. In this light Ghana will have to look seriously at a number of issues:

- The government will have to take a cue from Ghana's lack of preparedness and low Global Health Security Index score of 35.5 and commit to increasing the percentage of GDP spent on health. It will be instructive if a strategic plan with timelines on how to meet the provisions of the Abuja Declaration is worked on and implemented
- There will have to be an introduction of innovative cost-effective measures in the provision and procurement of health care across the country moving forward. This will have to involve significant reliance on digital technology to improve health care access at the primary care level, especially in remote areas. This may require deemphasizing of the construction of more health facilities while promoting the enhancement of health professionals' capabilities
- There will have to be an alteration in our model of primary health care procurement from the current Outpatient Department (OPD) driven model that promotes congestion and increases

the potential for the spread of disease to a model that encourages the incorporation of social distancing and service provision. This model may have to include appointment booking systems and downplay queues

- With job losses likely and out of pocket health expenditure expected to rise, the National Health Insurance Scheme (NHIS) will have to be revamped to encourage more Ghanaians to use the scheme. The emphasis should be on driving the current Out-of-pocket spending down from 40% to below 20%, while increasing the percentage of the population using the NHIS from the current 36.3% to close to 60%. If this doesn't happen, health poverty is likely to affect a large percentage of the population
- Mental health provision at the primary care level will have to be augmented too. As the impact of this pandemic on citizens' mental health cannot be underestimated
- Ghana's pharmaceutical supply chain will have to be realigned with an emphasis on improving the proportion of essential medicines that are manufactured locally, with the aim of driving down the average cost of generic medicines. The current situation where these essential medicines cost between 30% to 55% more in Ghana compared to the United Kingdom cannot continue. There will be a need to invest in national strategic medicines stockpile
- How we navigate these in the short to medium term will have a significant impact on our population profile, overall disease burden and life expectancy

Health and Economic Shock on Post-COVID-19 Economic Policy

The spread of COVID-19 from China to almost every corner of the world has resulted in a global health and economic crises. Nations in Africa, including Ghana, have not been spared. This twin crisis has shown that when the entire world is simultaneously hit with a shock, developing economies are more likely to be the hardest hit as they are usually the least prepared, and also lack the fiscal capacity to minimize the economic impact on the population – a quarter of which live in poverty. It is within this context that we propose some recommendations that policymakers should consider in a post-COVID-19 world.

Strategic National Stock of Food and Essential Items:

If there is anything we can learn from the frequency of viral outbreaks like SARS, MERS, H1N1 and the current COVID-19, in the last few years, it is that the next potential viral outbreak that could cause more harm than is currently being experienced is not far away. As such, policymakers should consider establishing a strategic stock of food and essential items within each region to improve the efficiency in the distribution and delivery of these resources.

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Creating a Database of Citizens' Information and Formalization: In Ghana and elsewhere in Africa, chaotic scenes of food distribution during this pandemic have been circulated on social media. Transfers to the poor have not been well targeted. This underscores the need to formalize our economies and have a good database of residents. Matching phone numbers with national ID card numbers and using the information to send Mobile money to targeted groups is worthy of consideration.

Boosting IT Capacity: Universities, schools, businesses, churches, among others, are using more online facilities during this pandemic. It is the consequence of lockdowns and physical distancing. The government of Ghana has given Vodafone and MTN additional spectrum at no cost for three months to enable them to provide faster internet speed. We should invest in strengthening our IT capacity and give targeted tax breaks and incentives for specific IT expenses, investment in larger spectrum.

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Fiscal Discipline and Management: This pandemic has underscored the importance of proper fiscal management, transparency and management. A post-pandemic Ghana must be more fiscally responsible.

Post-pandemic Recovery Depends on Policies during the Pandemic: The post-pandemic recovery will be faster depending on the policies implemented during the pandemic. The more the number of businesses that fail, the harder is the post-pandemic recovery. One cannot think about post-pandemic policies without thinking about policies during the pandemic. The recession induced by the pandemic is a supply problem caused by lockdowns and physical distancing. The usual demand stimulus in a recession is insufficient because people cannot go to work. Stimulus must directly benefit people and workers, not just firms. Wage and employment subsidy in Denmark and other countries is one such policy.

Commercial Electricity Tariffs and their Impact on Post-COVID-19 Economic Recovery

Service-sector businesses will play a vital role in Ghana's economic recovery post-COVID-19. This discussion focuses on three key issues that government must address to provide the affordable electricity required to successfully restart and sustain these enterprises.

Ease overcapacity in the generation sector: At approximately \$0.234/kWh, [Ghanaian businesses](#)⁵ currently pay some of the highest electricity rates globally. The rates for commercial consumers in [ASEAN countries](#)⁶ average about \$0.13/kWh.

5 aaf_electricity_and_water_tariffs_for_second_quarter_of_2020 (accessed May 15, 2020)

6 <https://digitalenergyasia.com/competitive-indonesian-electricity-rates-in-the-asean-region/> (accessed May 15, 2020)

This disparity is partly due to Ghanaians unnecessarily paying millions of dollars annually for unutilized capacity acquired under take-or-pay contracts. Ghana's installed reserve margin (IRM) in 2018 was 78% (Table 1), versus a typical 15-20% for North American electricity grids. The government should lower tariffs for non-residential customers to promote job creation. The resulting economic growth would improve capacity utilization and ultimately reduce electricity costs. Load-forecasting processes should be improved to maximize efficiency. Ghana's weather exhibits little seasonality, so a long-term target IRM of 10-15% should be achievable.

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Reduce Distribution System Losses: A quarter of ECG's electricity purchases continues to be lost through theft and systemic inefficiencies (Table 2).

This age-old problem is another reason for the high commercial tariffs and should be seriously tackled. Globally, average power transmission and [distribution losses is around 8.3%](#)⁷. The [U.S. average is about 5%](#)⁸. Lowering tariffs would disincentivize power theft and increase revenues that could then be used to modernize the grid to deliver affordable electricity to all consumers.

Utilize Hedging Mechanisms to Provide Cost Certainty: In 2019, Ghana generated an estimated 67% of its electricity from [thermal sources](#)⁹. Given how highly volatile fuel prices are, it is imperative that the government employs hedging tools to optimize its purchases. Brent crude calendar year 2021 strip price is at historic lows (Figure 1). The price picture is similar for natural gas. It is wise to lock in these low prices now, and with the bulk of both products currently being sourced locally, the government could use bilateral forward contracts to do so.

Table 1: Ghana Grid Installed Capacity and Peak Load (MW)

	2012	2013	2014	2015	2016	2017	2018
Installed Capacity	2,280	2,831	2,831	3,656	3,795	4,398	4,889
Dependable Capacity	2,045	2,487	2,569	3,359	3,521	3,966	4,492
Peak Load	1,729	1,943	2,108	1,933	2,078	2,192	2,525

Data Source: Energy Commission of Ghana: National Energy Statistics, 2009-2018

Table 2: ECG Electricity Purchases, Sales, Losses (GWh)

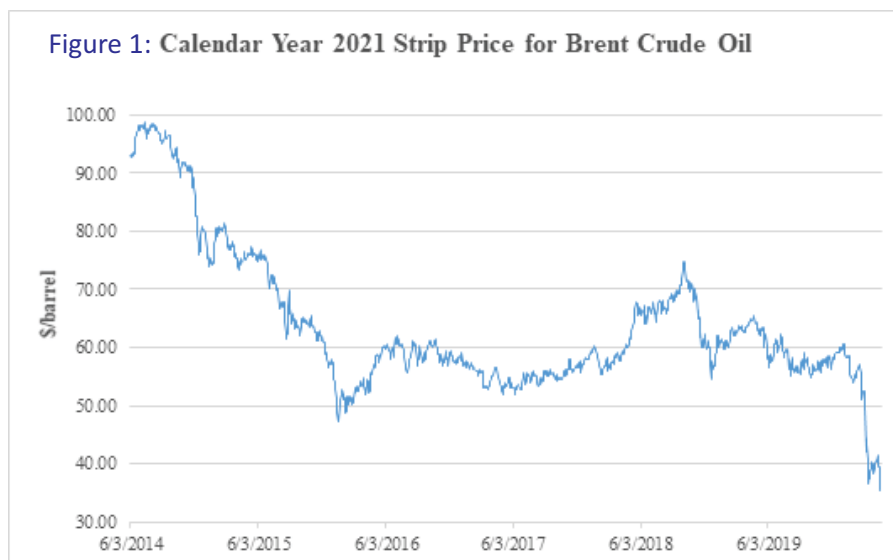
	2012	2013	2014	2015	2016	2017	2018
Purchases	7,994	8,479	8,370	7,544	9,316	9,783	10,901
Sales	5,823	6,496	5,252	5,831	7,115	7,575	8,251
Losses	2,121	1,983	2,108	1,713	2,201	2,208	2,649
% Losses	26.7	23.4	25.2	22.7	23.6	22.6	24.3

Data Source: Energy Commission of Ghana: National Energy Statistics, 2009-2018

7 <https://data.worldbank.org/indicator/EG.ELC.LOSS.ZS> (accessed May 15, 2020)

8 <https://www.eia.gov/> (accessed May 15, 2020)

9 http://www.energycom.gov.gh/files/2018_Electricity_Supply_Plan.pdf (accessed May 15, 2020)



Data Source: Intercontinental Exchange

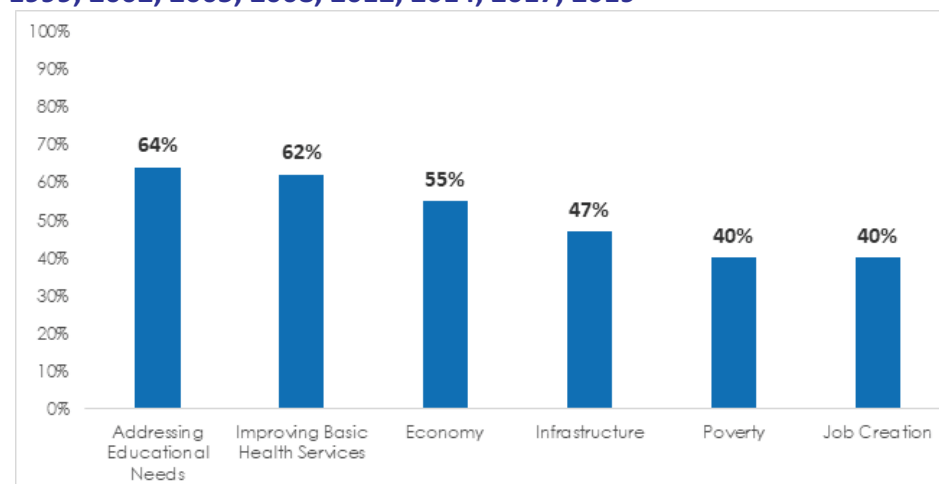
State Capacity/Governance Perspective

As government takes measures to deal with COVID-19 and its impact what are the key governance lessons to note? Of the many, I focus here on three in particular.

Government's Capacity to Deliver: Government's financial, human and infrastructural resources have been heavily tasked to respond to the crisis. A long road to full recovery is anticipated. Government's capacity to successfully manage the recovery will be critical. Judging from how Ghanaians have rated government's handling of key important problems in the Afrobarometer Survey (8 rounds), the capacity to deliver will be key, especially in areas such as addressing poverty and job creation.

Citizens and their Government: COVID-19 laid bare the consequences of disruption to life, especially of the economically disadvantaged. Government officials, MPs, and political party representatives have been seen delivering relief items to communities. At the same time citizens have raised their voices to ensure that all critical needs are met to deal with this crisis. Post COVID-19, when there is no longer a crisis, it will be important for governance if citizens do not retreat. Citizen's engagement with government officials and representatives cannot remain at the levels seen in the eight rounds of the Afrobarometer survey. (Table 3).

Figure 2: Average government performance on important problems | Ghana | 1999, 2002, 2005, 2008, 2012, 2014, 2017, 2019



Respondents were asked "How well or badly would you say the current government is handling the following matters, or haven't you heard enough to say? Average % of Ghanaians who said fairly well or very well."

Table 3: Contacting key officials | Ghana | 1999 , 2002, 2005, 2008, 2012, 2014, 2017, 2019 |

	Overall average	% change over time
Contacting MPs	14%	3%
Contacting An official of a government agency	11%	2%
Contacting Political Party official	18%	5%

Respondents were asked “During the past year, how often have you contacted any of the following persons about some important problem or to give them your views? % of respondents who said Yes (aggregate of only once, a few times and often) averaged over 8 rounds.

Trust in Information from Government: The occasional questioning or skepticism that greeted regular updates on COVID-19 including recovery efforts and its associated cost highlights the importance of trust in information from government sources. Government updates will continue till the country fully recovers with lasting impact on how government communicates with citizens and how citizens, in turn receive the information. A greater level of trust will be required from citizens, at levels much higher than currently expressed in the Afrobarometer survey. (Table 4).

Ghanaian Civil Society and COVID-19: Opportunities and Obstacles

Ghanaian civil society has the potential to play an important role in the battle to stem the COVID-19 pandemic. What are the opportunities and obstacles that may arise for Ghanaian civil society as it rises to meet this challenge? Three key points are discussed in the following.

Table 4: Trust in information from government sources | Ghana | 2014, 2017, 2019

	%
2014	39%
2017	58%
2019	54%

Respondents were asked “How much do you trust each of the following, or haven't you heard enough about them to say? Information from government sources” % saying somewhat or a lot.

Opportunity: Civil society's involvement in fighting COVID-19 may help strengthen the image and role of the sector.

Civil society groups have the potential to play an important role in mobilizing responses to the pandemic, especially at the local level (Krawczyk 2014). NGOs, community-based organizations, watchdog groups, religious associations, and women's groups will be on the front lines of pandemic response, engaging in delivery of health services in the form of contact tracing and care of marginalized citizens, creating informal support networks, advocating for government action, educating citizens on how to prevent the virus, and raising resources. If Ghanaian civil society successfully implements these interventions to help combat COVID-19, the sector could reap benefits that will strengthen associational life: enhanced image, increased legitimacy, greater influence, more resources, and fewer critiques of the effectiveness and accountability of the third sector (Brown et al, April 2020).

Opportunity: Getting civil society involved in the design, monitoring, and oversight of the pandemic response can help build trust, strengthen accountability and transparency, and lead to more effective interventions.

Evidence from the 2014-2016 Ebola crisis in West Africa highlights the importance of public engagement and trust during a health crisis (Christiansen et al, 2020). In environments where citizens have lower levels of trust in government, non-state actors, including civil society, are essential to ensuring an effective crisis response. Ghanaian civil society can act as a civic intermediary, helping build trust between government and citizens. What might this look like? Civil-society can lead community responses by reaching vulnerable communities and providing them with information on coronavirus risks and symptoms, and how to mitigate them. Civil society watchdog groups can demand transparency on COVID-19 data and forecasting models. Ghanaian civil society can also employ innovative tools such as digital platforms and apps to keep citizens informed and facilitate public participation (Open Government Partnership, 2020).

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Obstacle: There is the potential for democratic backslide and long-term restrictions on civic freedoms after the pandemic has ended.

Even before the pandemic, there was an increasing perception among African citizens that civic space was shrinking due to government restrictions. Yet, Africans are less willing to demand their freedoms than they were a few years ago. In fact, only 48% of Ghanaians support free association, which is a decline of 9% over the past decade (Afrobarometer Policy Paper No.55, April 2019). And the majority of Ghanaians, approximately 75%, are willing to accept restrictions on their movements in times of public safety threats (Afrobarometer Dispatch 351, March 20, 2020). Ultimately, these restrictions may come at a high price. A new law in Ghana, for example, gives the president sweeping powers to limit citizens' movements, including a ban on all public gatherings. Such restrictions can severely curtail vibrant civil society action. There is the danger that government will use the pandemic as an excuse to broaden its powers and restrict civic rights. These emergency restrictions also risk becoming permanent, leading to long-term reductions in civic and associational freedoms (International Center for Non-for-Profit Law,

Intersectional Approaches to Safeguarding Women's Rights in a Post COVID-19 Era

The novel coronavirus is probably here to stay. A "post COVID-19 era" remains an aspirational goal with long term impacts to be felt globally. The global pandemic has (re)awakened the analytical and activist voices of a plethora of actors who have been analyzing how the intersection of gender, and inherent power structures produce, and reproduce gender inequality. There is no shortage of debates, data points and disturbing narratives of the impact of the COVID-19 pandemic on women and girls.

The pandemic has revealed existing gender inequalities, which, if not managed properly, could lead to an erosion of the democratic principles of equality, fairness and representation for women and girls. I adopt an intersectional approach, in making the following recommendations for addressing gender-related issues in a post COVID-19 era.

Acknowledge Gender Inequalities Exist: For most women across the world, gender equality remains an aspirational goal due to multiple and often, intersecting challenges. In Ghana, and across other parts of Africa, challenges to achieving gender equality and women's rights are compounded by a dangerous elixir of institutional failures, prohibitive costs, socio-cultural (mis)interpretations of the place of women in society, and the slow pace of judicial and legal reforms. Delaying or denying women's access to healthcare, economic opportunities, protection from gender-based violence, right to education and many more, amount to failures to protect the rights of women. A post COVID-19 era must involve serious efforts to address inequalities women face on a daily basis in “normal” times.

The Role of State Actors (Government for the People): Democracy places an obligation on governments to promote the common good of their citizens. Women make up at least half of those citizens, therefore in all decision-making channels, the voices of women must be heard. Women should be at the decision-making tables. Governments should adhere to their constitutional obligations and principles of equality and equity. While the pandemic calls for prioritization of approaches to policymaking, the needs of women should not be sacrificed at the altar of the “national interest.” Providing safe, affordable, and equitable services should consider existing gender hierarchies and inequalities. Gender-blind policy assessments will lead to gender-blind policymaking. Governments must also adhere to their international obligations enshrined in regional treaties such as the Maputo Protocol and CEDAW. These treaties are international legal frameworks placing obligations on governments and State parties to protect and promote women's rights issues.

While the pandemic calls for prioritization of approaches to policymaking, the needs of women should not be sacrificed at the altar of the “national interest.” Providing safe, affordable, and equitable services should consider existing gender hierarchies and inequalities. Gender-blind policy assessments will lead to gender-blind policymaking.

The Role of Non-State Actors (Government by the People): At the basic level, democracy is government by the people. The “people” in this case refers to all citizens—acting individually or collectively. Post COVID-19 reconstruction efforts must involve all citizens.

- Civil society organizations: Must continue to mobilize citizens through awareness-raising, advocacy, and human resource development programs. Civil society actors are critical to creating a third space (between government and citizens) and their ability to amplify women's rights issues should continue in a post-COVID-19 era
- Individuals: The African proverb “I am, because we are” is an antithesis to the capitalist individualistic ethos of modern-day democracy. Our ability to “go back to our roots” and practice indigenous knowledge systems of communality, respect for women and matriarchy, will be critical to how societies prioritize women's rights issues. Gender-based discrimination and practices begin with the individual, the obligation to address the issues should begin with the individuals. Working together to resolve social problems between men and women is a starting point for achieving aggregate changes in society. We, the people, have to make the changes that are good for all
- Religious and Customary Bodies: Religious and customary bodies hold the key to social morality values. Religious leaders have to be reined in when their practices go contrary to the canonical interpretations of their religious texts. The misogynistic (re)interpretations of religious texts and practices often inure to the disadvantage of women. Continuous engagement with religious and customary bodies in finding solutions to gender-based discriminatory practices in a time of peace, is essential to limiting their exacerbation during future crisis

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Legal Perspective

Most constitutions contain derogation clauses designed to regulate the suspension of rights in times of emergency. These clauses are generally justified on the theory that certain situations may warrant the temporary suspension of certain rights in order to safeguard the community's right to liberty, if not existence, in the longer term. After all, constitutions should not be so inflexible that they end up becoming "suicide pacts" that "protect" rights when the very rights that they are protecting are under imminent attack from an enemy, whether visible, like an attack by a foreign power, or invisible, like an attack by an epidemic or pandemic.

The challenge is to design such a derogation clause so that it does not become an instrument that is easily abused. To meet this challenge, derogation clauses are generally based on certain core principles. First, derogation clauses require a proclamation or an official declaration of the existence of a state of emergency. This principle compels the government to put the public on notice and reduce the incidence of de facto states of emergency. Second, the government declaring the emergency must notify other parties of international conventions to which the country is a signatory. This notification principle enables the effective international monitoring of derogation measures.

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A third principle is proportionality, which requires that the measures adopted to address the emergency are no more restrictive or burdensome than is required by the exigencies of the situation. This principle, in essence, aims at fettering the powers of the declarant so that the measures taken are proportional to the identified threat, in degree and duration. A corollary principle that follows from the proportionality principle is that the measures must not be discriminatory either in purpose or effect. Lastly, it is important that derogation clauses that deal with emergencies are not confused with clawback or limiting clauses that deal with regulating or limiting rights under normal times.

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Ghana's Constitution, at Article 31, anticipates and addresses emergencies. It defines the circumstances under which a state of emergency may be declared "to include a natural disaster and any situation in which any action is taken or is immediately threatened to be taken by any person or body of persons which is calculated or likely to deprive the community of the essentials of life; or renders necessary the taking of measures which are required for securing the public safety, the defence of Ghana and the maintenance of public order and of supplies and services essential to the life of the community." The word "include" is important because it enlarges the meaning of the words or phrases used in the definition. For instance, natural disaster does not preclude human-made disaster. Nor does the Article preclude public health emergencies even if it is not a natural disaster or an action that somebody has threatened.

Article 31 provides that only the President may declare a state of emergency. However, the declaration must be in accordance with the advice of the Council of State. Further, the declaration must be by Proclamation published in the Gazette and the state of emergency could exist in the country, as a whole, or in any part of it. Where a Proclamation is so published, the President shall place immediately before Parliament, the facts and circumstances leading to the declaration of the state of emergency.

For its part, Parliament shall, within 72 hours after being so notified, decide whether the proclamation should remain in force or should be revoked; and the President shall act in accordance with the decision of Parliament. In effect, the President, acting on the advice of the Council of State, proposes and Parliament disposes.

The Constitution then provides strict time limits for such Proclamations. First, a declaration of a state of emergency shall cease to have effect at the expiration of 7 days, beginning with the date of publication of the declaration, unless, before the expiration of that period, a majority of all the members of Parliament pass a resolution to extend it. Notice that the 7-day window starts from when the proclamation is published not when Parliament decides that it should be in force.

Second, where Parliament approves a resolution of extension, the Proclamation shall continue in force for 3 months beginning with the date of the approval or until such earlier date as may be specified in the resolution. That is, the extension cannot be longer than 3 months.

Third, Parliament may, by resolution passed by a majority of all members of Parliament, extend its approval of the declaration for periods of not more than one month at a time. It is important to note that Parliament may, by a resolution passed by a majority of all the members of Parliament, at any time, revoke a declaration of a state of emergency.

Lastly, where an emergency is properly declared, then actions, taken pursuant to the emergency proclamation, as approved by parliament, can derogate from the rights enumerated “in Articles 12 to 30 of the Constitution but only to the extent that the Act in question authorizes the taking, during any period when a state of emergency is in force, of measures that are reasonably justifiable for the purposes of dealing with the situation that exists during that period.” This tells us that rights not listed therein, like the right to vote, are beyond derogation.

Even when there is an emergency, the Constitution stipulates processes for detaining persons at Article 32. A person so restricted or detained shall as soon as

practicable, and in any case not later than 24 hours after the commencement of the restriction or detention, be furnished with a statement in writing specifying in detail the grounds upon which he is restricted or detained and the statement shall be read or interpreted to the person restricted or detained.

Further, the detainee's family must be informed of the detention or restriction within 24 hours after the commencement of the detention or restriction and be permitted access to the person at the earliest practicable opportunity, and in any case within 24 hours after the commencement of the restriction or detention. Within 10 days of the detention or restriction, it shall be published in the Gazette and in the media stating that he has been restricted or detained and giving particulars of the provision of law under which his restriction or detention is authorized and the grounds of his restriction or detention. Within that 10-day window, and after that, during his restriction or detention, at intervals of not more than three months, his case shall be reviewed by a tribunal composed of not less than three Justices of the Superior Court of Judicature appointed by the Chief Justice; except that the same tribunal shall not review more than once the case of a person restricted or detained.

The detainee shall be afforded every possible facility to consult a lawyer of his choice who shall be permitted to make representations to the tribunal appointed for the review of the case of the restricted or detained person. The detainee shall be permitted to appear in person at the hearing of the case or by a lawyer of his choice.

On a review by a tribunal of the case of a restricted or detained person, the tribunal may order the release of the person and the payment to him of adequate compensation or uphold the grounds of his restriction or detention; and the authority by which the restriction or detention was ordered shall act accordingly.

In every month in which there is a sitting of Parliament, a Minister of State authorized by the President, shall make a report to Parliament of the number of persons restricted or detained by virtue of the emergency proclamation and the number of cases in which the authority that ordered the restriction or detention has acted in accordance with the decisions of the tribunal appointed under this article. Furthermore, the Minister shall publish every month in the Gazette and in the media, (i) the number and the names and addresses of the persons restricted or detained; (ii) the number of cases reviewed by the tribunal; and (iii) the number of cases in which the authority which ordered the restriction or detention has acted in accordance with the decisions of the tribunal appointed under this article. A person in restriction or detention or in custody as a result of the declaration of the emergency shall be released immediately when the emergency comes to an end.

One can readily see that the framers of the Constitution, informed by the country's history of abuse of power and executive tyranny, have carefully and thoughtfully, designed an emergency architecture that meets generally accepted constitutional principles. It follows both the proclamation and proportionality principles. The country, as a result of being a signatory to the International Covenant on Civil and Political Rights (ICCPR), is subject to the notification principle. It subjects the Proclamation to Parliamentary oversight and approval. It is time-limited, transparent and it provides due process for those detained under the declaration.

One can readily see that the framers of the Constitution, informed by the country's history of abuse of power and executive tyranny, have carefully and thoughtfully, designed an emergency architecture that meets generally accepted constitutional principles. It follows both the proclamation and proportionality principles.

Parliament has also enacted the Emergency Powers Act, 1994 (ACT 472) that mimics Article 31 and provides consequential powers that the President can assume on an emergency proclamation.

There is also the Public Health Act, 2012 (ACT 851), which consolidates the law relating to public health to prevent disease, promote safeguard, maintain and protect the health of human and animals and related matters. Under Section 169 of that ACT, the Minister is empowered to declare a public health emergency by executive instrument where there is a situation that poses an immediate risk to health, life, property or the environment.

Thus, the nation had an adequate legal framework for dealing with the Coronavirus and when the President, on March 15, 2020 first announced measures to address it, observers widely assumed that he will follow it up with an emergency proclamation under Article 31 and ACT 472.

It, therefore, came as a surprise when the Attorney-General announced that she had emplaced an Imposition of Restriction Bill in parliament to be considered under a certificate of urgency to address the problem. As has become the norm, the pliant Parliament quickly enacted the law and it was assented to by the President on March 20, 2020 as the Imposition of Restriction Act, 2010 (ACT 1012).

The object of this Act is to provide for powers to impose restrictions on persons, to give effect to paragraphs (c), (d) and (e) of clause 4 of article 21 of the Constitution in the event or imminence of an emergency, disaster or similar circumstances to ensure public safety, public health and protection. Under this Act, the President may, acting in accordance with the advice of the relevant person or body, by Executive Instrument, impose restrictions specified in paragraphs (c), (d) and (e) of clause (4) of article 21 of the Constitution.

The aforementioned Article 21 guarantees certain fundamental rights, like speech, religion, and movement and 21(4)(c)(d)(e) provide that "Nothing in, or done under the authority of, a law shall be held to be inconsistent with, or in contravention of, this article to the extent that the law in question makes provision (c) for the imposition of restrictions that are reasonably required in the interest of defence, public safety, public health or the running of essential services, on the movement or residence within Ghana

of any person or persons generally, or any class of persons; or (d) for the imposition of restrictions on the freedom of entry into Ghana, or of movement in Ghana of a person who is not a citizen of Ghana; or (e) that is reasonably required for the purpose of safeguarding the people of Ghana against the teaching or propagation of a doctrine which exhibits or encourages disrespect for the nationhood of Ghana, the national symbols and emblems, or incites hatred against other members of the community; except so far as that provision or, as the case may be, the thing done under the authority of that law is shown not to be reasonably justifiable in terms of the spirit of this Constitution.”

Clause 3 of the ACT purports to address the circumstances under which restrictions can be imposed. However, this clause does not describe the emergency, disaster or similar circumstances listed in the object of the ACT but merely recites the purposes that the restrictions are supposed to achieve (i.e., the purposes specified in 21(4)(c)(d)(e)). To clarify this point, an ethnic conflict might trigger the declaration of a state of emergency in the interest of public safety. The ethnic conflict, not public safety, is the circumstance that has led to the imposition of the restriction while the protection of public safety is the purpose that the restriction (e.g., curfew) will seek to achieve.

It must be emphasized, even at the expense of stating the obvious, that Article 21(4) has nothing to do with emergencies. It merely provides that certain rights can be regulated by law even in ordinary times on grounds of defence, public safety, order, health. For instance, even in normal times, one's right to practice their religion is subject to the criminal law, which can prohibit the mutilating of womanhood notwithstanding the importance of this as a religious practice. One's right to assembly can be regulated so that it cannot be exercised when people are asleep or at the airport or at a military facility, etc. Article 21(4) is an example of a clawback or a limiting clause. It is not a clause for emergencies, which are specifically addressed by Article 31.

Under the Constitution, fundamental human rights can be suspended only in an emergency and, even then, only in accordance with the process specified by

Article 31 (and repeated in Act 472). It is a fundamental constitutional error to confuse the suspension of rights during an emergency to the regulating of rights during a non-emergency. Conceptually, the former is a derogation and the latter is a limitation, a distinction that is universally accepted and firmly ensconced in the common law. Rights can be suspended only in an emergency via the process outlined by Article 31. Rights cannot be suspended otherwise. Similarly, rights can be restricted but NEVER suspended in normal times.

ACT 1012 attempts to straddle both emergency and non-emergency situations and fails at both. It provides for power to impose restrictions to give effect to Article 21(4)(c)(d)(e) “in the event or imminence of an emergency, disaster or similar circumstances to ensure public safety, public health and protection.” What does this mean beyond stating that power is being conferred to act in the case of an emergency? Why confer such powers when the Constitution has done so explicitly in Article 31?

Article 31 already provides that the rights under Article 21 can be derogated from in an emergency so why the need to give the President power to impose restrictions specified in paragraphs (c), (d) and (e) of clause (4) of article 21 of the Constitution?

All of these problems flow from a failure to distinguish between derogation and limitation. There are several important differences between derogation and limiting clauses. First, derogation of rights can be done in parts of or the whole country. A good example of the former is a curfew in an area of ethnic conflict and an example of the latter is the nationwide ban on religious services, announced by the President on March 15, 2020. By way of contrast, restriction of rights is generally of universal application. If there is no proclamation of emergency, and there is not one, the President cannot suspend religious services, as he has sought to do by reliance on ACT 1012.

Second, derogation of rights always has time-limits. After all an emergency cannot exist forever. If it does, then it is a new normal. This is why Article 31 has such clear rules on time frame. Au contraire, restriction of rights typically has no such time-limits.

For instance, in the interest of public health, government can ban some types of tattoos with a law that has no sunset clause. This ban regulates speech but could be justified on public health grounds.

Third, ACT 1012 has nothing to do with the coronavirus pandemic. In fact, it does not even pretend to declare a state of emergency. The ACT simply gives the President the power to impose restrictions on freedom of expression, to practice religion, of assembly, association, information, movement, to participate in political activities, etc. by bypassing parliamentary scrutiny. Where the Constitution requires parliamentary approval of any emergency proclamation, the ACT empowers the President to impose these rights-obliterating restrictions by merely issuing an Executive Instrument. Where the Constitution requires parliamentary scrutiny, the Act allows the President to impose these restrictions whenever he is satisfied that they are reasonably required in the interest of defence, public safety, public health or the running of essential services.

Parliament cannot design an emergency architecture to co-exist with that stipulated by the Constitution. Nor can it outsource its emergency oversight function to the President to be exercised via executive instruments. Thus, all the measures announced by the President and ACT 1012 are unconstitutional.

Parliament cannot design an emergency architecture to co-exist with that stipulated by the Constitution. Nor can it outsource its emergency oversight function to the President to be exercised via executive instruments.

Similarly, the 4-year maximum sentencing provided by ACT 1012, which has been used to impose sentences on some pastors, cannot stand scrutiny under the strict procedural process of Article 32. Given the health issues raised by the virus, it is reasonable to assume that observers are aware of the violations but have opted for silence to allow for the prompt effectuation of the containment measures rather than subject them to judicial scrutiny. However, once that is done and the emergency is lifted, it will be wise to allow the Court to pronounce on this issue for the future but also to correct the record that the whole country went along with this remarkable interpretation of the Constitution. ■ ■

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