

DEMOCRACY IN TIMES OF A PANDEMIC

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We are experiencing an unprecedented global crisis; a comprehensive and multidimensional crisis. A health, economic and social crisis. In a few months the Coronavirus became a global pandemic that has even changed the way we relate to each other as human beings.

Ignacio Ramonet mentions that no pandemic has ever been so fulminant and of such magnitude. The virus has already travelled around the planet and has forced billions of people into their homes. Something only imaginable in post-apocalyptic fiction. It is what social sciences call "total social fact", in the sense that it convulses the whole of social relations, and shocks the totality of actors, institutions and values. (2020)¹

The pandemic does not discriminate against countries or people; in less than four months since the first positive case of Coronavirus was diagnosed in the city of Wuhan in the People's Republic of China, hundreds of thousands of people have died and millions have been infected on all five continents. The world continues to live in uncertain times. We are faced with a disease that is multiplying exponentially every day, which requires new human behavior from everyone and a new global pact of cooperation and solidarity.

In spite of the uncertainty and anxiety generated by the crisis, the main commitment is to ensure all our efforts to face the challenges of the pandemic and its aftermath. The way out of the crisis is collective and shared; it is a vital challenge for our survival that excludes no one and that brings us all together without exception.

¹ Ignacio Ramonet, "Pandemic and the world system", 25-April-2020.

On March 11, 2020, the World Health Organization (WHO) declared COVID-19 a global pandemic. This declaration was prompted by the spread of the virus across the globe and called on the international community to take urgent and aggressive action to contain the disease.

Global alarms went off and since then, from different levels of responsibility and effectiveness, all countries have resolved a number of urgent measures and implemented various actions to try to mitigate the crisis. The abovementioned, seeking to reduce the silent and exponential spread of the virus, includes measures such as: quarantines, suspension of mass gatherings and public events; suspension of working and commercial hours, social distancing, curfews, closure of national and international borders, paralysis of economic activity, mobilization of military and police forces, declaration of states of emergency, public calamity, suspension of citizens' rights, prohibition of assembly and free transit, among others.

The implementation of these virus-control measures has not been easy. As societies of this century are increasingly globalized, characterized by the growing interaction, interdependence, social, cultural and economic communication that takes place between people, and countries at the regional and global level.

While these measures are urgent and necessary for the control of the virus, their application must be totally temporary and cannot be indiscriminate. They must be fully regulated and protected within the framework of the Rule of Law, with duly determined timeframes and limits, and cannot affect human rights, since these are the fundamental basis of democratic societies.

The consequences of the crisis will be multi-systemic, political and democratic systems could be affected, and the secondary effects left by the aftermath of the COVID-19 pandemic threaten to damage democracy and the Rule of Law in several countries in the region and the world, due to the postponement or impossibility of carrying out fair, transparent and equitable electoral processes with integrity that guarantee democratic transitions.

We must be aware of the great danger represented by the fact that, in the middle of the crisis, the nefarious presence of totalitarianism, authoritarianism and populism, together with the erosion of fundamental rights, take advantage of the development of states of emergency.

The pandemic has affected the normal development of the electoral processes planned for 2020. Worldwide, elections were planned in 86 countries in various regions, including presidential and legislative elections in Bolivia, the United States, the Dominican Republic, Ethiopia, Poland and Venezuela, and constitutional referendums in Chile and Russia, among others.

Furthermore, due to the health crisis generated by the coronavirus and the imposed measures of social isolation, elections have been postponed in nine countries until the end of the year, while the schedule of elections is considered undetermined in 40 nations, with elections scheduled for 2021. Only France, Israel and the Dominican Republic were able to hold elections in the first quarter of 2020.

The aftermath of the pandemic, the high possibility of contagion through human interaction, the risk of death and the application of the above-mentioned restrictive measures all pose serious difficulties for the organization of the judicial process. For these reasons, what must be analyzed are the democratic alternatives so that the original legitimacy of the new rulers is not damaged, as well as the democratic transitions, the alternation of their authorities and the duration of the terms of government.

Possible extensions or expansions of the mandate of incumbent Governments that contravene internal constitutional frameworks should be avoided. Alternatives must be sought in the voting mechanisms and electoral logistics that avoid power gaps or the lack of heads of institutions. At such critical and complex times when a pandemic must be faced, we know when and how it will begin, but we do not know when and how it will end.

In its report on the post-COVID-19 state of affairs, the Secretariat for Strengthening Democracy (SFD) of the Organization of American States (OAS) warns that in many countries in the region, the dates of general elections and the duration of the corresponding terms of office have constitutional status. In these cases, the postponement of elections and changes or extensions in the periods for holding popularly elected positions implies a reform of a constitutional norm; this generates important legal challenges and, in some cases, could challenge the maintenance of the system of checks and balances that is vital in democratic systems.

The declaration of states of emergency to deal with the pandemic may lead to the erosion of the democratic system and the Rule of Law. Restrictions must always and in all cases be constitutional, legal, proportional and temporary, and their application must be done in respect for human rights.

The military and police cannot be exempted from criminal responsibility for acts of repression outside the law, nor can they authorize the lethal use of force against those who violate social confinement; these examples illustrate how democracy can be weakened by the mishandling of the COVID-19's palliative measures.

The exercise of disproportionate measures of order and control, added to the absence of elections and excessive states of emergency, can lead to the presence of arbitrary and tyrannical regimes that injure and restrict rights, under the discourse of preserving health.

The desire to construct images of leadership or false altruism on the part of those in power can lead to populisms that affect democratic values and transparency in the technical management of a multipolar crisis.

Daniel Innerarity points out that this is not a time for great leaders to address their people vertically, but for organization, protocols and strategies. This is all about collective intelligence, both in terms of medical response and organizational and political response. Of course a

president's communication is very important, but much more so is our collective capacity to govern crises, including their anticipation and management.

It is true that to a large extent we are in a new crisis that was very difficult to anticipate. It is also true that we find ourselves with a political system that is under-resourced, with strategic capacity, too competitive, too focused on the short term, opportunistic and with little willingness to learn. The key value of the institutions is trust: we have come from a crisis of confidence in the institutions, which we have not yet been able to recover. (2020)²

I agree with many authors that this crisis is testing the *institutionality* of countries. Thus, parliaments and electoral bodies (administrative and jurisdictional), must make the dates for elections more flexible, plan and execute other administrative and legal acts that involve the conduct of electoral processes in times of pandemic, within the framework of their powers. Similarly, in the cases where the postponement of elections is necessary due to health conditions, the constitutional courts or tribunals must establish the possibility of extending the mandates of public officials or not, clearly and unambiguously, and within their respective legal systems.

Similarly, governments, parliaments and constitutional courts must regulate the development of the state of emergency under international parameters and in accordance with the law. These must be based on a legitimate objective and must be strictly necessary in a democratic society, in order to constitute the least restrictive means available, so that the exercise of any right is not arbitrary, absurd or discriminatory.

As for the organization of the processes, much has been debated about the possibility whether the electoral agencies can progressively adopt the use of remote electronic voting means and should it be necessary, to divide the voting days, as well as attending to strict health protection measures for the voters and authorities that participate in the physical voting days. Also, the regulation of digital media in the conduct of electoral campaigns continues to be debated. In any

² Daniel Innerarity, "Conversations on the pandemic 2", 17-March-2020.

case, political parties, candidates and voters will be forced to transform their way of doing politics through innovative mechanisms. The COVID-19 will modify many of the aspects of organization and management of the campaigns in the electoral processes and will demand of enormous efforts for its realization.

At the regional level, the Permanent Council of the Organization of American States (OAS), under the leadership of its Secretary General Luis Almagro, decided to unite in a hemispheric response to the unprecedented crisis of COVID-19. This response is driven by democratic leadership, cooperation and solidarity among the member states and inter-American entities to mitigate the adverse effects and accelerate recovery. To strengthen hemispheric cooperation and solidarity to contain, mitigate and defeat the pandemic and its consequences Member States will defend democratic principles, ensuring full respect for human rights and transparency, preventing all forms of discrimination, including racism and xenophobia, in their response to the crisis.

To conclude, I believe that there are no single recipes or magic solutions for dealing with the crisis; a high dose of cooperation and solidarity is required. Democracy cannot be another victim of the pandemic, because the consequences would be unimaginable. Democracy cannot be suspended in the face of any crisis, in any country, under any circumstances. Democracy can never be quarantined. As the well-known popular saying goes; we must take care that the remedy is not worse than the disease. Let us bear in mind that the devil is always in the details.

It is necessary that the world recovers its vital flow and restarts its life progressively and gradually. We must take note and learn from the lessons that this hard test leaves us with, so that we can face the challenges that lie ahead with resilience and solidarity.

Secretary for the Strengthening of Democracy. The views are personal. They do not represent the position of the OAS.