



CRISIS GOVERNANCE FORUM

Rule of Law-Based Policymaking for
COVID-19 Response and Recovery



**COVID-19
RESPONSE**

A Series of Online Consultations on Rule of Law-Based Policymaking for COVID-19 Response and Recovery

SERIES LAUNCH

Wednesday 1 July 2020, 9am-11am EST

The *Crisis Governance Forum* will consist of a series of online dialogues sharing insights and exchanging policy solutions among policymakers and practitioners involved in COVID-19 crisis management. The initiative is intended as a contribution to the overall effort to project Agenda 2030, and SDG 16 within that Agenda as a roadmap in designing post-pandemic social and economic recovery strategies and in building community resilience to similar external shocks in the future.

The “Series Launch” will feature representative policymakers and other stakeholders, who will highlight the intrinsic link between crisis governance and the rule of law, outline lessons learned in policymaking related to COVID-19 and offer concrete examples of rule of law-based policymaking for COVID-19 recovery in line with the SDG 16 roadmap.

As the COVID-19 pandemic rapidly expanded to all corners of the globe, we were reminded every day that the ability to contain the spread, flatten the curve of infections, diminish the rate of mortality and to provide economic stimulus and social protection against its impact, are all inextricably linked to governance capacity. In crises situations, more than in other circumstances, citizens demand effectiveness, accountability and transparency from public institutions and their leadership.

Rule of law-based policymaking is critical to provide legitimacy and enhance public trust in government for the extraordinary measures that need to be deployed in both crisis response and recovery contexts.

Public health emergencies call on government officials to take unprecedented decisions without delay that may require by-passing standard policymaking processes or temporarily suspending some civil liberties, while access to medical services and remedies could carry a difference between life and death. Decisions are also made involving significant redistributions of public resources to alleviate the social and economic toll of the crisis. It is thus paramount to ensure that follow up decisions are rooted in relevant legal frameworks, and associated processes include public deliberation, oversight and transparency.

As the COVID-19 pandemic unfolded, IDLO together with UNDESA and the Government of Italy was involved in preparation for the next SDG 16 Conference in Rome focusing on governance capacity to lead the transformations in support of the UN Decade of Action for the SDGs. With the mounting role of the governance functions in crisis settings, and the need to increasingly employ the rule of law framework as we phase out the emergency stage and prepare for recovery and resilience building, IDLO, working with Rome Conference and other partners, decided to create a forum for discussion on best practice and optimizing short- and long-term policy solutions. The outcome of the online consultations will be part of IDLO's contribution to the preparations of the next Rome Conference and will be made available in support of the HLPF deliberations.

Given the centrality of strong public institutions in accelerating progress towards SDG 16 and the implementation of the 2030 Agenda overall, one of the primary tasks of the Forum will be to promote SDG 16 as a framework for leveraging the transformative potential that rule of law-based recovery and resilience initiatives at all levels of policymaking carry towards realizing all of the Agenda's goals.

Crisis governance issues calling for a rule of law-based approach that will be addressed in subsequent sessions of the Forum will include:

- Equitable access to health care and other basic services and redress mechanisms for related grievances
- Methods utilized in identification and measures taken to provide targeted support to groups at-risk of being left behind
- Policing for the enforcement of emergency policies and management of correctional facilities
- Prevention of domestic violence and women's access to justice in COVID-19-affected conditions that disproportionately affect women and girls
- Use of national and international norms and standards in designing economic stimuli and other measures aimed at social protection
- Strategic planning and enactment of new legislation in preparation for socio-economic recovery
- Modalities for enabling public deliberation and inclusion of civil society in design of recovery policies and strategies in COVID-19-affected environments
- Oversight and redress mechanisms for COVID-19 response-related grievances and violations of human rights
- Policymaking in environments where COVID-19 pandemic interfaces with violent conflict and other pre-existing crises.



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A Series of Online Consultations on Rule of Law-Based Policymaking for COVID-19 Response and Recovery

The *Crisis Governance Forum* will offer a series of online dialogues sharing insights and exchanging policy solutions among policymakers and policy implementers involved in COVID-19 crisis management. In organizing consultations on a broad range of topics related to rule of law-based policymaking for COVID-19 response and recovery, IDLO will partner with co-organizers of the SDG 16 Conference in Rome, members of the SDG 16+ community and other relevant stakeholders. Participants will include policymakers at all levels of governance, from national to municipal, judiciary, civil society, academic and research institutions, as well as general public. Live discussions and written contributions will be recorded to support the work of national and sub-national policymakers, inform the agenda of the next SDG 16 Conference and made available to the HLPF reviews.

Background

1. In a matter of a few weeks, COVID-19 has tested the capacities of governance at all levels—local, national, regional and global—to respond to the complex, transnational challenges posed by the pandemic, while at the same time, testing the limits of the capacity of people everywhere to cope and sacrifice. It is a crisis likely to profoundly alter economic, social and political conditions, although the full extent is still difficult to foresee.
2. Up until the beginning of March, IDLO, UNDESA and the Government of Italy had advanced in planning—and were about to embark in an extensive process of interagency consultations towards—a Conference in Rome focusing on governance capacity to lead the transformations required for the achievement of SDG 16 and envisaged to support a Decade of Action on 2030 Agenda. It was intended to follow up on the global, multi-stakeholder Conference on SDG 16 held in Rome in May last year in preparation for the review of progress of SDG 16 at the HLPF in July 2019. While the actual scheduling of the conference will now depend on the evolution of the pandemic, the process of preparation is continuing bearing in mind the renewed interest and pertinence that the governance theme of the conference acquires in the context of the current crisis.
3. In view of the COVID-19 crisis currently undermining development gains, commitment to the 2030 Agenda remains the guiding principle for recovery efforts. At the launch of his report, *Shared Responsibility, Global Solidarity*,¹ released on 31

¹ <https://unsdg.un.org/sites/default/files/2020-03/SG-Report-Socio-Economic-Impact-of-Covid19.pdf>.

March, UN Secretary General Guterres pointed out that “everything we do during and after this crisis must be with a strong focus on building more equal, inclusive and sustainable economies and societies.” The report thus, identifies the 2030 Agenda and the 17 Sustainable Development Goals as the roadmap for recovery from economic and social implications of the COVID-19 pandemic, and building back better and more resilient societies.

4. As highlighted in the IDLO Director General’s policy statement “A Rule of Law Based Response to COVID-19 Pandemic,” strong institutions, measures to sustain peace, to provide access to justice for all and to guarantee inclusion, key elements of the Goal 16, are all critical in framing immediate responses and in introducing structural changes in social and economic conditions for sustainable post-pandemic recovery.

A Platform for Discussing Crisis Governance

5. As the COVID-19 crisis rapidly expands to all corners of the globe, we are reminded every day that the ability to contain the spread, flatten the curve of infections and diminish the rate of mortality is inextricably linked with governance capacity. The ability of government officials to rapidly learn from emergency response in different sites of the pandemic, to rely on all available data for taking policy decisions—from the procurement of medical equipment and timely expansion of medical facilities to the provision of supporting social services—is decisive in combatting COVID-19. Along with medical doctors, nurses and other staff, who are now called upon to carry out an enormous social task, we are all seeing how crisis management requires existence of strong and responsive public institutions at all levels. In crises situations more than ever citizens demand effectiveness, accountability and transparency as well as inclusivity in the responses of public institutions and their leadership. As no country in the world appears to be spared from the COVID-19 crisis and its implications, finding paths for ensuring just and equitable response and recovery has become a universal concern.
6. In health emergencies of the magnitude of COVID-19 there are multifaceted social and economic fallouts of the crisis that can exacerbate pre-existing inequalities and undermine stability of social order. Indeed, the pandemic has already shown to have a disproportionate impact on people living in extreme poverty, women and girls, the elderly, children, people with disabilities, migrants, refugees and displaced persons, prisoners, and those living in situations of conflict and insecurity. For the groups at risk of being left behind therefore, the rule of law can be a lifeline in times of crisis.
7. In line with its core mission to promote respect for the rule of law and assist societies in creating a culture of justice, IDLO is making as one of its priorities to share knowledge and concrete illustrations of how adherence to the rule of law is critical in guiding public institutions to mount timely and effective responses, and to provide pathways for post-emergency recovery. When government officials have to take decisions without delay that may require by-passing normal policymaking processes; when some civil liberties may have to be suspended; when access to medical services and remedies carry a difference between life and death; and when decisions are made involving vast redistributions of public resources to alleviate the social and economic toll of the crisis, it is paramount to ensure that these decisions are rooted in relevant

legal frameworks, and associated processes include accountability and transparency. What we identified as “rule of law-based policymaking” is thus critical to provide legitimacy and enhance trust in government for the extraordinary measures that need to be deployed in both crisis response and recovery.

8. Policymakers need to be perceived to be holding a sensitive balance between protecting public health and government overreach, making impartial decisions offering equitable remedies and services to all segments of society, and acting swiftly in response while including public deliberation on recovery. A rule of law-based approach, proposed by IDLO, means identifying pathways for re-aligning policymaking process with national and international normative frameworks, re-introducing rule of law-based approach in policy design and enacting new laws to underpin and kick start recovery phase. All these actions are part of an effort to maintain the culture of justice even in the crisis setting and create new opportunities for its promotion in the recovery phase.
9. Working with policymakers at all levels of governance, from national to municipal, including with host governments in countries where IDLO provides assistance, as well as partners in organizing SDG 16 Conference and partners in SDG 16+ community, and international experts, IDLO will launch a platform for a series of online dialogues on issues related to governance and rule of law-based policymaking in the COVID-19 crisis settings. One of the objectives of the Forum will be to report on relevant dialogues at the national level, facilitated by IDLO and other partners. Inputs from each individual consultation, including crisis governance solutions and best practice, will be recorded to feed back to the work of national stakeholders. They will also inform agenda of the next SDG 16 Conference in Rome and will be made available for the HLPF review of the 2030 Agenda in the context of COVID-19 recovery, online or once circumstances allow large gatherings.

Modalities of Discussion

10. The Crisis Governance Forum will offer a series of online dialogues for sharing insights and exchanging policy solutions among policymakers and policy implementers at all levels, including government officials, judiciary, civil society, academic and research institutions, as well as general public. Like the 2030 Agenda itself, the response and recovery policies that we examine will be universal in their scope covering all types of development settings. The Forum discussions will map out lessons from the ongoing health emergency responses worldwide, so far predominantly in developed countries. Consideration of governance response and recovery measures will nevertheless aim towards minimizing the impact of the crisis in environments with weak institutional capacity, which could be hit hardest.
11. There is a range of governance challenges that are particularly acute in the context of COVID-19 crisis, which are also relevant for SDG 16 implementation. Among the issues that require a rule of law-based approach, the Forum may discuss some of the following: equitable access to health care and other basic services and redress mechanisms for related grievances; methods utilized in identification and measures taken to provide targeted support to groups at-risk of being left behind; policing related to enforcement of emergency policies and maintenance of public safety as

well as management of correctional facilities; prevention of domestic violence and women's access to justice in COVID-19 affected conditions that disproportionately affect women and girls; use of national and international norms and standards in designing economic stimuli and other measures and resources aimed at social protection; strategic planning and enactment of new legislation in preparation for social and economic recovery; modalities for enabling public deliberation and inclusion of civil society in design of recovery policies and strategies in COVID-19-affected environments; oversight and redress for violations of civil liberties and other human rights; policymaking in environments where COVID-19 pandemic interfaces with violent conflict and other pre-existing crises; etc.

12. While the short-term measures to contain and halt the spread of infections and the longer-term measures to deal with the social and economic effects of the pandemic overlap to some extent and can be addressed in parallel, the path to advance rule of law-based policymaking in each case is likely to vary. During the emergency phase with social distancing measures in place, the assessment of decisions in terms of their alignment with the domestic and international legal framework will largely be a matter of public debate and advocacy. In preparation and during the recovery period, there is a broader gamut of rule of law approaches that become relevant, including legislative reform to address all effects of the pandemic and for building resilience as well as reintroduction of, and broader access to litigation, public deliberation, oversight mechanisms, etc.
13. In terms of the evolution of the pandemic and our measures for containment and eradication, the discussion will initially focus on mapping and assessing specific health emergency policies and their impact on achieving SDG 16 to date. This should then be used as a situation analysis for discussion of preparations for social and economic recovery in particular area. Each live session is envisaged to feature: 1) introduction of the topic at hand and analysis of impact of COVID-19 on related social and economic conditions in light of the 2030 Agenda; 2) reports on emergency responses and best practice from national and local government practitioners; and 3) appraisal of the steps and strategies needed to prepare for social and economic recovery and resilience building phase, with a view to seek alignment with SDG 16 targets.
14. In the follow up to live discussions online, a broader spectrum of views and perspectives will also be included through written inputs into the online platform by consultation participants. Organizers will compile a report on each discussion topic based on live sessions and subsequent participants' inputs. These thematic reports will be made available to policymakers at national and sub-national level and used to prepare the discussion on governance at the next installment of SDG 16 Conference in Rome.