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COVID-19 PANDEMIC IN SOMALIA: A CONSTITUTIONAL PERSPECTIVE

By

AHMED KHEIR OSMAN



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Introduction

The Covid-19 in Somalia is part of the worldwide pandemic of the Coronavirus disease of 2019¹ which originates from China and reached Somalia through Europe and Arabian Gulf. The first case of Covid-19 in Somalia was reported on Monday, March 16, 2020. Since then the number of cases has increased in an exponential manner. Currently, there are more than 2,812, with about 818 recoveries and 90 deaths.² The federal and state Governments of Somalia have put in place various measures in a bid to prevent the spread of the virus. Among other measures taken are the imposition of a night curfew, closure of schools and institutions of higher learning, setting up of quarantine facilities, shutting down prayers of mosques, public meetings as well as political gatherings. Further measures taken also include restriction of entry and exit in Somalia. All these measures brought key constitutional and legal interests.

Constitutional Perspective

A Constitution is a fundamental and supreme law of any sovereign state. It provides definition for citizenship, prescribes citizens' rights, responsibilities, obligations and duties. It also distributes, secures and limits authority and powers, aggregates and articulates aspirations and interests as well as outlining procedures for actions, and interactions and sanctions default.³ The Constitution of Somalia as the supreme legal instrument does not have any specific provisions on the subject of disaster management, despite being one of the world's lengthiest constitutions. The exclusion of disaster management in the constitution may probably be explained on one main ground. During the time of formation of the Constitution, disaster management was not considered as such a significant subject as to merit the attention of the constitutional makers. Later alone the constitution is the normative source of law thereby making a provision in this Constitution was necessary.

¹ COVID-19 is an infectious disease caused by a new coronavirus first identified in December 2019. Coronaviruses are a family of viruses known to cause by Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2). As of June 2020, there is no vaccine yet to prevent COVID-19, and no specific treatment for it, other than managing the symptoms. On March 11, 2020, the World Health Organization (WHO) declared that an outbreak of the viral disease COVID-19, had reached the level of a global pandemic.

² As of the report on 22/june/2020

³ Fu, Keng YC, Yi HC, et al. Probabilistic integrated risk assessment of human exposure risk to environmental bisphenol A pollution sources. *Environ Sci Pollut Res.* 2016;23(19):19897–19910.

This documentary attempts to exhaust how the Covid-19 as perhaps one of the pandemics affecting Somalia in recent history, seems to challenge the legal concept of Human Rights.

The Right to Life

The right to life is deemed inherent to every human being and the very basic for the enjoyment of all other rights. Under Article 13 of the Constitution of Somalia provides that everyone has a right to life. With regards to the healthy dangers brought about by the Covid-19 pandemic, it clearly shows how this right is and has been infringed with, off course, the failure of government. This contagious disease of Covid-19 has a serious risk to the health which puts the life of vulnerable members of the community such as people with weak immune system due to underlying health issues among others as main victims.⁴

The state being one of the countries that has ratified the African Charter is obliged to maintain its citizens' right to life and guaranteeing their health. With the current reports, Somalia is registering an exponential increase in the number of deaths caused by the fallen pandemic.

Right to Health Care

The preamble of the 1946 World Health Organization (WHO) constitution defines health as a state of complete physical, mental and social wellbeing and not merely the absence of disease or infirmity.⁵ Under article 27 (2) of the Federal Constitution of Somalia, provides the rights to health care and no one should be denied emergency health care for any reason, including social, political and economic status. However, Covid-19 brings into focus the challenge that affects the rights to health as one of the fundamental rights in Somali; among other challenges include lack of creation of National Centre for Disease Control and the setting up of covid-19 specialized facilities.

⁴ Patricia Achan Okiria, 'Human rights-based effective response to COVID-19 in Uganda', (7th April 2020), *New Vision Newspaper*, Uganda, Kampala

⁵ See the preamble of the WHO, the constitution was adopted by the international health Conference held in New York from 19 June to 22 July 1946, signed on 22 July 1946 by the Representative of 61 States (*Official Record Wld Hlth Org.*, 2, 100) and entered into force on 7th April 1948.

Right to Consent in medical care

The Constitution of Somalia is the supreme law of the land, thus, any law, culture or custom that contradicts the provisions of the constitution shall be null and void as cited in Article 4 (2). This means the Constitution takes precedence over all laws, in this case, all healthy laws such must adhere to its provisions or else it may be nullified.

Nobody should be subjected to medical experimentation, forced medical examination, or given treatment without expressed consent.⁶ In the eve of the Covid-19 lockdown, citizens from abroad were forced to medical examinations and quarantines in an attempt to prevent transmission and minimize the impact of the virus even found negative. This creates a conflict of constitutional rights such as right to life, health and the right to be treated with respect and dignity.

The right to Access Information

The right to information⁷ is a fundamental right and an inherent part of the right to freedom of opinion and expression.⁸ During the Covid-19 pandemic, the right to seek, receive and disseminate information should be processed free of charge and priority be given information on health issues and other aspects of the crisis. The Federal and state governments of Somalia should ensure that the information they provide to the public regarding Covid-19 is accurate, timely and consistent with constitutional rights principles. All information about Covid-19 should be accessible and available in all languages (Maay and Maxaa-tiri)⁹. This should include accepted sign language interpretations for Radio/Televised announcements, or websites that are accessible to people with vision, hearing and learning disabilities among others.

⁶ Article 15 (3) of the Federal constitution of Somalia states that, every person has the right to physical integrity, which cannot be violated. No one may be subjected to medical or scientific experiments without their consent or, if a person lacks the legal capacity to consent, the consent of a near relative and the support of expert medical opinion.

⁷ See Article 32 (1) of the Federal Constitution of Somalia states that every person has the right of access to information held by the state.

⁸ See article 18 of the federal constitution

⁹ See Article 5. The official language of the Federal Republic of Somalia is Somali (Maay and Maxaa-tiri), and Arabic is the second language

Right to Education

This right is recognized under Article 30 (1) of the Constitution of Somalia which provides education as the basic right for all Somali citizens. The Covid-19 pandemic has affected educational institutions globally including Somalia, leading to the partial and total closure of schools, universities and other institutions of higher learning. The Federal and state governments have temporarily closed educational institutions in an attempt to contain the spread of Covid-19; this affects hundreds of Somalia students. Ideally, the government should have adopted a variety of advanced technological solutions to ensure the continuation of learning and teaching activities virtually in respect of their constitutional rights.

Right to Privacy and Confidentiality

Everyone, irrespective of their race, nationality, gender and occupation, should be confident that their sensitive personal information such as names, diagnosis or medical history is treated with the utmost care and confidentiality by the government, health-care workers and public or private entities. In order to prevent stigmatization and discrimination of recovered Covid-19 patients as well as build trust and open channels of communication between patients and health-care workers. Ready access to testing service and enhanced compliance to public health guidance and clinical advices could assist to a large extent.

The right to privacy is yet to be explicitly incorporated in the Somali constitution; however, the same comes into existence under Article 15 (1) and clause 2 of the constitution which provides that every person has the right to liberty and personal security. Since the Constitution of Somali does not specifically guarantee 'right to privacy', the determination of privacy as a right completely rests upon the interpretation of the judiciary and enactment of laws by the parliaments.

Application of International Human Rights Laws

Somalia is a state party to various laws at international and regional levels of human rights organizations. At the international level, the applicable laws to be reviewed include; the International Covenant on Civil and Political Rights (ICCPR),¹⁰ the international covenant on economic, social and cultural rights (ICESCR)¹¹ and the Universal Declaration of Human Rights (UDHR).¹² While at the regional level, the applicable laws to be reviewed will include; the African Charter on Human and Peoples' Rights¹³ Among others.

Right to Health: Under article 25(1) of the UDHR provides that the standard of living is adequate for the health and wellbeing of all people such include food, housing, medical care and security in case of sickness. The International Covenant on Economic, Social and Cultural Rights (ICESCR), also recognizes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.¹⁴ Though, the right to health is not absolute.¹⁵ The International Covenant on Civil and Political Rights (ICCPR), of which Somalia is also a party, offers protection of such rights. It permits derogation of obligations in case of national emergency.¹⁶

Protection of Medical Workers: Health care workers are part of the machinery of constitutional rights defenders, being the frontline workers a number of doctors and other medical workers have been contracted with Covid-19 in Somalia, all in effort to curb the menace. This could be attributed to the insufficient Personal Protection Equipment (PPE) such as protective suits, goggles and sanitizer to use while treating Covid-19 patients. Article 12, 2 (c) of the ICESCR requires states to take steps for the prevention of occupational diseases. While the same article provides that the state should create conditions which would ensure that all medical service and medical attention in the event of sickness are protected. Thereby risking their lives in this case the government can

¹⁰ Somalia ratified the ICCPR on 24 Jan 1990

¹¹ Somalia ratified the ICESCR on 24 Jan 1990

¹² UDHR was adopted on 10 December 1948

¹³ Somalia ratified the African Charter on Human and Peoples' Rights on 31 June 1985

¹⁴ See, Article 12 (1) ICESCR

¹⁵ See, art.4 ICESCR

¹⁶ See Article 4 (1) ICCPR, this article need to be invoked into two ways as states by the Human Rights Committee's General Comment No. (G.C) 29, (1) the situation must amount to a public emergency that threatens the life of the nation. (2). there must be an officially proclaimed a state of emergency.

be held responsible for putting medical workers to treat Covid-19 patient without prior provisions of PPE to protect them.

It was confirmed that seven medical workers including the Secretary-General of Somali Medical Association is among those infected. More so, in Somalia's Capital Mogadishu, Martini hospital which is the country's only medical hospital dedicated to treat the growing number of coronavirus patients has exposed the health workers to do their job without enough PPE thereby risking their lives¹⁷

Right to Information: The right to seek and receive information is recognized by Article 19 (2) ICCPR. In this regard, it is an important aspect of the right to health, and providing access to information concerning the major health issues in the society. Limitations to freedom of expression are permitted under article 19 (3) if relevant measures are proportionate to the achievement of certain enumerated ends, including the preservation of public order. Perhaps the suppression of bad news, rumors and conspiracy theory about Covid-19 could prevent panic and public disorders.¹⁸ The Somali government kept from the public information about the true nature of the disease. This could have mitigated the deaths in Mogadishu and some other parts of the country.

The right to life: Under article 6 of the ICCPR, one must not be arbitrary deprived of his or her life, so non-arbitrary deprivations are permissible. The right to life can legitimately be balanced against other rights, even if the biological disasters such Covid-19 crisis. The right to life is deemed as absolute such no one should be deprived of it even in terms of such pandemic after all it's the governments obligation to look after the general wellbeing of its citizens.

Freedom of movement

As per article 12 of the ICCPR, gives basic elements of liberty and freedom of movement within the land, air and sea of a country.¹⁹ This restriction can only be limited in exceptional circumstances, including protection of public health emergency or any other natural disaster.²⁰

¹⁷ Mohamed Adow, Somalia: only one hospital to treat country's Covid-19 patients' (2020), available at: www.aljazeera.com/news/2020/04/somali-hospital-treat-countrys-covid19-patients.

¹⁸ S. Joseph 'Covid-19 and Human Rights: Past, Present and Future,' *journal of international Humanitarian Legal Studies*, (2020).

¹⁹ See also article 21 of the Federal Constitution of Somalia

²⁰ See article 12 (3) ICCPR

During the Covid-19, Somali's authorities' denial of issuing exit or entrance visas to its citizens undermines the citizen's rights to leave and return as established in the universal Declaration of human right, as well as their right to family unity. The imposition of night curfew and restrictions on movement has also become an excuse for police brutality. Citizens have been assaulted by police officers for lawful acts, such as sitting in front of their homes. This resulted to the death of a young man who sat outside of his house.

Globally, governments have imposed different degrees of lockdowns in order to curb their country's spread of the pandemic. Somalia is also in part of the efforts however it has to face some standoff with its people who see the lockdown as a kind of violation of their fundamental right of freedom of movement.

Conclusion

Preventing the spread of Covid-19 by Somali government is a Constitutional obligation to its citizens since it affects the bill of rights in their indivisibility and their independence. Adopting a human right-based approach is not only the right thing to do, but it's also critical for the success of the countrywide Covid-19 response. The federal government must realize that the purpose of the aforementioned measures against the pandemic is to protect the lives of its citizens which is one of its mandatory responsibilities as enshrined both in the federal constitution as well as other international human rights charters. These rights among others include the right to life, the right to health and the right to access information which every responsible government needs to protect and preserve from the threat posed by the Covid-19 by taking pro-active measures against the spread of the transmission as well as deaths.

All errors are mine. The views exposed here are entirely my own and not official statements of the Kasmaal Forum in Uganda-Kampala.

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Ahmed Kheir Osman is a Master's Student in Public International Law at Kampala International University (School of Law). You can leave your comments on Yihoop80@gmail.com.