



Emergency Powers and COVID-19: Solomon Islands as a case study

This response reproduces the article [“Together or apart against COVID-19? The Solomon Islands State of Emergency”](#) by Georgina Keka and Anouke Ride, published on 5 June on the Asia Pacific Policy Society Policy Forum website, with some additional data added to update the analysis.

What were the main mechanisms used to handle the COVID 19 challenges, both health and economic, in your country? How well did they work for the purpose?

The World Health Organization (WHO) on 11 March declared the novel coronavirus (COVID-19) outbreak a global pandemic. Two weeks later, on 25 March, the Solomon Islands Governor General declared a State of Emergency (SOE) under s.16 of the Solomon Islands Constitution (see next section for more details). Governor-General Sir David Vunagi said the Government [recognised that the importation of COVID-19 could be catastrophic](#) considering the limited health resources the country has. “Solomon Islands will only be safe if COVID-19 does not enter Solomon Islands,” he said.

At the time, even though there were no cases in the country – and in fact to this date, no cases have been reported at all – the threat of COVID-19 seemed great. The population was already susceptible to transmissible diseases, which cause 22 per cent of deaths nationwide. Hepatitis B alone was responsible for 57 deaths in 2017, and there were 395 reported cases of tuberculosis in 2018. Urban overcrowding, lack of water and sanitation and poor hygiene are contributing factors to disease spread, and lack of early detection and treatment limits control of disease.

On 27 March, the SOE was extended to four months. Measures imposed under the SOE focused on controlling people’s movement, closing borders, restricting movement of vessels and aircraft, allowing special funds to implement public safety measures, and to temporarily close public places. Some economic sectors, like informal food and betel nut markets in Honiara, were banned completely, whilst other sectors were subject to more limited restrictions. For example, nightclubs are currently banned but kava bars and casinos are open. The largely Chinese-owned shops in Honiara were allowed to continue to operate with voluntary social distancing guidelines. Public transport such as buses – minivans which are often overcrowded – were allowed to operate without any restrictions. Meanwhile, with the closure of satellite markets, Honiara Central Market was more crowded than ever. Schools and educational institutions closed for eight weeks from 30 March and many people, particularly youth, went back to their home villages. Members of Parliament were then given \$250,000 to help their constituents in Honiara move back to the villages.

In relation to finance, the normal review of budgets by Parliament has been suspended with Parliament not sitting since 8 April. Additionally, two major financial decisions were made by the government – to cut 780 “non-essential” public service salaries by 50 per cent, and to repackage pre-existing and new donor funding as a stimulus package. The initial stimulus package included funding for key ministries, notably agriculture, and state-owned enterprises. Currently, individuals and

businesses are able to apply for certain types of assistance, to be reviewed on a case by case basis. Targeted assistance for tourism was included, but not for those affected by the closure of informal markets or temporary gaps in pay packets.

In July, despite no cases of coronavirus yet being reported in Solomon Islands, the Governor General issued another state of emergency proclamation, which was endorsed by the National Parliament. This has now placed Solomon Islands under a SOE until 25 November, one of the longest SOEs declared around the world. There have been some concerns raised by the Opposition Party, the media and civil society leaders about whether the SOE has been necessary (see below for more).

Was a constitutional emergency power available? If so, was it used? If not, why not?¹

Section 16 of the Solomon Islands Constitution explicitly provides for the imposition of a state of emergency, when the country is at war or when “there is in force a declaration made under the provisions of this section”. The Constitution permit the the Governor-General (who is the ceremonial head of State, usually required by Convention to act on the advice of the Prime Minister of the country) to declare, by proclamation, “at any time” that a state of public emergency exists and to publish that proclamation in the Gazette. The declaration will last 7 days, unless before its expiration it has been approved by a resolution of Parliament supported by the votes of at least two-thirds of all the members. If Parliament is not sitting at the time, it may be reconvened within 2 weeks from the day of the Proclamation, at which point the period of 7 days will commence.

The Governor General declared the State of Emergency (SOE) on 25 March,² when the National Parliament was not in session. His Proclamation made clear that it triggered the country's *Emergency Powers Act*,³ under which the PM can make implementing orders.⁴ Section 3 of the Act gives the Prime Minister powers to:⁵ (a) declare a public place to be a quarantine station; (b) prohibit the entry of a person or a class of persons into Solomon Islands; (c) direct a person or a class of persons to comply with quarantine procedures; (d) take possession of or requisition property to establish a quarantine station; (e) declare a public place to be an emergency zone; (f) restrict the movement of a person for the maintenance of order & security of the public in an emergency zone; (g) temporarily close a public place; (h) restrict the movement of vessels and aircrafts; (i) suspend access to online media outlets or media outlets; (j) make an Order for the National Disaster Council to coordinate and implement emergency operations; (k) order the release of special funds provided for under other laws of Solomon Islands to implement public safety measures.

On 27 March, the Prime Minister issued the *Emergency Powers (Covid-19) Regulations 2020*⁶ which listed a range of orders which were purportedly made to protect the country from the pandemic and to prevent the spread of virus if there were cases.⁷ Parliament was recalled on 7 March to hold an

¹ This section was drafted by Charmaine Rodrigues, Constitution Transformation Network.

² <https://www.rnz.co.nz/international/pacific-news/412607/solomons-declare-state-of-public-emergency-because-of-covid-19>;

³ http://www.paclii.org/sb/legis/consol_act/epa197.rtf

⁴ <https://www.solomontimes.com/news/governor-general-declare-state-of-public-emergency-in-solomon-islands/9655>

⁵ <https://www.solomonislandsembassy.com/news-and-media/hon-prime-minister-manasseh-sogavare-statement-to-the-nation-on-the-state-of-public-emergency/>

⁶ https://solomons.gov.sb/wp-content/uploads/2020/04/GAZ-33-SUP-23-26TH-MARCH-2020_.pdf

⁷ <https://www.solomonstarnews.com/index.php/news/national/item/23346-premiers-briefed-on-emergency-powers-covid-19-regulations-2020>

emergency sitting to debate the SOE. On 8 April, the National Parliament approved the SEO Proclamation which then meant that the SOE would be in force for up to four months, unless revoked by Parliament or the Governor General.⁸

On 19 May, the Prime Minister issued another regular, *Emergency Powers (Covid-19) Regulations (No.2) 2020* which gave the PM extended powers, which he used to impose major restrictions on freedom of media. He could also close a business if it failed to comply with emergency orders, exempt foreign sea vessels from the border closure and destroy illegal properties such as betelnut stalls erected in public places.⁹

On 24 July, when the SOE was due to expire at the end of the initial four months, it was replaced by another Proclamation of SOE by the Governor General, which provided time to allow next steps to be debated in Parliament.¹⁰ On the same day, the Prime Minister issued *Emergency Powers (COVID-19) (No.3) Regulation 2020*.¹¹ Despite no cases of COVID-19 yet being reported, on 29 July the Solomon Islands National Parliament extended the SOE by another 4 months, to 25 November 2020.¹²

In response to the second extension of the SOE, Opposition Leader Matthew Wale has called for new emergency legislation to help the country better cope with the Covid-19 pandemic and any such similar health emergencies or national disasters.¹³ Currently in Solomon Islands, a constitutionally-based SOE is the only available option which enables the Government to take the kind of drastic public health actions implemented to date. However, using an SOE also gives the Government much broader powers, to suspend a number of fundamental rights enshrined in the Constitution. These have been used, in particular the power to restrict freedom of the media. The Prime Minister has specifically stated that COVID-19 Regulation No.2 specifically includes a provision which “prohibits a person from spreading rumors and false information during the state of public emergency that is likely to create or foster public alarm, anxiety or disaffection or to produce public detriment...[which apparently is intended to] stop people from spreading lies that may cause social disharmony or public alarm and anxiety under the pretext of freedom of expression”.¹⁴ The Prime Minister also stated that “Regulation 14 of the Emergency Powers (COVID-19) (NO.2) Regulation 2020 gives me the power to suspend access to media outlets under certain circumstances as outlined in that particular Regulation by way of an Order”.¹⁵

⁸ <https://www.solomontimes.com/news/four-months-state-of-public-emergency-for-solomon-islands/9707>; <https://www.rnz.co.nz/international/pacific-news/413733/solomons-parliament-extends-state-of-public-emergency>

⁹ <https://corporate.southpacificislands.travel/new-covid-19-regulations-for-solomon-islands/>

¹⁰ <http://www.parliament.gov.sb/>

¹¹ <https://www.solomontimes.com/news/gg-declares-state-of-public-emergency-still-exists-in-soiomon-islands/10048>

¹² <https://www.solomontimes.com/news/four-months-state-of-public-emergency-for-solomon-islands/9707>; <https://www.rnz.co.nz/international/pacific-news/413733/solomons-parliament-extends-state-of-public-emergency>

¹³ <https://www.rnz.co.nz/international/pacific-news/422202/call-for-new-covid-19-emergency-legislation-in-solomon-islands>

¹⁴ <https://www.solomonstarnews.com/index.php/news/national/item/23666-media-to-report-responsibly-pm>

¹⁵ Ibid.

Were other forms of emergency power used? If so, what were they? Were they consistent with the Constitution?

No. As noted above, the Opposition party has specifically raised concerns that Solomon Islands only has the constitutional state of emergency power available to be used to enable a Government to take extraordinary action to address a crisis. Opposition Leader Wale noted in a statement following Parliament's endorsement of the second 4-month long SOE in July 2020 that "Once the governor general delegates those powers, parliament doesn't really have a role anymore. And so there are no checks and balances and oversight being exercised... Unlike Australia and New Zealand where there were different alert levels, 1 through 4, - Solomon Islands' emergency legislation was akin to jumping from 0 to 10 without anything in between".¹⁶

In either case, was the legislature involved in the approval or scrutiny of the measures taken? How effective was legislative involvement?¹⁷

Yes, as noted earlier, Parliament was required to review and endorse the Governor General's Proclamation of a State of Emergency within 7-21 days (depending on whether Parliament was sitting), but MPs were given only a binary choice of endorsing the decision to issue the SOE or rejecting it. The terms of the SOE could not be reviewed.

Likewise, the *Emergency Powers Act* gives the Governor-General (presumably acting on the advice of the Prime Minister, based on convention) to issued regulations, but these are not subject to scrutiny. The Act makes no reference to Parliament at all and section 4(2) states that: "Any regulation made under section 2, or any rule or order made thereunder, shall have effect notwithstanding anything inconsistent therewith in any law, and, to the extent of the inconsistency, the law shall have no effect so long as the regulation, rule or order remains in force" (emphasis added).

The National Parliament in Solomon Islands in any case, does not have a reputation for strong oversight. Although parliamentary committees do now exist and do work, the nature of the Westminster parliamentary system and the fact of a unicameral House, means that the Prime Minister's allies dominate the chamber and are very unlikely to reject any proposed Bill or regulation submitted by the Government. Interestingly, the Parliament website indicates that the Public Accounts Committee, which is responsible for overseeing Government expenditures, has been sitting in August but it is not clear that they are specifically overseeing expenditures in relation to COVID-19.

Were there other forms of oversight of the responses to the pandemic; for example, through courts?

The media has attempted to undertake oversight, by publishing articles on what the Government has been doing and reporting on Opposition statements. However, it is not clear what impact this has had, and the Prime Minister has made very clear statements that threaten the independence of the media and indicate the possible risk of producing reports unfavourable to the Government.¹⁸

Another possible source of oversight is Solomon Islands Auditor General, an independent accountability institution which was established under the Constitution and has received considerable institutional strengthening support over the years to empower it to properly oversight the

¹⁶ Above n.12.

¹⁷ This section was drafted by Charmaine Rodrigues, Constitution Transformation Network.

¹⁸ Above n.13

Government. However, it is not clear whether they are currently working on any COVID-19 related audits, and in any case, such reports would only be available for publication in 2021 at the earliest, unless specifically expedited.

What positive or negative lessons can be taken from this experience in your country for the use of emergency procedures and the role that representation plays?

This SOE is one of only three State of Emergency declarations applied to Honiara and surrounds since Solomon Islands became independent in 1978. Other SOEs were imposed during the civil conflict in 1999, and for a month in Honiara just after the April 2014 floods which caused widespread damage, 12,000 people to be displaced, and 23 deaths. This was the first time a State of Emergency has been imposed prior to an actual crisis, as there are no current cases of the virus. Examination of the use of this SOE is therefore important.

While the intent of SOEs is for control and rapid response to emergency situations, there needs to be care they do not also cause conflict and confusion. For instance, the closure of informal markets was handled well in some cases, with police talking calmly and advising market sellers to close up and go home. But in some cases, these closures were handled violently. In White River, police seized goods and cash from roadside sellers, which led some disgruntled people to loot goods from a nearby Chinese-owned store. Betel nut sellers operating during the SOE period have described how they give goods or money to law enforcement officers in order to continue their trade. Such conduct adds to distrust of officers in high crime communities, which in turn fuels a lack of reporting of crimes.

Secondly, accountable and transparent decisions are less likely to cause disagreement, flouting of rules or other forms of dissent such as protests or sabotage. Ruth Liloqula, CEO of Transparency Solomon Islands (TSI), said information provided by the Executive Government is not enough:

“The Executive Government, whilst providing messages, should be offering more targeted messages than what has been coming out. The role of oversight committees, internal controls and national audit function must continue and not be taken over by the pandemic oversight committee or threatened by them. Under the cover of SOE, as a result of the pandemic, there is very little transparency, and no accountability on the public funds paid to members of Parliament.”

Thirdly, clear and consistent information is needed. In the first lockdown from 10 April, 63 people were arrested for breaching curfews. However, their [cases were thrown out](#) because of incorrect procedures. Confusing statements were made about what time the lockdown started and stopped. The communications about the second lockdown were clearer, and the number of people breaching it far fewer, with only 22 arrested. Good communication will limit people’s interaction with the justice system over conflicts with State of Emergency matters.

Finally, in this economic downturn, which the Central Bank of Solomon Islands has classified as a recession, it is desirable to keep disruptions to economic activities at a minimum and be attentive to the impact of the crisis on poverty. The informal sector has faced a significant shock with the closure of informal markets. For instance, the three largest informal markets – White River, Fishing Village and Henderson – alone have a [combined gross value per annum of roughly SBD48 million \(AU \\$8 million\)](#), and provide the only source of household income for more than 80 per cent of vendors.

With many losing formal jobs in industry, and pay from civil service positions, the importance of informal incomes is likely to be even greater. A [survey of 100 businesses](#) by the Solomon Islands Chamber of Commerce and Industry found 55 of them have laid off staff or are planning to lay off

workers. 34 per cent of these businesses have to lay off more than 40 per cent of their workforce. In addition to this, businesses have faced at least 71 hours of disruption to normal business caused by trial lockdowns.

The State of Emergency is currently in place until 25 November 2020, but there are lessons to be learned from what has happened so far. These include the need for better coordination, consultation and expertise from ministries and stakeholders, attentiveness to conflict factors, and prioritised assistance to people most affected by the situation. Addressing these issues could help bring people together and improve the Solomon Islands' response to COVID19.

Biography: *Georgina Kekea is a freelance journalist working in the Solomon Islands Media industry since the year 2000. My current affiliation in newsroom work is with the Solomon Times Online. I also do work with Radio Australia's both Pacific Beat and Tok Pisin Service. Currently I am the Vice President of the Pacific Environment Journalist Network (PEJN) and the President of the Media Association of Solomon Islands (MASI).*