



World Justice  
Project

**ACCOUNTABLE  
GOVERNANCE  
AND THE  
COVID-19  
PANDEMIC**

# Accountable Governance and the COVID-19 Pandemic

Responding to a public health emergency such as COVID-19 requires effective government institutions capable of delivering both preventive and emergency medical care while also maintaining other essential public services. Regardless of the exigencies of the crisis, it must carry out these basic functions in accordance with the rule of law—open to the public, contestable in the courts and through elections governed by law, with the consent of the legislature, and reviewed by audit and other oversight bodies.

Any exceptions to these fundamental pillars of rule-of-law-based governance must be strictly necessary, proportionate to the crisis, and time-limited. To deviate from such standards seriously risks pandemic responses that are both unaccountable and ineffective.

Unfortunately, the pandemic arrives at a time when the steady erosion of the rule of law over the last several years has been particularly acute, as documented by the World Justice Project—particularly with respect to constraints on executive powers. Reports from around the world suggest a wide range of responses to the pandemic, some well within the boundaries of established legal norms, and others that suggest a manipulation of the emergency for ulterior motives, both short- and long-term. Even before COVID-19 struck, executives around the world were increasingly turning to emergency decrees—often under a guise of combating terrorism—to undermine and attack political opponents, including judges, lawyers, and journalists.<sup>1</sup>

*The pandemic risks reinforcing these trends and further eroding checks on executive powers and other aspects of accountable governance.*

The examples cited below—on such issues as abuse of emergency powers, reduced functioning of legislatures and courts, interference with electoral accountability, and attacks on civil society and journalists—are not exhaustive and may or may not reflect a persistent trend. But they do illustrate growing and worrisome pressures on rule of law values and practices in some countries and portend a worsening of the pandemic itself.

1. Turkey under President Recep Tayyip Erdoğan is a good example of this trend. See WJP Rule of Law Talk podcast, Sept. 4, 2019, <https://worldjusticeproject.org/about-us/connect/podcast/fionnuala-n%C3%AD-aol%C3%A1in-emergency-laws-and-human-rights>. See also United Nations, General Assembly, Human rights impact of policies and practices aimed at preventing and countering violent extremism: Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (21 February 2020), available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/045/67/PDF/G2004567.pdf?OpenElement>.





## Constraints on Executive Power

This dimension of the rule of law, which entails limiting the powers of the executive and holding them accountable for misconduct, is of paramount concern in the face of a national emergency when quick and decisive executive action to mitigate and contain the threat is required. There is no question that a deadly pandemic like COVID-19, which spreads quickly with little knowledge of how to treat or kill the virus, calls for strong emergency measures to protect all citizens, especially the most vulnerable.

In general, emergency measures should incorporate five essential features in order to strike a proper balance between liberty and security. They should be in accordance with the law; based on a legitimate objective; strictly necessary in a democratic society; the least restrictive and intrusive means available; and not arbitrary, unreasonable, or discriminatory.<sup>2</sup> These principles, which are non-binding under international law, also state that “[p]ublic health may be invoked as a ground for limiting certain rights in order to allow a state to take measures dealing with a serious threat to the health of the population or individual members of the population. These measures must be specifically aimed at preventing disease or injury or providing care for the sick and injured.” More recently, in the context of COVID-19, the UN Human Rights Committee and other bodies have underscored the importance of strictly limiting the scope of emergency measures in substance, time, and geographical space to allow a return to normalcy as soon as possible, with full respect for rights to life, non-discrimination, and other non-derogable rights.<sup>3</sup>

In many countries, laws and procedures were already in place to ensure proper limits and oversight of executive powers in emergencies, though their conformity with international rule of law and human rights norms varied widely.<sup>4</sup> In others, the COVID-19 pandemic presents a new opportunity for leaders with authoritarian tendencies to abuse their emergency powers for political gain.

Prime Minister Viktor Orban of Hungary is the leading example of this potential threat to the rule of law. On March 23, 2020, he won backing from a Hungarian parliament controlled by his allies for open-ended emergency powers that granted him virtually unfettered control of government.<sup>5</sup> After much domestic and international criticism, the Orban government pushed through a new “medical emergency” law with provisions such as indefinite renewal after six months, authority to use military power to enforce the decree, and blocks on parliament from vetoing or overriding related emergency decrees.<sup>6</sup> In Israel, the then-interim government of Prime Minister Benjamin Netanyahu initially used the crisis to deploy military units and other national security tools (e.g., surveillance by security services) to enforce a strict lockdown. His government also suspended any non-urgent judicial processes, including an impending criminal trial against him on corruption charges. After objections were raised in parliament and in courts, many of these measures were circumscribed in some fashion.<sup>7</sup>

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2. Siracusa Principles on the Limitation and Derogation Provisions of the International Covenant on Civil and Political Rights, 1985, <https://www.icj.org/wp-content/uploads/1984/07/Siracusa-principles-ICCPR-legal-submission-1985-eng.pdf>. Article I.B.iv.25. These principles were developed by a group of leading international jurists convened by the American Association for the International Commission of Jurists after decades of experience with the way emergency powers, such as military rule and states of exception, were abused or manipulated by leaders to retain power in the name of other goals such as repressing communism or countering terrorists.

3. UN Human Rights Committee, Statement on Derogations from the Covenant in Connection with the COVID-19 Pandemic, 30 April 2020, <https://www.ohchr.org/Documents/HRBodies/CCPR/COVIDstatementEN.pdf>; Venice Commission, Report - Respect for democracy, human rights and the rule of law during states of emergency, reflections, taken note of by the Venice Commission on 19 June 2020 by a written procedure replacing the 123rd plenary session, 19 June 2020 [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2020\)014-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2020)014-e) (“[Emergency] measures are ... subject to the triple, general conditions of necessity, proportionality and temporariness.”)

4. For an analysis of how 74 countries have responded to the pandemic with respect to states of emergency or other exceptional legal and constitutional measures and their accordance with rule of law and human rights principles, see Joelle Grogan, “States of Emergency,” *Verfassungsblog*, May 26, 2020, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3611057](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3611057).

5. These included such powers as canceling elections and referenda, criminalizing the publication of false or distorting facts that interfere with disease control, and shutting down all but the Constitutional Court, which his allies control. “Hungary’s Orbanistan: A Complete Arsenal of Emergency Powers,” *Verfassungsblog*, Center for Global Constitutionalism, April 2020, <https://verfassungsblog.de/hungarys-orbanistan-a-complete-arsenal-of-emergency-powers/>.

6. Kim Lane Scheppele, Princeton University, webinar presentation on “Pandemic and Dictatorship in the EU: The Case of Hungary,” Democracy Reporting International, June 9, 2020. See also “Is the State of Emergency in Hungary Really Over?” Friedrich Naumann Stiftung, June 29, 2020, <https://fnf-europe.org/2020/06/29/is-the-state-of-emergency-in-hungary-really-over/>.

7. Israel has been operating under a state of emergency since its founding in 1948. Tamar Hostovsky Brandes, <https://verfassungsblog.de/israels-perfect-storm-fighting-coronavirus-in-the-midst-of-a-constitutional-crisis/>.



In another variant of this executive disregard for legal boundaries, some political leaders have set an example that suggests either they or their supporters need not follow the public health rules recommended by their advisors or adopted by local officials to contain the virus. In the United States, for example, President Trump ignored an executive order of the governor of Michigan to wear face coverings when visiting an automobile plant,<sup>8</sup> and has exempted himself from White House rules requiring face masks on site,<sup>9</sup> implying that he is above the law. In a similar vein, President Jair Bolsonaro of Brazil initially dismissed calls for a declaration of a public health emergency and fired his minister of health for calling for more stringent measures.<sup>10</sup> Brazil and the United States are now the two leading global epicenters of the contagion.

Despite such mixed signals, hundreds of millions of people around the globe have complied with government orders to stay home for all but essential business, an extraordinary signal that the vast majority of people are committed to a law-abiding society. Nonetheless, in some countries, government responses to the pandemic have been overly militarized and repressive, for example in India, South Africa, and Kenya. In the Philippines, President Duterte suggested police use “shoot to kill” tactics to restrain violators of the lockdown.<sup>11</sup> Striking evidence has emerged of government agents enforcing lockdown measures and curfews against people on the basis of ethnicity, race, religion, and gender identity.<sup>12</sup> Even public health experts are coming under verbal attack and harassment for encouraging government leaders to adopt stronger legal measures to control the virus.<sup>13</sup>

*Rule of law culture and values are threatened by both excessive use of government authority and attacks on its legitimate exercise in the context of the pandemic.*

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8. Anne Gearan, “Trump skips a mask in public during tour of Michigan auto plant,” *The Washington Post*, May 21, 2020, [https://www.washingtonpost.com/politics/trump-skips-a-mask-in-public-during-tour-of-michigan-auto-plant-that-requires-them/2020/05/21/6c3563f6-9b77-11ea-ac72-3841fcc9b35f\\_story.html](https://www.washingtonpost.com/politics/trump-skips-a-mask-in-public-during-tour-of-michigan-auto-plant-that-requires-them/2020/05/21/6c3563f6-9b77-11ea-ac72-3841fcc9b35f_story.html).

9. Eliza Relman, “Trump Orders White House Staffers to Wear Masks,” *Business Insider*, May 11, 2020, <https://www.businessinsider.com/trump-orders-white-house-staffers-to-wear-masks-2020-5>.

10. Marina Lopes, “Brazil’s Bolsonaro fire Health Minister Mandetta after differences over coronavirus response,” *Washington Post*, 16 April 2020.

11. Human Rights Watch, “Kenya: Police Brutality During Curfew,” *Human Rights Watch*, 22 April 2020, <https://www.hrw.org/news/2020/04/22/kenya-police-brutality-during-curfew>; see also “‘Shoot them dead’: Philippine President Rodrigo Duterte orders police and military to kill citizens who defy coronavirus lockdown,” *CBS News*, 2 April 2020, <https://www.cbsnews.com/news/rodrigo-duterte-philippines-president-coronavirus-lockdown-shoot-people-dead/>.

12. See e.g. <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25889&LangID=E>; <https://www.hrw.org/news/2020/05/05/china-covid-19-discrimination-against-africans>; <https://www.amnesty.org/en/latest/news/2020/05/refugees-and-migrants-being-forgotten-in-covid19-crisis-response/>; <https://www.aljazeera.com/indepth/opinion/police-covid-19-pandemic-excuse-abuse-roma-200511134616420.html>.

13. Malaka Gharib, “‘I Will Kill You’: Health Care Workers Face Rising Attacks Amid COVID-19 Outbreak,” *NPR*, 29 June 2020, <https://www.npr.org/sections/goatsandsoda/2020/06/29/883573061/i-will-kill-you-health-care-workers-face-rising-attacks-amid-covid-19>.



## Diminished Functioning of Legislatures, Courts, and Oversight Bodies

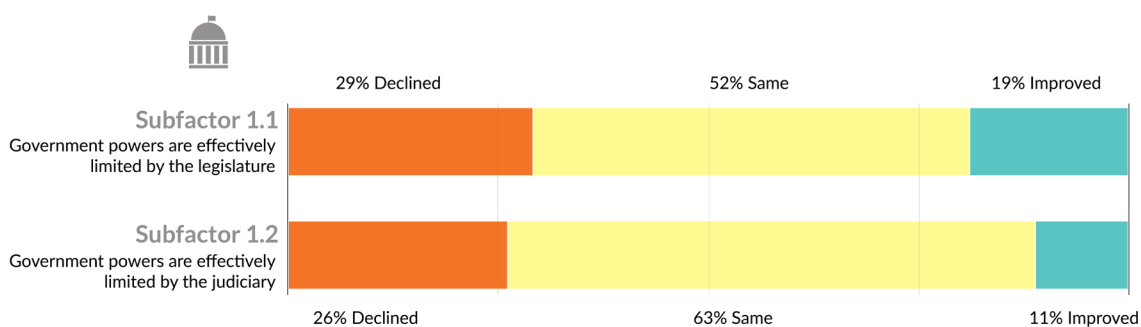
The pandemic has had an acute short-term effect on legislatures and judiciaries, which play critical roles as frontline responders to the crisis and as bulwarks against abuse of executive powers. A proper allocation of government powers in national emergencies would allow these bodies to continue to operate, at a minimum for carrying out the essential business of writing laws, monitoring executive actions, protecting fundamental rights, and adjudicating disputes relevant to addressing the crisis. Yet the lack of knowledge about how the virus is transmitted has spurred leaders of many parliaments and courts to shutter their doors for all but the most urgent business.

*While an understandable precaution for the short term, the limitations on parliamentary and judicial capacity, if prolonged, could upset the normal checks and balances critical to the rule of law in a number of contexts.<sup>14</sup>*

An extraordinary case is Sri Lanka, where the president dissolved the opposition-controlled parliament six months ahead of schedule, allegedly in hopes of winning a sweeping two-thirds majority and centralized powers in early elections. After the elections commission delayed setting a date due to the pandemic, President Rajapaksa refused to recall parliament despite constitutional provisions requiring it meet within three months of its dissolution. The Supreme Court turned down opposition requests to reconvene parliament, leaving the president, and his brother as prime minister, in power to govern without parliamentary approval, in apparent violation of the constitution.<sup>15</sup>

The diminished functioning of parliaments and judiciaries comes at a time when their ability to constrain executive power is already under stress, according to the *WJP Rule of Law Index*. For example, in the past five years, more countries declined than improved on their Index score measuring whether government powers were effectively limited by the legislature or by the judiciary.

**Figure 1. Changes in sub-factor scores 2019-2020**



\*Percentages are calculated out of 102 countries and the threshold for unchanging countries is a change in score between -0.05 and 0.05.

14. For a summary of the measures parliaments around the world have taken to curtail normal business and procedures, including cancelling hearings, sessions, and voting, see InterParliamentary Union, Country Compilation of Parliamentary Responses to the Pandemic, <https://www.ipu.org/country-compilation-parliamentary-responses-pandemic>.

15. Seerat Chaaba, "Coronavirus keeps Sri Lanka without a functioning parliament," *Deutsche Welle*, May 29, 2020, <https://www.dw.com/en/coronavirus-keeps-sri-lanka-without-a-functioning-parliament/a-53615108>; Asad Hashim, "Sri Lanka stares at constitutional crisis as polls delayed," *Al Jazeera*, May 22, 2020, <https://www.aljazeera.com/news/2020/05/sri-lanka-stares-constitutional-crisis-polls-delayed-200522072254187.html>. Elections have since been rescheduled to August 5.

Another vital rule of law instrument for checking executive power are independent watchdogs, inspectors general, auditors, and other oversight bodies established to monitor and report on how public monies are spent. Given the massive financial response to the pandemic to date—in the United States and European Union alone, over \$4 trillion had been allocated by April 2020 for loans, unemployment insurance, payroll protection, and other emergency economic measures<sup>16</sup>—these oversight bodies are more important than ever. But the speed of the response, combined with a debilitated legislative and watchdog infrastructure, risks impairing the ability of public health and other social services to spend wisely and effectively.

## Elections Delayed, Accountability Denied?

The holding of periodic, transparent, free, and fair elections for political offices is a cherished mechanism for peaceful transitions of power and an effective mechanism for holding leaders accountable to the law. Under international law, citizens have the right to vote, without unreasonable restrictions, “at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.”<sup>17</sup> States may derogate from this obligation in a public emergency only to the extent strictly required by the exigencies of the situation.<sup>18</sup> This critical limit on government powers, like many others, is already facing its own troubles, which the pandemic further exacerbates.

*In general, regularly scheduled elections should go forward during the pandemic as long as proper steps are taken to mitigate the public health risks associated with convening large groups.*

Authorities may need to postpone elections in the short term to put in place the necessary public health measures but otherwise should set a legal date and stick to it. Traditional elections usually require interactions with poll workers and physical contact with voting machines that could spread germs, but authorities in some countries have mitigated this through mandatory face masks, temperature checks, sanitary cleaners, and personal writing devices. One positive example is the impressive way in which South Korea carried off its national legislative elections in the midst of the crisis.<sup>19</sup>

While a handful of other countries have proceeded with regular elections with necessary precautions of physical distancing and other measures,<sup>20</sup> a growing number of jurisdictions have decided to postpone elections until the pandemic crisis subsides, raising obvious concerns regarding electoral accountability.<sup>21</sup> As of June 17, according to the International Foundation for Electoral Systems, local, provincial and national elections and referenda had been postponed in 66 countries and territories, 27 of them indefinitely.

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16. Andrew Soergel, “How Much Can America Spend on the Coronavirus Pandemic?” *US News*, 21 April 2020, <https://www.usnews.com/news/economy/articles/2020-04-21/how-much-can-america-spend-on-the-coronavirus-pandemic>; See also Douglas A. Redicker and Giovanna de Maio, “Europe and the existential challenge of post-covid recovery,” *The Brookings Institution*, 20 April 2020, <https://www.brookings.edu/blog/order-from-chaos/2020/04/20/europe-and-the-existential-challenge-of-post-covid-recovery/>.

17. Article 25(b), International Covenant on Civil and Political Rights, <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

18. *Ibid.*, Art. 4(1).

19. Andrew Jeong and Timothy W. Martin, “South Korea’s Coronavirus Test Run: How to Hold an Election,” *Wall Street Journal*, April 15, 2020, <https://www.wsj.com/articles/south-koreas-coronavirus-test-run-how-to-hold-an-election-11586948227>.

20. Elections with mitigating measures have taken place during the Covid-19 pandemic in such countries as South Korea, Israel, Mali, Guinea, Malawi, and the United States.

21. Parliamentary or local elections have been delayed in such European countries as Spain, North Macedonia, Poland, and the United Kingdom, [https://www.ifes.org/sites/default/files/elections\\_postponed\\_due\\_to\\_covid-19.pdf](https://www.ifes.org/sites/default/files/elections_postponed_due_to_covid-19.pdf).



## Civil Society and Media Under Attack

A healthy rule of law society requires checks on executive powers not only by separate branches of government but by citizens and journalists exercising their fundamental rights of expression, opinion, participation, association, and peaceful assembly. Unfortunately, dozens of studies have catalogued the steadily shrinking political space for civil society organizations and the media to carry out this vital role well before the COVID-19 crisis struck.<sup>22</sup>

The pandemic has had several immediate and direct effects that limit freedoms of expression and association even further. The lockdowns imposed far and wide to contain the disease have forced citizens off the streets just as popular protests were gathering steam in such places as Chile, Colombia, Hong Kong, and Algeria. While these measures may be necessary in the short term, they give citizens few good options to exercise their rights to hold government accountable - either move organizing and expression online, convene in groups at the risk of contagion, or mute their voices until the pandemic subsides. As evidenced by the series of public demonstrations against racism in the last few months, many people are choosing to take a middle path of assembling with precautions.<sup>23</sup>

Good public health practice to control epidemics calls for tracking how the virus spreads, to whom, and how quickly. The mobile phones in our hands can be a vital tool for tracing infections as they spread around a community and beyond. They can also become an easy entry point for violating rights to privacy, particularly against a regime's political opponents and critics. In several countries, such as China, Russia, and India, authorities allegedly are exploiting the crisis by combining data from location tracking apps, CCTV cameras with facial recognition, mobile phone data, drones, and credit card records to create, as one Russian opposition party put it, a "cyber-gulag" unlikely to end after the pandemic subsides.<sup>24</sup>

Some governments have gone further to exploit the crisis to silence critics. For example, in Azerbaijan, opposition leaders have been arrested and sent to jail for criticizing their government's response to the crisis.<sup>25</sup> New emergency laws and decrees criminalizing the spreading of misinformation about the virus or censoring reports about government missteps are popping up in a range of countries from France and Australia to Thailand, Egypt, Malaysia, the Philippines, and Jordan, with obvious risk of abuse and manipulation for ulterior ends.<sup>26</sup> While "infodemic" - the spreading of misinformation and rumors as a serious impediment to tackling the virus - is a serious concern, authorities could overreach in enforcing controls to the point of censoring vital, if embarrassing, information. As a cautionary tale, courageous whistleblowers like Dr. Li Wenliang who tried to warn others of the new coronavirus in Wuhan, China, were silenced by police, with deadly results.<sup>27</sup>

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22. See, e.g., Felix Bethke and Jonas Wolff, "COVID-19 as a Threat to Civic Spaces Around the World" Peace Research Institute Frankfurt. 1 April 2020.

23. The contours of the right to peaceful assembly is currently under debate at the UN Human Rights Committee, which is drafting a general comment to address issues such as police repression of protests, surveillance, and online assemblies. See Second Reading of Draft General Comment No. 37 on Article 21 of the UN Human Rights Committee, <https://www.ohchr.org/EN/HRBodies/CCPR/Pages/GCArticle21.aspx>.

24. David Gilbert, "These 30 Regimes Are Using Coronavirus to Repress their Citizens," *Vice News*, 9 April 2020.

[https://www.vice.com/en\\_us/article/dygbxk/these-30-regimes-are-using-coronavirus-to-repress-their-citizens](https://www.vice.com/en_us/article/dygbxk/these-30-regimes-are-using-coronavirus-to-repress-their-citizens).

See also Hannah Ellis-Peterson, "India's Covid-19 app fuels worries over authoritarianism and surveillance," *The Guardian*. 4 May 2020.

25. See, e.g., Human Rights Watch, "Azerbaijan: Crackdown on Critics Amid Pandemic," 16 April 2020.

<https://www.hrw.org/news/2020/04/16/azerbaijan-crackdown-critics-amid-pandemic#>.

26. International Center for Not for Profit Law and European Center for Not for Profit Law, "COVID-19 Civic Freedom Tracker,"

<https://www.icnl.org/covid19tracker/?location=&issue=9&date=&type=>.

27. Javier C. Hernandez, "China Spins Coronavirus Crisis, Hailing Itself as a Global Leader," *The New York Times*, 3 March 2020.

<https://www.nytimes.com/2020/02/28/world/asia/china-coronavirus-response-propaganda.html>.



# Holding Government Accountable - Now and for the Long Term

The COVID-19 crisis is presenting an enormous stress test for accountable governance on which an effective public health response depends. To tackle the challenges the pandemic poses to this dimension of the rule of law, the following priorities deserve attention in the short and long term:

## Emergency Powers

No one seriously contests that the COVID-19 crisis requires governments to take extraordinary measures to protect public health and save lives from a fast-spreading deadly disease. There are, however, **important rule-of-law guardrails that should be in place before such emergency powers are invoked**. It starts with having rules already on the books, properly approved by legislatures in open debate, that define when and how such emergency powers may be used, including in an epidemic. As the world is witnessing, a full-blown health emergency such as COVID-19 has dramatic effects on fundamental rights and basic government functions. It is important, therefore, that proper constitutional norms are adopted well before a crisis hits, when cooler minds may prevail, in order to ensure executive authority is exercised consistent with fundamental rights.

The COVID-19 crisis is an opportunity for societies to revisit their current legal frameworks for emergency powers and tighten up the safeguards against their abuse for ulterior motives.

- ▶ In the short term, emergency measures as a matter of law should expire after a short period.
- ▶ Executives should seek public input and legislative approval for their extension or revision so that leaders constantly are forced to incorporate both expert and general public feedback into the process.
- ▶ Governors, mayors, and other local officials with responsibility for shaping and enforcing quarantines should be tasked with immediately establishing multidisciplinary task forces to advise them on managing the crisis, with regular reports to the legislature and the public.
- ▶ These lessons from the current crisis should be taken up by legislatures to write enabling laws as soon as the crisis subsides.

## Legislatures, Judiciaries and Oversight Bodies

In addition to setting up the right protocols, **it is critical in the short term that legislatures, judiciaries, and oversight bodies carry out their vital role in monitoring executive actions and adjudicating disputes** regarding abuse of emergency powers.

- ▶ They must be able to keep their doors open, physically and/or virtually. Protective gear, testing supplies, and medical services should be rushed to these frontline rule of law bodies.





- ▶ Legislatures should adopt secure technologies that will allow, at a minimum, emergency hearings, debates, and laws to be approved. Video and web streaming services can be readily deployed to allow legislators to meet online, and just as important, to shine more light on their deliberations.
- ▶ Proxy voting or authenticated remote voting can be set up if legislators cannot or should not travel to their capitals, as the European Parliament is doing.
- ▶ Auditing and other supervisory bodies should be able to carry out their normal functions with access to information about executive expenditures as lawfully required.

**Judicial activity should also shift as soon as possible to virtual technologies** to ensure laws and rules conform to constitutions and protect citizens' rights.

- ▶ In order to maintain civil peace and protect lives, courts should prioritize cases relating to order and security, domestic violence and child abuse, fundamental civil and political rights, due process, and separation of powers.
- ▶ Courts at every level, including immigration courts, should be fully supplied with the necessary protective gear, which should be shared with defendants, lawyers, and all court personnel.
- ▶ Over the longer term, as online courts become more common, new protocols should be adopted to ensure both victims' and defendants' rights to a fair and speedy trial; to improve access to counsel; and to open trials and other hearings to a wider public, thereby improving awareness and transparency of otherwise opaque judicial matters. Now is the time to drive a justice tech revolution in ways that will expand access, protect rights, and improve efficiencies.

## Elections

Just as parliaments and courts must continue to function during a pandemic, **elections of public officials must go forward if government leaders are to be held accountable to the citizenry.** Allowing independent monitors to observe the electoral process before, during, and after the ballot is also essential.

- ▶ In the short term, election authorities should act quickly to reassure the public that electoral contests can be held in ways that both guarantee the right to vote and protect public health. Basic precautions, such as widely available protective gear, touchless paper or electronic ballots, sanitary protocols, and proper physical distancing, should be implemented.
- ▶ If there is adequate time to prepare without jeopardizing the sanctity of the process, upcoming elections should be transitioned to more flexible procedures, including allowing new voters to register by mail or through public services like health clinics and food centers; mailing ballots to all registered voters; permitting voting by mail or at drop-off centers; and recording vote-counting sessions to ensure transparency and, if necessary, facilitate proper recounts in close elections.
- ▶ Elections should stick as closely as possible to the regular electoral calendar. While voter turnout may drop off slightly, it is more important to subject officeholders to regular elections required by law than to postpone elections. Leaders must not be allowed to extend their stay in office outside the normal rules of the electoral game.



## Nongovernmental Checks

A rigorous rule of law system also depends on healthy nongovernmental checks on all aspects of government power. To be effective, this entails upholding a host of rights and open government principles—the right to information, active civic participation, functioning complaint mechanisms, freedom of opinion and expression, and freedom of assembly and association.

- ▶ **While the pandemic may inhibit large gatherings and assemblies for a limited period of time, it should not interfere with any other activity of organized civil society.** NGOs may still communicate with their members, organize online petition drives, provide expert commentary on legislative and regulatory matters, and otherwise fulfill their mission to serve the public. Many of them are bravely assuming great risk to themselves as soup kitchen workers, day care providers, and union organizers for other frontline workers; they should not only be free to carry out these functions but also be recognized and applauded for this work.

The same can be said for journalists who are playing an essential role as conduits of life-saving public health information, as watchdogs for the public, and as storytellers paying witness to the myriad effects of the crisis on our daily lives. Local media in particular has never been more important as communities grapple with the evolving rules on everything from shopping for basic necessities to taking their children to neighborhood playgrounds.

- ▶ These vital nongovernmental services should be protected from threats and attacks and supported, if necessary, with public funding to sustain them during the emergency.
- ▶ Over the longer term, independent media need new business models, including public and philanthropic funding, to protect and enhance their critical voice.

### Resources

International Center for Not for Profit Law (ICNL), “Covid-19 CivicFreedom Tracker”  
<https://www.icnl.org/covid19tracker/?location=&issue=9&date=&type=>

Joelle Grogan “States of Emergency” Verfassungsblog  
<https://verfassungsblog.de/states-of-emergency/>

InterParliamentary Union, “Country compilation of parliamentary responses to the pandemic,”  
<https://www.ipu.org/country-compilation-parliamentary-responses-pandemic>

Council of Europe “Respecting democracy, human rights, and rule of law in the framework of the Covid-19 sanitary crisis”  
<https://rm.coe.int/sg-inf-2020-11-respecting-democracy-rule-of-law-and-human-rights-in-th/16809e1d91>

International Foundation for Electoral Systems (IFES), “Global Impact of Covid-19 on Elections” <https://www.ifes.org/publications/global-impact-covid-19-elections>

Democratic Decay “COVID-DEM Infohub” <https://www.democratic-decay.org/covid-dem>

International IDEA “Covid-19 and Democracy”  
<https://www.idea.int/our-work/what-we-do/covid-19-and-democracy>

United Nations “Rule of Law support in the context of the Covid-19 pandemic”  
<https://www.un.org/ruleoflaw/blog/2020/05/united-nations-rule-of-law-support-in-the-context-of-covid-19-pandemic/>

Privacy International “Tracking the Global Response to Covid-19”  
<https://privacyinternational.org/examples/tracking-global-response-covid-19>