

## Transparency International Anti-Corruption Helpdesk Answer

# Legislative best practices during times of emergency

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At the beginning of the COVID-19 pandemic, emergency and restrictive measures became the norm as countries attempted to find ways to reduce the number of infections and to mitigate the broader effects of the pandemic. However, deliberative law-making and oversight roles of parliaments became constrained, creating an imbalance of power between the executive and the legislative branches of government. In addition, the emergency powers and accompanying restrictive measures that have been introduced have negatively affected basic freedoms in many country around the world, especially where these powers have been misused by authoritarian regimes to target political opponents, shrink civic space, as well as unjustifiably postpone elections.

Even – or rather especially - during times of crisis, there are certain best legislative practices contained in legal instruments, soft laws and the wider literature that countries are advised to take into account. For instance, it is well recognised that restrictive measures must be legal, necessary, proportional, and non-discriminatory as well as temporary in scope. There are also simple but effective solutions that could enhance parliamentary oversight during the pandemic such as introduction of e-parliament sessions. Regarding elections, a number of Special Voting Arrangements have been adopted all over the world, in an effort to ensure that the pandemic is not used as a pretext to unjustifiably postpone elections.

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## Query

Please provide an overview of best legislative practices during times of emergencies. In the answer, please include an overview of the impact of emergency restrictions on democratic and legislative processes, civic space, and anti-corruption in general.

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## Background

When faced with extraordinary circumstances such as the COVID pandemic, governments tend to resort to extreme measures that limit certain freedoms in order to mitigate the crisis (Duri et al. 2020: 9). In this context, the parliament plays a central role not only in enactment of emergency laws (Murphy 2020: 26–30), but to prevent the government from adopting draconian measures that can plunge countries into authoritarianism (Freedom House 2021).

The extraordinary circumstances imposed by the COVID pandemic have put the legislative branch at the crossroads. On the one hand, legislatures have had to authorise and adopt emergency measures with anti-democratic characteristics such as increased surveillance and restrictions of freedoms (Chêne et al. 2020). On the other hand, they have had to keep functioning as normally as possible in a democratic setting, including protecting human rights, as well as maintaining checks and balances over the executive to hold the government to account (Inter-Parliamentary Union and Office of the United Nations High

## Main points

- International instruments regulating measures that restrict human rights in times of crisis include Article 4 of the *International Covenant on Civil and Political Rights* as well as the accompanying *Siracusa Principles on the Limitation and Derogation Provisions*.
- When enacting measures that restrict rights, it is important to ensure they meet the requirements of legality, necessity, proportionality, and non-discrimination.
- Emergence measures must be strictly temporary in scope, the least intrusive to achieve emergency goals, and be subject to review.
- There are simple but effective solutions that can enhance parliamentary functions during COVID such as the use of e-parliament programmes or social media and online platforms to interact with citizens.
- Since beginning of the pandemic, countries around the world have increasingly adopted Special Voting Arrangements (SVA) to prevent postponement of elections.

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Commissioner for Human Rights 2005; Chaplin 2020; Griglio 2020).

According to Murphy (2020: 13), parliamentarians around the world have simultaneously faced three kinds of challenges since the beginning of the pandemic. First, parliamentarians have had to decide measures in real-time with great uncertainty over a long period. Second they have had to deal with highly technical topics and disagreements between experts on the appropriate response to deal with the public health and economic crisis. Third, they have been forced to work under conditions where parliamentarians are themselves at risk of illness and death through carrying out their normal schedules and tasks.

It is worth mentioning that the current public health emergency maps over other ongoing challenges in many societies, such as poverty, armed conflict, natural hazards, corruption, and political crises (Kallio et al. 2020: 1). The pre-existing political situation may have complicated legislative practices and democratic processes during the pandemic still further.

For instance, in Israel, the pandemic caught the new parliament in the midst of a political crisis (after the third round of elections in a year) and with a caretaker government (Bar-Siman-Tov 2020: 31).

Similarly, in Malawi, discussions related to the COVID-19 emergency measures coincided with the country's second presidential election process – after the 2019 presidential election had been nullified by courts (Chirwa et al. 2021).

In such settings, the adoption and implementation of restrictive measures was made more complicated by political instability, and typical democratic processes to appoint new political leaders were complicated by the health emergency.

## The broader impact of restrictions on legislative and democratic processes, civic space, and anti-corruption

However parliaments decide to carry out their functions in times of crisis, it has always been imperative that they do not abandon their core constitutional functions of legislation, oversight of the executive and representation of citizens (Murphy 2020: 8).

Parliaments represent the will of the people, as they “provide the vital link between the public and the system of government, serve as the principal forum for airing issues of public concern and continue to perform functions that cannot be replicated by any other institution” (Power and Shoot 2012: 28)

The core of parliamentary representation is based on human interactions. Debates and plenary sessions by parliaments around the world have always been structured in a face-to-face fashion in order to deliberate and decide. When democratic deliberations cease, this gives room for autocratic traits to emerge (Repucci and Slipowitz 2020; V-Dem Institute 2021).

## The impact on legislative and democratic processes

A [data tracker by INTER PARES](#) covered actions taken in response to COVID-19 by parliaments in 166 countries around the world from February to June 15, 2020. It found that during that period, parliaments around the world were:

- exceptionally adjourned or dissolved such as in India and Malaysia;
- partially suspended their business such as in Canada and Mexico;
- subjected to procedural changes such as in Indonesia and Vietnam;
- adopted social distancing measures such as in Myanmar and Thailand, or
- subjected to normal procedures without restrictions such as in Japan.

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The Inter-Parliamentary Union (IPU) (2021b) also mapped three different gradations of the effects of the current COVID-19 restrictions on the legislative work. There include that the parliament continues to meet physically, but with restrictions as some jurisdictions and constitutional frameworks do not allow parliaments to adopt fully digital solutions; the parliament continues to meet virtually using remote working methods; and the parliament does not meet (this may be due to a pre-scheduled and/or an anticipated recess period or even because of the lack of political will or technical capacity).

Hence, it is clear that most parliaments around the world have been forced to operate in a different and limited way than the one they are accustomed to. At the same time, there have been an unprecedented legislative processes to enact emergency and restrictive measures for unprecedented times.

Since the onset of the COVID pandemic, a common trend has been the passage of repressive laws that lack civic scrutiny or regular checks and balances. As declared by one respondent to a *Freedom House* study on the impact of COVID-19 on democracy and human rights, the most disturbing development has been the “passage of laws that curb freedom but claim to curb the virus” (Repucci and Slipowitz 2020: 4). This report also described that in some countries, emergency measures have been subjected to discriminatory application to specific segments of the population. For instance, in Bulgaria, Romani neighbourhoods were allegedly placed under harsher movement restrictions, and in Kuwait, authorities placed greater restrictions on noncitizen neighbourhoods (Repucci and Slipowitz 2020: 5).

Emergency measures have also led to the imbalance of power as the executive branch in many countries has side-lined the legislature. For instance, Crego and Kotanidis (2020) report that in many nations, the executive invoked special legislative powers through a constitutional state of emergency, or a statutory emergency regime.

In April 2020, the Cambodian *Law on the Management of the Nation in a State of Emergency* was promulgated in response to COVID-19 and provided the government with a range of arbitrary and excessive powers. These included an absence of either checks and balances or periodic reviews of states of emergency, the obligation of the government to inform only measures ‘taken’ to the legislative branch, open-ended emergency powers and martial law (Amnesty International 2020a).

In Hungary<sup>1</sup>, “the Parliament adopted the Bill on Protection against the COVID-19 pandemic. It extended the government’s power to rule by decree by absolving it from parliamentary scrutiny, without providing a clear cut-off date. While the bill was replaced (...), the government continued to uphold a set of transitional powers allowing the restrictions of human rights, such as the right to freedom of peaceful assembly, and curtailing access to asylum” (Amnesty International 2021: 180).

Emergency and unrestricted powers given to the executive may be abused to call off any government business including parliamentary activity that is meant to provide checks and balances on the executive. For instance, in Papua New Guinea, the government adjourned the parliament for 6 months citing COVID-19 amidst a motion of no confidence filed against the prime minister (Tarawa 2021).

Such restrictions on parliamentary activity have also meant that, in many countries, the ability of the legislature to perform its deliberative and scrutiny functions has reduced (Petrov 2020: 71).

Where, as in the case of Sri Lanka, elections were postponed because of COVID laws or regulations, this left the legislature out of session beyond the constitutional deadline and weakened checks and balances on executive power (Freedom House 2020). In Zimbabwe, parliamentary and local government elections were indefinitely postponed by the executive citing the pandemic, although there were indications that it might be for political

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<sup>1</sup> Amnesty International (2020c) published a public statement about the Hungarian situation.

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reasons considering that many other lockdown measures were eased (The Economist 2020).

## The impact on the civic space and anti-corruption

The existence of freedoms and guarantees, such as the freedom of assembly and freedom of speech, and the right to movement, are essential elements of a healthy democracy (Dahl 1989). However, as the pandemic took hold, most countries put restrictions on these freedoms as a means to mitigate the crisis. Conventional ways for citizens to pressure government for a change have been restricted as protests suddenly became illegal, constituency offices were closed and journalists banned from entering public buildings or disseminating information regarding the pandemic without authorisation from government (Repucci and Slipowitz 2020; Murphy 2020: 21–22).

Restrictions have created an environment of constant surveillance that goes beyond the scope of the pandemic, and shrink civic space by banning activism, media coverage, transparency, and accountability under the pretext of COVID-19 responses (CIVICUS 2021).

According to the V-Dem Institute (2021: 15–16), during the last year the global trend towards autocratisation accelerated, while freedom of movement and other freedoms associated to the right to discuss freely, to declare political opposition, and to demonstrate freely suffered a setback too. As these freedoms were restricted, so was anti-corruption activism and opportunities for citizens to participate in public and political life (Duri et al. 2020: 9–10).

According to a report by the Freedom House (2020), journalists and political activists have been arrested and targeted with violence, harassment, and intimidation, freedom of press and information have been largely curtailed through enactment of legislation supposedly designed to stop the spread of “fake news”. For instance, in Sri Lanka, the government increased the pressure on civic space by ordering the arrest of anyone who criticised or contradicted the official line on the coronavirus (Freedom House 2020).

In Cambodia, the authorities used the COVID-19 pandemic as a pretext to further repress freedom of expression, with journalists, human rights defenders and government critics targeted for expressing their views (Amnesty International 2021: 106).

Authorities have also responded ruthlessly to anti-corruption protests during the COVID pandemic. For instance, during the first months of the pandemic, security forces in Niger responded by arresting of protesters as well as firing tear gas which led to the death of three people (Peter 2020). Transparency International has also identified that “countries that perform poorly on the Corruption Perceptions Index appear to be more likely to violate human rights and democratic norms as part of their emergency responses” (see Vrushni and Kukutschka 2021).

Another human rights challenge that has featured prominently during the pandemic is the use of surveillance systems. As put by the Amnesty International (2020b), “lessons learnt from recent history tell us that there is a real danger surveillance measures become permanent fixtures. In the wake of the attacks of 11 September 2001 (9/11), government surveillance apparatus expanded significantly. Once these capabilities and infrastructure are in place, governments seldom have the political will to roll them back”. Thus, the increased use of personal surveillance, introduced to deal with the crisis, is a matter of civic importance as such surveillance could be used to track political activists both in the short and long term (Duri et al. 2020: 10–11).

## Best practices for legislatures during times of emergency

### Framework and criteria for restrictions on civic freedoms

There are existing international legal standards that should be adhered to when governments introduce measures that affect civic freedoms, and which cannot be negated or revoked even in times of emergencies. Those directives are preconditions for democracies to operate well and Ellena and Shein (2020) stress that great care



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should be given to preserve certain minimum standards.

Article 4 of the *International Covenant on Civil and Political Rights* (ICCPR) (United Nations 1976) provides that States may only take certain measures to suspend or derogate civil and political rights in times of “public emergency which threatens the life of the nation” and if those measures “do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.”<sup>2</sup>

Article 4(2) goes on to provide that some rights cannot be derogated even during times of crisis, including the right to life, the right to be free from torture and other inhumane or degrading treatment or punishment, the right to be free from slavery or servitude and the right to be free from retroactive application of penal laws.

Similarly, Article 27 (2) of the American Convention on Human Rights also stipulates that there are non-derogable rights, including the right to juridical personality, right to life, right to humane treatment, freedom from slavery, freedom from ex post facto laws, freedom of conscience and religion, rights of the family, right to a name, rights of the child, right to nationality, right to participate in government or of the judicial guarantees essential for the protection of such rights.

The *Siracusa Principles on the Limitation and Derogation Provisions* in the International Covenant on Civil and Political Rights<sup>3</sup> also provides for non-derogable rights in times of emergency. These include the right to life, freedom from torture, cruel, inhuman or degrading treatment or punishment, and from medical or scientific experimentation without free consent, freedom from slavery or involuntary servitude, the right not to be imprisoned for contractual debt; the right not to be convicted or sentenced to a heavier penalty by virtue of retroactive criminal legislation; the right to recognition as a person before the law; and freedom of thought, conscience and religion.

The United Nations also highlights in its *Emergency measures and COVID-19 Guidance* (United Nations 2020b: 1–2) that “some rights, such as the right to life, the prohibition from torture and the principle of legality in criminal law, cannot be derogated from even during states of emergency and continue to apply in all situations” and “obligations associated with the core content of “the rights to food, health, housing, social protection, water and sanitation, education and an adequate standard of living” cannot be derogated during situations of emergency.

At the beginning of the pandemic, [UN human rights experts](#) reminded states they need to ensure that measures adhere to international human rights obligations, and that any emergency responses to the coronavirus must be proportionate, necessary and non-discriminatory (OHCHR 2020). In addition, the [UN High Commissioner on Human Rights](#) also called for emergency measures to be carried out in strict accordance with human rights standards. Hence, laws enacted to deal with the COVID-19 crisis may be tested against these international legal instruments.

Attention must be given especially to the current restrictions related to the freedom of expression and information, freedom of movement, the right to privacy, freedom of assembly, the rights to vote and be elected, and due process rights (Ellena and Shein 2020).

According to the United Nations (2020b: 1), any restriction must meet the following requirements in order to safeguard human rights:

- **Legality:** The restriction must be ‘provided by law’. This means that the limitation must be contained in a national law of general application, which is in force at the time the limitation is applied. The law must not be arbitrary or unreasonable, and it must be clear and accessible to the public;
- **Necessity:** The restriction must be necessary for the protection of one of the permissible grounds stated in the ICCPR,

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<sup>2</sup> See also article 27 (1) of the American Convention on Human Rights.

<sup>3</sup> See <https://www.icj.org/siracusa-principles-on-the-limitation-and-derogation-provisions-in-the-international-covenant-on-civil-and-political-rights/>

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which include public health, and must respond to a pressing social need;

- *Proportionality*: The restriction must be proportionate to the interest at stake, i.e. it must be appropriate to achieve its protective function; and it must be the least intrusive option among those that might achieve the desired result;
- *Non-discrimination*: No restriction shall discriminate contrary to the provisions of international human rights law.

Hence, the parliament needs to test any derogatory measures against these requirements of legality, necessity, proportionality and non-discrimination.

According to the *Siracusa Principles*, “the severity, duration, and geographic scope of any derogation measure shall be such only as are strictly necessary to deal with the threat to the life of the nation and are proportionate to its nature and extent... The principle of strict necessity shall be applied in an objective manner. Each measure shall be directed to an actual, clear, present, or imminent danger and may not be imposed merely because of an apprehension of potential danger”.

Importantly, the *Siracusa Principles* goes on to provide that “the national constitution and laws governing states of emergency shall provide for prompt and periodic independent review by the legislature of the necessity for derogation measures”. This means that any restrictive laws should include measures that allows for periodic parliamentary review throughout the duration of the crisis. The rationale for such review is that derogation of rights is undesirable in any democratic settings, and when it occurs, “nothing but a short life is wished” to ensure a continued culture of respecting and protecting human rights (Istrefi 2020).

In addition, *Siracusa Principles* provide that effective remedies should be made to persons who claim that derogation measures that affected them were not strictly required by the exigencies of the situation.

As this section has shown, there are available best practices that are essential for parliaments to

comply with when enacting laws that restrict any rights and freedoms during times of crisis.

## Guidance for enacting emergency measures

As described in the previous section, states of emergency are specifically regulated under international human rights law (United Nations 2020b: 2) and because of that their respective measures should follow certain basic conditions to be enacted. As such, the principles of legality, necessity, proportionality and non-discrimination discussed above apply to enactment of emergency measures (United Nations 2020b).

In addition, Ellena and Shein (2020) provide that emergency measures should be strictly temporary in scope, which means they must be specifically limited in duration and make provisions for an end point. They must include safeguards such as sunset or review clauses, in order to ensure return to ordinary laws as soon as the emergency situation is over.

As witnessed during the current pandemic, enacting legislation under states of emergency provide opportunities for abuses, especially those associated with the attempt to use the legal procedures to progressively undermine democratic institutions and purposes. In order to safeguard democratic institutions, therefore, an important feature in emergency measures is the existence of mechanisms to make ensure checks and balances that any legislation passed under emergency is valid (Moulds 2020).

In Finland, a decree commissioning emergency powers must be submitted to parliament immediately and within a maximum of one week. The parliament decides whether the decree can enter into force and whether it can stay in force for the suggested period of time (up to a maximum of 6 months at a time). Where this process cannot be followed without compromising the purpose of the Act, the emergency powers can exceptionally be applied before Parliament has exercised its review function. If Parliament upholds the commissioning decree, it will ex-post review the subsequent implementing decrees issued by the Government to use the emergency powers. Parliament can

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repeal the Emergency Powers Act in full or in part, but it cannot change the content of these decrees (Neuvonen 2020: 228).

In Norway, the parliament adopted an Enabling Act that authorised the government to make decisions that constitutionally must be taken in Parliament. The purpose was to enable the government to take measures to limit the disruption of the normal functioning of society and mitigate the negative consequences of the pandemic for the population and the economy. The Act was valid for a month but could also be repealed by the parliament at any time (Inter-Parliamentary Union 2020: 2).

In Switzerland, the emergency ordinances of the Government need to be approved by Parliament or they will cease to be in force after six months. The emergency ordinances of Parliament are preferred over those of the Government since they are perceived to have greater democratic legitimacy (Inter-Parliamentary Union 2020: 3).

In Australia, there is a federal COVID-19 Committee, occupied by a majority of non-government senators, has worked in order to exert "influence when it comes to improving the rights compliance of the laws enacted in response to COVID-19 or providing a meaningful check on executive power" (Moulds 2020: 185).

## Specific measures to conduct parliamentary business during times of Covid-19

According to Murphy (2020), some parliaments have faced challenges to implement virtual solutions by regulatory, legislative and even constitutional provisions. Though regulations and even laws can be amended rapidly, constitutional provisions that require the physical presence of parliamentarians are usually difficult to amend, particularly where amendment requires a referendum that cannot easily be organised during a pandemic. Hence, "parliaments will need to study and initiate constitutional reforms to enable their continued functioning through virtual means during a crisis, while ensuring adequate process safeguards" (Murphy 2020: 9).

Some pre-COVID-19 initiatives can help parliaments to overcome the current challenges. For instance, *e-Parliament* programmes, which are initiatives to make legislatures "empowered to be more open, transparent and accountable through Information and Communications Technology (ICT)" (Inter-Parliamentary Union 2018: 18), are worth mentioning, especially due to their importance in times of limited in-person interaction.

IPU's *World e-Parliament Report 2018* presents the main guiding principles that those programmes tend to include (Inter-Parliamentary Union 2018: 19) transformation (of processes); timeliness (of dissemination or decisions); transparency (of information); openness (of access); and cost efficiency (reduction of costs).

The report also presents relevant information about the scope (work areas) of e-Parliament programmes (Inter-Parliamentary Union 2018: 19). These include openness, transparency and accountability; international cooperation; communication and engagement with citizens; human resources and technical infrastructure; ICT strategic planning and implementation; libraries and research services; technology services for members; and management of parliamentary documentation.

A number of countries adopted *e-Parliament* programmes even before the COVID pandemic. This includes the following:

- In Austria, since September 2017, all Austrian citizens over 16 can submit comments on legislative proposals via the parliament's website. Further, citizens are able to support bill drafts with 'votes for' (through the thumbs up signal) and agree with existing published comments (Serra-Silva 2021: 15).
- Since 2008, the Brazilian Chamber of Deputies has a developed digital platform for citizen participation in the legislative process, known the *e-Democracia*<sup>4</sup> portal" (Inter-Parliamentary Union 2018: 36).
- In Croatia, the parliament publishes the draft bills on its website along with a Word

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<sup>4</sup> <https://edemocracia.camara.leg.br/>.



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file form where everyone can contribute within 30 days (Serra-Silva 2021: 15).

- In Portugal, there is a permanent forum for citizens to discuss legislative initiatives or related matters that the assembly wants to submit for public discussion. The assembly chooses a topic and everyone can follow and participate in those debates for 30 days (Serra-Silva 2021: 14).
- In the United Kingdom, a select committee can create a forum on its website to collect public input. Usually, committees target very specific audiences and focus on citizen's experiences. Besides these forums, 'digital debates' between MPs and citizens before a parliamentary debate is held in parliament have taken place on social media such as Twitter and Facebook in the UK since 2015 (Serra-Silva 2021: 14).

In the end, the broader impact of Covid-19 restrictions on democratic and legislative processes has made the technological implementation/adaptation of legislative processes not marginal but central to the democratic operations (Koryzis et al. 2021: 10).

Apart from ICT-based solutions, some other straightforward initiatives that may help legislatures to carry out their activities during the pandemic are as follows (Inter-Parliamentary Union 2021a):

- In Angola, MPs in the National Assembly participated from different rooms in the Parliament building, local offices and their homes.
- The Belgian House of Representatives amended its Rules of Procedure to allow Members, under certain conditions, to be regarded as "present" at selected committee and plenary meetings though they are not physically in attendance, as well as to vote electronically or by email. Remote committee meetings voting are

done by a show of hands or a verbal nominal vote using the software Zoom.

- In Brazil, the House of Representatives<sup>5</sup> and the Senate<sup>6</sup> are holding remote sessions that are broadcasted live to the public through the Parliament's media and digital platforms. The institutions are also publicly sharing details of their technology solutions with other parliaments.
- In Czech Republic, the Parliament launched a new website and YouTube channel to bring it closer to the public. The platforms include information materials on the history of parliament and its core functions, presentations, working sheets for teachers and students, interactive quizzes for pupils and live guided tours of the parliament (INTER PARES 2020).<sup>7</sup>
- In Namibia, the national assembly's livestreaming services are boosted on social media platforms, and these services will be expanded to multiple online spaces, such as the Parliament's website, as well as translated into indigenous languages. The audio files could then be used by radio stations to broadcast to the electorate, in keeping with the parliament's commitment to reach the grassroots (Inter-Parliamentary Union 2021a).

## Guidance on running elections during the pandemic

The Covid-19 pandemic has produced visible effects on elections throughout the globe. As recently reported by International IDEA (2021a), from the beginning of the pandemic until May 2021,<sup>8</sup> at least 78 countries and territories across the globe have decided to postpone national and subnational elections due to COVID-19, out of which at least 41 countries and territories have decided to postpone national elections and referendums. At least 118 countries and territories have decided to hold national or subnational elections despite concerns related to COVID-19 of

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<sup>5</sup> <https://virtual.camara.leg.br/>.

<sup>6</sup> [http://www.senado.leg.br/senado/hotsites/sdr/index\\_eng.html](http://www.senado.leg.br/senado/hotsites/sdr/index_eng.html).

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[https://sites.google.com/view/snemovnaprovzdelani/hlavni\\_stranka](https://sites.google.com/view/snemovnaprovzdelani/hlavni_stranka).

<sup>8</sup> See International IDEA (2021a) for a full list of all elections postponed around the world due COVID-19 from February 21, 2020 until May 9, 2021.

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which at least 97 have held national elections or referendums. In addition, 53 countries and territories have held elections that were initially postponed due to concerns related to COVID-19 of which at least 28 have held national elections or referendums”.

A number of scholars and observers have considered how elections can be run in times of crisis. According to James and Alihodzic (2020: 344), “the best available safeguards for electoral integrity during crisis include introducing or expanding low-tech solutions such as early voting, enhanced risk management, as well as transparency and inclusivity in decision making”.

Drawing on the recent experiences around the world, Birch et al. (2020: 3–4) attempted to provide a set of recommendations on how to hold elections safely and democratically during the COVID-19 pandemic. The recommendations include the following:

- The public and vulnerable groups should be consulted during election preparations;
- Complaints systems should be fully made available to citizens and electoral stakeholders to report problems during the process;
- Parliamentary committees should be used to oversee the work of electoral management bodies (EMBs);
- EMBs must use their websites and social media presence to provide accurate information about the voting process and should monitor social media for misinformation campaigns.
- EMBs should also take strong measures to address disinformation and hate speech during election period that could cause harm to electoral stakeholders;
- EMBs must maximize transparency and provide clear records of their meetings held to prepare for elections during COVID-19;
- The effective management and safeguarding of poll workers requires advanced planning. The fast-evolving pandemic may well necessitate measures tailored to local needs, depending on severity of lockdowns and infections;
- Polling stations should be widely distributed so as to reduce the mixing of

infected and non-infected individuals from different geographic areas; this may in some cases require the addition of supplementary polling places and a consequent reduction in the number of voters who attend each facility;

- EMBs and national task forces formed to deal with the crisis should ensure that each institution’s tasks and responsibilities related to issuing guidance, planning, and implementing preventive measures for elections are clear and well-delineated;
- Regardless of its level of involvement with a national task force, EMBs should strive to obtain advisory, logistical, and operational support from other groups while maintaining political neutrality and communicating transparently to citizens;
- As it is ultimately their responsibility to hold elections safely, EMBs must coordinate with competent public health authorities working to build political consensus around these decisions and taking a firm stand against actors who push for decisions that can put voters and poll workers at risk to advance their political interests.

The legislature plays an important role in setting up the necessary legal and institutional framework to incorporate such recommendations in order to hold safe, free and fair elections during the crisis. In addition, their oversight role over EMBs, through for instance parliamentary committees on elections, underscores their importance and relevance to the smooth operation of elections throughout the pandemic.

Another mechanism used to hold elections during a crisis is the Special Voting Arrangements (SVAs). SVAs are “arrangements that allow voters to exercise their right to vote by alternative means to casting their ballot in person, on election day, in the default polling station in the voter’s constituency” (International IDEA 2021b).

According to Asplund et al. (2021), different types of SVAs have been adopted by some countries during the pandemic. These include:

- Early voting, which allows voters to cast their ballot before election day. For instance, in North Macedonia,

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parliamentarian elections in July 2020 allowed early voting, a day or two days before the official election day, for people who tested positive for COVID-19 and were quarantined or who were in self-isolation, as well as persons in prisons, mental institutions, centres for internally displaced persons and in assisted living facilities (International Foundation for Electoral Systems 2020: 1).

- Postal voting, which refers to when a ballot is delivered to the voter, usually to their place of residence. In the United States, five states held 'all-postal' elections as every registered voter was sent a voting pack and there was no traditional in-person polling locations though assistance options were provided to voters needing help with completing their voting pack. Some states sent voting packs to all registered voters, while also providing in-person polling locations, while others required an 'excuse' to be provided to vote by post, and 10 states amended their rules to categorise COVID-19 and related issues an acceptable reason to vote by mail (Sullivan 2020: 12).<sup>9</sup>
- Proxy voting, that is when a voter authorises another person to cast their vote on their behalf. In Croatia, voting by COVID-19 patients was carried out by a proxy. After a call from the COVID-19 patient, the election committee would visit the home of the infected person, stand outside and the trusted person would fill out the ballot and hand it to the election committee in an envelope (Keršić 2020: 3).
- Home and institutional-based voting, where a voter who cannot visit a polling station on election day for a variety of reasons casts their ballot from their home or current place of residence. In Montenegro, the EMB granted hospitalised patients the right to vote through mobile ballot box teams. In general, requests were made to authorities before a set deadline and members of EMBs, with protective equipment and trained to follow health and voting

protocols, would then visit voters to collect their votes (Asplund et al. 2021).

For the adoption of SVAs, Spinelli (2021) provided a 'SVA Checklist', which legislatures are encouraged to consider. For instance:

- As an alternative to complement traditional voting, are SVAs suitable to the context in which they must be introduced and used in the long-haul, one election to the next?
- Are they legally, procedurally and operationally feasible and implementable?
- What types of risks does the introduction of SVAs present to the integrity of the electoral process and how each of them could be resolved?
- Are they simple, consistent and comprehensible enough, for voters to use easily and for electoral stakeholders to understand and trust?
- Are they transparent and, yet, secure enough? Can their integrity be ensured by bolstering security measures necessary to detect, and deter, the greater likelihood of interference, undue influence and fraud that such methods can entail?
- As complex tasks that require comprehensive preparations and planning, do the necessary capacities to implement them effectively exist?
- Can the introduction of SVAs be founded and built over as political consensus and public trust, which are essential requisites difficult to obtain and uphold?
- Can these methods be implemented gradually and then, based on lessons learned, scaled up?
- As costly operations, are their introduction and long-term refinement and use cost-effective and based on value-for-money principles?

These questions are relevant for the government, including the parliament, when deciding whether to adopt SVAs during times of crisis.

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<sup>9</sup> NCSL (2021) presents all US state policies on absentee/mail voting in effect for the 2020 general election.

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## Conclusion

The COVID pandemic has witnessed an unprecedented use of emergency and restrictive measures around the world as countries attempted to mitigate the crisis. As the paper showed, this however has had a generally negative impact on legislative and democratic processes, and autocratic leaders have abused emergency laws to suppress basic freedoms, target political opponents, to shrink the civic space, as well as unjustifiably postpone elections.

There are legislative best practices contained in legal instruments, soft laws and the broader policy literature that are important to adhere to in times of crisis. For instance, it is well recognised that restrictive and emergency measures must be legal, necessary, proportional, and non-discriminatory as well as temporary in scope.

There are also simple but effective solutions that could also enhance parliamentary activities during the pandemic such as introduction of e-parliament services. Also, as holding of elections is under threat in certain countries, there are a number of best practices from around the world that could be used to avoid unjustifiable postponement. For instance, the use of Special Voting Arrangements (SVA) has been on the rise and may be an effective mechanism to consider in different contexts.

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