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Legislative leadership in the time of COVID-19

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Executive summary

Legislatures are central to modern democratic politics, holding governments to account and scrutinising legislation in order to generate more effective public policy. Yet during moments of crisis, legislatures are often bypassed as presidents and prime ministers prioritise a rapid response. The concern that legislatures will be marginalised, with greater power concentrated in the hands of the executive, has been particularly significant during COVID-19, when eighty countries have witnessed democratic backsliding. The implications of this for the quality of health policy are particularly significant given the virus, which has already led to the loss of two million lives worldwide, has been met with idiosyncratic and at times populist responses in some countries – such as Brazil, Madagascar, Tanzania and the United States – where governments failed to follow scientific advice.

There are good reasons to worry that the nature of the COVID-19 pandemic may have been particularly deleterious to horizontal accountability, as social distancing requirements make it harder for legislatures to sit. Conversely, unlike many other crises, the challenges posed by COVID-19 have endured for months, creating greater time for legislative scrutiny. Moreover, unlike certain aspects of foreign and security policy, healthcare is an area over which parliaments typically have considerable influence. It is therefore unclear exactly how detrimental the pandemic has been to accountability. Given that prior research suggests that greater legislative engagement results in a more considered and effective policy, this raises a number of questions that are important for both the safeguarding of democratic governance and the potential for an effective and inclusive COVID-19 response:

- What role have legislatures played in responding to COVID-19, particularly in scrutinising governments' actions to address the crisis?
- To what extent is this explained by the level of democracy and legislative effectiveness prior to COVID-19, as opposed to COVID-19 specific effects?
- What have been the main enablers and barriers to effective legislative scrutiny?
- Which legislative actors have been involved in responding to COVID-19 and what kinds of legislative leadership have been the most effective?

In order to assess the extent to which legislators have been able to exert leadership during COVID-19, and the impact that legislative oversight has had on government responses, Westminster Foundation for Democracy, the Developmental Leadership Programme and the International Development Department at the University of Birmingham developed the "Legislative Responses to COVID-19 Tracker". The Tracker monitors legislative responses to COVID-19 along three key indicators: whether the legislature sat; whether there was legislative oversight of the initial response from 1 March to 1 May 2020; and, whether legislatures had ongoing oversight from 1 April to 1 September 2020. Data on these indicators were collected for 65 countries, selected to provide a representative sample from each continent based on population size, pre-existing democracy scores and V-Dem's Pandemic Backsliding Risk Index. To supplement this data, in-depth case studies were conducted on Brazil, Nepal and Ukraine, three countries that had very different levels of legislative engagement during COVID-19, despite previously featuring similar levels of legislative effectiveness.

The Legislative Responses to COVID-19 Tracker reveals that levels of legislative engagement have varied considerably between countries:

- A range of innovative approaches were taken to enable legislatures to continue to function, mostly through the quick adoption of new or existing technology.
- However, only about half of all legislatures sat regularly, with around a third sitting irregularly, between 1 March and 1 June 2020.
- Just over one-tenth of legislatures had extremely limited or no sittings during this time period.
- Whilst two thirds of legislatures did have direct oversight of the government's initial response, almost a third of legislatures had no direct oversight and almost a quarter have continued to play a minimal role in the policy process.

This suggests that there has been limited accountability and scrutiny of government policy in numerous countries, despite the fact that initial government responses were rarely fully successful in containing the virus. There are two different - though not mutually exclusive - explanations for this variation: the pre-existing strength of democratic institutions and the disruptive impact of COVID-19 in low technology legislatures and those that require meetings to be held in person. In the majority of cases, lower scores on our Legislative Responses to COVID-19 Tracker reflected lower legislative effectiveness scores prior to the pandemic, as in Algeria. Similarly, countries with higher Tracker scores generally featured higher levels of scrutiny pre-pandemic, as in Belgium. However, there are also some cases in which the pandemic significantly disrupted pre-existing practices because legislatures lacked the necessary capacity to meet virtually, or were prohibited from doing so. These include Nepal, a country usually rated as having mid-level legislative effectiveness, where a specific provision requiring legislators to meet in person meant that when the government did not recall parliament in person, virtual parliamentary sittings were not possible. In these cases, social distancing requirements undermined the potential for oversight in legislatures that previously had greater teeth.

Additional barriers to legislative leadership include the type of legislation used by the government during their initial response, and the tendency to narrow participation due to technological challenges and time pressure. Executives that introduced States of Emergency or relied on existing laws tended to face less legislative scrutiny than those introducing new legislation. Time pressures and the need to make decisions quickly and via new digital processes also led to more streamlined debates. In turn, this had two important consequences, even in countries where legislatures remained active. First, it concentrated opportunities for legislative leadership in the hands of those already in leadership positions, such as party leaders. Second, it meant that legislatures heard evidence from, and engaged with, a narrower group of experts, advisers and concerned parties - such as civil society groups and ordinary citizens. As a result, legislative processes tended to be less participatory and inclusive.

The constraints on legislative leadership during the pandemic have been significant, but the report also finds that effective scrutiny has played an important role in constraining unnecessarily heavy-handed approaches in some cases and prompting the government into action where it had been slow to respond. This was especially the case where dedicated legislative committees featuring a diverse set of legislators and senior figures were established, as their greater flexibility in adapting to physical restrictions enabled them to continue operating. Based on these findings the report recommends:

- **Technology.** Governments should invest in digital communications technology to enable legislatures to continue operating during emergencies and boost the inclusivity of legislative processes at all times by facilitating consultative sessions with experts and civil society.
- **Regulations.** The rules concerning when and how legislatures may sit should be reviewed and revised to ensure that they facilitate operating remotely during health and other crises.
- **Committee system.** Legislatures should be aided to strengthen committees, expanding the administrative support, resources and expertise available to them, and deepening the connection between these committees and relevant experts, groups and concerned citizens.
- **Crisis committees.** Dedicated legislative committees with senior leadership should be established to deal with health emergencies, with established protocols for accessing independent expertise and gathering evidence from a wide range of individuals and groups.
- **Funding.** Support for legislative strengthening programmes should be increased to enhance horizontal accountability, strengthen committee systems and technical capacity, and enable these recommendations to be implemented.

Introduction

On 1 March 2020, as COVID-19 cases were reported in 59 countries worldwide,¹ legislatures had to consider how to adapt to debate, pass legislation, review the national budget and borrowing and scrutinise the actions of governments during the pandemic. This was not just a question of ensuring an effective health response. Since the beginning of the pandemic, there has been considerable democratic backsliding, with democratic freedoms undermined in 83 countries from March to September 2020.² Maintaining oversight and accountability during COVID-19 was therefore important for both the public and democratic health of the nation.³ This is especially the case given that the virus, which has already led to the loss of two million lives worldwide, has been met with idiosyncratic and at times populist responses in some countries, where governments – such as Brazil, Madagascar, Tanzania, and the United States – have failed to follow scientific advice.

However, the continued functioning of legislatures was far from guaranteed. Although legislatures are central to modern democratic politics, holding governments to account and scrutinising legislation in order to generate more effective public policy, they are often bypassed during moments of crisis such as wars and national disasters, as presidents and prime ministers prioritise a rapid response.⁴ There are also good reasons to worry that the nature of the coronavirus pandemic may have been particularly deleterious to horizontal accountability, as social distancing requirements make it harder for legislatures to sit. Given the leadership role of legislators, it is also important that they set a strong example by not gathering in large numbers, as the public are being encouraged or mandated to reduce face-to-face contact with others.

On the other hand, there are certain aspects of the coronavirus pandemic that appear to give a greater opportunity for legislative involvement. Unlike a natural disaster, such as a flood or hurricane, the challenges posed by COVID-19 have endured for months, creating greater time for legislative scrutiny. Moreover, unlike certain aspects of foreign and security policy, healthcare is an area over which parliaments typically have considerable influence. It is therefore unclear exactly how detrimental the pandemic has been to accountability. Given that prior research suggests that greater legislative engagement results in a more considered and effective policy, this raises a number of questions that are important for both the safeguarding of democratic governance and the potential for an effective and inclusive COVID-19 response:

- What role have legislatures played in responding to COVID-19, particularly in scrutinising governments' actions to address the crisis?
- To what extent is this explained by the level of democracy and legislative effectiveness prior to COVID-19, as opposed to COVID-19 specific effects?
- What have been the main enablers and barriers to effective legislative scrutiny?
- Which legislative actors have been involved in responding to COVID-19 and what kinds of legislative leadership have been the most effective?

In this report, we used the term 'legislative leadership' to refer to the ability of legislative actors to perform their role of oversight, scrutiny and policy creation. In order to assess the extent to which legislators have been able to exert leadership during COVID-19, and the impact that legislative oversight has had on government responses, Westminster Foundation for Democracy, the Developmental Leadership Programme and the International Development Department of the University of Birmingham developed the "Legislative Responses to COVID-19 Tracker". The Tracker monitors legislative responses to COVID-19 along three key

1. WHO (2020). Coronavirus Situation Reports, No, 41, 1 March 2020, https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200301-sitrep-41-COVID-19.pdf?sfvrsn=6768306d_ (27 October 2020).

2. VDem Institute (2020). Pandemic Backsliding: Democracy and Disinformation Seven Months into the Covid-19 Pandemic, 2 October 2020 https://www.v-dem.net/media/filer_public/37/de/37defb66-9457-4eeb-887a-f0c168dc4365/v-dem_policybrief-25_201002_v2.pdf (4 October 2020).

3. See notes from IALS/WFD Digital Conference: Are emergency measures in response to COVID-19 a threat to democracy? Fact and Fiction, <https://www.wfd.org/2020/06/26/10-september-2020-ials-wfd-digital-conference-are-emergency-measures-in-response-to-COVID-19-a-threat-to-democracy-fact-and-fiction/>.

4. Greene, A. (2020). *Emergency Powers in a Time of Pandemic*. Bristol: Bristol University Press.

indicators: (1) whether the legislature sat from 1 March to 1 June 2020; (2) whether there was legislative oversight of the initial response from 1 March to 1 May 2020; and, (3) whether legislatures had ongoing oversight from 1 April to 1 September 2020. Data on these indicators were collected for 65 countries, selected to provide a representative sample from each continent based on population size, pre-existing democracy index scores and V-Dem's Pandemic Backsliding Risk Index. To supplement and go beyond this data, in-depth case studies were conducted on Brazil, Nepal and Ukraine, three countries that had very different levels of legislative engagement during COVID-19, despite featuring similar levels of democracy and legislative effectiveness prior to the pandemic. To substantiate the Tracker, and to support the comparative analysis, the report also draws on a wide range of secondary literature, legislative data, and media coverage.

We find that many but not all legislatures have adapted their processes to ensure they can function during the pandemic,⁵ but also that there has been great variation between countries. Whilst some legislatures have expanded their digital and technological capacities in order to meet virtually and have continued to meet as they would have done normally, in a worrying number of cases there has been minimal legislative leadership during the pandemic.⁶ More specifically:

- 52% of all legislatures sat regularly, with 35% sitting irregularly, between 1 March and 1 June 2020.
- 12% of legislatures had extremely limited or no sittings during this time period (in some cases because they were not due to be sitting under the standard legislative timetable).⁷
- Whilst two thirds of legislatures did have direct oversight of the government's initial response, 31% of legislatures had no direct oversight of the government's initial response to the crisis from 1 March to 1 May, and 23% have continued to play a minimal role in the policy process.

This report seeks to explore these variations. To this end, it is important to recognise that the quality of legislative oversight varies considerably and that some parliaments struggled to hold the executive accountable even when the broader context is favourable. Researchers have referred to 'rubber stamp' legislatures in some regions, such as sub-Saharan Africa, often in contrast to more 'activist' or 'robust parliaments', such as the National Assembly in Kenya.⁸ Even legislatures in long-established democracies may face challenges in their scrutinising role. The parliament of the United Kingdom, for example, has often been described as weak and ineffective when the prime minister enjoys a large majority and tight control over their own party.⁹ It is therefore unsurprising that in the majority of cases, limited legislative response reflects low levels of democracy and legislative effectiveness prior to COVID-19.

In line with this pattern, we identify two different - though not mutually exclusive - explanations for variation in legislative leadership during the pandemic: the pre-existing strength of democratic institutions, and the disruptive impact of COVID-19 in low technology legislatures and those that require meetings to be held in-person. In the majority of cases, lower scores on our Legislative Responses to COVID-19 Tracker reflected lower legislative effectiveness scores prior to the pandemic, as in Algeria. Similarly, countries with higher Tracker scores generally featured higher levels of scrutiny pre-pandemic, as in Belgium. However, there are also some cases in which the pandemic significantly disrupted pre-existing practices because legislatures lacked the necessary capacity to meet virtually, or were prohibited from doing so by existing regulations. In these cases, social distancing requirements undermined the potential for oversight in legislatures that previously had greater teeth.

5. Cousins, C. (2020). How parliaments are working during the COVID-19 pandemic. Oireachtas Library and Research Service, https://data.oireachtas.ie/ie/oireachtas/libraryResearch/2020/2020-05-01/lrs-note-how-parliaments-are-working-during-the-COVID-19-pandemic_en.pdf;

Murphy, J. (2020). Parliaments and Crisis: Challenges and Innovations. Parliamentary Primer No.1. <https://www.idea.int/sites/default/files/publications/parliaments-and-crisis-challenges-and-innovations.pdf>; Kelly, R. Curtis, J. Fella, S. Mills, C. & Smith, B. (2020). Coronavirus: changes to practice and procedure in the UK and other parliaments. Briefing Paper Number 8874, House of Commons Library; <https://www.hansardsociety.org.uk/blog/how-are-parliaments-responding-to-the-coronavirus-pandemic>.

6. Bar-Siman-Tov, I. (2020). Parliamentary Activity and Legislative Oversight during the Coronavirus Pandemic - A Comparative Overview. Bar Ilan University Faculty of Law Research Paper No. 20-06. Available at SSRN: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3566948.

7. Information from our Legislative Responses to COVID-19 Tracker.

8. Barkan, J. D. (ed.). (2009). Legislative power in emerging African democracies (p.3333). Boulder: Lynne Rienner Publishers.

9. Foley, M. (2004). Presidential attribution as an agency of prime ministerial critique in a parliamentary democracy: The case of Tony Blair. *The British Journal of Politics and International Relations*, 6(3), 292-311.

Additional barriers to legislative leadership include the type of legislation used by the government during their initial response, and the tendency to narrow participation due to technological challenges and time pressure. Executives that introduced States of Emergency or simply relied on existing laws faced less legislative scrutiny in some cases than those introducing new legislation.¹⁰ The adoption of emergency powers, in particular, has shifted the balance of power in favour of the executive. Time pressures and the need to make decisions quickly and via new digital processes also led to more streamlined debates and discussions. While legislatures typically function through deliberation and decision-making, during times of crisis decisions may have to be made very quickly.¹¹ The need to operate more quickly has had two important consequences, even in countries where legislatures remained active. First, it concentrated opportunities for legislative leadership in the hands of legislators already in leadership positions. Second, it meant that legislatures heard evidence from, and engaged with, a narrower group of experts, advisers and concerned parties – such as civil society groups and ordinary citizens. As a result, parliamentary processes tended to be less participatory and inclusive.

The constraints on legislative leadership in many countries during COVID-19 have been significant, but this report also finds that effective scrutiny has played an important role in constraining unnecessarily heavy-handed approaches in some cases, and prompting the government into action where it had been slow to respond, such as in Brazil where the Congress voted for mandatory mask wearing in public spaces. This was especially the case where dedicated legislative committees were established, as their flexibility in adapting to physical restrictions enabled them to continue operating. For example, the commissions providing oversight of the government's COVID-19 response in Brazil have recently been involved in overseeing the government's role in funding COVID-19 vaccines.

The report therefore concludes that safeguarding democracy and improving government responses to health emergencies requires us to strengthen legislatures. On this basis, it recommends that international donors, civil society groups and governments themselves should focus on five key areas of reform: improving the technological capacity of legislatures to meet remotely and inclusively; reviewing and potentially revising legislative regulations to make sure that parliaments can sit during national crises; empowering the legislative committee system to ensure they have access to the administrative support and technical expertise they require; creating dedicated crisis committees with senior leadership and established rules and protocols that become operational during national crises and funding legislative strengthening programmes to enable these recommendations to be implemented.

The role of legislatures in responding to crises

Legislatures play an important role in making laws and policies to address emergencies and performing oversight and scrutiny of the actions, initiatives and policies of the executive; however there are differences between the COVID-19 pandemic and other common crises.¹² In contrast to national security crises and natural disasters, pandemics may be slow to start, and typically last longer. Particularly unique to the COVID-19 crisis is that nearly all countries have been affected. Information being shared in response to the crisis is decentralised, with high levels of involvement from other actors, such as the health sector and local governments. There is also no need for secrecy related to the information shared, in comparison to national security crises. However, in practice some governments have restricted access to information about COVID-19.¹³ Some argue that as a result of these factors, the executive is more 'bound' in a health crisis than in other

10. De Vrieze, F. & Grogan, J. (2020). To declare an emergency or not to declare an emergency? That is not the question. <https://www.wfd.org/2020/10/08/to-declare-an-emergency-or-not-to-declare-an-emergency-that-is-not-the-question/> (9 October 2020).

11. Murphy, J. (2020). Parliaments and Crisis: Challenges and Innovations. Parliamentary Primer No.1. <https://www.idea.int/sites/default/files/publications/parliaments-and-crisis-challenges-and-innovations.pdf>.

12. Ginsburg, T. & Versteeg, M. (2020). The Bound Executive: Emergency Powers during the Pandemic. Virginia Public Law and Legal Theory Research Paper No. 2020-52, University of Chicago, Public Law Working Paper No. 747, available at SSRN: <http://dx.doi.org/10.2139/ssrn.3608974>.

13. HRW (2020). Turkmenistan Denies Apparent Covid-19 Outbreak, 27 June 2020, <https://www.hrw.org/news/2020/06/27/turkmenistan-denies-apparent-covid-19-outbreak> (4 October 2020).

forms of emergency.¹⁴ For example, in national security crises, there is a well-established pattern of limited legislative oversight of government action.¹⁵ There may be higher levels of legislative involvement during COVID-19 than during other crises because it has taken place over a longer time period, and likely with more transparent exchanges of information about the crisis and the response.

There are a number of routes to scrutiny utilised by legislatures, such as auditing, public hearings and committees, as well as utilising plenary sessions to raise questions to the executive. In crises, some of these routes may be more difficult; for example, plenary sessions and committee meetings may need to operate with reduced attendance, and public hearings likely need to operate virtually. Even outside of crises, effective oversight needs more than rules and systems, requiring leadership from active and willing legislators who are committed to this function.¹⁶

There are complex and conflicting requirements of legislatures during the COVID-19 pandemic, with pressure to reduce the number of sittings alongside the need to take decisive measures to deal with the health and economic implications of the crisis. For example, there have been strong criticisms in the UK of the time given to debating the introduction and extensions of the Coronavirus Act, with arguments that this has not allowed proper scrutiny of the government's approach.¹⁷ However, an early report on the role of parliaments during the crisis argued that most parliaments surveyed had played a crucial role in debating and approving measures to address COVID-19.¹⁸ One study explored 159 legislatures from 23 March to 6 April and found that there was no causal relationship between the severity of COVID-19 and limitations to legislatures' operations. Instead, legislatures in more fragile democracies with more authoritarian governments were more at risk of limitations on their operation.¹⁹ Another study compiled information on legislative responses to COVID-19 and found that in two thirds of countries, legislatures passed brand new legislation to respond to the pandemic.²⁰ These are important findings, but there is a need to consider in more detail the ways in which legislative oversight has been enacted during the COVID-19 pandemic.

14. Ginsburg, T. & Versteeg, M. (2020). The Bound Executive: Emergency Powers during the Pandemic. Virginia Public Law and Legal Theory Research Paper No. 2020-52, University of Chicago, Public Law Working Paper No. 747, available at SSRN: <http://dx.doi.org/10.2139/ssrn.3608974>.

15. De Londras, F. & Davis, F. F. (2010). Compelling the Executive in Times of Terrorism: Competing Perspectives on Effective Oversight Mechanisms. *Oxford Journal of Legal Studies*, 30(1): 19-47.

16. IPU (2017). Global Parliamentary Report 2017 - Parliamentary Oversight: Parliament's power to hold government to account. Inter-Parliamentary Union and United Nations Development Programme.

17. Lum, Z-A. (2020) Rushed COVID-19 Legislation Gets Scorn in UK, Approval in Canada. 30 September 2020, https://www.huffingtonpost.ca/entry/uk-parliament-contempt_ca_5f74bdbec5b6374c55882601?qucounter=1&guce_referrer=aHR0cHM6Ly93d3cuZWNVc2lhLm9yZy8&guce_referrer_sig=AQAAABcCnBTnLqnC7KG9LiFESmwmeGYxLtJOVXK-PXRQ6sS45R23ZqTq2Le8D-LDakFIIModtGmcGWITDIZ5ELWQBpe3wZm5Jf5iqBSLaSiaJ_9vJOvUPvxOqpZIP4Z4dVscwQvR_7qb9j9GqrzqBDn90aPzuifAvQFHqM27Sc6J-TnS (14 October 2020).

18. Murphy, J. (2020). Parliaments and Crisis: Challenges and Innovations. Parliamentary Primer No.1. <https://www.idea.int/sites/default/files/publications/parliaments-and-crisis-challenges-and-innovations.pdf>.

19. Waismel-Manor, I. Bar-Siman-Tov, I. Rozenberg, O. Levanon, A. Benoît, C. & Ifergane, G. (2020). Covid-19 and Legislative Activity: Cross-National Study. Bar Ilan University Faculty of Law Research Paper No. 20-12, available at <https://dx.doi.org/10.2139/ssrn.3641824>.

20. Ginsburg, T. & Versteeg, M. (2020). The Bound Executive: Emergency Powers during the Pandemic. Virginia Public Law and Legal Theory Research Paper No. 2020-52, University of Chicago, Public Law Working Paper No. 747, available at SSRN: <http://dx.doi.org/10.2139/ssrn.3608974>.

Our research

To understand legislatures' responses to COVID-19, we developed a Tracker to bring together the wealth of information collated by numerous organisations.²¹ The 65 countries included in this Tracker were selected to provide a representative sample from each continent, based on population size, pre-existing democracy index scores and V-Dem's Pandemic Backsliding Risk Index. The Tracker compiled information on three indicators. Indicator 1 explored whether the legislature was sitting regularly from 1 March to 1 June 2020.²² Indicator 2 assessed if there was legislative oversight of the government's initial COVID response (or of COVID-related economic and/or financial legislation) from 1 March to 1 May 2020. The final indicator broadly considered whether legislatures had ongoing oversight of the government's response to COVID-19 from 1 April to 1 September 2020 (such as the requirement to vote on extension of emergency powers, introduction of COVID-related legislation, formation of a COVID committee). A score out of three - with the possibility of half scores for partial fulfilment of each indicator - was given to each country: the 'Legislative Responses to COVID-19 Index.'

The Tracker was developed from scoping of secondary data including existing COVID-19 Democracy Trackers, legislatures' websites and media sources. For more information about how the Tracker was developed, please see Appendix 1. This approach to data collection was designed to provide a quantitative overview of legislatures' responses to COVID-19. Three in-depth case studies were then conducted in order to explore the quality and quantity of legislative oversight and the role of leadership not captured by the Tracker. These cases were chosen based on the similarity of their pre-pandemic effective parliament score (which denotes the extent to which the legislature is capable of overseeing the executive)²³ and the fact that they were all considered to be at high risk of democratic backsliding at the outset of the pandemic.²⁴ However, each legislature operates differently and has varying powers in relation to the executive and we noted variations in their legislative responses to COVID-19 index score from our Tracker. This meant that we could explore why legislatures' responses to COVID-19 varied, where we might have expected them to have similar ability to provide oversight based on these pre-pandemic scores.

Taken from the Global State of Democracy Indices for 163 countries, the effective parliament score ranges from 0 to 1, with 1 representing the highest achievement in the sample. The three case studies have scores that indicate mid-range performance: Brazil (0.62), Nepal (0.62) and Ukraine (0.64). Based on the analysis of our Tracker, legislatures had different levels of involvement during the COVID-19 crisis, with Nepal scoring 1/3, Ukraine scoring 3/3 and Brazil scoring 3/3 on our Legislative Responses to COVID-19 Index. However, the extent of scrutiny in reality in Ukraine and Brazil was different, with Ukraine's Verkhovna Rada predominantly having oversight through the introduction of new legislation through the parliament, not formal oversight of the government's emergency response. This provides an interesting example of the nuance and complexity that cannot be explored solely through our Tracker.

The variation in legislative oversight in these case studies, in spite of the similarity of the extent to which the legislature is capable of oversight, allows for the exploration of what factors enabled or hindered legislative scrutiny and leadership during this time. These case studies were based on 33 key informant interviews and scoping of legislatures' websites and media sources.

21. For example, the [WFD Pandemic Democracy Tracker](#), [State of Emergency Information](#), the [V-Dem Pandemocracy Tracker](#), [IPU Tracker](#), [INCL Tracker](#), [IDEA Tracker](#), the [Inter Pares Tracker](#) and the [Democracy Community Tracker](#). These were supplemented with searching of individual legislatures' websites and media sources.

22. Regularity was defined as sitting at least four times per month in at least two out of the three months of this time period.

23. The Global State of Democracy Indices (2019), <https://www.idea.int/gsod-indices/about#Effective%20Parliament> (14 September 2020).

24. Lührmann, A. Edgell, A. B. & Maerz, S. F. (2020). Pandemic Backsliding: Does Covid-19 Put Democracy at Risk? Policy Brief, V-Dem Institute.

Legislative oversight during COVID-19

The 65 countries we consider are distributed across the entire spectrum of the Legislative Responses to COVID-19 Index, as illustrated by Figure 1. Some 27 countries scored 3 on our Tracker, making it the most common score, while 12 scored 2.5, 7 scored 2, 10 scored 1.5, 5 scored 1 and 4 scored 0. As this suggests, many legislatures continued to sit during the pandemic, with 52% sitting regularly and 35% sitting irregularly between 1 March and 1 June 2020. Meanwhile 12% of legislatures had extremely limited or no sittings during this time period. In some cases, legislatures were not sitting due to issues not initially related to COVID-19, such as scheduled recesses. For example, in North Macedonia the Assembly voted to dissolve on 16 February 2020 for elections scheduled for 12 April.²⁵ However, due to COVID-19, the elections were postponed, and so the legislature did not sit until 4 August.²⁶ In other countries, there were exceptional adjournments due to COVID-19. For example, in Australia, Parliament was suspended on 23 March; in May, there were strong calls for the full resumption of Parliament.²⁷

The majority of legislatures (69%) also had some oversight of the executive's initial response to the crisis between 1 March and 1 May. This is slightly higher than the 64% noted in other studies,²⁸ which is unsurprising given that our Tracker included legislative responses related to COVID-19 economic and/or financial legislation. This legislation was introduced in nine countries that either did not have oversight of overarching emergency legislation, where neither emergency nor new legislation was utilised by the executive to respond to the crisis or where an emergency response was not invoked at the national level. However, there was no legislative oversight found either on the emergency response or on any COVID-specific economic and/or financial legislation in nearly a third (29%) of legislatures in this timeframe.

Finally, 77% of legislatures had some form of ongoing oversight, such as voting on extensions to emergency legislation, the executive reporting to the legislature on their response to the pandemic, the development of legislation to tackle economic and/or financial aspects of the COVID-19 response, or the formation of a committee(s) providing formal monitoring of the response. For example, in a third of countries in our Tracker, a committee was formed to directly monitor the COVID-19 response.

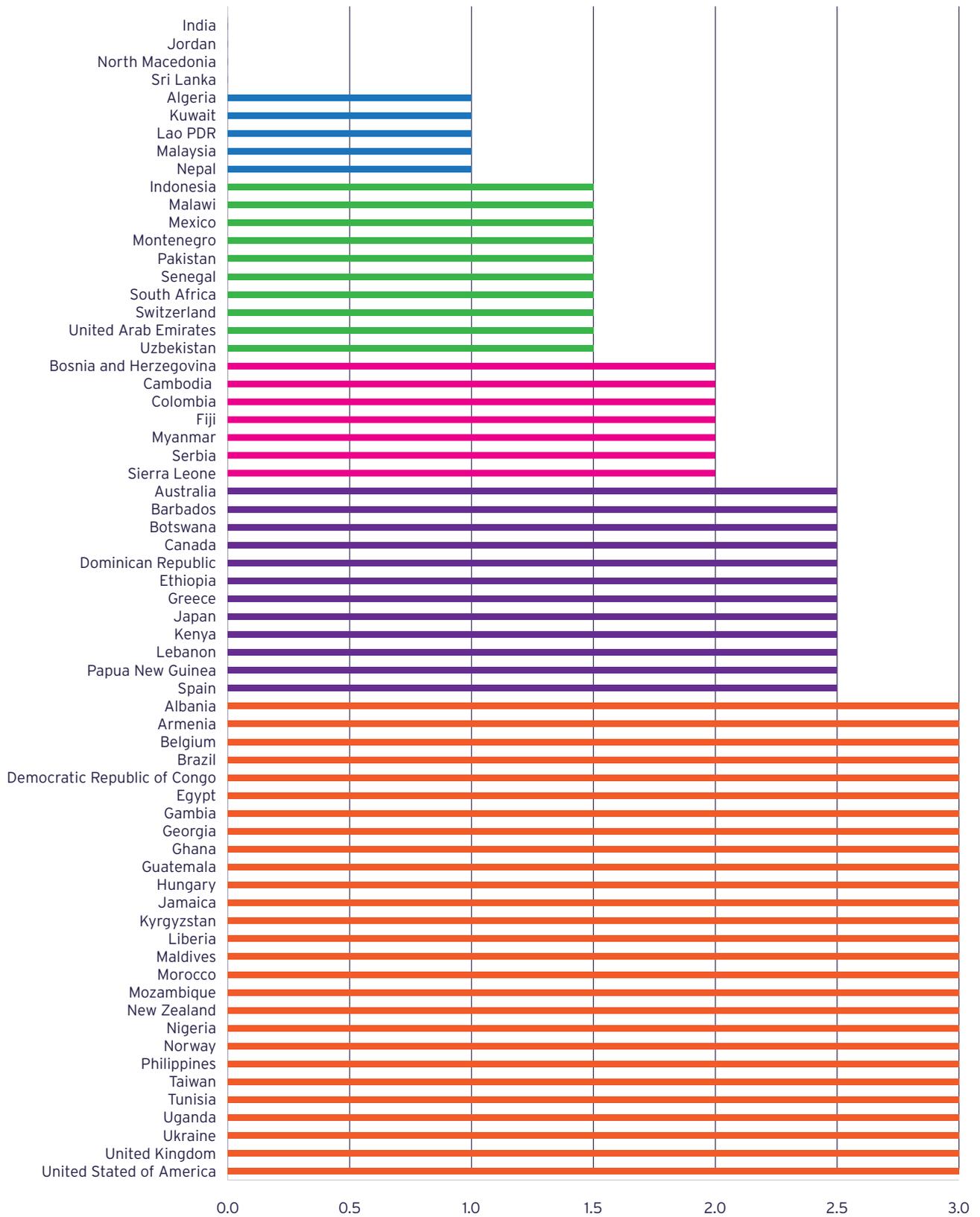
25. Radojevic, I. & Stankovic, N. (2020). The Parliamentary Response to Covid-19 and States of Emergency in the Western Balkans. First Report. Westminster Foundation for Democracy.

26. Radojevic, I. & Stankovic, N. (2020). The Parliamentary Response to Covid-19 and States of Emergency in the Western Balkans. Second Report. Westminster Foundation for Democracy.

27. Knaus, C. (2020). Calls to end 'undemocratic adjournment of parliament. 10 May 2020. <https://www.theguardian.com/australia-news/2020/may/11/calls-to-end-undemocratic-adjournment-of-parliament> (9 September 2020).

28. Ginsburg, T. & Versteeg, M. (2020). The Bound Executive: Emergency Powers during the Pandemic. Virginia Public Law and Legal Theory Research Paper No. 2020-52, University of Chicago, Public Law Working Paper No. 747, available at SSRN: <http://dx.doi.org/10.2139/ssrn.3608974>.

Figure 1: Legislative Responses to COVID-19 Index

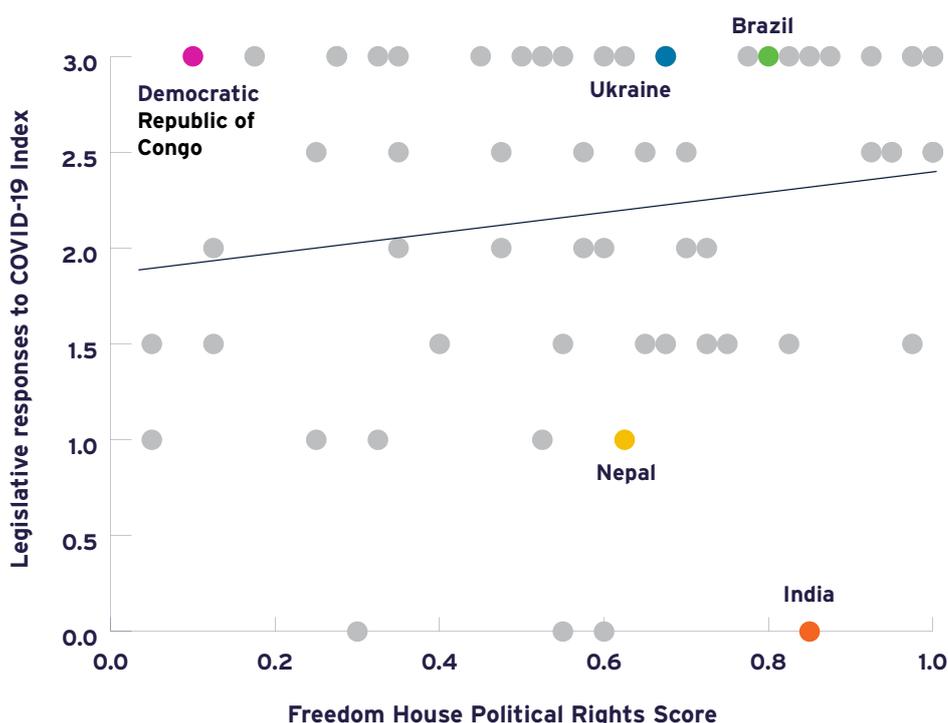


The length of the COVID-19 crisis meant that in some legislatures, there were numerous votes on extensions of emergency legislation, or there was oversight of economic legislation to mitigate the long-term effects of the pandemic. The increase in the role of legislatures prior to 1 September 2020 may also reflect increased action and ability for legislative oversight after the 'first wave' of the COVID-19 pandemic, as infection rates decreased in many countries and legislatures were more able to provide their usual functions.

However, for 23% of legislatures, there was limited, or no, opportunities for ongoing oversight of the government's response from 1 April to 1 September 2020. In some cases, the executive was required to report to parliament, but no evidence was found that this had occurred during the stipulated timeframe. For example, in Greece, there was critique of a lack of legislative scrutiny at the outset of the pandemic, as most of the government's work has been done through ministerial decisions and legislative decrees, which reduced the transparency in decision making.²⁹ For a full breakdown of the coding decisions for each country, see the Legislative Responses to COVID-19 Tracker that accompanies this report.

Acknowledging the potential limitations of democracy and legislative strength indices - each of which provides a slightly different ranking of countries based on the values and issues that it prioritises - we then sought to examine whether countries that score higher on pre-pandemic democracy ratings had more legislative oversight during this period. When we compared legislature responses during COVID-19 and Freedom House political rights scores, we found that generally those countries with a higher Freedom House score also had more opportunities for oversight during COVID-19 (Figure 2).

Figure 2: Comparing Political Rights Score to Legislative Responses to COVID-19 Index



It is also clear that there are legislatures where the response was not in line with what might be expected. For example, India, which scores 34/40 on Freedom House's political rights score, scored 0 in the Legislative Responses to COVID-19 Index. A recent article outlines the way the executive imposed lockdown without involvement of the legislature.³⁰ As lockdown was introduced on 23 March, the legislative session was halted

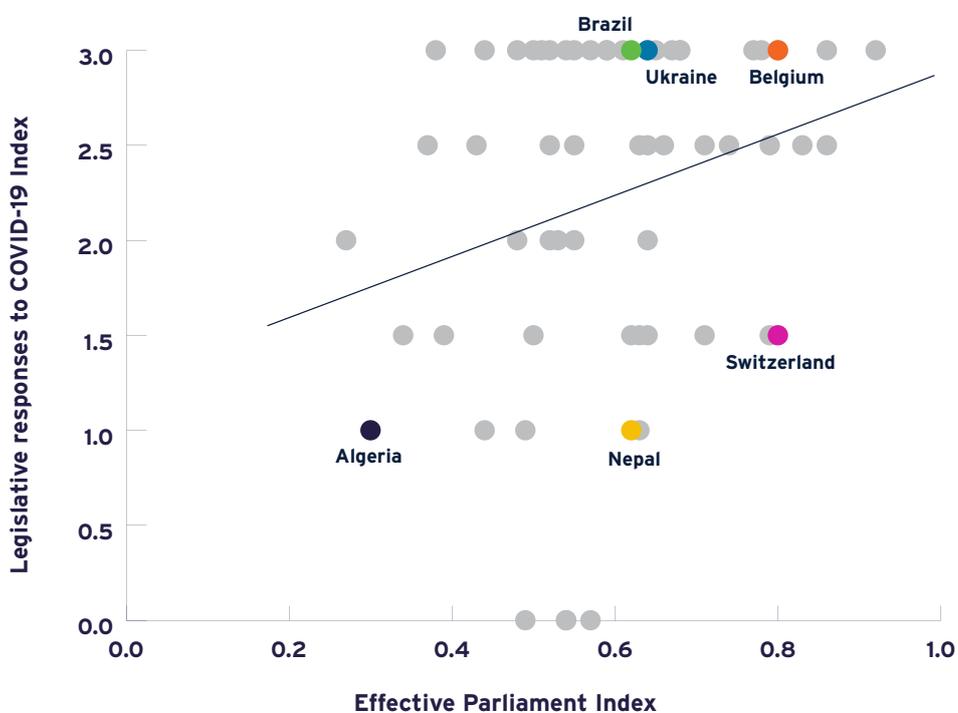
29. Fotiadis, A. (2020). Greek Govt Accused of Dodging Democratic Oversight. 28 April 2020. Reporting Democracy, <https://balkaninsight.com/2020/04/28/greek-govt-accused-of-dodging-democratic-oversight/> (4 September 2020).

30. Mukherji, R. (2020). Covid vs. Democracy: India's Illiberal Remedy. *Journal of Democracy*, 31(4): 91-105.

and calls by legislators to continue meeting virtually were resisted.³¹ Therefore there was a long gap in legislative oversight, with a break in sitting until 14 September.³² On the other hand, despite only scoring 4/40 on Freedom House's political rights score,³³ the Democratic Republic of Congo's legislature voted to extend the state of emergency that was implemented by the executive to respond to COVID-19³⁴ and had ongoing oversight of the four extensions of the state of emergency.³⁵ In addition, the National Assembly set up a COVID-19 commission to monitor the measures taken by the government in response to the crisis.³⁶

Similar findings were also noted when comparing the Legislative Responses to COVID-19 index and The Global State of Democracy Effective Parliament Index (Figure 3).³⁷ There is a stronger association between these two scores than between the Freedom House scores, suggesting that as one would expect, this index may be a slightly better predictor of legislative responses during COVID-19. However, the number of cases a significant distance away from the line also indicates that even this index, which explicitly looks at parliamentary effectiveness, fails to capture much of the variation that we see.

Figure 3: Comparing Parliamentary Effectiveness Score to Legislature Response to COVID-19 Index



In addition to the previous outliers, Switzerland scores 0.8 on the effective parliament index yet scored only 1.5 on the Legislative Responses to Covid-19 Index. After finishing its Spring session on 20 March, the

31. Verma, M. (2020). Parliaments in the Time of the Pandemic. *Economic and Political Weekly*, 55(24), 13 June 2020.
 32. The Wire (2020). Parliament's Monsoon Session Starts Amid Slew of Changes Effected by COVID-19 Situation, 14 September 2020, <https://thewire.in/government/parliaments-monsoon-session-starts-covid-19-situation-question-hour> (20 October 2020).
 33. Freedom House (2020). Freedom in the World - Democratic Republic of Congo, <https://freedomhouse.org/country/democratic-republic-congo/freedom-world/2020> (1 November 2020).
 34. Ahmed, L. B. (2020). Covid-19: extension of the state of health emergency. 23 April 2020, <https://www.aa.com.tr/fr/afrique/rdc-covid-19-prorogation-de-1%C3%A9tat-durgence-sanitaire/1816480> (6 September 2020).
 35. Chahed, N. (2020). DRC: extension of the state of health emergency for 15 days. 23 May 2020, <https://www.aa.com.tr/fr/afrique/rdc-prorogation-de-1%C3%A9tat-durgence-sanitaire-de-15-jours/1851663> (6 September 2020).
 36. Mikanda, J. (2020). Covid19: the National Assembly sets up a commission to assess the government's actions, 11 June 2020, <https://cas-info.ca/2020/06/covid19-lassemblee-nationale-met-en-place-une-commission-afin-devaluer-les-actions-du-gouvernement/> (6 September 2020).
 37. The Global State of Democracy Indices (2019), <https://www.idea.int/gsod-indices/about#Effective%20Parliament> (14 September 2020).

Swiss legislature sat again for an extraordinary session from 4 to 8 May. However, the Federal COVID-19 Act was only passed by the Swiss legislature on 25 September 2020.³⁸ The legislature did have some oversight, namely of the financial response to COVID-19, which was approved during the extraordinary session,³⁹ with further funds approved by the Senate in June.⁴⁰

It is important to note that coding the information in the Tracker was a particularly complex process for a number of reasons. We have utilised all available databases and information to come to a balanced judgement for each country, but legislative data is not always easy to come by and it is possible that additional information would lead us to slightly different decisions in some cases. It is also important to note that the Tracker captures the potential for legislative oversight rather than the quality or quantity; thus, it may overstate the oversight that occurred in practice. For example, the Hungarian legislature passed the Coronavirus Protection Act and revoked the state of danger on 16 June; however, it was widely considered that when the legislature first approved the state of danger it handed over significant powers to the government, dramatically reducing legislative oversight in practice.⁴¹ In Indonesia, the government passed a regulation in lieu of law, which allowed them to take various measures to tackle COVID-19 without prior consultation with the Dewan Perwakilan Rakyat (DPR). The DPR did have oversight of the budget that was re-allocated to COVID-19. However, it has been reported that the amendments to the state budget occurred with very little debate or discussion.⁴² Additionally, whilst an oversight working committee was also set up in the DPR to monitor the COVID-19 response, experts have questioned the power that this temporary committee has and the limited communication about their work.⁴³ Others have argued that the COVID-19 outbreak in Indonesia created ideal conditions for politicians to pursue their agenda, with little scrutiny, undermining democracy.⁴⁴

Therefore, considering the complexity of understanding legislative oversight in practice during COVID-19, three case studies were undertaken to explore the nuances of how legislatures have, or have not, been able to effectively perform their oversight role during this crisis.

Case study: Brazil

Brazil's President exercises executive power with veto power, the ability to rule by decree and ask for urgency in analysis of a proposition in the legislature. However, the President's powers are insufficient without legislative support.⁴⁵ The bicameral legislature develops legislation, monitors the Executive Branch and can authorise legal processes against the President or Vice-President.⁴⁶ Vigorous inter-party competition and party switching mean that Brazilian presidents tend to govern on the basis of broad coalitions. However, Bolsonaro has declined to forge a coalition with the legislative branch. All 26 states in Brazil have their

38. FOPH (2020). Coronavirus: Measures and Ordinances, <https://www.bag.admin.ch/bag/en/home/krankheiten/ausbrueche-epidemien-pandemien/aktuelle-ausbrueche-epidemien/novel-cov/massnahmen-des-bundes.html> (22 October 2020).

39. Swiss Info (2020). Swiss Parliament extends coronavirus relief package, 5 May 2020, https://www.swissinfo.ch/eng/politics/sign-off-session_swiss-parliament-extends-coronavirus-relief-package/45737938 (22 October 2020).

40. Swiss Info (2020). Parliament approves extra CHF 14.9 billion for Covid relief, 4 June 2020, https://www.swissinfo.ch/eng/politics/coronavirus-funds_parliament-approves-extra-chf14.9-billion-for-covid-relief/45806602 (22 October 2020).

41. De Vrieze, F. (2020). No quarantine for democracy. 21 April 2020, <https://www.wfd.org/2020/04/21/no-quarantine-for-democracy/> (3 September 2020).

42. Hasan, A. M. (2020). Budget politics in Indonesia's Covid-19 response. 14 September 2020, <https://indonesiaatmelbourne.unimelb.edu.au/budget-politics-in-indonesias-covid-19-response/> (22 October 2020).

43. Interviews with researchers at Cakra Wikara Indonesia, Anna Margret and Dirga Ardiansa (Assistant Professors, University of Indonesia) and Yolanda Panjaitan (Lecturer, University of Indonesia) on 10 November 2020 and Dr Ratih Adiputri (Lecturer of Indonesian Politics at University of Jyväskylä) on 17 November 2020.

44. Mietzner, M. (2020). Populist Anti-Scientism, Religious Polarisation and Institutionalised Corruption: How Indonesia's Democratic Decline Shaped Its Covid-19 Response. *Journal of Current Southeast Asian Affairs*, 39(2): 227-249.

45. Brum Bernardes, C. (n.d). The Brazilian National Congress: A Complex Relationship with the Executive. https://www.psa.ac.uk/sites/default/files/BERNARDES%20-%20Brazilian%20Parliament_FINAL.pdf.

46. Brum Bernardes, C. (n.d). The Brazilian National Congress: A Complex Relationship with the Executive. https://www.psa.ac.uk/sites/default/files/BERNARDES%20-%20Brazilian%20Parliament_FINAL.pdf.

own governments and legislatures with relative financial independence, bringing considerable complexity to the political system. Freedom House considers Brazil 'free', with a political rights score of 31/40.⁴⁷ V-Dem's Pandemocracy Tracker considered Brazil 'at high risk of democratic backsliding during the pandemic',⁴⁸ but Brazil scored 3/3 on our Legislative Responses to COVID-19 Index.

As of 14 November, Brazil had 5,810,652 confirmed cases of COVID-19 and 164,737 deaths.⁴⁹ Executive inaction is widely blamed for the severity of the crisis⁵⁰ and was influenced by fraught relationships between the President, the Supreme Court, National Congress and governors. Bolsonaro's fractious relationships have also extended to within his own government, with two health ministers either replaced or resigning,⁵¹ whilst on 31 May, Bolsonaro made appearances at a demonstration where people were calling for Congress to close.⁵²

Brazil's Congress quickly adapted to allow for remote work.⁵³ The highly qualified in-house digital team, with the mandate and resources to design and re-design systems was an important factor in this swift transition. However, this swift switch also occurred as a result of the contentious relationship between the President and Congress, as it was considered crucial to maintain oversight of the executive's actions. On 16 March, in a virtual session, the Congress approved the decree of public calamity and created a mixed committee to monitor the actions of the government.⁵⁴ The muted executive response meant that the National Congress legislated quickly on numerous issues, including the distribution of school meals and the use of telemedicine.⁵⁵

Legislative scrutiny strongly focused on the financial aspects of the crisis, with a pivotal action being pressure to increase emergency financial aid.⁵⁶ Another contentious issue was when the Ministry of Health's website for COVID-19 data on deaths and cases was taken down, and there were 'demonstrations by countless deputies and senators to publish the figures'.⁵⁷ The Congress also overturned several vetoes issued by President Bolsonaro, for example by voting in favour of mandatory mask wearing in closed spaces, something Bolsonaro did not support.⁵⁸ They also opposed a decree which sought to enable private sector partnerships in the Sistema Único de Saúde.⁵⁹

The committees established to monitor the COVID-19 response played an important oversight role during the crisis.⁶⁰ Particularly at the outset, the commission in the Câmara dos Deputados was 'involved in providing

47. Freedom House (2020). Freedom in the World 2020 - Brazil. <https://freedomhouse.org/explore-the-map?type=fiw&year=2020&country=BRA> (17 October 2020).

48. Lührmann, A. Edgell, A. B. & Maerz, S. F. (2020). Pandemic Backsliding: Does Covid-19 Put Democracy at Risk? Policy Brief, V-Dem Institute.

49. WHO (2020). Brazil Covid Information, <https://covid19.who.int/region/amro/country/br> (14 November 2020).

50. Smith, A. E. (2020). Brazil's Populist Playbook, Covid vs. Democracy. *Journal of Democracy*, 31(4): 76-90.

51. Londoño, E. (2020). Another Health Minister in Brazil Exits Amid Chaotic Coronavirus Response. *The New York Times*, 15 May 2020, <https://www.nytimes.com/2020/05/15/world/americas/brazil-health-minister-bolsonaro.html> (3 October 2020).

52. Singer, A. (2020). Jair Bolsonaro, wannabe dictator. *Le Monde Diplomatique*, July 2020, <https://mondediplo.com/2020/07/05brazil> (3 October 2020).

53. Resolution No. 17 created the 'Sistema de deliberação remota'.

54. Reuters Staff (2020). Brazil Senate approves State of Emergency to fight coronavirus, 20 March 2020, <https://www.reuters.com/article/us-health-coronavirus-brazil-emergency-idUSKBN2172G1> (16 October 2020).

55. Agência Brasil (2020). Câmara aprova Programa Emergencial de Manutenção do Emprego e da Renda. 28 May 2020. <https://agenciabrasil.ebc.com.br/politica/noticia/2020-05/camara-aprova-programa-emergencial-de-manutencao-do-emprego-e-da-renda> (12 October 2020).

56. Meyer, E. P. N. & Bustamante, T. (2020). Authoritarianism Without Emergency Powers: Brazil Under -19. <https://verfassungsblog.de/authoritarianism-without-emergency-powers-brazil-under-covid-19/> (3 October 2020).

57. Interview with Elisabete Busanello, CNE - assistente técnico de gabinete, Câmara dos Deputados via email in November 2020.

58. CNN (2020). Defying Bolsonaro, Brazilian congress orders mandatory mask wearing, 21 August 2020, <https://edition.cnn.com/videos/world/2020/08/21/brazil-coronavirus-covid-19-pandemic-congress-jair-bolsonaro-masks-romo-1kl-intl-ldn-vpx.cnn> (6 October 2020).

59. Chagas, E. (2020). Senadores comemoram revogação de decreto sobre o SUS, 29 October 2020, <https://www12.senado.leg.br/noticias/materias/2020/10/29/senadores-comemoram-revogacao-de-decreto-sobre-o-sus> (20 November 2020).

60. The External Commission to Monitor the Preventative Actions of Health Surveillance and Possible Consequences for Brazil in Confronting the Pandemic Caused by Coronavirus in the Câmara dos Deputados and the Mixed Covid-19 commission, composed of six members from the Câmara dos Deputados and the Senado.

oversight on the executive actions on medicines for intensive care units, ventilators, the distribution of ventilators' and more recently put pressure on the executive to fund vaccines.⁶¹ The Mixed COVID-19 commission held a number of public hearings and has been releasing weekly reports on its work.⁶² On 16 May, it approved the formation of a temporary subcommittee to create a parallel system of counting cases of the disease and consequent deaths. This is a key area of scrutiny as '... we will be able to compare our data with the official figures released by the federal government'.⁶³ However, there is more coordination now between the committee in the Câmara dos Deputados and the Health Minister, which may reduce the level of scrutiny. The dynamics of multiparty presidentialism can foster an environment where legislators constantly bargain to procure resources from the Executive, who thereby secures support, which can undermine vital checks and balances.⁶⁴

The most commonly mentioned parliamentary actors leading the scrutiny of the executive were those already in leadership positions. For example, Rodrigo Maia, the President of the Câmara dos Deputados 'has taken a very decisive role in the media' speaking out against some executive actions and asking for information and legislation during the crisis.⁶⁵ The fact is that the legislature is able to impeach Bolsonaro and increasing requests for impeachment 'makes Rodrigo Maia a veto player'.⁶⁶ Additionally, the coordination role of party leaders, already an important position, is reinforced with reduced in-person meetings and they play a more prominent role in virtual debates. As a result, there 'should be a major concern about the egalitarian distribution of visibility'⁶⁷ as this could weaken the position of representatives who work independently or across party lines and place limits on their ability to provide oversight. Other barriers to effective legislative scrutiny in Brazil during COVID-19 include the fact that ordinary committees have not been functioning. The responsibility for scrutiny is thus given to a far smaller group of legislators and leaves a large void in the scrutiny of other areas. There has also been a reduction of public participation in these processes, as a result of the switch to virtual working, which reduces the information provided to those who are scrutinising the executive's actions and means less accountability.⁶⁸

Overall, Congress has been an effective check on the President's power, particularly through legislative pressure and oversight of special committees. However, scrutiny is concentrated in the hands of fewer legislators and there are additional concerns about transparency and interaction with outside actors and the legislature's reduced oversight of issues not related to the pandemic.

Case study: Nepal

Executive power in Nepal is exercised by the Prime Minister and Cabinet, whilst legislative power is vested in the bicameral Sanghiya Sansad. Nepal's constitution, ratified in 2015, also set out federal and provincial powers.⁶⁹ The Nepal Communist Party, founded two years ago through a merger between two major streams of the communist movement⁷⁰ has a near two thirds majority, but ongoing party struggles have 'flared up in the early months of the pandemic'.⁷¹ Some experts consider that members of parliament have 'shallow engagement in policy-making and legislative review processes', instead focusing on their representative

61. Interview with Professor Fabio Gomes, Professor at the Brazilian Chamber of Deputies Training Centre on 27 October 2020.

62. CN-Covid-19 Monitoring Reports, <https://legis.senado.leg.br/comissoes/arquivos?ap=5437&codcol=2342>.

63. Câmara Dos Deputados (2020). Mixed commission will make parallel counting of cases and deaths related to Covid-19, 16 June 2020, <https://www.camara.leg.br/noticias/669282-comissao-mista-fara-contagem-paralela-de-casos-e-obitos-relacionados-a-covid-19/> (16 October 2020).

64. Mello, E. & Spektor, M. (2018). Brazil: The Costs of Multiparty Presidentialism. <https://muse.jhu.edu/article/690080/pdf>.

65. Interview with Researcher at the Brazilian Federal Senate on 29 October 2020.

66. Interview with Professor Amy Erica Smith, Iowa State University and Carnegie Fellow on 30 October 2020.

67. Interview with Digital Democracy Expert, 6 November 2020.

68. Interview with Researcher at the Brazilian Federal Senate on 29 October 2020.

69. Constitute Project (2019). Nepal's Constitution of 2015, 12 August 2019, https://www.constituteproject.org/constitution/Nepal_2015.pdf?lang=en (18 September 2020).

70. Shakya, M. (2020). The politics of border and nation in Nepal in times of pandemic. *Dialectical Anthropology*, 44: 223-231.

71. Interview with Iain Payne, Program Analyst Niti Foundation on 19 October 2020.

function.⁷² Other critiques of Nepal's political system are summarised by the concept of 'bhagbanda' or 'division of the spoils' rather than a focus on improving governance.⁷³ Freedom House considers Nepal 'partly free', with a political rights score of 25/40.⁷⁴ V-Dem's Pandemocracy Tracker considered Nepal 'at high risk of democratic backsliding during the pandemic'⁷⁵ and Nepal only scored 1/3 on our Legislative Response to COVID-19 index.

As of 14 November, Nepal had 204,242 confirmed cases of COVID-19 and 1,189 deaths.⁷⁶ The government imposed a nationwide lockdown from 24 March to 21 July 2020. In spite of having numerous options, such as Article 273 of the Constitution, the Public Health Act 2017 and the Disaster Risk Reduction Management Act 2017, the government invoked the 57-year-old Infectious Diseases Act, giving it sweeping powers to respond to the crisis.⁷⁷ This approach does not 'give any role to the parliament or its committees for scrutiny'.⁷⁸ Overall, there has been overwhelming critique of the government's mishandling of COVID-19, with ongoing 'Enough is Enough' protests.⁷⁹

The only focus of the legislature on COVID-19 was a proposal of public importance in the lower house Pratinidhi Sabha, focused on issues of testing, repatriation and coordination⁸⁰ as the legislature adjourned when national lockdown began.⁸¹ Ruling party internal power struggles contributed to this decision, but COVID-19 provided a strong justification for not meeting physically. Although the legislature met in May and June for the budget session and to endorse the Second Amendment to the constitution of Nepal, except for some speeches, there were minimal opportunities to scrutinise the government's response to COVID-19.⁸² Therefore MPs lost an important forum through which to provide oversight. Despite calls for virtual sittings, the Parliament Secretariat referred to the lack of regulations and technology that would enable these meetings.⁸³

Committees became the primary route for legislative oversight, although they met less frequently and with fewer members present. The Legislation Management Committee of the upper house Rastriya Sabha conducted post-legislative scrutiny of the Infectious Diseases Act, soliciting expert and public feedback.⁸⁴ Its conclusion that the Act is outdated and insufficient was submitted to the government.⁸⁵ The Public Accounts

72. Mahato, S. Kumar Sah, R. & Chaudhary, P. (2020). Legislators' Engagement in Policy-making and Post-legislative Scrutiny in Nepal since 1991. *Journal of Southeast Asian Human Rights*, 4(1): 69-99.

73. Nepali Times (2020). Nepal political tug-o-war continues. 3 September 2020, <https://www.nepalitimes.com/banner/nepal-political-tug-o-war-continues/> (19 September 2020).

74. Freedom House (2020). Freedom in the World 2020 - Nepal. <https://freedomhouse.org/country/nepal/freedom-world/2020> (17 October 2020).

75. Lührmann, A. Edgell, A. B. & Maerz, S. F. (2020). Pandemic Backsliding: Does Covid-19 Put Democracy at Risk? Policy Brief, V-Dem Institute.

76. WHO (2020) Nepal Covid Information, <https://covid19.who.int/region/searo/country/np>.

77. Devkota K. (2020) Response to the COVID-19 by emergency law or inappropriate law, a threat to democracy, a case study of Nepal with Post-legislative scrutiny of Infectious Disease Act, 1964.

78. Interview with Dev Raj Dahal, Associate Professor of Political Science, Tribhuvan University, via e-mail November 2020.

79. Rijal, D. (2020). Social movement through social media. 15 June 2020, <https://www.nepalitimes.com/latest/social-movement-through-social-media/> (22 September 2020).

80. Ghimire, B. (2020) House asks government to come up with action plan to deal with coronavirus threat, 7 March 2020, <https://kathmandupost.com/national/2020/03/07/house-unanimously-asks-government-to-come-up-with-action-plan> (11 September 2020).

81. Ghimire, B. (2020). Parliament secretariat says no possibility to hold formal meeting of the House committees virtually, 14 April 2020, <https://kathmandupost.com/national/2020/04/14/parliament-secretariat-says-no-possibility-to-hold-formal-meeting-of-the-house-committees-virtually> (19 October 2020).

82. The Himalayan Times (2020). Nepali Congress leader Gagan Thapa comes down heavily on govt. 9 June 2020, <https://thehimalayantimes.com/kathmandu/nepali-congress-leader-gagan-thapa-comes-down-heavily-on-govt/> (2 November 2020).

83. Ghimire, B. (2020). Parliament secretariat says no possibility to hold formal meeting of the House committees virtually, 14 April 2020, <https://kathmandupost.com/national/2020/04/14/parliament-secretariat-says-no-possibility-to-hold-formal-meeting-of-the-house-committees-virtually> (19 October 2020).

84. <https://www.facebook.com/100667834740336/videos/232166431186971>.

85. Devkota K. (2020) Response to the COVID-19 by emergency law or inappropriate law, a threat to democracy, a case study of Nepal

Committee summoned representatives from the Ministry of Health to question its approach to procurement and the Education and Health Committee and its subcommittee on COVID-19 also made numerous demands. However, whilst ministers can be requested to attend, 'committees do not have the authority to demand them'.⁸⁶

In spite of the legislature not meeting, a controversial announcement by the government on 18 October that people should pay for COVID-19 tests and treatment was criticised by ruling party and opposition MPs.⁸⁷ Legislators have also used the media to speak out if committee meetings were not happening or if they were not members of committees that were meeting.⁸⁸ The opposition party also formed a 35-member COVID-monitoring committee to demand transparency in the government's plans, particularly in relation to quarantine facilities and testing.⁸⁹ On 16 October, they submitted their critical report and demanded a special session of the legislature to discuss the issue.⁹⁰ However this did not materialise, and many have also critiqued the opposition for not mobilising effectively to oversee the government response.⁹¹

The closure of the legislature and inability to hold virtual meetings results in limited oversight. Afraid of catching COVID-19, many legislators were less active during this period and many considered that parliament's closure was in line with national lockdown.⁹² Challenges also arose from the narrative that the government needed support to tackle the crisis; when asked about the use of COVID-19 funds, the Prime Minister responded that 'the focus right now should be on fighting COVID-19 and not petty financial calculations'.⁹³ The fact that the majority of committees are also chaired by the majority ruling party may have also meant they were less willing to scrutinise their own government.

Most legislators did not have space to establish leadership, and 'the group initiative of parliamentarians has not been seen'.⁹⁴ Scrutiny predominantly came from individuals such as Gagan Thapa, an opposition MP who served as the Minister of Health and Population from 2016 to 2017.⁹⁵ He is considered a legitimate actor in overseeing the government's response as: 'he worked on the medical education bill. He did a very hard job of being in opposition, so people know he can talk about these things'.⁹⁶ He also has access to his former technical advisers who 'provide analysis and he has the courage to raise these issues'.⁹⁷ Chairs of committees also had a more prominent role, such as Parsu Ram Meghi Gurung MP who initiated the post-legislative scrutiny of the Infectious Diseases Act,⁹⁸ as committee meetings were the only legislative activity. Whilst important, this leaves the legislature's institutional oversight role concentrated in the hands of a limited number of MPs.

with Post-legislative scrutiny of Infectious Disease Act,1964.

86. Interview with Manoj Satyal, Journalist Setopati Digital Newspaper, on 2 November 2020.

87. Pradhan, T. R. (2020). In a rare show, ruling party leaders censure government over virus test and treatment move. 20 October 2020, <https://kathmandupost.com/national/2020/10/20/in-a-rare-show-ruling-party-leaders-censure-government-over-virus-test-and-treatment-move> (14 November 2020).

88. <https://www.facebook.com/278385109664350/posts/646896342813223/>; <https://www.facebook.com/278385109664350/posts/648407225995468/>.

89. The Himalayan Times (2020). Nepali Congress slams govt. for poor handling of COVID crisis, 6 October 2020, <https://thehimalayantimes.com/nepal/nepali-congress-slams-govt-for-poor-handling-of-covid-crisis/> (6 November 2020).

90. The Himalayan Times (2020). Govt's bid to control COVID ineffective: Congress, 17 October 2020, <https://thehimalayantimes.com/nepal/governments-bid-to-control-covid-ineffective-nepali-congress/> (6 November 2020).

91. Election Observation Committee Nepal (2020). Review Report: Role of the Opposition in a Parliamentary Democracy: Review of the parliamentary activities during the months of August to October 2020.

92. Interview with Ashok Dahal, General Secretary, Journalist's Society of Parliament Affairs on 21 October 2020.

93. Shakya, M. (2020). The politics of border and nation in Nepal in times of pandemic. *Dialectical Anthropology*, 44: 223-231.

94. Interview with Constitutional Scholar and Lawyer on 2 November 2020.

95. HQSS Commission (2020). Gagan Thapa - Profile, <https://www.hqsscommission.org/people/gagan-thapa/> (17 November 2020).

96. Interview with Manoj Satyal, Journalist Setopati Digital Newspaper, on 2 November 2020.

97. Interview with George Varughese, Senior Strategic Advisor, Niti Foundation on 26 October 2020.

98. WFD (2020). MPs in Nepal scrutinise decades-old laws invoked by Government to respond to COVID-19, 13 May 2020, <https://www.wfd.org/2020/05/13/mps-in-nepal-scrutinise-decades-old-laws-invoked-by-government-to-respond-to-covid-19/> (6 September 2020).

Overall, the government appears to have undermined democratic processes by invoking an outdated piece of legislation to address COVID-19 and evading legislative oversight and scrutiny. Individual legislators, largely through committees and social media, have provided scrutiny, but there have been criticisms of the legislature's uncoordinated approach to oversight during the crisis.

Case study: Ukraine

The Ukrainian president has a number of powers; however, executive power is exercised by the Cabinet of Ministers and legislative power rests with the unicameral Verkhovna Rada.⁹⁹ The legislature has oversight powers, with the mandate to oversee and monitor the state budget, pass a vote of no confidence in the Prime Minister and establish commissions of inquiry.¹⁰⁰ Currently President Zelenskyy's party has an outright majority in the Verkhovna Rada.¹⁰¹ Freedom House considers Ukraine 'partly free' with a political rights score of 27/40, stating that opposition groups are represented in parliament and their political activities are generally not impeded.¹⁰² V-Dem's Pandemocracy Tracker considered Ukraine 'at high risk of democratic backsliding during the pandemic',¹⁰³ but Ukraine scored 3/3 on our Legislative Responses to COVID-19 Index.

As of 14 November, Ukraine had 525,176 confirmed cases of COVID-19 and 9,508 deaths.¹⁰⁴ Coinciding with a change of cabinet and a new health minister,¹⁰⁵ the government did not declare a state of emergency, but did introduce a three-week nationwide quarantine on 12 March for which legislative approval was not required.¹⁰⁶ As COVID-19 infections were low, this decision was heavily debated, particularly by businesses.¹⁰⁷ Some of the more restrictive measures have been lifted since 11 May, with the introduction of an 'adaptive quarantine' which transferred power to introduce quarantine measures to regional commissions.¹⁰⁸ However, these measures were also highly unpopular, with protests in several regions and conflict between central and local politicians.¹⁰⁹ Most recently, the government introduced a weekend quarantine, which has also been strongly criticised.¹¹⁰

The Verkhovna Rada adapted legislation to respond to COVID-19, enabling virtual committee meetings.¹¹¹ The e-parliament strategy launched on 4 February meant that there were pre-existing electronic systems and the

99. Averchuk, R. (2016). Presidential Power in Ukraine: A Comparative Analysis, 8 July 2016, <https://voxukraine.org/en/presidential-power-in-ukraine-comparative-perspective-en/> (18 November 2020).

100. Tashtanov, T. (2020). Report and Roadmap: On Internal Reform and Capacity-Building for the Verkhovna Rada of Ukraine. European Parliament.

101. Oxford Analytica (2019). Ukraine enters new territory with majority parliament. Expert Briefings, <https://doi.org/10.1108/OXAN-DB245410>.

102. Freedom House (2020). Freedom in the World 2020 - Ukraine, <https://freedomhouse.org/country/ukraine/freedom-world/2020>.

103. Lührmann, A. Edgell, A. B. & Maerz, S. F. (2020). Pandemic Backsliding: Does Covid-19 Put Democracy at Risk? Policy Brief, V-Dem Institute.

104. WHO (2020). Covid Information - Ukraine, <https://covid19.who.int/region/euro/country/ua> (14 November 2020).

105. Pifer, S. (2020). March was a roller coaster month for Ukraine. 6 April 2020, <https://www.brookings.edu/blog/order-from-chaos/2020/04/06/march-was-a-roller-coaster-month-for-ukraine/> (17 November 2020).

106. Åslund, A. (2020). Responses to the Covid-19 crisis in Russia, Ukraine and Belarus. Eurasian Geography and Economics. DOI: 10.1080/15387216.2020.1778499.

107. 112 Ukraine (2020). Clashes broke out at Verkhovna Rada, entrepreneurs try to break into building, 17 November 2020, <https://112.international/ukraine-top-news/clashes-broke-out-at-verkhovna-rada-entrepreneurs-try-to-break-into-building-56565.html> (29 November 2020).

108. Bernatskyi, B. (2020). Backgrounder: Ukraine's response to Covid-19 - from total lockdown to adaptive quarantine.

109. Minakov, M. (2020). Ukraine's Current Political Agenda, 31 August 2020, <https://www.wilsoncenter.org/blog-post/ukraines-current-political-agenda> (20 November 2020).

110. Ponomarekno, I. (2020). Defying Ukraine's central government, many regions ignore weekend lockdown, 15 November 2020, <https://www.kyivpost.com/ukraine-politics/ignoring-ukraines-central-government-regions-mostly-ignore-weekend-lockdown.html> (22 November 2020).

111. IPU (2020). Preserving the functionality of parliament during the COVID-19 pandemic: the Ukrainian Experience, Innovation Tracker, Issue 6, 20 July 2020.

ICT department provided training to support these adaptations.¹¹² During the quarantine period, 37 laws were passed, including 12 aimed at combating COVID-19.¹¹³ These included laws to liberalise tax legislation, amend the state budget and establish a fund to support industries affected by the quarantine.¹¹⁴ However, there were reports of limited time for discussion,¹¹⁵ and uneasy negotiations.¹¹⁶ Previously, reports on the Verkhovna Rada noted that 'the presidential one-party majority in the Rada rapidly approved whatever draft laws were offered by the president's team'.¹¹⁷

During the COVID-19 crisis the legislature primarily focused on its legislative function, but after approving 65 million Ukrainian hryvnia (UAH) for COVID-19, legislators have asked numerous questions about why more than half of the fund has been transferred to finance road construction.¹¹⁸ The Accounting Chamber within the Verkhovna Rada has been tracking the costs of combating COVID-19,¹¹⁹ but there has not been formal oversight or sanctions from the legislature, and critical monitoring of the COVID-19 fund is being undertaken by civil society.¹²⁰ However, 'almost all hours of questions to the government are about the situation with coronavirus in Ukraine and urgent measures of the Government to combat this disease'¹²¹ and 'even deputies from the majority party put questions to the government about why their policy has been ineffective'.¹²²

The Cabinet of Ministers' weekend quarantine has also been unpopular with the majority party and the opposition, but the Verkhovna Rada was unable to reverse this restriction.¹²³ Many argued that they should have taken a stronger response, as their only resolution was to request the government inform citizens earlier about strengthening quarantine restrictions.¹²⁴ This 'is a very low level of discussion, it is not about the parameters or configuration of quarantine, but about due notification',¹²⁵ thus representing limited scrutiny. There were some committees questioning the government about the health and economic response to COVID-19.¹²⁶ However, oversight in the committees was considered inefficient, as 'the minister can ignore the

112. IPU (2020). Preserving the functionality of parliament during the COVID-19 pandemic: the Ukrainian Experience, Innovation Tracker, Issue 6, 20 July 2020.

113. Information Department (2020). Parliamentary Rules and Legislation in a Pandemic, 15 June 2020, <https://www.rada.gov.ua/news/Novyny/194093.html> (19 November 2020).

114. Tax and Legal Alert (2020). Verkhovna Rada of Ukraine adopted a law aimed to prevent the emergence and spread of COVID-19, 18 March 2020, <https://www2.deloitte.com/ua/en/pages/press-room/tax-and-legal-alerts/2020/2020-03-18-covid-19.html> (15 November 2020).

115. Hromadske International (2020). Ukraine's Parliament Adopts Coronavirus Law in Emergency Session, 17 March 2020, <https://en.hromadske.ua/posts/ukraines-parliament-adopts-coronavirus-law-in-emergency-session> (22 November 2020).

116. Vakulenko, V. Khodachek, I. & Bourmistrov, A. (2020). Ideological and financial spaces of budgetary responses to Covid-19 lockdown strategies: comparative analysis of Russia and Ukraine. *Journal of Public Budgeting, Accounting and Financial Management*.

117. Prokip, A. (2020). President Zelenskyy Is Losing Trust. Is He Losing Power? Focus Ukraine Blog, 14 April 2020. <https://www.wilsoncenter.org/blog-post/president-zelenskyy-losing-trust-he-losing-power> (20 November 2020).

118. Prokip, A. (2020). Ukraine Quarterly Digest: July-September 2020. 14 October 2020, <https://www.wilsoncenter.org/blog-post/ukraine-quarterly-digest-july-september-2020> (12 November 2020).

119. Patskan, V. (2020). Specialists of the Accounting Chamber have already started tracking expenditures to combat COVID-19, <https://rp.gov.ua/PressCenter/News/?id=874>.

120. Pristai, D. (2020). COVID-19 Anti-Fund. What did the money go for and was it really needed? 3 September 2020, <https://suspijne.media/60177-fond-borotbi-z-covid-19-na-so-pisli-kosti-ta-ci-dijisno-vin-buv-potriben/> (28 October 2020).

121. Interview with legal expert working with Verkhovna Rada, 16 November 2020.

122. Interview with Dr Bohdan Bernatskyi, National University of Kyiv-Mohyla Academy, 4 December 2020.

123. Zavgorodnya, I. (2020). The Verkhovna Rada did not support the abolition of the 'weekend quarantine'. 17 November 2020, <https://www.dw.com/uk/verkhovna-rada-ne-pidtrymala-skasuvannia-karantynu-vykhidnogo-dnia/a-55627141> (28 November 2020).

124. Zubkova, D. (2020). Rada Obliges Cabinet to Inform Citizens about Strengthening of Quarantine Restrictions 7 days before their entry into force, 17 November 2020, <https://ukranews.com/en/news/739304-rada-obliges-cabinet-to-inform-citizens-about-strengthening-of-quarantine-restrictions-7-days> (4 December 2020).

125. Interview with Dr Bohdan Bernatskyi, National University of Kyiv-Mohyla Academy, 4 December 2020.

126. Information Department (2020). The Committee on Humanitarian and Information Policy has submitted for registration a package of bills on economic support for culture and creative industries, 22 April 2020, <https://www.rada.gov.ua/news/Novyny/190982.html> (19 October 2020).

committee'.¹²⁷ Additionally, 'most committees have majority from the parliamentary majority'¹²⁸ which might affect their ability to scrutinise.

As the crisis continued, legislators and staff were infected with COVID-19, limiting their ability to function.¹²⁹ It was also considered that 'pandemics are seen by the authorities and citizens as a big challenge for the country, so criticising government actions during the pandemic may not be seen by the public as a good thing... parliamentary members are very careful with it... They are trying to work as a united force to combat this common enemy.'¹³⁰ However, the main barriers to legislative scrutiny pre-existed the pandemic as: 'Ukrainian parliament has limited resources in terms of questioning the government and scrutinising.'¹³¹ It is difficult for the opposition to request a parliamentary hearing, particularly as the current mono-coalition supports the President. The Cabinet is appointed by the majority in the Verkhovna Rada, so it is a challenge for them to criticise the government they appointed: 'That is why there have not been so many critiques of the government's decisions and actions from the parliament.'¹³²

Individuals in the legislature have submitted questions about COVID-19 to the government and the Deputy Chairperson of the Verkhovna Rada, Olena Kondratyuk has been critical of testing and the lack of transparency about the Prime Minister's strategy to overcome the coronavirus pandemic.¹³³ Those in leadership positions seem to have more opportunities to vocally scrutinise the government's response. However, it was widely considered that the strongest scrutiny of the government was coming from outside of the Verkhovna Rada, such as from civil society organisations and local political leaders who challenged quarantine measures.¹³⁴

Overall, the Verkhovna Rada played an active legislative role in responding to COVID-19. However, even in the absence of a state of emergency, pre-existing weak oversight capacity has meant that scrutiny has been largely focused on a few actions, such as the weekend quarantine or economic support. Indeed, it is considered that the most effective scrutiny has come from outside the legislature.

Key factors shaping legislative scrutiny

From the information in our Tracker and these three case studies, it is clear that legislatures have an important role to play in responding to COVID-19. In particular, they have scrutinised the government where there is a lack of action, such as Brazilian Congress voting for mandatory mask wearing in public spaces. In many cases, they have also mobilised for the development of, and provided oversight of legislation to deal with the long-term challenges of COVID-19, such as through bringing in economic subsidies to support workers in vulnerable employment. However, as noted in all three case studies there have also been numerous barriers to legislative scrutiny during the pandemic which pre-exist and have been exacerbated by the COVID-19 crisis. Legislative committees were seen to play a key role in legislative scrutiny during the crisis, although this was not without restrictions.

127. Interview with legal expert working with Verkhovna Rada, 16 November 2020.

128. Interview with Kostiantyn Fedorenko, Research Associate, Centre for East European and International Studies, 24 November 2020.

129. Zubkova, D. (2020). Razumkov Entrusts Duties of Rada Chair to Kondratiuk, 16 November 2020, <https://ukranews.com/en/news/738991-razumkov-entrusts-duties-of-rada-chair-to-kondratiuk> (29 November 2020).

130. Interview with Research Scholar, 27 November 2020.

131. Interview with Interview with Kostiantyn Fedorenko, Research Associate, Centre for East European and International Studies, 24 November 2020.

132. Interview with Research Scholar 27 November 2020.

133. Press Service (2020). 'We need to start mass testing of citizens for coronavirus, support scientists and finance the production of Ukrainian PCR tests' 9 April 2020, <https://www.rada.gov.ua/news/Povidomlennya/191831.html> (22 November 2020); Press Service (2020). The message of the President of Ukraine to the Verkhovna Rada should answer questions of strategy of fight against coronavirus, 19 October 2020, <https://www.rada.gov.ua/news/Povidomlennya/198613.html> (10 December 2020).

134. International Alert (2020). Civil Society in Ukraine mobilise to respond to Covid-19, defuse tensions, <https://www.international-alert.org/blogs/civil-society-ukraine-mobilise-respond-covid-19-defuse-tensions> (22 October 2020); Skorkin, K. (2020). Ukraine's Latest Schism: Zelenskyy against the Regions, 3 June 2020, <https://carnegie.ru/commentary/81966> (14 November 2020).

Barriers to legislative scrutiny

In all cases, pre-existing barriers to legislative scrutiny continued during the crisis. In Nepal: 'COVID has not caused a lack of parliamentary agency, but it is an additional example of it.'¹³⁵ In Ukraine too, the minority opposition, and make-up of committees may limit the amount of scrutiny that has taken place in practice. In Brazil, the highly fragmented legislature can make the opposition voice weaker and can inhibit parliament's ability to scrutinise the executive due to the nature of coalitions. However, the fact that Rodrigo Maia has been effective at managing this has strengthened the legislature.¹³⁶

However, arguments were also made that legislatures should support the government, rather than challenging it during a national crisis. In Nepal, although the opposition and the media questioned the decision to prorogue parliament, this did not last for long, 'because they also considered that there was a pandemic and that this decision was mandatory'.¹³⁷ It was also considered that because the opposition was in the minority, they may have been more wary of their legitimacy to challenge the government during a crisis. In Ukraine it was also considered that legislators were careful in their scrutiny of government's actions so as not to be criticised for distracting the government from their important work in responding to the crisis. This was not mentioned in Brazil, perhaps because the President had taken a minimal approach to tackling the virus. Therefore, rather than support the President's actions, Congress emerged as an important institution pushing for a more robust approach to addressing COVID-19; the pre-existing fractious relationship between the legislature and executive in this case may also have contributed.

If legislators want to scrutinise whether COVID-related legislation was sufficient, whether it achieved its aims, or if more is needed, there needs to be data and information sharing. However, in Brazil and Nepal this seemed to become more difficult during the crisis. Whilst COVID-19, unlike national security crises, does not require secrecy in sharing information, it was considered that in Nepal, it became more difficult for legislators to get documents from governments to base their discussions on during the crisis. Additionally, in Brazil, as informal networks between legislators, local leaders, and executive officials were not possible because of the lack of in-person meetings, sharing of information which occurs this way has become more challenging.

The impact of the type of legislation invoked by the government

During the COVID-19 crisis, governments utilised varying forms of legislation such as enacting a state of emergency, introducing new COVID-specific legislation, utilising pre-existing legislation that addressed infectious diseases and pandemics, or not taking a national-level legislative approach. The type of emergency legislation invoked played an important role in shaping legislative involvement and oversight. For example, in Ukraine, although the Verkhovna Rada approved legislation which allowed quarantine to be declared,¹³⁸ it had limited ongoing oversight over the controversial restrictive quarantine,¹³⁹ and implementation of a specific anti-COVID act 'would have given the government more power to act responsibly'.¹⁴⁰ There would also have been more formal parliamentary oversight if a state of emergency had been adopted; although this may have been challenged, as the opposition parties had referred to a state of emergency as a de facto 'usurpation of power'.¹⁴¹ In Nepal the fact that the government invoked outdated pre-existing legislation meant that the legislature had no formal route through which to amend or scrutinise their response. Although a state of emergency would have given sweeping powers to the government, the Infectious Diseases Act also gave the government power to take broad and indeterminate 'necessary action', without any legislative

135. Interview with George Varughese, Senior Strategic Advisor, Niti Foundation on 26 October 2020.

136. Interview with Professor Amy Erica Smith, Iowa State University and Carnegie Fellow on 30 October 2020.

137. Interview with Ashok Dahal, General Secretary, Journalist's Society of Parliament Affairs on 21 October 2020.

138. Bernatskyi, B. (2020). Backgrounder: Ukraine's response to Covid-19 - from total lockdown to adaptive quarantine.

139. Petrov, R. & Bernatskyi, B. (2020). Response to COVID-19 in Ukraine: Legal Pragmatism or Constitutional Outbreak? 27 April 2020, <https://verfassungsblog.de/response-to-covid-19-in-ukraine-legal-pragmatism-or-constitutional-outbreak/> (14 October 2020).

140. Interview with Dr Bohdan Bernatskyi, National University of Kyiv-Mohyla Academy, 4 December 2020.

141. Hromadske International (2020). The Cabinet Wants to Give Zelenskyy Emergency Powers. What does that mean? 19 March 2020, <https://en.hromadske.ua/posts/the-cabinet-wants-to-give-zelenskyy-emergency-powers-what-does-that-mean> (22 November 2020).

oversight mechanism. In both cases, there were strong criticisms of the actions of the government related to incompatibility with the Constitution, but parliament's ability to provide a much-needed check on the response was limited.

In Brazil, Congress approved the decree of public calamity, which gave the government increased budgetary powers to tackle COVID-19, but more serious constitutional provisions were not utilised.¹⁴² The approval of the decree of public calamity also meant that a formal oversight committee was established, which played an important role in overseeing the expenditure and measures taken by the federal government to tackle the crisis. However, even though Congress had oversight over the decree of public calamity, others argued that still 'the Brazilian government is authorised to go beyond existing legal limits so it can minimise the effects of the COVID-19 pandemic' and this opened the door to the executive utilising a realm of other emergency powers,¹⁴³ which may have longer-term consequences beyond the pandemic. Importantly, whether or not emergency powers have an end date, or 'sunset clause' which gives them an automatic expiry date or the requirement for legislatures to approve its extensions, influences whether legislatures have ongoing oversight of the government's use of emergency powers.¹⁴⁴

As others have outlined, there is complexity in determining whether the use of emergency powers or ordinary legislation represents misuse or abuse of power.¹⁴⁵ The safeguards included within states of emergency do not guarantee higher levels of legislative oversight, and the necessity of having a 'sunset clause' in emergency legislation is clear, but the use of ordinary legislation has also been used to avoid or evade legislative scrutiny.

The importance of legislative committees in the context of COVID-19

Legislative committees emerged as an important mechanism through which legislatures exercised oversight of the governments' response to the crisis.¹⁴⁶ This likely occurred for two reasons: in Brazil, the state of public calamity required oversight committees to be formed, whilst in Nepal and Ukraine it was easier to adapt committee meetings. In Ukraine, amended legislation enabled virtual committee meetings whilst virtual plenary sessions would have required deeper legislative changes. Given the difficulties of virtual meetings in Nepal, the smaller number of legislators within committees made it easier to avoid breaking quarantine restrictions and to maintain social distancing.

Indeed, in Nepal, committees were particularly important, because they were the only option for formal legislative scrutiny during the crisis. Although they could not stop the Infectious Diseases Act being utilised, arguably the Legislation Management Committee played an important role in debating the introduction of this law and raising awareness about its potential damaging impact. Brazil's oversight committees worked effectively to raise numerous issues related to the insufficient response to the crisis from the executive and played an important role in ensuring transparency of government information. Legislative committees will also likely be active in examining the long-term effects of legislation introduced in response to COVID-19 and the differential impacts of this. For example, Ukraine's Committee on Humanitarian and Information Policy submitted for registration a package of bills aimed at economic support for culture and creative industries.¹⁴⁷

142. Meyer, E. P. N. & Bustamante, T. (2020). Authoritarianism Without Emergency Powers: Brazil Under Covid-19. <https://verfassungsblog.de/authoritarianism-without-emergency-powers-brazil-under-covid-19/>.

143. Archegas, J. V. (2020). Pushing the Boundaries of Legal Normality. 10 April 2020 <https://verfassungsblog.de/pushing-the-boundaries-of-legal-normality/> (14 November 2020).

144. Frost, R. (2020). Sunset clauses: Don't let the sun go down on democracy. 29 September 2020, <https://www.wfd.org/2020/09/29/sunset-clauses-dont-let-the-sun-go-down-on-democracy/> (3 October 2020).

145. De Vrieze, F. & Grogan, J. (2020). To declare an emergency or not to declare an emergency? That is not the question. <https://www.wfd.org/2020/10/08/to-declare-an-emergency-or-not-to-declare-an-emergency-that-is-not-the-question/> (4 October 2020).

146. De Vrieze, F. & Moulds, S. (2020). Parliamentary Committees: windows into the world of COVID-19 legislation and its impact, 19 October 2020, <https://www.wfd.org/2020/10/19/parliamentary-committees-as-windows-into-the-world-of-covid-19-legislation-and-its-impact/> (7 November 2020).

147. Information Department (2020). The Committee on Humanitarian and Information Policy has submitted for registration a package of bills on economic support for culture and creative industries, 22 April 2020, <https://www.rada.gov.ua/news/Novyny/190982.html> (19 October 2020).

However, there were also challenges raised related to legislative scrutiny through committees, largely related to the formation of committees reflecting the legislature's majority. In Nepal, it was argued that the more experienced MPs who are often committee leaders and members are more likely to have a closer relationship with the ruling party and may be more reluctant to scrutinise as a result. In Ukraine it was also considered that committees having a majority from the ruling party may have been the reason why no temporary commission to investigate the response to COVID-19 was formed. In Nepal, there are also pre-existing critiques of certain committees for not consulting experts enough, and of legislators not doing their homework and thus not providing effective scrutiny.¹⁴⁸

There were also specific challenges related to COVID-19. In the Brazilian case, the role of the two oversight committees dominated, with other committees not meeting. This concentrated the role of scrutiny among a smaller number of legislators, and also meant that for most legislators this task was predominantly performed during the plenary sessions. There were associated concerns that scrutiny of COVID-19 therefore came at the expense of other areas, with reports of one minister suggesting that the emergency provided a good opportunity for pushing through watered down environmental regulations.¹⁴⁹ Without plenary sessions in Nepal, legislators who did not have a role on such committees had no formal opportunity for scrutiny. It was considered that this had large equity issues, as it influenced the way in which many legislators could perform their oversight role. Another key part of scrutiny and oversight through legislative committees is engaging in public hearings. However, due to COVID-19 these have reduced and so there is less public participation in these processes. In Brazil, the Mixed Commission has made its debates open to the public to follow and participate¹⁵⁰ but this needs to be institutionalised to ensure the quality of deliberation and accountability to citizens.¹⁵¹ Therefore, prioritising work with legislative committees to institutionalise oversight processes and strengthen their ability to scrutinise and engage with citizens will be essential for legislatures in preparing for future crises.

The role of leadership

Primarily through the case studies, but also from some information in the Tracker, we were able to explore which legislative actors have been involved in responding to COVID-19. It appears that one of the key features of legislative leadership during COVID-19 is that it has become more concentrated, with fewer routes for scrutiny meaning those in existing leadership roles are provided with more space. For example, in Brazil political party leaders decide the plenary agenda, and were given more visibility in virtual sessions. As the plenary was the main platform for legislative oversight, this focused power of scrutiny in the hands of party leaders. This was also noted in other contexts, such as Tunisia, where the Assembly of the Representatives of the People established a 'crisis' cell, including leaders of each parliamentary group, to oversee the government's actions.¹⁵² On the other hand, in Nepal, limited opportunities for scrutiny within parliament meant that many parliamentarians spoke out on social media, 'if parliamentary committee meetings weren't happening, or they weren't members of those parliamentary committees who were responsible to discuss these particular issues'.¹⁵³ Numerous individual legislators utilised their social media and media presence to challenge the government's response.¹⁵⁴ This led to a more individualised response, as opposed to coordinated action through legislative structures.

148. Ghimire, B. (2020). House committees matter, but they don't matter, 3 October 2020, <https://kathmandupost.com/national/2020/10/03/house-committees-matter-but-they-don-t-matter-in-nepal-mini-parliaments-are-failing-in-their-job> (19 October 2020).

149. Smith, A. E. (2020). Brazil's Populist Playbook, Covid vs. Democracy. *Journal of Democracy*, 31(4): 76-90.

150. Câmara dos Deputados (2020). Mixed Commission debates operationalisation of the vaccine against Covid-19, 20 October 2020, <https://www.camara.leg.br/noticias/700922-comissao-mista-debate-operacionalizacao-da-vacina-contra-a-covid-19/> (17 November 2020).

151. Pinheiro, V. M. Illarraz, M. & Mestriner, M. T. (2020). The impacts of the Covid-19 crisis on the Brazilian legal system - a report on the functioning of the branches of government and on the legal scrutiny of their activities. *The Theory of Practice and Legislation*, 8(1-2): 193-212.

152. Murphy, J. (2020). Parliaments and Crisis: Challenges and Innovations, *Parliamentary Primer No. 1*, <https://www.idea.int/sites/default/files/publications/parliaments-and-crisis-challenges-and-innovations.pdf>.

153. Interview with Ashok Dahal, General Secretary, Journalist's Society of Parliament Affairs on 21 October 2020.

154. <https://www.facebook.com/278385109664350/posts/646896342813223/>; <https://www.facebook.com/278385109664350/posts/648407225995468/>; <https://www.youtube.com/watch?v=yvMjLz2Fpww>.

COVID-19 has affected who is able to be present to provide legislative oversight as those not in existing positions of leadership, or without an existing media profile, likely experience a reduced role in this process during the crisis. As a result, the legislature's representative function may be compromised, and this also raises critical questions about what fair and equal participation looks like.¹⁵⁵ Representatives from minoritised groups are less likely to be in existing political leadership roles, and thus their visibility and ability to effectively scrutinise the government's response is a serious concern.

There were also interesting trends related to the legitimacy of legislative leaders in scrutinising the governments. In all case studies, previous experience appeared to have provided leaders with legitimacy to challenge the government. For example, in Brazil, individual legislators raised questions about particular aspects of the crisis: 'Parliamentarians who have experience in the health sector can stand out in discussions about the pandemic ... [they] have more credibility with the population when dealing with the issue of the pandemic.'¹⁵⁶ For example, Deputy Jandira Feghali, a doctor, criticised the President for encouraging people not to wear masks and for underreporting cases,¹⁵⁷ and Humerto Costa, a doctor and former Minister of Health, was an important mobiliser of the creation of a temporary commission of senators to monitor the registration of vaccines against COVID-19.¹⁵⁸ In Nepal, Gagan Thapa MP's previous role as the Minister of Health meant that he had experience and access to information that was considered fundamental to effective oversight. Former ministers 'have a legitimacy issue for challenging the government, as they understand the state apparatus. Using that legitimacy, they can bring the voice of what people would want the state to do.'¹⁵⁹ However, previous experience does not necessarily mean effective scrutiny. In Brazil, Deputy Osmar Terra, a doctor with a lot of political experience including as a health secretary, has been criticised for spreading misinformation about COVID-19.¹⁶⁰ Therefore, prior expertise may have led to more opportunities for leadership, but does not necessarily translate into more effective scrutiny.

Nevertheless, it is important to note that in Nepal and Ukraine in particular, as well as in countries in the Tracker which did not score highly on the Legislative Responses to COVID-19 Index, civil society organisations are considered to have played a more prominent and active role in scrutinising the government's response to COVID-19 than legislative actors. In Brazil and Ukraine local political leaders have also been key actors in scrutinising the government's response, with mayors pushing for more stringent responses to tackle the health crisis in Brazil, and in Ukraine pushing for more consideration of the long-term economic implications of strict health-related restrictions.

Conclusion and recommendations

Legislatures play an essential role in preserving democratic practices and ensuring the consideration of the long-term implications of the COVID-19 crisis, particularly developing economic legislation to support citizens during the pandemic. As the above discussion has demonstrated, legislatures have both prevented governments from adopting an unnecessary - and counterproductive - heavy-handed response, and been able to prompt the executive into action when a prompt response was not forthcoming. But this was only possible in countries where the legislature sat and enjoyed the power of effective oversight, which was not the case in a significant minority of countries.

155. Childs, S. (2020). Why the exclusion of pregnant MPs from the House of Commons during Covid-19 matters - for them and for others, 4 December 2020, <https://www.hansardsociety.org.uk/blog/why-the-exclusion-of-pregnant-mps-from-the-house-of-commons-during-covid-19> (10 December 2020).

156. Interview with Elisabete Busanello, CNE- assistente técnico de gabinete, Câmara dos Deputados via email in November 2020.

157. Câmara Dos Deputados (2020). Maia charges Pazuello for transparency in data from the Ministry of Health, 6 September 2020, <https://www.camara.leg.br/noticias/667981-maia-cobra-de-pazuello-transparencia-em-dados-do-ministerio-da-saude/> (14 October 2020).

158. Senado Federal (2020). Humerto Costa proposes commission to monitor vaccine records, 27 October 2020 <https://www12.senado.leg.br/noticias/audios/2020/10/humberto-costa-propoe-comissao-para-acompanhar-registros-de-vacinas> (9 November 2020).

159. Interview with Mohan Das Manandhar, Executive Director Niti Foundation 2 November 2020.

160. Mantas, H. (2020). Brazilian fact-checkers excoriate the country's leaders for promoting disinformation about COVID-19, 8 April 2020, <https://www.poynter.org/fact-checking/2020/brazilian-fact-checkers-excoriate-the-countrys-leaders-for-promoting-disinformation-about-covid-19/> (19 October 2020).

Legislative oversight developed over time, with many countries required to approve extensions of states of emergency on multiple occasions, and also to provide oversight of updates to the budget over time. In this way, the length of the COVID-19 crisis, and also the fact it is occurring in all countries worldwide, appears to have led to more opportunities for legislative oversight than in some previous crises. The adoption of innovative solutions played an important role in this process, with the introduction of digital technology enabling many parliaments to operate remotely. Yet even five months into the pandemic, many legislatures were still struggling to provide either scrutiny or accountability, despite the clear limitations of many government responses.

There have been three main barriers to legislative scrutiny. First, pre-existing institutional weakness has played an important - perhaps the most important - role in shaping legislative leadership, with the limited autonomy and authority of many legislatures in normal times exacerbated by crisis conditions. Second, the distinctive impact of COVID-19 and the social distancing measures it has required has been particularly impactful on legislatures with limited technological capacity and small budgets, and for those parliaments whose standing orders or regulations require them to only meet in person. Third, governments that have either introduced states of emergency or simply relied on old legislation have limited the space for legislative scrutiny, which is typically greatest when new laws are proposed.

It is also important to note that even where legislatures have demonstrated effective leadership, the combination of great time pressure and the inability to meet in person has concentrated legislative influence in the hands of legislators already in leadership roles, such as party leaders or heads of committees. In some cases, this has meant that 'backbench' legislators, civil society groups, experts and concerned citizens have been squeezed out of the policymaking process. Again, in many legislatures this reflects a general lack of broader participation in normal times, which has simply been exacerbated by the pandemic. But even in some of the most effective and powerful legislatures, the challenges of social distancing have eroded some of the important gains achieved in recent years towards rendering legislative processes - such as committee hearings and evidence sessions - more open, participatory and inclusive.

A balanced response to the impact of COVID-19 on legislatures must therefore recognise that there is a need to both improve the ability of legislatures to navigate specific health crises and to address the underlying barriers to effective scrutiny and lack of inclusivity of many legislatures. Only by adopting this two-fold approach can we both prepare more effectively for the next health crisis, while also ensuring that legislatures are primed to play more effective roles in the political process outside of crises. The evidence presented in this report suggests that empowering parliaments to be more inclusive and impactful bodies will take at least five steps:

1. **Invest in technology beyond the pandemic.** Governments should invest in secure digital communications technology that can facilitate legislative sittings and consultative sessions with experts, civil society and citizens' groups, to enable legislatures to continue operating during future health emergencies, and to boost the inclusivity of legislative processes at all times. Public hearings are an important form of oversight, and whilst these are particularly challenged during crises, there is a need for continued learning and focus on how legislators can engage with citizens. Through technology, politicians can reach out more and hear more voices; however, this needs to be prioritised, or challenges with physical meetings are likely to reduce participation in decision making and information sharing that is crucial for effective and inclusive legislative scrutiny.
2. **Strengthen the regulatory environment.** The rules concerning when and how legislatures may sit should be reviewed and revised to ensure that they facilitate operating remotely during health and other crises. In cases such as Nepal, these regulations were designed to protect the integrity of the legislature, but in times of crisis they can be too restrictive and should be amended to enable parliaments to sit via secure digital communication. COVID-19 has also highlighted the value of having flexible regulations on legislative participation for individuals with different health needs, since a strict requirement of attendance in person may marginalise legislators who are particularly vulnerable to a virus or disease.

3. **Committee system.** Legislatures should be aided to strengthen committees, expanding the administrative support, resources and expertise available to them, and deepening the connection between these committees and relevant experts, groups and concerned citizens. While almost all legislatures have standing committees of some form that deal with areas such as healthcare, in many countries these committees receive limited funding and administrative support, which constrains their ability to scrutinise legislation and act as a bridge to enable civil society and concerned citizens to play a role in the policy process.
4. **Crisis committees.** Dedicated legislative committees with senior leadership should be established to deal with health emergencies, with established protocols for accessing independent expertise and gathering evidence from a wide range of individuals and groups. The creation of COVID-19 response committees has been shown to have a significant and positive impact on government policy in Brazil, where the Mixed COVID-19 Commission created a parallel system of counting COVID-19 deaths, to compare with official data released by the government to mitigate against delays in disclosing this data. The formation of a specific crisis committee should therefore be both institutionalised - so that they have guaranteed resources and the clear authority to both request explanations and justifications of government policy, and to make alternative proposals - and the most effective models extended to other countries.
5. **Funding.** Support for legislative strengthening programmes should be increased to enhance horizontal accountability, strengthen committee systems and technical capacity, and enable these recommendations to be implemented. The focus of international donors and organisations in the wake of COVID-19 will naturally be on increasing the capacity of healthcare systems and avoiding a prolonged economic downturn, but ensuring that investments in healthcare are used in the most effective way requires strong legislative oversight. More broadly, legislatures also play a critical role in maintaining horizontal accountability and restricting democratic backsliding. Given that 83 countries have moved away from democracy in the last year, with only one country, Malawi, moving towards it, maintaining support for legislatures is more important than ever.

Undertaking these measures will both enhance the ability of governments to cope with future national crises and support the evolution of more open, participatory and inclusive democratic systems.

Appendix 1: Legislative Responses to COVID-19 Tracker

The Legislative Responses to COVID-19 Tracker was compiled from September 2020 to November 2020. Details of the coding decisions can be found in the Legislative Responses to COVID-19 Tracker, available alongside this report. If you would like information on the process of this compilation, please email r.l.gordon@bham.ac.uk.

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