States of emergency in response to the coronavirus crisis and parliamentary control: developments in EU Member States

Member States of the European Union have all adopted a wide range of emergency measures in response to the unprecedented public health crises generated by the COVID-19 pandemic. Member States’ constitutional and legal frameworks differ widely as regards the procedures and requirements to adopt emergency measures in times of pandemic. Some Member States’ constitutions contain detail provisions on states of emergency (e.g. France, Germany, Hungary, Poland, Spain, Estonia, or Malta), whereas some others contain no provisions at all (e.g. Denmark). Similarly, EU Member States have resorted to different constitutional and legal mechanisms to adopt the measures needed to stop the spread of the virus and address the consequences of the pandemic. Some Member States have decided to declare an emergency state (e.g. Bulgaria, Estonia, Latvia, Romania, or Spain), whereas some others have decided not to resort to that possibility and adopted the measures needed on the basis of ordinary public health law or with accelerated legislative procedures already existing in the national system (e.g. France, Germany, Italy, Poland, Malta or Slovenia).

Despite this variety of national situations, a common feature of the legal response to tackle the pandemic in the Member States of the EU has been the shift in the competences of both the legislative and the executive powers. As in some other parts of the world, governments in the EU Member States have assumed a central role in proposing and adopting the measures needed to tackle the crisis, in some cases with significant transfers of additional competences from the legislature to the executive branch. Such institutional shifts are usually considered justified if they are necessary to overcome the exceptional situation; if they are proportional and limited in time; and if there is an effective judicial and parliamentary control (Venice Commission, Respect for Democracy, Human Rights and the Rule of Law during States of Emergency, May 2020).

In this vein, the proposed paper will focus on parliamentary control of the measures.
adopted during the pandemic in the EU Member States. After analysing the legal framework used by Member States to tackle the coronavirus pandemic, as well as the additional powers granted to the executive branch during crisis, we will try to determine whether the different national Parliaments were able to exercise an effective and timely control over the measures proposed and adopted by the government and whether similarities or differences can be drawn from the state’s reactions. The analysis is based on research performed by the European Parliament’s research service, which led to the publication of a series of briefings between May and June 2020 drawing on official information and available commentaries of scholars on the national responses.

2. Alex Read, Democratic governance practitioner

Risks to Democracy from Surveillance Technologies: Implications in the Global South

Social change and introduction of new technologies has historically followed crises such as pandemics, and COVID-19 has seen increasing public tracking through use of surveillance technology. While surveillance technology is a key tool to enhance virus preparedness and reduce societal risks, the speed of uptake is likely to raise ethical questions where citizens are monitored, and personal data is collected. COVID-19 has hit during a period of democratic decline and the surveillance-based business model in the platform economy dominated by a small number of technology companies, together with the development and export of artificial intelligence-powered surveillance tools, carries particular risks for democratic development in countries of the Global South. Increased use of surveillance technology has human rights implications and can undermine the individual privacy required for democracies to flourish. Responses to these threats must come from new regulatory regimes and innovations within democracies, and a renewed international approach to the threats across democracies of the Global North and South.

3. Sarah Moulds, University of South Australia

Democratic scrutiny of COVID-19 laws: Are Parliamentary Committees Up to the Job?

In response to the complex and potentially devastating threat posed by COVID-19 Parliaments around the world have transferred unprecedented powers to executive governments and their agencies (Edgar 2020), often with the full support of the communities they represent. These laws were passed within days, sometimes hours, with limited safeguards and a heavy reliance on sunsetting provisions some of which are dependent on the pandemic being officially called to an end. While parliaments themselves have suspended or reduced sitting days (Twomey 2020) parliamentary committees have emerged as the forum of choice when it comes to providing some form of parliamentary oversight of executive action.

This paper aims to evaluate the capacity of parliamentary committees established within the Australian, New Zealand (NZ) and United Kingdom (UK) parliaments to effectively scrutinising and review governments’ responses to COVID-19. It does this by comparing the legal framework underpinning the relevant committees in each jurisdiction and applying an established tiered evaluation framework (Moulds, 2020) to the work of these committees with a view to identifying their immediate and longer term impact on the shape of the laws made in response to COVID-19 in those jurisdictions. The Paper concludes by offering some preliminary observations about the scrutiny capacity of the parliamentary committee systems in Australia, NZ and the UK in the context of emergency law making and flags areas for further research, evaluation and reform.
4. Sonia Palmieri and Sarah Childs, Australian National University and Birkbeck University of London

**Patience ladies: Gender Sensitive Parliamentary Responses in a Time of Crisis**

In early 2020, in the face of the global Covid-19 pandemic, numerous parliaments played their rightful democratic role by following the advice of health and economic experts and swiftly passing emergency legislation and relief packages. This was, in many countries, an attempt to reach an equilibrium between saving lives and saving economic livelihoods, on the understanding that both were in serious jeopardy. In the face of public health measures many parliaments also found themselves having to reform their own rules, procedures and practices. In both cases – policy interventions and institutional redesign – it appears that parliamentary responses to the Covid-19 situation were less commonly based on the advice of gender experts or took gender inequalities into account. Few, if any, emergency packages were designed following a systematic consideration of existing, deeply entrenched gender inequalities, despite continuous public analysis and commentary about the disproportionate gender impacts of the pandemic and the resulting lockdowns; and no parliaments instituted (temporary) rule changes that prioritized the voices of women parliamentarians or constituents. In this paper, which draws on our work drafting the UN Women Covid-19 Parliamentary Primer & Checklist, we revisit the democratic case for gender sensitive parliaments, highlighting their particular relevance to the 2020 pandemic. We introduce our model for gender sensitive crisis responses across four key stages of the parliamentary process presented in the Primer: representation, deliberation, legislation and scrutiny, and offer an initial assessment of what transpired in the world’s parliaments based on an IPU survey. In our conclusion we suggest that if parliaments are to be gender sensitive institutions in times of crisis, they must not only change how they do politics but also develop and sustain a robust political culture that values gender equality and an ethic of caring that supports new rules, procedures and practices that better redress institutional gender deficiencies.

5. Victoria Jennett, Independent Consultant Justice Reform

**Emergency release of people from prison because of Covid-19, and the effect on rule of law and democracy**

Many countries are implementing emergency releases of people from prison to mitigate the spread of Covid-19. Such measures, while critical to public health, can enable the unjust release from prison of politically connected and wealthy individuals convicted of corruption offences, thereby undermining the rule of law and democratic values by weakening public trust in the justice system. To reduce prison overcrowding while ensuring that white-collar criminals are appropriately sanctioned, one strategy is to impose alternatives to custodial sentences that ensure appropriate sanctioning of convicted criminals whilst de-densifying prisons – an approach that could be considered for non-emergency times as well.

Main points:

- Emergency prison release mechanisms to prevent the spread of Covid-19 can pose corruption risks due to weak design, uneven implementation, and inadequate oversight.
- Such releases take three main forms: prisoner amnesties declared by governments; emergency release procedures drafted by governments and implemented by prison directors; and court decisions to release individual prisoners or set out frameworks on who is eligible for release.
- These emergency procedures can enable the unjust release of politically connected prisoners convicted of corruption offences and undermine public trust in the rule of law and the justice system.
To help maintain rule of law during the emergency, alternatives to custodial sentences in line with international standards can be imposed on newly released persons who have been convicted of corruption crimes.

Conditions attached to releases can include, among others, status penalties, economic sanctions and monetary penalties, confiscation or expropriation of assets, and restitution or compensation to victims.

In non-emergency times, as well, alternatives to custodial sentences can be used to sanction those convicted of corruption crimes as a means to mitigate financial and social damage caused by corruption and reduce prison overcrowding.

6. Carmelina Sessa, Bar Association of Nocera Inferiore
Coronavirus, effects on rule of law: how fundamental rights live with mass surveillance technologies in democratic systems – an analysis of Europe and Italy in a global view

In the management of the Coronavirus pandemic, also Law, in its regulatory and Law enforcement dimension, is called to play a central and synergistic role with Science, while moving in a different field, in order to protect the greeting and the life of the largest possible number of people. The relationships between Law and Science, which have always animated global debates, today, with Coronavirus, are enriched in the context of the confrontation with the Law of a health emergency.

The purpose of the study here is to evaluate the impact that Coronavirus has on the structure of the sources of Law in democratic systems. To be examined is the European constitutional context, and particularly Italy, i.e. the first State in Europe has launched containment measures to deal with and contain the spread of contagion. Through a comparative legal analysis and a methodological approach with a constitutional and international cut, the document aims to examine the legal constitutional and legal assumptions and reflections with the purpose of implementing compression of Fundamental Human Rights and freedoms, to counter an “invisible enemy”.

Starting from the reflection of the problematic borders in which it is possible to evaluate the legal limitations, compatible with the higher principles of the system (foreseen by the Constitutions, the European Convention on Human Rights and by International Charters on Human Rights, such as the International Covenant on civil and political rights), the survey mainly wants to highlight and show its consequences on the Rule of Law. In this regard, the discussion focuses on the analysis of the technique of balancing fundamental rights and on the principle of proportionality, which, to date, are becoming increasingly actual and popular in the work of framing the regulatory activity of the emergency legislation.

The right to privacy, the right to personal freedom, and freedom of movement (due to social distancing, confinement at home and forced hospitalizations) are certainly included in the basket of rights, "compressed" by state interference to guarantee public order and safety. The paper intends to focus on the legal issues related to the risks of using mass surveillance technologies, underlining the matter of privacy and protection of personal data, directly connected to the territorial surveillance, contact, and data tracing measures, i.e. those tracking systems that allow mass control over the population, through the use of the Internet and Technology. The discussion concentrates on the International and European regulatory framework. The data protection provided in the European context configures an exceptional and unprecedented system, which today revolves around the General Data Protection Regulation for the protection of personal data (GDPR). With a view to undoubted short-term
benefits, the paper wants to linger on how to safeguard both the protection of personal data and health, in the face of this pandemic threat, taking into account that the link between emergency regulation and technological innovation requires particular attention, because the effects could settle in a longer-term perspective.

7. Kate Doust and Sam Hastings, Legislative Council of Western Australia
Legislative scrutiny in times of emergency: A case study of Australian parliaments
Australia has seen a rapid-paced legislative and regulatory response to the coronavirus pandemic, which has seen governments play a more prominent role in citizens’ lives. It comes at a time where trust in Australia’s governments and parliaments is at an all-time low.

This research examines the response by some Australian governments and parliaments to the coronavirus pandemic on two grounds. It firstly examines the success of parliament in undertaking its fundamental role in the scrutiny of legislation in circumstances where the usual scrutiny time for bills was severely abridged.

Secondly, it examines the capacity for parliaments to maintain transparency during times where parliamentary time and access is restricted. The central thesis of this paper is that rather than being a threat to democracy, in Australia, the speed and breadth of the parliamentary response may have enhanced it.

This research uses a case-study approach to examine the legislative response to COVID-19 from two Australian parliaments – the Australian parliament and the Western Australian parliament. Through analysis of parliamentary debates, media sources and legislative documents this research will assess laws passed during the initial months of the COVID-19 response against the principles set out by the House of Lords Constitution Committee in their inquiry into Fast-track Legislation. Using data collected from comparative legislation enacted during non-emergency times, the research will examine the extent to which the emergency may have impacted on the quality of the legislation presented to and ultimately passed by the parliament. The research also examines the mechanisms used to limit the effects of these laws. Preliminary data suggests that these parliaments did an adequate job in balancing the need to act quickly to protect the wellbeing of the nation with the need for adequate legislative scrutiny and limits to the extraordinary powers put in place.

Finally, this research will investigate efforts made by Australian parliaments to remain transparent and ensure active participation by its Members during emergency periods. It will identify barriers and make recommendations for reform in Australian parliaments to improve both scrutiny and transparency should future restrictions inhibit parliament’s ability to conduct its business in the usual manner.

8. Samantha Davey, University of Essex
The Coronavirus Act 2020 and Guidance Governing Social Relationships and Communication: An Orwellian Dystopia or a Protective Bubble?
The Coronavirus Act 2020 was created via emergency powers and was fast-tracked into existence in just four days. As a consequence, this statute lacks the usual prolonged scrutiny which legislation receives from the Houses of Parliament. The urgency to act and create new law was because of the high numbers of people becoming seriously ill or dying due to contracting the coronavirus. The Conservative Government was under pressure to impose practical measures via law to reduce the spread of the virus, which had swept across the world, and to provide special protection for vulnerable members of society including the elderly and disabled.

This paper seeks to address the legitimacy of ministerial coronavirus guidance which has been created through powers under the
Coronavirus Act. This will involve discussion on measures such as the practice of social distancing, the use of face masks and the rules on social gatherings. The legitimacy of the aforementioned guidance and how it is being applied by public bodies is assessed with reference to three of the Nolan principles on integrity, accountability and openness, which guide the conduct of public officials such as ministers. This paper considers issues which pertain to three distinct spheres of law: criminal law, family law and public law. The discussion considers how social and familial relationships are being increasingly regulated, including by criminal law, due to the guidance created by the Executive and applied by public bodies such as the police. It is argued that these measures have had and continue to have an adverse effect on face-to-face communication.

9. Emiliano Frediani, University of Pisa
Public Administration and precautionary approach in the Italian answer to Covid-19
The health emergency linked to Covid-19 brought to the fore the problem of the usefulness and correct application of the precautionary principle. In the paper, the topic will be analysed starting from the foundations of the precautionary principle, to see consequently how it must be “handled” in practice when the Administration is called to decide in contexts of health crisis. Particular attention will be paid, just from the beginning, to the relationship between science and Public Administration, in order to demonstrate how the precautionary approach represents a “rule of action” for the public decision-maker when there is no full scientific certainty.
In this perspective, the analysis will be developed starting from the definition of a general context: that one represented by the so-called “irreducible uncertainty”. This premise will be the starting point to define a “law of uncertain science”, which “follows” the facts and is characterized for its flexibility. The problem will then be reported to the administrative decisions, called in emergency times to be “adaptive” and reviewable.

The reflection on precaution “in action” will have the Italian case as an observation “laboratory”. In this perspective, the investigation will be conducted by looking at the “answer” of the Italian legal system to the emergency related to Covid-19. This will lead to see if the precautionary approach has been taken seriously by the Italian Administration and, subsequently, what characters have taken the measures to fight against the spread of the Coronavirus outbreak.

In conclusion, it will be necessary to understand whether the “postulates” of precaution “in the books” have been translated into an adequate precaution “in action”. In other terms, the attention will be focused on two different aspects: the first related to the “time” of the action; the second to the content of the measures taken to fight against the spread of the virus. This will allow us to understand if the Italian Government acted promptly (in compliance with the precautionary approach) and what was the decision-making process that brought to these measures.

10. Sean Molloy, Northumbria University
Approach with Caution: Sunset Clauses as Safeguards of Democracy?
In response to the covid-19 pandemic, leaders across the globe scrambled to adopt emergency legislation. Amongst other things, these measures gave significant powers to governments in order to curb the spreading of a virus, which has shown itself to be both indiscriminate and deadly.

Nevertheless, exceptional measures, however necessary in the short term, can have adverse consequences both on the enjoyment of human rights specifically and democracy more generally. Not only are liberties severely restricted and normal processes of democratic deliberation and accountability constrained, but the duration of exceptional powers is often unclear. One potentially ameliorating measure is the use of sunset clauses: dispositions that
determine the expiry of a law or regulation within a predetermined period unless a review determines that there are reasons for extension.

The paper argues that without effective review processes, far from safeguarding rights and limiting state power, sunset clauses can be utilized to facilitate the transferring of emergency powers while failing to guarantee the very problems of normalized emergency they are included to prevent.

Thus, sunset clauses and the review processes that attach to them should be approached with caution.

11. Andrea Cullen, Legislative Assembly Canberra

Isolating Parliament and the People from budget scrutiny and oversight; suspending democratic practices in the fight against COVID–19? Some case studies from Australian jurisdictions

As Parliaments around the world are changing practices to operate in the COVID–19 climate—many are being challenged in their ability to carry out cornerstone financial scrutiny functions as protectors of the public purse—in particular, in the function of the oversight of government budgets and forward estimates. Some would argue extraordinary times, such as a pandemic crisis, require extraordinary scrutiny—rather than isolating Parliament and the People from budget scrutiny and oversight.

In Australia—federally (the Commonwealth of Australia) and in its six states and two territories—all jurisdictions have delayed presentation of their annual budget legislation and estimates processes due to the pressing nature of the challenges presented by the COVID-19 climate. Whilst all Australian jurisdictions have passed legislation to ensure that public services and the functions of government can continue throughout the emergency period until respective budgets are handed down—three jurisdictions are to hold elections in 2020. In each of these jurisdictions—introduction of respective budget bills will be further delayed until after each election has been held and a government is formed. In the absence of a budget and forward estimates—voters will go to the polls with limited information on the financial position of their respective jurisdictions—which some argue gives the incumbent government an unfair advantage over its opponents and sets a worrying precedent for governments elsewhere in the country.

To assess whether suspending cornerstone budget scrutiny and oversight practices in the fight against COVID-19 could be regarded as an expansion of authority of the executive or a functional necessity in the current climate—for each of the three Australian jurisdictions going to the polls in 2020—this paper will present an analysis of the: (i) extent to which the respective Parliament—due to the deferral of their 2020–2021 Budget—was involved in decision-making to provide for supply in the interim—to ensure the proper functioning of government service delivery obligations and programs; and (ii) in the absence of a budget and estimates process—the adequacy of information released prior to each election in providing the People (voters) with a full picture of the financial position of the respective jurisdiction.

12. Elena Griglio, Italian Senate

Governments as Covid-19 lawmakers in France, Italy and Spain: Continuity or Discontinuity?

Executive dominance in Covid-19 law-making has been a major trend worldwide. Governments have leveraged emergency prerogatives to boost their legislative powers, often side-lining the role of parliaments. The impact of executive law-making on fundamental liberties has been unprecedented.

However, government’s capacity to exercise full legislative powers is not absolutely new to many European countries. This trend is
analysed in the paper comparing practices in the pandemic and in normal times, not specifically related to a state of emergency. To this end, three countries have been selected because of their constitutional clauses allotting law-making powers to the government even outside of emergency situations. This is the case for the decree-laws in Italy and Spain and the ordonnances in France.

The question addressed is whether there are relevant differences in the use made of these mechanisms during the pandemic. The results of this comparative analysis demonstrate that there is much continuity in the executive’s reliance on these mechanisms. However, discontinuity may be detected on the ground of the exceptional impact produced on the substantial values that legislation should protect: the values of output, input and throughput democracy, referred to law’s responsiveness to the liberties’ protection, to the political demands and concerns voiced by citizens and to the fundamental accountability, transparency and inclusiveness standards.

Therefore, in perspective of the roll-back of the emergency legislation, the role of parliaments, based on the core difference in the democratic status between law-making and legislation, turns out to be crucial.

13. Khimlal Devkota, Constituent Assembly Nepal
Case study of Post-Legislative Scrutiny of the Infectious Disease Act in Nepal

This paper intends to critically examine whether democracy has been compromised while containing the COVID-19 coronavirus in Nepal. The government of Nepal has been trying to control the spread of the pandemic by invoking the Infectious Disease Act 1964. As empowered by the law, the Government of Nepal has enforced restrictive measures. Such measures have undermined democratic values.

Such activities focus on the decisions or decision-making processes as well as the emergency measures themselves and, therefore, does not limit itself to human rights and democratic norms, values and principles. But it is different in reality. The main research question of this study is whether democratic practices have been affected while responding to COVID-19 by unnecessary use of power and enacting emergency laws or using inappropriate laws in Nepal? This study is not only confined to the piece of legislation but beyond that, this study is related with the health of the general public. The study is a value aid in the field of democratization in legislation even in emergency or pandemic situations. This study also presents a comparative picture of COVID-containment measures adopted by different countries.

The Qualitative Research Method has been used in the study and has applied broad literature review with legislative scrutiny. At the same time, the study is trying to compare with the actions and measures taken by the government of other parts of the world. Critical theory has been applied for objective assessment and recommendations for future. Subsided rule of law by enacting emergency laws or implementing outdated and inappropriate laws to contain the spread of the pandemic is the major finding of the study. The decisions based on either emergency laws or inappropriate laws are in fact the lack of laws for legitimizing the monopoly of the executive in the specific context of Nepal. Therefore, democracy has been subsiding and will suffer further.

The study recommends updating the legislation as per the need of time and comprehensive legislation with compilation of scattered provisions of the infectious disease and unification of laws with enacting umbrella act for future to respond to pandemic like COVID-19 without any compromise of the fundamental norms, values and principles of democracy.
14. Fotis Fitsilis, Hellenic Parliament
The Hellenic Parliament’s Response to the COVID-19 Pandemic - A Balancing Act between Necessity and Realism
Because of their particular nature, representative institutions around the globe are usually well equipped, both legally and capacity-wise, to adequately respond to political crises; this is what political evolution has taught them. Responses to political crises have been developed and take the form of formal or informal rules of procedure that lie at the disposal of the Speaker or other parliamentary functionaries. On the contrary, battling a health crisis does not immediately belong to the issues a parliament under normal circumstances deals with. Hence, the scattered responses by the world’s parliaments, as pointed out by recent studies, come as no surprise. This article showcases the Hellenic Parliament, which constitutes a classic example of a legislature combating the pandemic situation through a gradual and multidimensional response. Its relevant actions are displayed and analyzed vis à vis the average global response. As the pandemic seems far from being over, the article attempts a series of future projections on how to deal with it in the long run.

15. Htar Zin Zin Ei, Lower House Myanmar
A forward-looking response to Covid-19 choices shaping the future in Myanmar
The outbreak of the coronavirus markedly indicates a turning point for a transformation of the global political and economic system, and the international community now appears to be on the edge of a brand-new era. The Pandemic’s early days in Myanmar, emergency powers grant to some ministries raised fears of Covid-19 implement power grabs. But beyond these high figuration cases, a plague on Democracy and personal freedoms has disintegrated a more widespread and sophisticated way. The Ministry of Health and Sports needed to spend the loan plan was met by the existing laws of the country, medium-term debt management strategy, development aid policy, the Millennium Sustainable Development Plan (2018-2030), and Goal 6 of COVID-19 Economic Relief Plan. And a minister and Member of Parliaments have discussed the getting Japanese yen 30 billion from the JICA to alleviate socioeconomic impacts and to support economic policy reform and Asian Development Bank has to set up loan insurance corporations for the development of SME’s in Myanmar. Other loans are signed in MoU to activate the agreements on relaxing the 8th round of ASEAN financial services. A plague on Democracy, in authoritarian regimes, contrast that have lately come under assault and offensive, meanwhile their administrator have been higher leaders or legislative and ruling parties take control if the crisis to remove checks on their power of ineffectual the opposition. Parliaments are currently subject to the same public health and social distancing measure as we talk about a different subject style that mentioned the subject of money for schools, places of worship, or business. Parliament today is more vital than emergency laws and mandate in a time of crisis, can parliaments go to the function? Do you strengthen public support for democratic principles by investing in civic education? Is it dependently on the country’s economic aspect, including an independent judiciary, and the anti-corruption department and the rights of minorities and migrants undermined faith in Democracy around the world? It is essential to foster the strengthening public understanding of Democracy, especially among young people, to protect freedom domestically and build support for a foreign policy that protects democratic rights and values abroad. To date, many workshops, seminars, and conferences in remote sensing hold to discuss the development of legislation. Few of them have addressed scrutiny, most of which restricted to pre-legislative scrutiny. While in fact, the legislative process is a bulky that needs to review subsequently.
16. Sossi Tatikyan, Consultant public security policy and governance reform

The adoption, enforcement and parliamentary oversight of the state of emergency measures in Armenia in response to Covid-19

The Covid-19 pandemics caught most of the world by surprise and generated new issues for the emergency legislation and institutional mechanisms of the affected states. Parliamentary oversight is even more crucial during the states of emergency to ensure good governance, human rights and rule of law. The legislation of many but not all countries underlined the necessity of the approval of the state of emergency by the legislature upon the recommendation by the executive. In some countries, parliament was suspended during pandemics (Hungary). Other parliaments went fully (Brazil) or partially (Ukraine, Georgia, Moldova) digital. Few parliaments continued parliamentary plenary and committee sessions through physical attendance (Armenia) due to the lack of the right of e-voting in the legislation. However, the modalities prohibit large gatherings and impose social and physical distancing. When members of the parliament continue to attend the plenary sessions of the parliament, they are exposed to health risks and if they interact with citizens, they expose them as well. Dependent on whether they wear masks, they become role models for the public (Armenia). Parliamentary sessions, approvals of emergency measures and Q&A sessions with the Government are not criteria of the parliamentary oversight of their implementation. Tunisia established a Special Committee for oversight of the implementation of Covid-19 measures while other countries’ parliaments are considering the establishment of Inquiry Committees after the failure of Covid-19 management. Most of parliaments did not conduct effective parliamentary oversight and post-legislative monitoring to scrutinize implementation of pandemics-related decisions and protection of human rights. Only few states (New Zealand) were able to overcome epidemics in a short period of time. Others had to extend the state of emergency by an indefinite number of times, facing questions by the opposition and activists whether it is legitimate and how to ensure fundamental freedoms and human rights, such as, civic protests, labor rights, freedom of information, digital tracking of personal data and use of force by internal security. The paper will address the specificities of the state of emergency declared for the management of pandemics, legislative and procedural gaps, and the lack of institutional enforcement and oversight mechanisms. It will offer recommendations to address those gaps and relevant issues. It will base the analysis on the first-hand experience of the Armenian case and research of the examples of other countries.


Democratic issues arising in relation to emergency legislation addressing the coronavirus public health crisis require to be contextualised by reference to pre-existing trends of rule of law in different jurisdictions. In the UK, there have been suggestions that the Government have used the COVID-19 crisis as an opportunity to increase Executive control and diminish the rule of law. Reports of Parliamentary Committees (including the Joint Committee on Human Rights and the Joint Committee on Statutory Instruments) suggest that there is some substance in these suggestions. And there have certainly been new developments in the field of legislation and quasi-legislation in the Government’s response to COVID-19 that require to be considered in the light of democratic and rule of law principles. In particular, it is important to examine and record the relationship between: existing civil contingencies legislation; new primary legislation; public health subordinate legislation; other
emergency subordinate legislation; government statutory guidance; government voluntary guidance; prosecutorial discretion; and new constructs including “government instructions” and appeals to “civic responsibility”.

The reality is probably more subtle than a deliberate attempt to subvert the rule of law under the cover of the public health emergency; and the Parliamentary reports have to be considered in the light of pre-existing trends. This paper will consider the principal themes of these Parliamentary reports, and the Government’s responses to them, and draw conclusions as to how legislatures and governments around the world could ensure that the process of enacting and enforcing the necessary emergency legislation leaves a legacy of strengthened democracy and rule of law.

18. Marijana Opasinova Sundovska, American University North-Macedonia

The case of North Macedonia

The unprecedented outbreak and spread of the Covid-19 virus in the world and its grave consequences on human health, the economy and the everyday life forced national parliaments either to change its standard work mode or transfer their constitutional competences to the executive by declaring state of emergency.

The detrimental effects of this unorthodox situation, especially on functioning of democracies, government branches’ division, economic disturbances and losses of jobs are yet to be determined and analysed. Not expecting that the virus will reach pandemic proportions, the President of the Parliament of the Republic of North Macedonia, Talat Xhaferi, signed the decision for dissolution of parliament on 12 February 2020 for early parliamentary elections. It came as results of a previously reached political agreement, which was followed by establishment of a technical government to prepare the elections, a commitment taken from the Przino Agreement in 2015. The state had faced a unique situation with a dissolved parliament and an extended mandate of the technical government.

The constitutional vagueness regarding the work of the parliament in emergency situations and the duration of mandate of the parliamentarians allowing for different interpretation thereof, made the situation even more complicated than before. Consequently, the Government had to propose a proclamation of state of emergency for the first time since the independence, in order to be able to adopt legally binding regulations to manage the crisis. The State President proclaimed state of emergency on 18 March 2020 that had to be extended two more times, once for additional 30 days and another for 8 days, in order to observe the electoral deadlines for the scheduled parliamentary elections. According to the Constitution, these states of emergency have to be approved by the incoming parliament after the elections re-scheduled on 15 July 2020. Some experts have strongly argued that the government with hands untied in these challenging and deparlamentarized times abused its competence by adopting regulations that had nothing to do with the state of emergency. This paper will reflect on the unique political and legislative processes in the state and its effects on the parliamentary democracy.

19. Lianne van Kaiken & Evert Stamhuis, Erasmus University Rotterdam

Digital equals public; assembly meetings under a lockdown regime

Just before mid-March 2020 the COVID-19 pandemic was present at full force in the Netherlands, leading to restrictions on movement and public gatherings. That affected the democratic process at all levels of Government, bringing the risk of decisions being postponed or sinking below a minimum level of visibility towards the population. To counterbalance this impact the Dutch legislator moved swiftly and enacted within 22
days the Temporary Act digital deliberation and decision-making local democracy; Act of April 8th, 2020. The Dutch legislator introduced the option of digital debate and decision-making for among others municipal and provincial councils; the democratically elected assemblies at local and regional levels. At the same time the Ministry of the Interior and Kingdom Relations set up an evaluation committee to monitor and evaluate if and how the relevant governments benefit from this temporary legislation.

The Act addresses decision abstinence and lack of publicity, which would make the democratic system deficient in providing legally valid decisions timely and transparently. The relevant government authorities are in no position to allow that to happen, according to the national government, because they are not only dealing with the corona pandemic itself, but are also essential links in the country’s public administration to meet the challenges of today.

Local and regional authorities should continue to act and be seen to do so and therefore intervention by statute was deemed necessary.

In this paper we discuss the contents of the Act and disclose the evidence on its effect so far, as was collected by the evaluation committee soon after the entry into force of the Act. Section 2, the legal descriptive part, deals with the way in which the intentions were translated into allowances to divert from statutory requirements for a legitimate deliberation and decision-making. We attend to the temporary nature of the Act in that section as well.

Section 3 then moves to the empirical part, showing the outcome of the evaluation studies. We come to concluding remarks and recommendations in section 4.

20. David Thirlby, Westminster Foundation for Democracy

Case study of Pakistan

Pakistan has experienced one of the worst outbreaks of the COVID 19 pandemic. The government has had to balance securing the health of its citizens and protecting an already weak economy from implementing lockdown measures.

The response to the COVID 19 pandemic can be seen as the first major challenge to the post-2008 democratic dispensation. Previous challenges have concerned security – (especially at the height of terrorist attacks) and political (Constitutional ruling against PM Nawaz Sharif; controversy of the 2018 election results). However, the response to the COVID 19 pandemic is a system-wide challenge as it brings together three different strands that have been brewing:

1. Effectiveness of a parliamentary form of government when the governing party has a small majority. This can be ascribed to the lack of one dominant party in the Punjab which in effect determines power in Islamabad. Lack of a secure majority has increased the tendency for the executive to issue decrees thereby avoiding contested parliamentary oversight mechanisms;

2. The political fragmentation that has accompanied, followed or driven devolution. This is especially marked in Sindh and how it has reacted to the COVID response and in its different response which has contradicted that of the federal government;

3. The effectiveness of the Constitutionally mandated bodies (e.g. Council of Common Interests) in coordinating the fight of the pandemic and in the parliamentary mechanisms to oversee the executive actions (at both federal and provincial level).

The article will start with an assumption that the response by the federal and provincial governments will be a major step in framing federal and provincial competencies. The article will also explore that emergency decrees and COVID 19 related legislative responses have not been fully scrutinised by the legislatures due to political divisions and lack of a culture of impartial scrutiny.
Finally, the article will explore what the long-term impact will be if the legislatures have been marginalised in the COVID 19 response. In Pakistan democracy is closely associated with parliamentarism so moves away towards more direct executive actions will frame an authoritarian narrative.

21. Felipe de Paula, University of São Paulo
Emergency Measures in Brazil: is Covid-19 fostering authoritarianism?
This article investigates whether Covid-19 emergency measures have been used to foster authoritarianism in Brazil. Departing from plentiful factual evidence of an ongoing authoritarian agenda in Brazil, the text explains how emergency measures can be legally deployed in the country and establishes two criteria to assess emergency measures as potential authoritarian acts: (i) the Levitsky and Ziblatt’s litmus test of authoritarian behaviour, and (ii) prior and current government sings that allow us to detect the actual agenda where an emergency measure allegedly related to the pandemic may fit into.

Then, the article examines two exemplary issues directly impacted by Covid-19 emergency measures in Brazil: (i) access to information rights and (ii) academic freedom and university autonomy. The paper ends with the central role other democratic institutions such as the Supreme Court still play in this context.

22. Kamil Kapica, University of Warsaw
Elections and abrupt changes of the electoral law in the era of pandemics – analysis on the example of constitutional crisis in Poland
The high rate of COVID-19 infection and the uncontrolled epidemiological situation in Poland did not prevent the organization of the presidential election on 28 June (instead of 10 May).

Despite of satisfying the constitutional conditions, no extraordinary state was introduced before. The introduction of a state of emergency would result in the appropriate extension of the term of office of constitutional organs and inability to hold a presidential election during the state of emergency and 90 days after its end (article 228 of the Constitution of the Republic of Poland). The omission of constitutional provisions, which protect the continuity of state bodies, is a clear violation of the rule of law. The authorities not only omitted the explicit provisions of the Constitution, but also adopted the new electoral law on June 2 (merely 26 days before elections, being completely in contrary to case-law of Constitutional Tribunal).

Emergency changes in electoral law raise legitimate concerns from the point of view public health protection, operating without the rule of law, as well as possible violation of free elections principle (art. 3 of European Convention of Humans Rights). The resulting irregularities may constitute arguments against considering the elections as valid and properly conducted.

Legal doubts were raised in respect to correspondence voting and subsequent risk of active voting right deprivation, unreasonable shortening of the deadline for submitting an election protest to the Supreme Court (from 14 to 3 days), lowering the requirements for members of constituency electoral commissions, as well as limiting the possibility of observing elections. Sudden and ill-considered changes of electoral law, as well as violation (omission) of constitutional provisions can affect in distortion of electoral values of primary importance. Numerous legal flaws may form the basis for effective application for declaring the election invalid. I consider the fear as justified that within particular election outcome, signalled irregularities may be successfully used to challenge the election result.

The objective of study is to discuss the issues of constitutional crisis, assess the impact of abrupt legislation changes, as well as legal defects on the validity of election results. Finally, the study presents the conclusions on what approach should be applied by Supreme
Court during the evaluation of validity of elections.
The study will be based on the dogmatic method, with particular emphasis on the case law of the Constitutional Courts and the European Court of Human Rights. Factual and legislative solutions of other countries, applied during the pandemic, will be comparatively presented.

23. Elohor Stephanie Onoge, Law researcher Monitoring and Evaluating the Impact (Post-Legislative Scrutiny) of Emergency Regulation in Response to COVID-19 Pandemic: A Case Study of Nigeria

The threat posed by passing emergency laws and policies in response to the coronavirus (COVID-19) pandemic can be said to be a critical precursor of human rights abuses. In response to the COVID-19 pandemic, the Nigerian President issued the COVID-19 REGULATION 2020 exercising his powers under the Federal Quarantine Act, CAP Q2 Laws of the Federation of Nigeria 2004. Based on this, the Nigerian Federal Government has undertaken stringent measures, enforced restrictions and cessation of movement, social and economic activities in Nigeria to curtail the pandemic. It, therefore, should be noted that COVID-19 and human rights are inextricably linked.

Nigeria has employed common aspects of human control to stop the spread of the disease, which included travel bans, quarantine orders, social distancing, and lockdowns.

These restrictive measures have been accompanied with authoritarian provisions which impinge on human rights and democratic processes.

This study analyses the emergency measures implemented by the Nigerian Government and human rights' infractions and considers Post-Legislative Scrutiny as a method to mitigate the impact of the legislative measures being employed by the government, as a safeguard for human rights and democracy in Nigeria.

To ensure true democracy, it is necessary that Nigeria regulations, laws and policy in response to COVID-19 be in line with the international human rights commitments, and that these temporarily imposed restrictions on rights do not become permanent.

Questions to be addressed in this study are:
(1) Is the breadth of powers currently enjoyed by executive bodies, such as Public Health authorities and security forces under scrutiny and review of the Legislature? (2) Are there safeguards put in place by the Legislature, as an oversight to ensure democratic rule and respect for human rights in Nigeria?

This study uses the qualitative research method, in that there are no numeric or quantitative data produced. It relies on content analysis of COVID-19 regulations legislation, academic literature, articles, journals, and Newspaper publications.


Whilst there is significant discussion globally on the thesis that the Coronavirus is emboldening autocrats the world over through vastly expanded emergency powers, extraordinary measures and reliance on enforcement rather than on expendable democratic subtleties, this short report focuses on the particular case of Albania to show that even though the level of illiberal thrust in this country is far from equaling that of authoritarian regimes, a host of key similarities are already there, and the substance behind those similarities is equally worrying.

In Albania, the operationalisation of the pandemic has made room for the relentless advancement of the government’s political agenda, giving rise to serious doubts about the sincerity of the government-sponsored measures, their end effects and their compatibility with public interest and constitutional framework.

From 6 April to 26 May 2020, the ‘COVID-19 and States of Emergency’ Symposium, co-hosted by the Verfassungsblog and Democracy Reporting International and convened by Joelle Grogan, published reports daily on states of emergency and executive action taken in response to COVID-19 in 74 countries, analysing legal measures and the use of emergency powers which impact nearly 80% of global population. The fifty days of the Symposium covered the height of the global legal reaction to the pandemic, offering a snapshot of countries in collective crisis. The worldwide network of expert contributors included former judges of the European Court of Human Rights, as well as professors and scholars of constitutional, public, and international law. Before analysing the impact of COVID-19 on government, parliaments and courts, contributors were asked to provide an outline of: (1) Pre-existing emergency powers of the state and the limitations placed upon their exercise, and whether these have been used; (2) Newly implemented legislation/delegated powers in light of COVID-19 and the limitations placed upon the use or exercise of those powers; (3) Emergent, consequent, or potential impacts of these powers on democracy, human rights or the rule of law.

The country reports were accompanied by 8 thematic commentaries on, inter alia, derogations from international rights instruments, the role of the judiciary, and the practice of democracy.

Building on the findings of the final Convenor’s report of the Symposium, this paper traces the central themes, questions and issues raised by the Symposium. It considers constitutional safeguards on a ‘state of emergency’, and whether this is preferable to the use of ordinary legislation in managing a crisis. It connects this with an examination of the dangers of executive action, and whether countries have been successful in limiting the potential for abuse, as well as preventing or sanctioning it. It considers how states have struggled to maintain some degree of legislative and judicial normality – essential for the scrutiny and review of emergency measures - while other states have given it up entirely. It identifies and analyses the two most common forms of executive response: one built on transparency and certainty, buoyed by public trust – and the other driven by surveillance and sanction. Based on the latest data tracking infection and mortality rates as well as indicators of social and economic recovery, it concludes on evidence across states for emerging best practice, as well as the most deeply concerning developments worldwide.