

COVID-19 Emergency Measures Are Hurting Democracy Globally

 See also the *AJPH* COVID-19 section, pp. 1344–1375.

There are not one, but two, pandemics on a joint rampage: COVID-19 and an authoritarian deployment of emergency powers to combat COVID-19. As governments scramble to contain the far-reaching health and economic costs inflicted by the evolving pandemic, political leaders worldwide are increasingly turning to excessive and disproportionate emergency containment measures that spell grave dangers for civil rights and liberties. This is as true of democracies as it is of semiauthoritarian states and dictatorships. Yet it is a legal and moral imperative that public health emergencies do not result in decisions that systemically regress hard-won advances in liberal democracy over the past century.¹

Responsible governments must be more interventionist in the face of a pandemic. But derogation, even in the midst of a public health emergency, from democracy-enabling rights, such as personal liberty and privacy and freedom of speech and association, is strictly regulated by numerous key treaties, including the International Covenant on Civil and Political Rights, the American Convention on Human Rights, the Arab Charter on Human Rights, and the European Convention on Human Rights. The Siracusa Principles, adopted in 1984 by the United Nations Economic and Social

Council, impose additional controls such as necessity, proportionality, and good faith on limitations on, and derogations from, the rights contained in the International Covenant on Civil and Political Rights.

The World Health Organization has repeatedly praised China's response to the COVID-19 pandemic,² despite the lack of clear evidence supporting the efficacy, sustainability, and proportionality of Wuhan-style lockdowns,³ which imposed an unprecedented, indefinite, mass quarantine of millions of people between January and April 2020. Elsewhere in China, armed officers and community officials enforced residential lockdown rules, affecting hundreds of millions more. An all-or-nothing approach to stemming the spread of COVID-19 sets, however, a dangerous precedent for the handling of future pandemics and disasters, for global history is rife with examples of emergency measures being retained and repurposed over long durations.

COVID-19 is already being used to justify democracy-stifling measures. On March 30, 2020, Hungary enacted one of the most draconian emergency laws in recent European history. It empowers the government to suspend the enforcement of duly enacted laws and impose additional extraordinary measures by

decree. There is no “sunset clause” for this law, and elections and referenda are prohibited indefinitely. Dissemination of distorted claims about COVID-19 is punishable by up to five years' imprisonment.⁴ This legislation has rightly been condemned by the United Nations High Commissioner for Human Rights, the Secretary General of the Council of Europe, and the Director of the Organization for Security and Co-operation in Europe Office for Democratic Institutions and Human Rights.

In India, the invocation of the Disaster Management Act, 2005, allows the Indian government to effectively rule by decree, without parliamentary involvement. State governments may also rule by decree under the colonial era Epidemic Diseases Act, 1897, which was enacted to help contain the bubonic plague in Bombay. These statutes allow wide variation in regulation and enforcement practices across India and little democratic accountability for measures imposed or actions taken. With

very broadly framed criminal offences established in the Indian Penal Code and the Code of Criminal Procedure for actions that could jeopardize public health, the stage is set for diverse uses and abuses of emergency powers. Degrading practices, such as stamping persons in home quarantine with indelible ink, have already featured in the Indian response to COVID-19.

Elsewhere in Asia, the Cambodian Parliament enacted emergency legislation on April 10, 2020 authorizing telecommunications surveillance, prohibiting or restricting the distribution or broadcast of information that could generate unrest or fear, and establishing criminal offences for obstructing emergency efforts punishable by up to 10 years' imprisonment. As in Hungary, the legislation contains no sunset clause, and there are clear signs that Cambodia is being further transitioned into authoritarianism, all in the name of combating COVID-19. In comparatively liberal Hong Kong, marred by escalating tension with mainland China and rapid authoritarianization since 2019, riot police arrested protesters for unlawful assembly on the pretext of enforcing social distancing regulations.

Even the French requirement for individuals to carry

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documentation attesting to their reasons for being outside their place of residence is profoundly illiberal and authoritarian. Inappropriate use in public health interventions of drones, robots, facial recognition cameras, electronic wristbands, and mobile phone tracking, including in otherwise democratic countries, will likely bolster an emerging global surveillance culture that undermines trust and personal freedom.⁵ These measures are unlikely to be fully rolled back after the end of the COVID-19 pandemic, as aggressive legal responses to the September 11, 2001 attacks in the United States exemplify the persistence of surveillance measures well into the future.⁶

Decision makers are faced with formidable and complex challenges in the current pandemic. They and their expertise deserve our respect and deference. Nevertheless, measures taken to stem the spread of COVID-19 cannot be permitted to undermine civil liberties more than is strictly necessary to achieve the purpose of viral containment. As vital as effective containment measures are, we must not lose sight of the imperative that a right and proportionate balance is struck between population health goals and the fundamental rights and freedoms that are the lifeblood of transparent, accountable, and democratic government. Most alarmingly, the global retreat of democracy that has occurred in recent years is likely to be aggravated by abuses of COVID-19 emergency powers around the world.⁷

There are, however, welcome developments in some countries as courts roll back some of the excesses in the fight against COVID-19. In Germany, the Higher Administrative Court of Mecklenburg-Vorpommern

invalidated a prohibition on travel to the state's coastal and lakeland areas on the basis of disproportionate interference with freedom of the person. Local courts in France suspended city curfews that were deemed excessive. The Constitutional Court of Kosovo ruled that COVID-19 containment measures restricting the freedoms of movement and assembly and the rights to private and family life were unconstitutional. These judicial decisions, too, deserve our respect and our deference, as they provide a technically balanced, nonpartisan counterweight to the adoption of excessive measures.

Democratic accountability and the rule of law cannot be completely suspended in any public health emergency. As humanity grapples with COVID-19, the way to combat one pandemic is not to create another, a pandemic of authoritarian rule. *AJPH*

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CONFLICTS OF INTEREST

We declare no competing interests.

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