

Civic Space and the COVID-19 Pandemic

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Around the world, Governments responded to the COVID-19 pandemic in ways that constrained civic space, exacerbating existing obstacles and creating new challenges for civil society. Adopting emergency and other exceptional legal measures, Governments granted themselves new powers and restricted civic freedoms, including the freedom of association, assembly and expression.

Many Governments prohibited public protests and demonstrations or significantly limited attendance at such gatherings. Some imposed new restrictions on speech that was critical of the State, with such limitations often framed as targeting disinformation or “fake news” about the pandemic. Some impeded the flow of information in other ways, including by criminalizing commentary from journalists, health-care workers, human rights defenders and others on the State’s pandemic response. Worldwide, Governments adopted new powers to surveil the public in the name of tracking contagion and deployed surveillance technology and systems in ways that significantly interfered with the right to privacy. Frequently, Governments designed, adopted and implemented these measures without providing opportunities for civil society consultation or participation.

While COVID-19 responses by Governments had a largely negative impact on civic space, many Governments demonstrated that it was possible to safeguard civic space while effectively countering the threats and risks surrounding the virus. The pandemic also served to reinforce the value of civil society in emergency response. Civil society played a critical role in gathering and amplifying accurate information about the spread of the virus, assessing community needs, reaching marginalized communities, and delivering essential services—even when doing so often involved the risk of contagion. The oversight role played by civil society was likewise important during the pandemic, as it worked to protect human rights, fundamental freedoms and the rule of law against government overreach. In the subsections below, good practices are highlighted and successful approaches and initiatives adopted by both Governments and civil society to protect civic space are further explored.

Positive practices by Governments

Applying guardrails for emergency measures. According to the COVID-19 Civic Freedom Tracker,² 112 countries formally declared a state of emergency or other exceptional legal

state that enabled the Government to restrict rights and freedoms. As required by international law and in line with good practice, some formally notified relevant treaty bodies of derogations in response to COVID-19; from January 2020 to April 2022, 24 States submitted over 110 notifications of states of emergency and related derogations.³ Some took additional steps to ensure that their emergency measures aligned with their obligations under international law by continually assessing the measures’ necessity, proportionality, legality and non-discriminatory impact. Opportunities were created for the oversight and review of emergency measures by relevant institutions, including legislatures, courts and international bodies. In Portugal, the Parliament reviewed and debated the state of emergency, extending it 15 days at a time, and eventually allowed it to lapse. Rather than using the COVID-19 emergency to expand State power, some Governments invoked grants of emergency authority that were narrowly drafted and included an expiration date.

Enabling public participation in crisis response. Engaging the public in the design, implementation and review of crisis response measures proved critical to effectiveness in the COVID-19 context. Some States successfully integrated public participation into their COVID-19 response even as they sought to move quickly. In Kenya, the Parliament invited public submissions regarding key issues relating to the pandemic and considered this input in the drafting of a pandemic response and management bill. In Belize, civil society representatives were included in the Government’s COVID-19 policymaking committee and allowed to participate in parliamentary debates over COVID-19 measures.⁴ In Guatemala, the Ministry of Public Health and Social Assistance partnered with Indigenous midwives to provide accurate information to rural communities and encourage vaccination.⁵

Facilitating the flow of information. During a crisis, the free flow of information is crucial to ensure that responses are evidence-based, to facilitate public understanding of the situation and cooperation with response measures, and to hold Governments accountable for measures that may infringe rights. Rather than restricting information flows during crises, Governments should take affirmative action to support public access to information through independent media outlets and online platforms. This includes the dissemination of accurate information about the status of the crisis and the steps being taken in response. They should publicize official documents describing their responsive measures, mandate proactive disclosure of official information, provide

for virtual public meetings with government representatives, and establish systems for individuals and groups to request information from public bodies. The Government of Ireland obliged officials to continue to comply with the Freedom of Information Act, publicized its National Action Plan in response to COVID-19, and created hotlines for individuals to access information. New Zealand issued guidance to agencies and the public urging greater transparency and access to official information even while the country was under a state of emergency.⁶ Governments also took steps to increase the accessibility of COVID-19-related information. Japan and Austria both published information about COVID-19 measures in multiple languages.⁷

Protecting freedom of peaceful assembly. Excessive restrictions on public assembly—for example, those characterized by the lack of an expiration date or exceptions for socially-distanced peaceful protests—cut off an important channel for public expression and participation during the pandemic. By contrast, the COVID-19 restrictions on gatherings in Denmark exempted “opinion-shaping assemblies” such as demonstrations and political meetings, though the Government encouraged participants to socially distance and follow other health guidelines.⁸

Safeguarding the right to privacy. Some Governments that introduced digital surveillance tools in an effort to curb the spread of COVID-19 took steps to ensure that the privacy rights of individuals were not infringed. A COVID-19 contact tracing app in Norway, for instance, shared individuals’ movement data with authorities but anonymized it first, and users received clear information about the purpose, storage and nature of the data collected. The app was also voluntary, and users could delete it and their data at any time. Governments considering similar technology based on personal data in response to future crises should prioritize privacy, transparency and public consultation and impose narrow limits on these initiatives.

The role of civil society

Civil society pushed back against COVID-19-inspired restrictions on civic space in a number of ways. Across the globe, civil society organizations played a critical monitoring and awareness-raising role. In Indonesia, a human rights foundation monitored the impact of emergency measures on rights and freedoms and carried out a public awareness campaign via social media.⁹ Civil society representatives formed networks and coalitions and found new strength in numbers. A human rights lawyer in Poland established a new pro bono network to defend individuals who were targeted for engaging in anti-government protests during the pandemic after dozens of protesters demonstrating in support of a lesbian, gay, bisexual and transgender (LGBT) activist were arrested for

violating COVID-19 restrictions.¹⁰ In other cases, civil society leveraged direct advocacy to push back; human rights defenders in Tunisia, for example, were able to lobby the Government to remove criminal sanctions—including prison sentences of up to two years—for violations of COVID-19 movement restrictions.¹¹ A civil society coalition in Ecuador successfully pushed the Government to engage Indigenous communities in the design of their vaccination campaign.¹² Civil society organizations also used strategic lawsuits to challenge the validity of COVID-19 emergency measures that infringed rights and constrained civic space. In Israel, such organizations successfully challenged limits that a COVID-19 regulation placed on public demonstrations, including a requirement that an individual could only participate in a demonstration within 1,000 metres of his or her residence.¹³ In Brazil, after the President suspended deadlines for responses to requests for public information, the Bar Association successfully challenged the constitutionality of the measure, arguing that it violated the right to access information and restricted the constitutional rights to information, transparency and disclosure.¹⁴

Policy recommendations

Stakeholders seeking to safeguard civic space in future crises should strive to ensure adherence to the following principles:

- Emergency measures should be limited in duration and should be subject to extension only upon legislative approval.
- Restrictions on assembly and movement should include reasonable exceptions.
- Governments should disseminate accurate information about emergencies and responsive measures through a variety of accessible platforms and in multiple languages.
- Governments should publicize official documents describing their responsive measures, mandate proactive disclosure of official information, establish systems for individuals and groups to request information from public bodies, and enforce existing access to information frameworks.
- Governments using digital surveillance technology based on personal data should prioritize privacy, transparency and public consultation and the imposition of narrow limits on these programmes.
- Governments should establish procedures to review emergency measures affecting civic freedoms in consultation with civil society and to relax and remove those measures as soon as they are no longer necessary.

Endnotes

- 1 Elly Page is a Senior Legal Advisor and Alexandra DeBlock is a Research Officer at the International Center for Not-for-Profit Law (ICNL).
- 2 ICNL, COVID-19 Civic Freedom Tracker, available at <https://www.icnl.org/covid19tracker/>.
- 3 United Nations, General Assembly, “Civil society space: COVID-19: the road to recovery and the essential role of civil society”, report of the Human Rights Council at its fifty-first session (A/HRC/51/13, 30 June 2022), para. 7, available at <https://www.ohchr.org/en/documents/thematic-reports/ahrc5113-civil-society-space-covid-19-road-recovery-and-essential-role>.
- 4 ICNL, “Latin America: freedoms of association and peaceful assembly in times of coronavirus”, December 2020 report, available at <https://www.icnl.org/post/analysis/latin-america-freedoms-of-association-and-peaceful-assembly-in-times-of-coronavirus>.
- 5 Pan American Health Organization, “An ancient tradition to the rescue: Mayan midwives or ‘comadronas’ dispel COVID-19 vaccination fears” (Regional Office for the Americas of the World Health Organization, 3 June 2022), available at <https://www.paho.org/en/stories/ancient-tradition-rescue-mayan-midwives-or-comadronas-dispel-covid-19-vaccination-fears>.
- 6 New Zealand, Office of the Ombudsman, “Chief Ombudsman’s statement on official information response times during the COVID-19 emergency”, news article, 24 March 2020, available at <https://www.ombudsman.parliament.nz/news/chief-ombudsmans-statement-official-information-response-times-during-covid-19-emergency>.
- 7 Civil Society Action Committee, “First, save lives: solutions for the COVID-19 pandemic and new solidarity with migrants and refugees”, a global civil society statement, 7 April 2020, available at <https://csactioncommittee.org/wp-content/uploads/2020/04/Civil-Society-Statement-on-COVID-19-and-Migrants.pdf>.
- 8 ICNL, COVID-19 Civic Freedom Tracker, “Denmark: No. 158 on Amendment of the Law on Measures Countering Infectious and other Communicable Diseases”, introduced 31 March 2020, available at <https://www.icnl.org/covid19tracker/>.
- 9 The Lokataru Foundation, an ICNL partner.
- 10 American Bar Association, Center for Human Rights, *COVID-19 Related State of Emergency Measures: Impact and Responses*, report, February 2022, available at https://www.americanbar.org/content/dam/aba/administrative/human_rights/justice-defenders/chr-covid-19-emergency-measures-report-feb-2022.pdf.
- 11 Ibid.
- 12 Fundación Pachamama, an ICNL partner.
- 13 Yuval Shany, “The return to Balfour: Israel’s Supreme Court strikes down coronavirus regulations curbing the right to protest”, Lawfare blog post, 13 April 2021, available at <https://www.lawfareblog.com/return-balfour-israels-supreme-court-strikes-down-coronavirus-regulations-curbing-right-protest>.
- 14 American Bar Association, Center for Human Rights, *COVID-19 Related State of Emergency Measures: Impact and Responses*.