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Global Democracy and Human Rights Impacts of COVID-19: In Brief

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Introduction

As governments worldwide administer lockdowns, travel limitations, and other restrictions to respond to the Coronavirus Disease 2019 (COVID-19) pandemic, some experts have warned of a "parallel epidemic" of government repression.[1] Proponents of this view maintain that some governments are using the COVID-19 pandemic as a pretext to consolidate political power undemocratically or impose undue restrictions on the exercise of civil and political rights. Meanwhile, even when restrictions may be justified on the basis of public health, the manner of application and enforcement of these measures may raise human rights concerns in some cases. Some Members of Congress have expressed alarm over the implications of COVID-19 for democracy and human rights trends, as evidenced by statements and legislation introduced to date. At the same time, COVID-19's ramifications in this area are diverse and evolving.

This In Brief report discusses key democracy and human rights concerns raised by experts and advocates, includes brief country case studies,[2] and discusses potential congressional policy responses. Although some issues discussed herein may be relevant to domestic debates in the United States, this report focuses on democracy and human rights issues internationally and in relation to U.S. foreign policy.[3]

Background

Concerns over potential erosions in democracy and respect for human rights caused by government responses to the COVID-19 pandemic are situated among broader worries over worldwide democratic backsliding in recent years. International human rights treaties, however, provide some guidance for permissible emergency curtailments of human rights.

Global Trends and U.S. Interests

Global indexes generally indicate that the aggregate level of democracy globally—as measured on dimensions such as the extent of free and fair elections and political participation, the rule of law, and respect for fundamental freedoms—has not advanced since around 2006; some amount of overall democratic backsliding has occurred.[4] A variety of factors may be affecting democracy and human rights around the world, including the increased influence of governments widely viewed as authoritarian, such as the People's Republic of China (China) and Russia; dissatisfaction with government performance within democracies and challenges to liberal democracy's appeal and prestige as a political system (including arguably diminished global perceptions of the U.S. democracy and human rights example); and new regulatory and technological means by which nondemocratic governments are able to repress political dissent.[5]

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[1] Selam Gebrekidan, "For Autocrats, and Others, Coronavirus Is a Chance to Grab Even More Power," *New York Times*, March 30, 2020.

[2] Country case studies are included for illustrative purposes; their inclusion does not imply a CRS judgment that impacts are limited to, or necessarily particularly acute in, these countries.

[3] For CRS products on the U.S. domestic context, see relevant reports accessible at https://www.crs.gov/resources/coronavirus-disease-2019.

[4] The nongovernmental organization Freedom House, for example, has registered 14 consecutive years in which respect for political rights and civil liberties declined in more countries than showed improvement. See Freedom House, *Freedom in the World 2020*: *A Leaderless Struggle for Democracy*, March 4, 2020. Numerous other organizations also measure the state of democracy globally, with varying findings on the extent and nature of democratic backsliding.

[5] For discussion of these and other relevant global trends, see CRS Report R45344, *Global Trends in Democracy:*

In addition to eliciting concern from the perspective of values and norms, events affecting global trends in democracy and human rights potentially engage significant U.S. foreign policy interests. Policymakers have often viewed democracy and respect for human rights as foundational to international peace and the sustainability of the post-War II international order. They have also linked it to helping foster an international environment that is hospitable to U.S. influence and the pursuit of U.S. policy objectives.[6] Rights-respecting democracies are perceived, for example, as unlikely to go war with one another and as generally reliable and trustworthy international partners of the United States. Security threats to the United States, by contrast, often emanate from or are associated with nondemocracies. At the same time, analysts continue to debate to extent to which the United States should promote democracy and human rights internationally.[7]

Principles for Permissible Restrictions on Human Rights

Some human rights treaties allow for bounded restrictions on the exercise of some human rights to meet public health crises. Most notably, the International Covenant on Civil and Political Rights (ICCPR) provides for certain derogations and restrictions, as described further below.[8]

Derogations from ICCPR obligations in the context of public emergencies. The ICCPR allows that "[i]n time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations" under the treaty.[9] Any derogations must be "strictly required" by the situation, consistent with other obligations under international law, and nondiscriminatory. States Parties are not permitted in these instances to derogate from their obligations to respect certain rights, including the rights to life and to freedom of thought, conscience, and religion, as well as against slavery, torture, and cruel, inhuman, or degrading treatment or punishment, among others. In providing guidance on public emergencies in the context of COVID-19, the United Nations (U.N.) Office of the High Commissioner for Human Rights (OHCHR) has stated that the ICCPR's "strictly required" language "relates to the duration, geographical coverage and substantive basis" of the state of emergency. It noted that declared emergencies therefore should be time-limited, "the least intrusive to achieve the stated public health goals," and include safeguards "to ensure return to ordinary laws as soon as the emergency situation is over." OHCHR further stated that measures should be transparent, nondiscriminatory, and subject to independent review.[10]

Background, U.S. Policy, and Issues for Congress, by Michael A. Weber.

[6] See relevant discussion in CRS Report R44891, *U.S. Role in the World: Background and Issues for Congress*, by Ronald O'Rourke and Michael Moodie; see also "Identification with U.S. Strategy and Interests" in CRS Report R45344, *Global Trends in Democracy: Background, U.S. Policy, and Issues for Congress*, by Michael A. Weber.

[7] Disagreements exist over whether democracy and human rights promotion supports core U.S. national interests, creates potential tension with other objectives, or raises questions over the U.S. capacity for achieving its goals. See "Debates over Democracy Promotion in U.S. Foreign Policy" in CRS Report R45344, *Global Trends in Democracy: Background, U.S. Policy, and Issues for Congress*, by Michael A. Weber.

[8] To date, 173 States Parties have ratified the ICCPR; the United States ratified in 1992. Different than the ICCPR, the International Covenant on Economic, Social and Cultural Rights (ICESCR) generally does not provide for emergency restrictions. To date, 171 States Parties have ratified the ICESCR; the United States has signed but not ratified. Separately, regional human rights treaties may contain their own provisions for when State Parties are permitted to derogate from their obligations or otherwise restrict human rights.

[9] See Article 4 of the ICCPR. In addition, States Parties that use this public emergency derogation provision are to inform other States Parties through the U.N. Secretary-General of the specific provisions that have been derogated and the reasons for the derogation. In the context of COVID-19, few governments appear to have done so to date.

[10] OHCHR, *Emergency Measures and COVID-19: Guidance*, April 27, 2020.

Restrictions on the exercise of rights under the ICCPR for reasons of public health. Separately, and regardless of whether a public emergency has been declared, the ICCPR also allows for bounded restrictions on freedoms of movement, assembly, expression, and association when necessary to protect public health.[11] OHCHR has stated that such restrictions must be lawful, necessary, proportional, and nondiscriminatory. Moreover, according to OHCHR, any restrictions "should be interpreted strictly and in favour of the right at issue."[12]

General principles. In general, human rights experts and advocates have drawn on interpretations of the ICCPR to argue that emergency curtailments of the exercise of civil and political rights in the context of COVID-19 responses should meet the following criteria:

- be grounded in law and subject to independent oversight;
- serve a legitimate and necessary public health purpose;
- be strictly proportionate to the public health threat and limited in duration; and
- be nondiscriminatory and free from use as a basis to target particular groups.

Potential Impacts of COVID-19

Historically, some political leaders have used real or manufactured crises, or exaggerated the threat to the public of certain events, in order to justify human rights violations, undermine the rule of law, or subvert democratic institutions.[13] Commenting on the COVID-19 crisis, the U.N. Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism Fionnuala Ní Aoláin has argued that some governments proactively draft laws or policies containing their desired powers in advance of crises so that they may put those measures into action when the opportunity arises.[14] U.N. Secretary-General António Guterres has also warned that the COVID-19 crisis "can provide a pretext to adopt repressive measures for purposes unrelated to the pandemic."[15]

Efforts to evaluate the democracy and human rights dimensions of government responses to COVID-19 are complicated by the fact that the pandemic is widely recognized as a genuine health crisis. Public health experts broadly agree that effective public health responses to COVID-19 require the temporary curtailment of certain activities (such as large gatherings) and/or public health-oriented surveillance efforts. Moreover, government responses to the pandemic may vary widely. While some political leaders may perceive COVID-19 as a political opportunity, others may view it more as a threat to their popularity or the durability of their government. The extent to which COVID-19-related restrictions represent a departure from past governance patterns also may vary between states. In more repressive countries, for instance, strict restrictions imposed ostensibly to protect public health may largely align with past restrictions instituted for other purported reasons. Relatedly, while some governments have introduced new policies in response

[11] For instance, Article 21 states that no restrictions may be placed on the exercise of the right of peaceful assembly "other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others."

[12] OHCHR, *Emergency Measures and COVID-19: Guidance*, April 27, 2019.

[13] See, for example, discussion in Steven Levitsky and Daniel Ziblatt, *How Democracies Die* (New York: Crown Publishing, 2018), pp. 92-96.

[14] Selam Gebrekidan, "For Autocrats, and Others, Coronavirus Is a Chance to Grab Even More Power," *New York Times*, March 30, 2020.

[15] António Guterres, "We are all in this Together: Human Rights and COVID-19 Response and Recovery," United Nations, April 23, 2020.

to the virus, many also have invoked existing policies or practices (e.g., curtailing press freedoms) when implementing COVID-19 related restrictions.[16] In many countries, concerns are situated within broader and longer-term trends (see Hungary case study below, for example).

Case Study: Hungary

The Hungarian National Assembly passed the Coronavirus Protection Act on March 30, 2020, indefinitely extending a national state of emergency and permitting the government to adopt a broad range of extraordinary measures by decree in response to the COVID-19 pandemic.[17] While many other European countries adopted emergency laws in dealing with the pandemic, observers in Europe and the United States, including some Members of Congress, criticized the Hungarian legislation's lack of an end date, and conveyed the view that it critically weakened democracy in Hungary.[18] Some critics went further, asserting that the legislation spelled the end of democracy in Hungary, and suggesting that the Hungarian government could seek to permanently retain the powers granted to it under the state of emergency.[19] The legislation introduced prison sentences for purposely spreading false information about the pandemic, alarming human rights advocates concerned about potential abuse with respect to political opponents or the media.[20] Hungarian officials maintain that the legislation was necessary to allow the government to move swiftly in dealing with the pandemic, that the criticism was politically motivated, and that Hungary's parliament could revoke the authorization whenever it saw fit.[21] On June 16, 2020, in the context of the relatively successful containment of the pandemic in Hungary (approximately 4,000 confirmed cases and 565 deaths), the Hungarian National Assembly voted (by a unanimous vote of 190-0) to end the state of emergency and revoke the government's extraordinary powers.[22] Critics argued that the bill ending the state of emergency also allows the government to declare a state of health emergency in the future, creating a new legal basis for the government to assume extraordinary powers and govern by decree without parliamentary approval.[23]

The criticism and defense of Hungary's emergency coronavirus law is a continuation of an argument about democracy and rule of law in Hungary that has taken place over the past decade. Since 2010, Prime Minister Viktor Orban of the nationalist-conservative Fidesz party has controlled a dominant political position in Hungary. With popular support for the government's anti-immigration campaign, strong economic growth, and a fractured political opposition, Fidesz won a third consecutive two-thirds parliamentary supermajority in Hungary's 2018 election.[24] Many critical observers have expressed concerns that major reforms since 2010 have weakened systemic check-and-balances on legislative and executive power, eroded the independence of institutions like the central bank and constitutional court, centralized power around the prime minister, and entrenched Fidesz

[16] Thailand, for example, has reportedly used its Computer-Related Crime Act to arrest individuals for online speech related to the virus. See Human Rights Watch, "Thailand: COVID-19 Clampdown on Free Speech," March 25, 2020.

[17] An English version of the legislation is available at http://abouthungary.hu/news-in-brief/read-it-for-yourself-heres-the-official-text-of-the-coronavirus-protection-law-eng/. Hungary originally declared a state of emergency on March 11, 2020.

[18] See, for example, Ian Bond and Agata Gostyńska-Jakubowska, *COVID-19: Can the EU Avoid an Epidemic of Authoritarianism?*, Centre for European Reform, April 9, 2020, United States Senate Committee on Foreign Relations, *Risch Warns Hungary Against Use of Crisis to Weaken Democracy*, March 30, 2020; U.S. Representative Eliot L. Engel, *Engel Statement On Orban's Coronavirus Power Grab*, March 30, 2020; "Hungary Passes Law Allowing Viktor Orban To Rule By Decree," *Deutsche Welle*, March 30, 2020; and Council of Europe, *Secretary General Writes To Viktor Orbán Regarding COVID-19 State Of Emergency In Hungary*, March 24, 2020.

[19] See, for example, Felix Schlagwein, "'Hungary is No Longer a Democracy,' Says Hungarian Legal Scholar," *Deutsche Welle*, May 14, 2020.

[20] Joanna Kakissis, "New Law Gives Sweeping Powers To Hungary's Orban, Alarming Rights Advocates," *NPR*, March 30, 2020.

[21] Judit Varga, "No Power Grab In Hungary," *Politico Europe*, March 31, 2020.

[22] "Coronavirus: Hungary Votes To End Viktor Orban Emergency Powers," *BBC News*, June 16, 2020.

[23] Gabor Tanacs and Natalie Huet, "Hungary Ends Emergency Powers, But New Law Opens Up Potential To Re-Apply Them," *Euronews*, June 17, 2020 and Benjamin Novak, "Hungary Moves to End Rule by Decree, but Orban's Powers May Stay," *New York Times*, June 16, 2020.

[24] See Andrzej Sadecki, *Election in Hungary: Viktor Orbán's dominance confirmed*, Centre for Eastern Studies (Warsaw), April 11, 2018.

personnel and policies in the country's public institutions.[25] Critics also assert that Fidesz has sought to further consolidate its power by targeting media and civil society opposed to the government's program, and vilifying foreign-supported organizations and institutions. Supporters of the Orban government push back against this depiction, asserting that negative portrayals of Hungary in Europe and the United States are driven by the activities of political opponents and pro-migration advocates, who in turn influence the views of the media. In particular, the Orban government has blamed Hungarian-American billionaire George Soros, whose Open Society Foundations support nongovernmental organizations in numerous countries.

The most common government actions that many could view as a potential concern are emergency declarations and restrictions on free assembly. According to the International Center for Not-for-Profit Law (ICNL), more than 80 countries have instituted emergency declarations in response to COVID-19, and more than 100 countries have taken measures that affect free assembly, although restrictions have eased in some countries.[26] Experts worry that some restrictions fail to meet necessary principles to ensure respect for human rights.[27] Restrictions in some cases lack a clear end date, or may be disproportionately broad in scope and/or vague such that they provide excessive discretion to government authorities. In Algeria and Hong Kong, for example, governments appear to have cited public health rationales to ban peaceful protest movements.[28] The enforcement of lockdown orders has also raised concerns in some countries in light of reported or alleged arbitrary arrests or abuses by security forces (see Nigeria case study). Additional issues of particular concern are discussed in the subsections below.

Case Study: Nigeria

According to the National Human Rights Commission (NHRC), an independent government agency, security services killed nearly 30 people and unlawfully detained, extorted, tortured, or mistreated dozens more over the first five weeks of lockdown enforcement.[29] Authorities also have reportedly seized property belonging to individuals accused of violating stay-at-home orders. Human rights groups expressed particular concern over the decision by state authorities in Rivers State to demolish two hotels that they alleged had continued to operate despite the governor's executive order prohibiting hotel operations.[30] In some instances, authorities have pledged to investigate reported abuses; several police officers have been arrested in connection with alleged misconduct.

Advocates and opposition lawmakers also have raised alarm over the proposed Control of Infectious Diseases Bill, 2020, which is now under consideration by Nigeria's National Assembly. The act would accord health and law enforcement personnel with broad authorities to curtail freedoms of movement and assembly, detain individuals suspected of suffering from an infectious disease, take possession or oversee demolitions of property, and conduct warrantless searches to investigate violations of emergency decrees.[31] Several state legislatures have enacted similar measures since the outbreak began, with unfolding implications for civil liberties. In April, police in Ebonyi State reportedly invoked a new state infectious diseases law to detain two journalists on allegations of false

[25] See, for example, James Kirchick, *Hungary* in *The Anatomy of Illiberal States: Assessing and Responding to Democratic Decline in Turkey and Central Europe*, Brookings Institution, February 2019, pp. 13-15.

[26] ICNL, "COVID-19 Civic Freedom Tracker," accessed at https://www.icnl.org/covid19tracker. INCL's methodology includes laws, policies, and practices. ICNL's list includes the United States among countries that have instituted emergency declarations.

[27] OHCHR, "COVID-19: States should not abuse emergency measures to suppress human rights," March 16, 2020.

[28] See Hamid Ould Ahmed, "Algeria bans street marches due to virus; some protestors unswayed," *Reuters*, March 17, 2020, and Marc A. Thiessen, "China is using covid-19 to throttle Hong Kong's pro-democracy movement," *Washington Post*, May 21, 2020.

[29] NHRC, *National Human Rights Commission Press Release on COVID-19 Enforcement So Far Report on Incidents of Violation of Human Rights*, April 15, 2020; NHRC, *Report of Alleged Human Rights Violations Recorded Between 13th April to 4th May, 2020 Following the Extension of the Lockdown Period by Government*, May 15, 2020.

[30] Kayode Oyero, "SERAP threatens to sue Wike over hotels' demolition," *The Punch*, May 10, 2020.

[31] Ruth Olurounbi, "Coronavirus: Nigeria's proposed COVID-19 law tears the country apart," *The Africa Report*, May 15, 2020.

reporting.[32] Authorities also have prosecuted journalists under an expansive cybercrimes law passed in 2015; in June 2020, federal agents invoked that law to charge a journalist with false reporting on the government's COVID-19 response.[33]

Security force abuses and far-reaching legal measures come amid a broader deterioration of governance and human rights conditions in Nigeria. According to Amnesty International, attacks on the press have "continued unabated" since incumbent President Muhammadu Buhari first took office in 2015.[34] Authorities have raided media outlet offices and detained journalists and bloggers, often on state security or criminal defamation charges.[35] General elections in 2019 heightened concerns about Nigeria's democratic trajectory 30 years since the country's transition to civilian rule. The polls featured extensive violence and "increasingly brazen" vote buying, according to National Democratic Institute (NDI) and International Republican Institute (IRI) observers.[36] Meanwhile, security forces have been implicated in extensive human rights violations in the course of counterterrorism operations. According to the State Department's human rights report for 2019, security abuses included unlawful and arbitrary killings, forced disappearances, arbitrary detention, and threats and restrictions targeting humanitarian organizations.[37]

Freedom of Expression, Press Freedoms, and Access to Information

Advocates argue that government responses to COVID-19 both illustrate and exacerbate broader threats to rights to free expression and access to information.[38] Many governments have instituted or carried out controls on the media and free expression under the justification of preventing the spread of misinformation or disinformation about the virus, with both new and existing laws and policies providing government officials the authority to prohibit the spread of virus-related information they deem to be false or harmful.[39] According to ICNL, more than 30 countries have instituted laws, policies, or practices related to COVID-19 that affect free expression in some way.[40] Although false information may genuinely pose health risks to individuals, some such restrictions may disproportionately curtail freedoms and/or be used to suppress dissent by restricting criticism of, or news unfavorable to, government authorities.[41] Countries such as Algeria, China, Egypt, and Iran have blocked or censored websites and online commentary about COVID-19. Other nations, including Burma (Myanmar), Cambodia (see below case study),

[32] Committee to Protect Journalists (CPJ), "Nigerian police arrest, detain 2 journalists in Ebonyi state," April 24, 2020.

[33] CPJ, "Nigerian journalist held under cybercrime act for COVID-19 coverage," June 10, 2020.

[34] Amnesty International, *Endangered Voices: Attack on Freedom of Expression in Nigeria*, October 2019. Several Members of Congress have expressed concern over the ongoing prosecution of U.S.-based journalist and 2019 presidential candidate Omoyele Sowore, who faces charges of treason, fraud, and insulting the president in connection with his call for demonstrations against alleged corruption and electoral fraud. Senators Booker, Coons, Menendez, and Schumer and Representatives Gottheimer and Pascrell sent a joint letter to Nigeria's Attorney General in late 2019 urging respect for Sowore's due process rights.

[35] See, for example, HRW, "Nigeria's Wavering Commitment to Freedom of Expression," June 28, 2019; CIVICUS, "Concerns about freedom of expression in Nigeria: journalists arrested, protests repressed," November 19, 2019.

[36] NDI/IRI, *Nigeria International Election Observation Mission Final Report,* June 2019.

[37] State Department, *2019 Country Reports on Human Rights Practices: Nigeria*, March 2020.

[38] Reporters Without Borders, "2020 World Press Freedom Index: "Entering a decisive decade for journalism, exacerbated by coronavirus," April 20, 2020.

[39] See, for example, the Hungary, Cambodia, and Kazakhstan case studies in this report. See also U.N. Document A/HRC/44/49, *Disease pandemics and the freedom of opinion and expression,* April 23, 2020. Misinformation refers to the spread of false information, while disinformation refers to the spread of information that the sender knows to be false with the intent to mislead.

[40] Figure as of June 2020. ICNL, "COVID-19 Civic Freedom Tracker," accessed at https://www.icnl.org/covid19tracker. ICNL includes the United States among these, citing an order by Puerto Rico's governor. See Tim Stelloh, "ACLU files lawsuit over Puerto Rico 'fake news' laws feared by journalists covering pandemic," *NBC News*, May 20, 2020.

[41] U.N. Document A/HRC/44/49.

China, India, Iran, the Philippines, and Turkey have reportedly detained or punished journalists or online commentators in connection with their reporting or speech about the virus.[42] Critics of these and similar actions to restrict free expression elsewhere argue that, beyond violating human rights, such actions may do more harm to citizens' ability to access accurate information than the problems of misinformation and disinformation that they purport to combat.[43] A lack of transparency among some governments is also hindering the ability of citizens to access accurate information about the virus, and in some cases, governments themselves have been sources of misinformation or disinformation when communicating with publics about the virus.[44] Relatedly, analysts argue that international propaganda and disinformation efforts about COVID-19 by actors such as China and Russia pose risks to democracy and illustrate broader concerns in this area.[45]

Case Study: Cambodia

Observers have expressed concerns that some measures taken by the Cambodian government in response to COVID-19 are unwarranted, lack human rights protections, or could use be used to bolster the power of Prime Minister Hun Sen, the longest-serving leader in Asia. Furthermore, in return for Hun Sen's demonstrations of support to China during the COVID-19 outbreak in Wuhan, China, the PRC is expected to help Cambodia economically, which may further enable the Kingdom of Cambodia to resist pressure from Western countries to restore democracy and improve its human rights record.[46] U.S. relations with the Kingdom have become increasingly strained in recent years in light of the government's suppression of the political opposition, civil society, and freedom of expression, and its growing embrace of China.[47]

In the two decades following United Nations-administered national elections in 1993, Cambodia made fitful progress in its political and social development, including the development of a vibrant civil society and somewhat free press. Following strong performances by the opposition in the 2013 general and 2017 local elections, the Cambodian government placed increasing restrictions on political and social activism, and on the press. In November 2017, the Supreme Court of Cambodia, at the behest of the government, issued a ruling that dissolved the opposition Cambodian National Rescue Party (CNRP) for "conspiring with the United States to overthrow

[42] See also the Nigeria and Kazakhstan case studies. Reporters Without Borders, "Egypt blocks online "fake news" about coronavirus," April 3, 2020; CPJ, "Myanmar news editor sentenced to 2 years in jail over COVID-19 report," May 22, 2020; Reuters, "Turkey rounds up hundreds for social media posts about coronavirus," March 26, 2020; Reporters Without Borders, "COVID-19: six Chinese defenders of press freedom still in detention," May 26, 2020; Paul Mozur, "Coronavirus Outrage Spurs China's Internet Police to Action," *New York Times*, March 16, 2020; Bhavya Dore, "Fake News, Real Arrests," *Foreign Policy*, April 17, 2020; CPJ, "Amid Coronavirus pandemic, Iran covers up crucial information and threatens journalists," March 20, 2020; CPJ, "Algeria blocks 3 news websites and criminalizes false news," April 22, 2020. See also https://cpj.org/covid-19/.

[43] See Jacob Mchangama and Sarah McLaughlin, "Coronavirus Has Started a Censorship Pandemic," *Foreign Policy*, April 1, 2020; U.N. Document A/HRC/44/49; OHCHR, "COVID-19: Governments must promote and protect access to and free flow of information during pandemic – International experts," March 19, 2020.

[44] U.N. Document A/HRC/44/49; Reporters Without Borders, https://rsf.org/en/countries.

[45] See, for example, Andrea Kendall-Taylor and David Shullman, "Converging Chinese and Russian Disinformation Compounds Threat to Democracy," May 26, 2020.

[46] "A Friend Indeed, Cambodia Thanks China for Continued Assistance under Any Circumstances," *Khmer Times*, April 26, 2020; George Styllis, "Cambodia Awaits Payday as Hun Sen Cozies up to China," *Nikkei Asian Review*, April 17, 2020; David Hutt, "Will the COVID-19 Crisis Spell the End of Cambodia's Hun Sen?" *The Diplomat*, April 2, 2020; Nicola Smith, "Why It Pays for China's Neighbors to Play Down the Coronavirus," *The Telegraph*, February 14, 2020.

[47] A number of bills have been introduced in the 116th Congress related to restoring Cambodian democracy and possible U.S. sanctions, including the following: S. 34, H.R. 526, H.R. 1376, S. 1468, and S. 3081. Annual foreign operations appropriations legislation have placed democracy-related conditions on most U.S. assistance to the government of Cambodia and prohibited military assistance. See S.Rept. 116-126.

the government."[48] As a result, the ruling Cambodian People's Party ran virtually unopposed in the 2018 National Assembly election.

Cambodia, a country of 16 million people, has a reported total of 128 cases of COVID-19 and zero deaths as of June 15, 2020. Despite the relatively low number of cases, the Cambodian government has aggressively pursued those who speak out freely about the virus. Cambodian authorities reportedly have arrested roughly 30 people on charges of spreading "fake news" related to COVID-19.[49] Many have been released, but about one-third of those arrested, mostly those affiliated with the dissolved CNRP, remain detained.[50] In April 2020, Cambodia's parliament unanimously passed a state of emergency law, which authorizes the King to declare a state of emergency in situations of war, pandemics, and "national chaos." If a state of emergency is declared, in addition to giving the government the prerogative to place bans or limits on movement and gatherings, the new emergency law would authorize the government to restrict the dissemination and broadcast of information, engage in digital surveillance, and impose penalties on those who violate the law.[51] According to the U.N. Special Rapporteur on Human Rights in Cambodia, "The broadly worded language on the protection of national security and public order, ostensibly aimed at addressing COVID-19, can potentially be used to infringe on the right to privacy and unnecessarily restrict freedoms of expression, association and peaceful assembly."[52] Other concerns include the possibility of indefinite renewals of the state of emergency, which is to last no more than three months but "may be extended under the same conditions."[53] Cambodian leaders stated that the law was in compliance with the constitution, and Hun Sen reportedly said that there is a "slim chance" of it being invoked.[54]

Surveillance and Privacy

Governments of all political systems are using technological tools, such as surveillance camera footage, geolocation data, and contact tracing applications, to monitor their citizens for the purpose of combating the spread of COVID-19. Although potentially helpful for slowing the spread of the virus, some such measures may raise privacy concerns.[55] Moreover, experts warn that some regimes could exploit the virus to more permanently entrench invasive systems of digital surveillance for purposes of political repression. In particular, governments that already engage in widespread domestic surveillance efforts, such as China, may see the pandemic as useful in justifying the continuation or expansion of these efforts. In April 2020, more than 100 civil society organizations raised concerns over digital surveillance issues in the context of COVID-19 and argued that such measures should be time-limited, transparent, and with collected data used strictly for purposes of pandemic response, among other recommendations.[56]

Elections

Democracy experts have expressed concern over the potential impacts of COVID-19 on the actual and perceived fairness and legitimacy of elections. According to the International Institute

[48] Joshua Berlinger, "Cambodia Court Orders Main Opposition Party to Dissolve," *CNN*, November 17, 2017.

[49] Human Rights Watch, "Cambodia: Covid-19 Spurs Bogus 'Fake news' Arrests," April 29, 2020.

[50] Ry Sochan, "CPP Rolls Out Plan to Address Fake News," *Phnom Penh Post*, May 6, 2020; Lindsey Kennedy, Nathan Paul Southern, "Hun Sen's Coronavirus Crackdown," *Foreign Policy*, April 23, 2020.

[51] "Full Text of Approved State of Emergency Draft Law," https://www.information.gov.kh/detail/422898.

[52] Office of the United Nations High Commissioner for Human Rights, "Cambodia's State of Emergency Law Endangers Human Rights, Warns UN Expert," April 17, 2020.

[53] "Cambodia Approves Law on State of Emergency Despite Warnings from Rights Groups," *Radio Free Asia*, April 10, 2020; Human Rights Watch, "Cambodia: Emergency Bill Recipe for Dictatorship," April 2, 2020.

[54] "Cambodia's Senate Approves State of Emergency Law as UN Expert Warns of its Risks to Rights," *Radio Free Asia*, April 17, 2020; Niem Chheng, "PM: Law Likely Next Week," *Phnom Penh Post*, April 7, 2020.

[55] Natasha Singer and Choe Sang-Hun, "As Coronavirus Surveillance Escalates, Personal Privacy Plummets," *New York Times*, March 23, 2020.

[56] Human Rights Watch, "Joint Civil Society Statement: States use of digital surveillance technologies to fight pandemic must respect human rights," April 2, 2020.

for Democracy and Electoral Assistance, more than 60 countries and territories have postponed national or subnational elections due to COVID-19, while more than 30 have gone forth with elections as originally planned.[57] Decisions over whether to proceed with elections in the midst of COVID-19 may be complicated by a number of factors that vary across countries and subnational areas, such as the scope and extent of the outbreak and the capacity and willingness to institute measures and means of voting that mitigate health risks.[58] Democracy advocates contend that the democratic integrity of decisions concerning the timing of elections can be affected by the extent to which they comply with existing legal frameworks, are transparent, and reflect broad political consultation, among other principles.[59]

While short-term election postponements may sometimes be necessary or advisable for public health reasons, they represent a deprivation of the right of citizens to choose their political leadership that, if prolonged, could erode the democratic legitimacy of governments. Ruling governments could also exploit the virus to hold elections in a manner that undermines electoral fairness and legitimacy, such as by delaying elections until they are most politically advantageous, or conversely by pushing forward with them in the midst of widespread public health concerns and without sufficient accompanying adjustments to election processes.[60] Some commentary, for example, has argued that decisions to go forward with elections in Burundi and Guinea despite COVID-19 risks benefited the ruling governments in these countries and prevented the participation of outside election observers.[61]

Other Potential Challenges and Opportunities

Numerous other COVID-19-related developments could have implications for human rights or affect the quality of democracy and governance around the world. These could include unique or disproportionate impacts on marginalized groups (and restrictions on the ability of civil society to advocate for these groups; see Kazakhstan case study below), the potential for increases in corruption amid responses to the pandemic, and new civil-military imbalances arising from the role of the military in enforcing lockdown measures in some countries, among others. More broadly, to the extent that democracies or authoritarian governments are ultimately perceived as more or less effective in responding to COVID-19, this could affect the relative appeal of these political systems around the world. Also, although analysts generally view COVID-19 as presenting negative risks to democracy, some argue that the pandemic also presents some positive opportunities, such as for independent civil society groups to garner greater support through assisting in response efforts, or for improvements to voting processes.[62]

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[57] Some countries, including the United States, fall into both categories. See International Institute for Democracy and Electoral Assistance, "Global Overview of COVID-19 Impact on Elections," accessed at https://www.idea.int/news-media/multimedia-reports/global-overview-covid-19-impact-elections.

[58] For a discussion of these issues and recommendations for measures to mitigate health risks in elections, see Fernanda Buril, Staffan Darnolf, and Muluken Aseresa, *Safeguarding Health and Elections*, International Foundation for Electoral Systems (IFES), May 2020.

[59] See recommendations in Kofi Annan Foundation, "Open Letter: Democracy must not become the silent victim of the coronavirus pandemic," May 19, 2020. See also Katherine Ellena, *Legal Considerations When Delaying or Adapting Elections*, IFES, June 2020.

[60] Sarah Repucci, "The Coronavirus Takes Aim at Electoral Democracy," Freedom House, March 30, 2020; Florian Bieber, "Authoritarianism in the Time of the Coronavirus," *Foreign Policy*.

[61] The Economist, "COVID-19 helps ballot-dodgers in Africa," May 16, 2020.

[62] A broad overview of many of these issues and others is provided in Frances Z. Brown, Saskia Brechenmacher, and Thomas Carothers, "How Will the Coronavirus Reshape Democracy and Governance Globally?" Carnegie Endowment for International Peace.

Case Study: Kazakhstan

The COVID-19 pandemic struck Kazakhstan at a time of unprecedented political transition. In March 2019, the country's longtime ruler, President Nursultan Nazarbayev, announced his resignation after almost 30 years in office. Although Nazarbayev maintains significant political power, his handpicked successor, President Kassym-Jomart Tokayev, has promised reforms and increased government openness. The government has advanced legislation formally aimed at political modernization, but some analysts see these initiatives as largely cosmetic.[63]

Kazakhstani authorities responded to the COVID-19 pandemic by restricting international and domestic travel, imposing lockdowns, and instituting a state of emergency.[64] The nongovernmental organization Human Rights Watch has criticized the government of Kazakhstan in its COVID-19 response for failing to uphold human rights obligations by impeding access to information and arbitrarily enforcing pandemic-related restrictions. Over 1,500 people were sentenced to detention for violating quarantine, and journalists faced harassment from authorities for reporting on the pandemic.[65] In addition, authorities detained a number of government critics and journalists on suspicion of "disseminating knowingly false information during a state of emergency," a charge punishable by up to seven years in prison.[66] The state of emergency was lifted on May 11; although restrictions have been eased, authorities reintroduced some stricter measures beginning in the second half of June due to rising case numbers. In the assessment of the Observatory for the Protection of Human Rights Defenders, Kazakhstan's government used the state of emergency as "an excuse to prosecute its critics and opponents."[67]

Local activists and international human rights experts have expressed concerns that a new law regulating public assemblies was moved through parliament while the country was under lockdown, impeding public debate and blocking potential protests of the bill.[68] Although the government is touting the new legislation, signed into law by President Tokayev on May 25, as a positive reform, Kazakhstani and international human rights organizations have criticized the law for failing to meet international human rights standards. In the assessment of Human Rights Watch, onerous restrictions and bureaucratic requirements mean that the ability to protest remains "more a privilege than a right."[69] Continued grassroots discontent may test the new legislation, given Kazakhstan's upswing in protests and civil society activism in recent years and economic challenges as a resource-dependent economy significantly affected by the COVID-19 pandemic.[70] In advance of protests planned for June 6, the Minister of Health called on the public to avoid large-scale demonstrations, saying that such events were prohibited because they violated health guidelines and that participation would be punishable by law, a message echoed by local

[63] "President Tokayev: From Words to Actions in One Year. Kazakhstan Is on a Path of Progressive Reforms," Embassy of the Republic of Kazakhstan in the United States of America, June 4, 2020; Aigerum Toleukhanova, "Kazakhstan on the Edge," *The Diplomat*, June 2020; Dimash Alzhanov, "Pustye reformy Tokaeva," *Vlast'*, May 26, 2020; Dosym Satpayev, "Povodok udlinili, no ne sniali s shei obshchestva—Dosym Satpayev ob itogakh goda prezidentstva Tokaeva," *Hola News*, June 12, 2020.

[64] Under Kazakhstani law, a state of emergency grants authorities a range of powers, including the ability to suspend telecommunications networks and seize control of media outlets as well as radio and television equipment. Authorities may also suspend the activities of political parties, public associations, and independent organizations. See Meiirim Smaiyl, "Zapret vyborov i zabastovok, komendantskii chas," *TengriNews*, March 17, 2020.

[65] "Central Asia: Respect Rights in Covid-19 Responses," Human Rights Watch, April 23, 2020.

[66] Ibid. See also, for example, "Central Asia: Authorities Intensified Pressure on Journalists During the Coronavirus Pandemic," Analytical Center for Central Asia, May 5, 2020; "Kazakh Journalists Harassed Over Covid-19 Reporting," Reporters Without Borders, April 30, 2020; "Rights Defenders Accuse Kazakh Authorities Of Using Coronavirus Restrictions To Stifle Dissent," *RFE/RL*, April 20, 2020.

[67] "Kazakhstan: Smear Campaign Against Mr. Yevgeniy Zhovtis and Other Representatives of KIBHR," International Federation for Human Rights, May 11, 2020.

[68] Sarah H. Cleveland, "Joint Opinion on Compliance of the Draft Law on the Procedure for Organising and Holding Peaceful Assemblies with the Republic of Kazakhstan's Human Rights Obligations," International Bar Association's Human Rights Institute, The International Commission of Jurists, and the Centre for Civil and Political Rights, May 1, 2020; Laura Mills, "Kazakhstan Draft Law Would Undermine Freedom of Assembly," Human Rights Watch, March 31, 2020.

[69] Mihra Rittman, "Kazakhstan's 'Reformed' Protest Law Hardly an Improvement: Serious Restrictions on Right to Free Assembly Remain," Human Rights Watch, May 28, 2020.

[70] Bruce Pannier, "Kazakhstan Takes Another Economic Hit As Coronavirus Infects Oil Fields, Copper Mines," *RFE/RL*, June 3, 2020; ibid., "Plunge In Oil Prices Deals Another Blow To Kazakhstan, Turkmenistan," *RFE/RL*, April 23, 2020; Toleukhanova, op. cit.

authorities. Over 100 people were detained during the unsanctioned rallies in cities across Kazakhstan, and police blocked access to planned protest sites, stating that they were closed for disinfection.[71] On June 10, a group of women demonstrating for increased state support for low-income families were detained by police wearing protective equipment and forcibly placed in quarantine in the capital, Nur-Sultan.[72]

U.S. Responses

Numerous Members of Congress have expressed concern over the impact of COVID-19 for democracy and human rights generally and with regard to particular countries.[73] In May 2020, the House Foreign Affairs Committee held a virtual briefing on "Authoritarianism, Disinformation, and Good Governance During COVID-19."[74] Also in May, the U.S. Helsinki Commission held a briefing on "Disinformation, COVID-19, and the Electoral Process."[75] Within the executive branch, Secretary of State Michael Pompeo criticized the arrests of individuals worldwide "based on their public statements or activities regarding COVID-19," and stated that "[t]he United States condemns all such uses of the pandemic around the world as a pretext for repression."[76]

Foreign assistance. Funds appropriated in the Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020 (P.L. 116-123) included $250 million in Economic Support Fund (ESF) monies for COVID-19 prevention and response, "including to address related economic, security, and stabilization requirements." The State Department and the U.S. Agency for International Development (USAID) have indicated that a portion of these resources will be used to promote "citizen-responsive governance." USAID has further described a range of potential activities to promote democratic governance and human rights in the context of COVID-19, with aims such as preventing or mitigating the abuse of emergency powers and promoting "transparent and inclusive decisions" regarding elections.[77] Among funding amounts announced to date, the State Department has indicated that USAID is providing $5 million in ESF for activities along these lines.[78] Separately, the State Department in May 2020 sought proposals for two relevant projects: one to support civil society and media actors to combat corruption arising as an outgrowth of COVID-19, and another focused on the Indo-Pacific region aimed at "counter[ing] increasingly authoritarian approaches to COVID-19."[79]

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[71] "More Than 100 Detained At Kazakh Rallies Demanding Democratic Reforms," *RFE/RL*, June 6, 2020; "'Shal, ket!' Svyshe sotni zaderzhannykh, otseplennye 'dlia dezinfektsii' ploshchadi," *Radio Azattyq*, June 6, 2020.

[72] "Kazakh Women Demanding Financial Support Forcibly Quarantined," *RFE/RL*, June 10, 2020.

[73] For example, see https://www.markey.senate.gov/news/press-releases/bipartisan-bicameral-group-of-lawmakers-introduces-legislation-to-counter-human-rights-abuses-worldwide-amidst-coronavirus-pandemic.

[74] House Foreign Affairs Committee, "House Foreign Affairs Committee Hosts Virtual Forum with Madeleine Albright," May 8, 2020.

[75] Commission on Security and Cooperation in Europe, "Disinformation, COVID-19, and the Electoral Process," May 21, 2020.

[76] U.S. State Department, "Secretary Michael R. Pompeo at a Press Availability," May 20, 2020. See also U.S. State Department, "Deputy Secretary Biegun's Remarks at the 20th Anniversary Community of Democracies Virtual Conference," June 26, 2020. The State Department has also expressed concern over the impact of COVID-19 on the rights of religious minorities around the world. See U.S. State Department, "Briefing With Ambassador-at-Large for International Religious Freedom Sam Brownback on COVID-19 Impact on Religious Minorities," May 14, 2020.

[77] USAID, "COVID-19: Democracy, Human Rights, and Governance Issues and Potential USAID Responses," April 2020.

[78] U.S. Department of State, "UPDATE: The United States Continues to Lead the Global Response to COVID-19," press release, May 29, 2020.

[79] U.S. State Department, "DRL FY19 Countering Corruption Amid COVID-19," May 12, 2020, and "DRL Promoting

Proposed legislation. Among bills introduced thus far that relate to this issue, both the Protecting Human Rights During Pandemic Act (S. 3819/H.R. 6986) and Section 234 of the COVID-19 International Response and Recovery Act of 2020 (S. 3669) would require new reporting from the State Department on the human rights impacts of COVID-19 and the U.S. government response, including a strategic plan by the State Department and USAID to address "the persistent issues related to internationally recognized human rights in the aftermath of the COVID-19 response." These bills would also prioritize democracy and human rights programs in countries where government responses to COVID-19 have violated human rights.[80] The Protecting Human Rights During Pandemic Act would additionally authorize relevant appropriations and would amend the Foreign Assistance Act (FAA) of 1961 (P.L. 87-195), as amended, to make systematic violations of internationally recognized human rights through the use of emergency measures a consideration in determining whether security assistance to a foreign government may be withheld.[81]

Possible Questions for Congress

As Congress evaluates COVID-19's implications, considers potential policy responses, and conducts oversight of executive branch actions, some relevant questions may include the following:

- Are government actions in any given case grounded in law, necessary for public health, and narrowly tailored to the public health threat? Are they subject to independent oversight and implemented in a nondiscriminatory manner? When elections have been postponed, have governments justified this decision as the only feasible means of protecting public health? Conversely, when governments have decided to go forward with elections, have officials demonstrated that they have taken all necessary precautions and adjustments to protect public health?
- What policy tools may be most suitable for responding in a given case? Are there gaps in the U.S. policy toolkit that new legislation could address? Should the United States pursue broader multilateral response efforts on this issue alongside like-minded countries? If so, in what venues?
- How, if at all, are U.S. agencies adapting their human rights, democracy, and governance assistance programs to respond to COVID-19? What new programs are being pursued in this area, and what amount of the supplemental appropriations should be devoted to such programs?
- To what extent, if at all, does the U.S. domestic response to COVID-19 affect international perceptions of democracy? To the extent that the U.S. democracy and human rights record is under scrutiny in this regard or more broadly, such as pertaining to issues of racial inequality, how might this affect the receptiveness of other countries to U.S. advocacy on issues of democracy and human rights?

Transparent and Accountable Governance in the Indo-Pacific Region," May 18, 2020.

[80] Separately, the COVID-19 International Response and Recovery Act of 2020 would also authorize appropriations to the U.S. Agency for Global Media for enhanced reporting on COVID-19, including expanded efforts to combat COVID-19 disinformation.

[81] Pursuant to Section 502B of the FAA (22 U.S.C. 2304). The bills discussed in this paragraph were introduced in May 2020 and referred to the Foreign Relations/Foreign Affairs Committees.

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