

Democracy when you need it most:

Strengthening legislative transparency and accountability during crises

By Vivek Ramkumar and Corina Rebegea



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I. Introduction

The COVID pandemic is an unprecedented global crisis still sending shock waves across public health systems, governance structures and markets. Governments around the world have struggled with response and recovery. The pandemic has had deep governance repercussions, including severe budget deficits, declining public trust, and civic unrest.

As the representative body of the people, legislatures have a special role to play in ensuring policies and resources reflect the needs of citizens. Members of parliament are called upon to engage in policy debates reflecting the preferences and priorities of their constituents. They also have a critical role in providing information to help governments improve their policies, scrutinizing the actions of the government, and designing and monitoring budget decisions.

Recent studies show the performance of legislatures during COVID was critical for an effective response to the public health crisis and the safeguarding of democratic norms.¹ Yet, across regions, legislatures took a hard hit during the pandemic. In person convening was impacted by quarantine measures and states of emergency further concentrated power in the hands of the executive. Many countries lacked the constitutional and legislative arrangements – including rules of procedure – that would allow parliaments to meet and effectively adapt to the emergency.² In many cases urgency served as a pretext to override transparency, accountability, or inclusivity in response measures, or to cover up poor decisions or wasteful or corrupt implementation. According to one report, 95 countries implemented pandemic response measures that involved moderate or major violations to democratic norms.³ Most of these violations occurred in autocracies, but also in democracies, demonstrating that illiberal practices (even if temporary) became more prevalent during the crisis.

This policy paper focuses on the role that legislatures play in mitigating the ongoing effects of the pandemic, especially through their budget oversight roles, and ensuring responses are effective and consistent with democratic norms. It also looks at how increasing the resilience of legislatures builds resilience to future crises, not least through the role they can play in safeguarding constitutional checks and balances. Based on findings from research conducted by the National Democratic Institute (NDI) and the International Budget Partnership (IBP) into parliamentary functions during the pandemic, the brief provides recommendations for legislators, donors and parliamentary support organizations. It targets short-term adaptations that will ensure legislatures can perform - and improve - their functions and long-term democratic governance reform.

¹See for instance "Legislative leadership in the time of COVID-19" Gordon and Cheeseman. <https://www.wfd.org/wp-content/uploads/2021/01/Covid-19-legislative-leadership-V5.pdf> and "Sustainable Pandemic Recovery Depends on "Building Back Democratically" Global Analysis and Priority Actions." NDI White Paper. <https://www.ndi.org/sites/default/files/COVID%20RECOVERY%20BRIEF%20FINAL%20MARCH%202021.pdf>

²"Parliaments Responding to a Pandemic: Lessons Learned for Emergency Planning," Deveaux, Švecová, and Baker. https://www.ndi.org/sites/default/files/Parliaments%20Responding%20to%20a%20Pandemic.%20Lessons%20Learned%20for%20Emergency%20Planning_FINAL.pdf

³"Worth the sacrifice? Illiberal and authoritarian practices during Covid-19." Maerz, Lürhmann, Lachapelle, and Edgell. https://www.v-dem.net/media/finder_public/14/e0/14e03f3b-1c44-4389-8edf-36a141f08a2d/wp_110_final.pdf

II. Legislatures during the COVID crisis

During COVID, parliaments had to quickly adapt to the new environment by not only adjusting their procedures and operations to respond to quarantine demands, but also passing legislation to address the emergency. From passing lockdown legislation to approving supplementary budgets or other measures to alleviate the effects of the pandemic, parliaments had to balance urgency with the demands of ensuring integrity and accountability, fair and proper representation, and inclusive decision-making. In particular, making sure that vulnerable groups, including women, are not disproportionately affected by the pandemic - and the relief measures - has been a key concern during the Covid crisis and should be front and center to any emergency response in the future. Apart from lawmaking, legislatures have the difficult task of ensuring proper oversight and monitoring of emergency spending, prioritizing the work of permanent oversight committees or creating special committees, ensuring that audit reports are given adequate attention and are followed through and that other parliamentary scrutiny mechanisms, such as hearings or interpellations, are also utilized.⁴

Parliaments were caught on the backfoot by the pandemic at a time when there was great need for checks and balances, transparency, public participation and integrity. Many governments issued executive decrees and other fast-track procedures to expand executive power and bypass normal procedures, which left legislatures sidelined during the planning and announcement of government emergency measures.⁵ Studies also show that the gravity of the pandemic was not the main factor leading to the suspension of parliamentary activity, especially in partially free countries or hybrid regimes, but rather served as a pretext to override democratic standards.⁶ Globally, 22 countries established emergency measures without official time limits, while in 28 countries the parliament's ability to hold the executive accountable was deemed severely undermined.⁷

“In particular, making sure that vulnerable groups, including women, are not disproportionately affected by the pandemic - and the relief measures - has been a key concern during the Covid crisis and should be front and center to any emergency response in the future.”

⁴“Parliaments Responding to a Pandemic: Lessons Learned for Emergency Planning.” Deveaux, Švecová, and Baker. https://www.ndi.org/sites/default/files/Parliaments%20Responding%20to%20a%20Pandemic%20Lessons%20Learned%20for%20Emergency%20Planning_FINAL.pdf

⁵70% of countries worldwide declined in their ratings regarding [legislative] constraints on government powers. See the World Justice Project: Rule of Law Index. <https://worldjusticeproject.org/rule-of-law-index/factors/2021/Constraints%20on%20Government%20Powers>

⁶“Covid-19 and Legislative Activity: A Cross-National Study.” Waismel-Manor, Bar-Siman-Tov, Rozenberg, Levanon, Benoît, Ifergane. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3641824

⁷“Worth the sacrifice? Illiberal and authoritarian practices during Covid-19.” Maerz, Lürhmann, Lachapelle, and Edgell. https://www.v-dem.net/media/filer_public/14/e0/14e03f3b-1c44-4389-8edf-36a141f08a2d/wp_110_final.pdf

IBP conducted a rapid assessment of 120 countries' performance on transparency, oversight and public participation in COVID relief packages, which covered the role played by national legislatures in overseeing the emergency. This and other research underscored that normal legislative approval processes and public debates, particularly regarding important emergency fiscal packages, were hampered by the declaration of states of emergency and issuance of important decisions through executive decree (see table 1 below).

Table 1. Executive decrees limited legislative budget oversight



Source: "Managing Covid Funds: The accountability gap", International Budget Partnership, 2021.

Beyond declaring states of emergency, countries used a variety of other fast-track procedures under which legislatures were asked to set aside or modify established budget practices to expedite emergency responses (see table 2 below). These fast-track procedures also limited legislative oversight.

Table 2. Fast-track procedures adopted by national executives further undermined legislative oversight

38 Countries



In 38 countries, the cabinet or individual ministers were empowered with emergency expenditure and law-making authorities that allowed them to enact policies without seeking additional legislative approval (such as the authority to shift spending allocations from one ministry to another).

13 Countries



In 13 countries, governments set up extra-budgetary funds with alternative financing arrangements or coordinated external funding to bypass annual votes and budget acts, complicating legislators' effort to form complete pictures of public finances and/or relief efforts.

30 Countries



In 30 countries, fast-tracked approval procedures were used by legislatures to review and report on government proposals and to suggest amendments.

6 Countries



In 6 countries, the roles of upper chambers of the national legislature were curtailed.

In most of the countries in which executive decrees were not issued, legislatures deliberated and held votes before emergency fiscal packages were implemented—thereby enabling some degree of public scrutiny and accountability. However, legislative discussion on emergency fiscal policy packages was often circumscribed and inadequate. Legislators had shorter times to debate, had limited access to information or lacked specialized COVID committees to discuss emergency measures. Compounding the pressure of fast-tracking legislation, the lack of appropriate technologies to store and communicate information as well as meet online also took a toll on parliamentary convening and engagement with the public.⁸

Furthermore, COVID-related constraints had repercussions for women’s participation in political processes. At different levels of political engagement, the pandemic created additional barriers to entry for women voters or candidates, reinforcing traditional gender roles and male political dominance. Women MPs were also more negatively affected by the limitations imposed on legislatures.⁹

These limitations impacted the ability of governments to manage their responses in a transparent and accountable manner, thereby jeopardizing the effectiveness and impact of their responses to the crisis. For instance, out of 120 countries assessed by IBP, two thirds failed to follow transparent procurement procedures. Similarly, only 10 out of 120 countries assessed made any meaningful efforts to engage with their populations in the design and oversight of relief monies.¹⁰

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The Palace of Westminster, also known as the Houses of Parliament, in London, England.
Roberto Catarinicchia/Unsplash

⁸“Parliaments Responding to a Pandemic: Lessons Learned for Emergency Planning.” Deveaux, Švecová, and Baker. https://www.ndi.org/sites/default/files/Parliaments%20Responding%20to%20a%20Pandemic_%20Lessons%20Learned%20for%20Emergency%20Planning_FINAL.pdf.

⁹“How the Coronavirus Risks Exacerbating Women’s Political Exclusion.” Brechenmacher and Hubbard. <https://carnegieendowment.org/2020/11/17/how-coronavirus-risks-exacerbating-women-s-political-exclusion-pub-83213>.

¹⁰“Worth the sacrifice? Illiberal and authoritarian practices during Covid-19.” Maerz, Lürhmann, Lachapelle, and Edgell. https://www.v-dem.net/media/filer_public/14/e0/14e03f3b-1c44-4389-8edf-36a141f08a2d/wp_110_final.pdf.

Ensuring oversight of funds is a core parliamentary function. When legislatures can conduct oversight, governments can fill informational gaps and make better decisions to ensure relief reaches those who need it most, as well as course-correct if assistance is not meeting its targets.

However, constraints on transparency, access to information and public participation limited the ability of legislatures to conduct effective oversight during the budget execution period for which emergency packages were approved and/or as an ex-post measure following the implementation of emergency packages (see table 3).¹¹

Table 3. Few legislatures were actively tracking the implementation of emergency fiscal measures



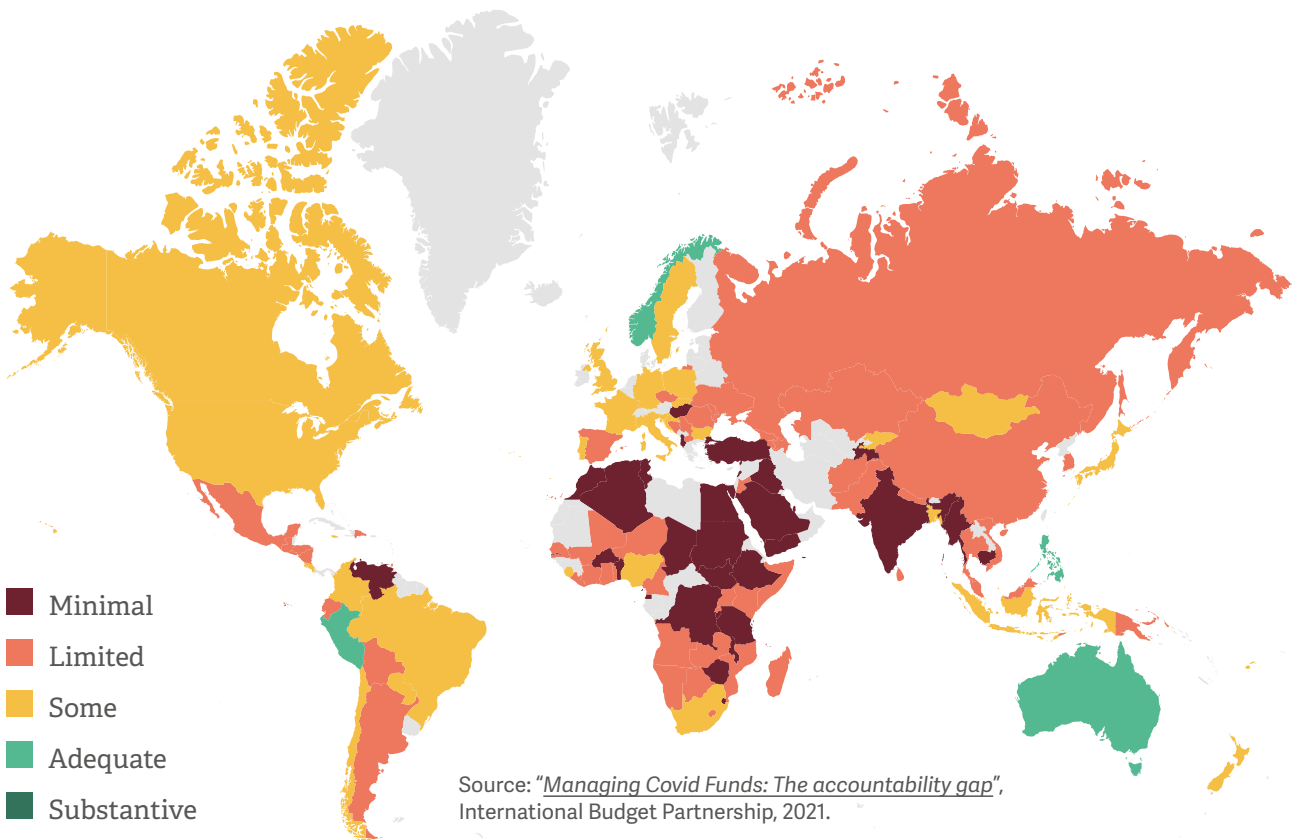
Source: "*Managing Covid Funds: The accountability gap*", International Budget Partnership, 2021.

¹¹"Managing Covid Funds: the accountability gap." International Budget Partnership. <https://internationalbudget.org/covid/>.

Across countries, independent audit bodies, generally referred to as supreme audit institutions (SAIs), are charged with investigating the use of public funds and submitting their reports to national legislatures. In many countries the ability of SAIs and other accountability institutions – including judicial bodies – to perform their functions was also hampered. In only about a quarter out of 120 countries assessed

by IBP were auditors able to produce and publish audit reports on COVID fiscal packages before the end of 2020, which in turn limited legislatures’ ability to ensure governments followed up on findings in a timely manner.¹² These phenomena were particularly pronounced in countries where such institutions (operating both at a prevention and at an enforcement level) were already struggling pre-pandemic.

Levels of accountability in early COVID fiscal policy responses



While in some contexts, the urgent need for emergency fiscal packages may have required that governments act quickly—and even at the cost of adequate involvement of national legislatures—all countries had more time to create appropriate checks and balances while these fiscal packages were (and in some cases still are) being implemented. As such, legislatures should have played key roles in ensuring accountability and oversight of the implementation of these measures. Preventing similar curtailments of fundamental democratic governance practices in crises to come will require an active role from parliaments in pushing governments to publish openly what they spend, including public contracts and expenditure reports, and what impact it is having, and put in place adequate mechanisms for citizen participation in the approval and execution of additional emergency policy packages.

¹²Ibid.

III. The benefits of legislative engagement and oversight

Notwithstanding the challenges outlined above, there are a number of cases in which legislatures played an important role in crafting or scrutinizing the COVID response. Countries in which legislatures actively debated the adoption and implementation of emergency packages demonstrated a virtuous cycle of accountability: higher levels of transparency, greater public engagement, and stronger roles by budget oversight institutions. For instance, across the different stages in the budget cycle, countries in which legislatures discussed and debated emergency fiscal packages had significantly stronger accountability mechanisms than those countries in which legislatures played a more passive role.¹³

“Countries in which legislatures actively debated the adoption and implementation of emergency packages demonstrated a virtuous cycle of accountability: higher levels of transparency, greater public engagement, and stronger roles by budget oversight institutions.”

¹³Ibid.

Box 1: Legislatures Enhancing Accountability

- The Brazilian Parliament has actively overseen the government's emergency measures. In April 2020, soon after the COVID crisis broke out in the country, Parliament approved a monthly basic income guarantee for more than 30 million informal workers.¹⁴ More recently, the Brazilian Senate has launched a *high-profile enquiry* into the government's handling of the pandemic.
- In Nepal, the Parliamentary Accounts Committee investigated irregularities in the procurement of medical equipment and supplies. The vendor charged with price gouging has now been blacklisted by the government.¹⁵
- In the Philippines, specific provisions are included in the "Bayanihan to Heal as One Act"—the law detailing COVID response measures—to ensure that weekly reports on COVID response actions are sent to a Joint Congressional Oversight Committee that oversees implementation. Congressional oversight of the Act has included an assessment of government programs and the issuance of key recommendations to the government for improving the design and implementation of its COVID measures.¹⁶
- In the United Kingdom, the Parliament's Public Accounts Committee set up a program of work to hold the government to account for its use of taxpayers' money in response to the COVID pandemic, including an inquiry into emergency government procurement. The Committee's actions led to changes being made by the UK government, which has now devoted additional resources to clear the backlog of COVID-related contracts that were not published.¹⁷
- In Kenya, the Senate committee overseeing COVID responses invited public submissions regarding key issues relating to the pandemic and considered this input in drafting a pandemic response and management bill.¹⁸
- Enhancing accountability includes making sure women's voices are being heard. The National Assembly of Djibouti set up an ad hoc support and follow-up committee to help combat the COVID pandemic. The committee included 20 per cent women parliamentarians, slightly below the proportion of women in the National Assembly which stands at 26.5 per cent.¹⁹ In the UK, the possibility to attend virtual sessions allowed slightly more women to participate (an increase from 31% to 35%).²⁰

¹⁴"Latin American CSOs lead during pandemic." International Budget Partnership. <https://internationalbudget.org/2020/04/latin-america/>

¹⁵"Managing Covid Funds: the accountability gap." International Budget Partnership. <https://internationalbudget.org/covid/>.

¹⁶Ibid.

¹⁷Ibid.

¹⁸"Positive Government Responses to COVID-19." International Center for Not-for-Profit Law. <https://www.icnl.org/post/analysis/positive-government-responses-to-covid-19>.

¹⁹"Country compilation of parliamentary responses to the pandemic." Inter-Parliamentary Union. <https://www.ipu.org/country-compilation-parliamentary-responses-pandemic#D>.

²⁰"House of Lords: Virtual sittings, participation and Covid-19." Brown, Thomas. <https://lordslibrary.parliament.uk/house-of-lords-virtual-sittings-participation-and-covid-19/>.

These findings are also consistent with trends identified in multiple rounds of IBP’s Open Budget Survey, which similarly finds that countries in which legislatures were active in debating draft budgets, in-year execution reports, and audit reports were typically more transparent, offered more opportunities for public participation, and had stronger budget oversight institutions than their peer countries in which legislatures were less active in debating reports during the annual budget cycles. When officials are transparent and inclusive—and

make space for historically marginalized voices to be heard—they ensure scarce resources are used wisely. Accounting for the differentiated impact of emergencies on women and ensuring their voices and interests are considered during crisis response not only addresses gender inequality, but also creates a path for a smoother recovery.²¹ And when speed and accountability are pursued together, the public can access improved services, which builds confidence that the government can deliver. Public trust is critical to recover and renew societies after COVID.



Officials from the National Sanitation Office of Senegal during a site inspection in Pekine, Dakar. International Budget Partnership

²¹“Gender and COVID-19: A guidance note for parliaments.” Inter-Parliamentary Union. <https://www.ipu.org/gender-and-covid-19-guidance-note-parliaments>.

IV. Building parliamentary and democratic resilience in the long-term: Policy recommendations

The gravity of the COVID crisis and its long-term implications have also prompted a wider conversation about interrelations between crises, as well as how countries and the international community can prepare for imminent future crises.

One important lesson from COVID is that there is no trade-off between democracy and efficient relief,²² and that responses can be agile, while also upholding transparency and accountability principles. In fact, integrity norms became even more central during crises to maintain citizens' trust in institutions and the effectiveness of the response.

Parliaments need to be involved in strategic discussions about lessons learned from this global crisis and work on preparedness measures, particularly as it pertains to ensuring fundamental democratic processes can continue during emergencies. In the current context of authoritarian ascendance,²³ the development of resilient legislative institutions, institutions, norms, and practices before crises erupt takes on special importance in order to ensure a more effective response, as well as to safeguard their relevance and the maintenance of checks and balances.

While the global health crisis is still ongoing, there are a set of concrete steps to ensure that responses to the current and future crises are effective and democratic. Importantly, the pandemic raised the alarm on the level of preparedness to respond to crises and democratic resilience during times of duress. The recommendations below seek to offer a path of action for legislatures, international donors and the democratic community.

²²Worth the sacrifice? Illiberal and authoritarian practices during Covid-19." Maerz, Lürhmann, Lachapelle, and Edgell. https://www.v-dem.net/media/finder_public/14/e0/14e03f3b-1c44-4389-8edf-36a141f08a2d/wp_110_final.pdf.

²³"Autocratization Turns Viral: Democracy Report 2021." V-Dem Institute. <https://www.v-dem.net/files/25/DR%202021.pdf>.

For legislatures²⁴

- **Design legal frameworks for emergency measures, including on public finance management that are** consistent with international human rights law to ensure they are proportionate, necessary and non-discriminatory, have a clear time limit, and provide adequate recourse. Additionally, parliaments should have the ability (and willingness) to intervene and reconsider emergency measures if these principles are not met.
- **Review and enhance constitutional and legal adaptations** for parliaments to be more flexible and adapt to functioning during crises, including by utilizing online and electronic tools and modernizing voting procedures.
- **Adopt technologies** that allow MPs to receive fiscal and spending updates in real-time and allow them to access information without requiring executive interventions. Ensure that the IT systems and protocols established during the COVID pandemic have longer-term relevance and that these measures can be adapted to changing circumstances in the future and also to in-person parliamentary activity.
- **Strengthen parliamentary research services, including on government fiscal measures** to ensure effective and continuous operations during emergencies and maintain independent, reliable information not mediated by the government. Digitized information is important to keep MPs informed and facilitate fact-based decision-making.
- **Strengthen transparency and access to information rules** and require governments to publish openly what they spend, including budgets, public contracts, expenditure and audit reports, and what impact it is having.
- **Prepare crisis communication protocols and channels** that shore up information integrity and build citizen trust, through channels that are inclusive and accessible to the whole population, while also committing to freedom of the press and refraining from the 'fake news laws' that result in censorship.
- **Establish mechanisms for citizen participation in and civil society oversight** of the approval and execution of emergency policy packages.
- **Empower and resource supreme audit institutions to conduct expedited audits** on emergency spending programs, and ensure governments take remedial measures in response to audit findings. The cooperation between audit institutions and parliaments needs to be prioritized to ensure enhanced oversight and accountability.
- **Design a long-term, multi-year development strategy on parliament's digital transition** for new infrastructure that enables effective oversight of government spending and programs.
- **Ensure data collected with regard to the impact of an emergency (and any government response) is disaggregated by gender** and other vulnerable groups to ensure the emergency response accurately reflects diverse public needs and input.

²⁴"Parliaments Responding to a Pandemic: Lessons Learned for Emergency Planning." Deveaux, Švecová, and Baker. https://www.ndi.org/sites/default/files/Parliaments%20Responding%20to%20a%20Pandemic_%20Lessons%20Learned%20for%20Emergency%20Planning_FINAL.pdf

For donors/international actors

- **Broaden recovery assistance beyond central governments** by proactively engaging local governments and legislatures in decision-making and implementation.
- **Support legislatures to strengthen their crisis response capacity** through adaptations to rules of procedure, constituent communications capacities and innovative civil society consultation processes.
- Work with partner international organizations whose membership is commitment-based (like the Open Government Partnership) to **develop action plans** that address the pandemic in ways that are accountable and responsive to citizen needs. Include commitments that ensure longer-term preparedness for future crises.
- **Increase international funding for legislative strengthening, including on their budget oversight functions that supports horizontal accountability** and strengthen committee systems and technical capacity. This would include support for independent and competent audit institutions and for formal and informal cooperation with other oversight bodies.
- **Mainstream democratic governance and integrity standards into foreign aid and lending programs.** A deep understanding of political dynamics is required to avoid activities that might undermine democratic processes and institutions, with special attention during campaign periods when international cooperation has the potential to tilt the electoral playing field in favor of an incumbent.
- **Continue to invest in resilience building measures** and in particular in strengthening democratic institutions and governance. As various research on the effects of the pandemic shows, the state of democracy prior to the crisis has a major effect on the resilience of democratic practices when they are put to test by emergency situations.

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