

CORONAVIRUS & CIVIC SPACE

Positive Government Practices in Responding to COVID-19

The COVID-19 pandemic does not have to be a crisis for human rights. In the context of widespread adoption of [emergency laws and other extraordinary measures](#) to respond to the pandemic, many governments have demonstrated that it is possible to safeguard rights while effectively countering the virus. In this brief, we set out positive practices that governments should follow in responding to COVID-19, along with selected examples of these practices.¹ We will be updating this over time and would welcome additional information on positive practices and examples.

RESPONSES ARE LAWFUL AND SUBJECT TO OVERSIGHT AND REVIEW

Legislatures, courts, and international bodies have critical roles to play in developing, authorizing, reviewing, and overseeing COVID-19 responses.

POSITIVE PRACTICES

- Emergency measures are consistent with constitutional provisions, and are subject to legislative deliberation, approval, and oversight.
- Emergency measures are limited in duration, to thirty or sixty days at maximum, and may only be extended with legislative approval.
- Grants of emergency powers are narrowly drafted, and emergency measures are precisely specified and clearly communicated to the public.
- Emergency measures are subject to judicial review, and individuals can seek remedies for rights violations through the courts.
- Governments formally notify derogations to relevant treaty bodies regarding states of emergency declared in response to COVID-19.

¹ We emphasize that government responses to COVID-19 are complex, and positive practices in some areas or by some actors may be accompanied by restrictive measures in other areas or on the part of other actors. While we highlight examples of positive practices in this brief, these examples should not be taken to suggest that responses in a given country are generally free from concerns relating to protection of rights, or that these responses could not be further improved to generate fuller respect for rights. Furthermore, some of the positive practices set forth generally here have not, to our knowledge, yet been practically implemented by government authorities. We set forth these practices to encourage more positive action to safeguard rights while effectively responding to COVID-19.

EXAMPLES

- In [Portugal](#), the state of emergency has been reviewed, debated, and extended by Parliament for fifteen-day periods, and has now been [allowed to lapse](#).
- In [Germany](#), the constitutional court ruled that health concerns linked to COVID-19 do not furnish grounds for a general ban on demonstrations.
- In [Malawi](#), the high court has barred imposition of a lockdown pending judicial review, following complaints that the government had failed to make adequate provisions for the poor and vulnerable during the lockdown.
- In [Brazil](#), the Supreme Court has exercised effective oversight of executive branch overreach, overturning a warrantless surveillance program and suspension of time limits for agency responses to information requests.
- [Dozens of countries](#) have notified derogations under the International Covenant on Civil and Political Rights and regional human rights instruments in relation to states of emergency declared in response to COVID-19.

RESPONSES ARE MINIMALLY RESTRICTIVE AND EFFECTIVELY DESIGNED

Responses are more effective when they are limited and based on objective evidence.

POSITIVE PRACTICES

- Restrictions on assembly and movement include reasonable exceptions.
- Restrictions on rights are imposed and extended based on transparent criteria, and are subject to continuous evaluation for necessity and proportionality in light of evolving scientific evidence.

EXAMPLES

- In [Denmark](#), the law authorizing prohibition of gatherings explicitly exempts “opinion-shaping assemblies” such as demonstrations and political meetings, while urging organizers and participants in such gatherings to follow health recommendations regarding social distancing.
- In [Scotland](#), the government has published “A Framework for Decision Making” outlining how it will determine steps needed to constrain the spread of COVID-19 while minimizing harm to health, society, and the economy.

RESPONSES ARE DEVELOPED AND MONITORED WITH PUBLIC INPUT

Public participation in designing COVID-19 responses bolsters their efficacy while encouraging compliance with measures that may be disruptive or inconvenient.

POSITIVE PRACTICES

- Governments engage in broad public consultations in developing and monitoring responses, and specifically engage and consider the impacts of responses on marginalized populations, including women and girls.
- Governments specifically enlist civil society expertise and participation in developing, implementing, and monitoring responses.
- Governments are responsive to calls to revise existing laws or practices to promote more effective and rights-respecting COVID-19 responses.
- In developing public consultation mechanisms, governments specifically consider and make efforts to address differential access to digital tools.

EXAMPLES

- The [Municipality of Milan](#) has published an official proposal listing the main guidelines and strategies that the city intends to follow during the post-COVID-19 phase, and issued a call for citizen feedback on the proposal.
- In [Kenya](#), the Senate committee overseeing COVID-19 responses invited public submissions regarding key issues relating to the pandemic and considered this input in drafting a pandemic response and management bill.
- In [the Bahamas and Belize](#), governments have included civil society representatives in COVID-19 policymaking committees.
- In [the Netherlands](#), human rights concerns about regional emergency decrees has spurred the central government to design a less strict, less ambiguous and more transparent national law which would replace such decrees.
- In the United States, the [Salt Lake City Council](#) has opened online meetings to persons calling in by phone, while the [Miami-Dade County commission](#) has invited citizens to participate in virtual meetings through voice messages, email, videos, a hotline, and a publicly available computer.

GOVERNMENTS PROMOTE THE FREE FLOW OF INFORMATION

Governments build trust, secure necessary feedback, and enlist the public in the fight against COVID-19 by encouraging the free flow of information.

POSITIVE PRACTICES

- Governments disseminate accurate information about COVID-19 and responsive measures through a variety of platforms and in multiple languages.
- Governments 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.

- Governments ensure strong protections for whistleblowers raising concerns about government misconduct or policy failures relating to COVID-19.
- Governments designate journalists as “essential workers” exempt from generally applicable restrictions on movement.
- Governments take affirmative action to support public access to information through independent media outlets and online platforms.

EXAMPLES

- [Italy](#) has created an online hub with information on official responses to COVID-19, health data, and prevention and treatment measures, while [Portugal](#) has developed a website, app, and mass media campaign presenting information on the pandemic and government actions to address it.
- In [South Africa](#), the Minister of Health has held an online public meeting to provide information about the COVID-19 response and answer questions.
- In [Austria](#), a government partner has bundled official information on measures relating to COVID-19 online in fourteen languages.
- In [New Zealand](#), the ombudsman has issued guidance for agencies and requesters aimed at preserving access to information despite COVID-19.
- In the United States, [most states](#) have revised public meeting requirements to allow virtual meetings that the public can observe, with [California](#) requiring local bodies to provide means for the public to participate in these meetings;
- The [U.S. communications regulator](#) has asked companies to pledge not to terminate service based on a failure to pay bills due to COVID-19 dislocations.
- In [Tunisia](#), the cabinet has pledged to provide public funding for independent media outlets to enable them to continue operating during the pandemic.

CIVIL SOCIETY IS EMPOWERED TO RESPOND TO COVID-19

Civil society—with its expertise, close ties to local communities, and experience dealing with crises—is a critical partner in combatting COVID-19.

POSITIVE PRACTICES

- Governments engage and support civil society organizations (CSOs) to implement responses, provide services, disseminate information, monitor government actions, and combat negative societal responses to COVID-19.

- Governments approach CSO oversight flexibly in light of constraints on CSO operations relating to COVID-19, with relaxation of requirements relating to reporting, organizational governance, and tax obligations.
- Governments eliminate or streamline procedures for release of CSO funds.
- Governments fast-track approvals for CSO activities related to COVID-19.

EXAMPLES

- In Tunisia, the ministry in charge of relations with CSOs launched an initiative to create a nationwide group of more than 500 CSO representatives and activists which would support the national initiative, implemented in coordination with local authorities, to collect and distribute food and supplies to low-income families and at-risk groups.
- In Bangladesh, the NGO Affairs Bureau – responsible for review of all foreign-funded projects implemented by CSOs – has formed a committee to provide rapid review, approval, and release of funds for COVID-19 emergency projects, with approvals issued via email and fund releases provided directly to banks.
- In Nepal, authorities are fast-tracking COVID-19 project approvals.

USE OF SURVEILLANCE IS NARROWLY TAILORED AND TRANSPARENT

Governments using [digital surveillance technology based on personal data](#) in an effort to curb the spread of COVID-19 should prioritize privacy, transparency, public consultation, and narrow limits on these programs.

POSITIVE PRACTICES

- Responses involving government use of personal data are developed through broad public consultations and administered openly and transparently.²
- Participation in COVID-19 responses involving government use of personal data is voluntary and non-participation does not carry negative consequences.
- Collection, use, sharing, storage, and processing (including algorithmic processing) of personal data is limited to what is strictly necessary to respond to COVID-19, based on determinations by privacy and public health experts.
- Governments use personal data only with adequate safeguards, including anonymization, secure storage, and limitation of access to persons and purposes necessary to carrying out effective COVID-19 responses.
- Governments regularly assess the effectiveness of the use of surveillance technology as part of COVID-19 responses.

² As described above, these responses must also be lawful and subject to robust legislative and judicial oversight.

- Public-private partnerships and public procurements relating to collection, use, sharing, storage, and processing of personal data are subject to open procurement and transparent reporting standards, and are entered into only after conducting due diligence and human rights impact assessments.
- Use of personal data for other commercial or law enforcement purposes, including enforcement of immigration policies, is strictly prohibited.
- Responses involving government use of personal data are implemented only for the duration of the COVID-19 crisis, with data collected or processed for these responses separately stored or flagged and erased thereafter.³

EXAMPLES

- In [Australia](#), authorities have released an app which permits users to notify authorities if they test positive for COVID-19, with other users who have had close contact with infected persons then notified by health authorities. Use of the app is voluntary, declining to use the app cannot result in denial of services, data stored on-device is subject to regular deletion, only health workers can access data stored off-device and then only with user permission, and the source code for the app has been [publicly released](#).

GOVERNMENT DETENTION OF PERSONS IS MINIMIZED

Minimizing the spread of COVID-19 requires reducing detainee populations and enforcing responsive measures without unnecessary recourse to detention.

POSITIVE PRACTICES

- Governments release incarcerated political prisoners, nonviolent offenders, and offenders with limited remaining sentences, and decriminalize nonviolent or minor offenses for the duration of the COVID-19 crisis.
- Governments transfer persons awaiting trial and offenders facing a high risk of infection to house arrest or other forms of supervision.
- Governments release undocumented immigrants from detention.
- Governments use reasonable fines (not imprisonment) to enforce COVID-19 responses, including limitations on movement, assembly, and expression.
- Governments designate attorneys representing detained persons as “essential workers” exempt from generally applicable restrictions on movement.

EXAMPLES

- In [Afghanistan](#), authorities have ordered the release of up to 10,000 prisoners, including women, young offenders, critically ill patients, and inmates over 55.

³ Some anonymized data may justifiably be retained for historical and research purposes, in the public interest.

- [Italy](#) has announced a plan to release and place under house arrest prisoners with less than eighteen months remaining in their sentences.
- In [Belgium, the Netherlands, and Spain](#), authorities are releasing undocumented immigrants from detention.
- In [Greece and Luxembourg](#), violations of restrictions on freedom of movement and assembly are punishable by limited fines rather than imprisonment.

FREE AND FAIR ELECTIONS ARE SAFEGUARDED

In this time of broad-ranging official responses to serious public health threats, it is particularly crucial that the people have a voice in choosing their representatives.

POSITIVE PRACTICES

- Election authorities adjust voter registration rules and polling station procedures, and promote early voting and (where secure) remote voting, in order to protect the administration of free and fair elections.
- Elections are postponed only by consensus, where lawful, and as a last resort.

EXAMPLES

- In [South Korea](#), elections for the National Assembly were conducted as scheduled in April with strict health and safety measures, including measures specifically aimed at permitting those infected with COVID-19 to vote.
- In [France](#), a second round of local elections was postponed from March to June with the consensus approval of all political parties.

CONTACT INFORMATION

We would welcome additional information about positive practices that governments should follow to safeguard rights while effectively responding to COVID-19, along with examples of these practices. For questions or to provide additional information, please contact Nikhil Dutta, ICNL Global Programs Legal Advisor, at ndutta@icnl.org.

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