The Risk of Covid-19 Pandemic Emergency Measures to Democratic Standards in Eastern and Southern Africa

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About the author

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Executive Summary

The Covid-19 pandemic emergency measures pose risks to democracy in Africa. Data from *The Pandemic Backsliding Project* reveals that of the thirteen countries assessed in Eastern and Southern Africa, nine imposed measures that brought a high risk of pandemic backsliding by limiting freedom, the role of the legislature, the role of the judiciary and enforcing pandemic measures abusively and arbitrarily. Two countries introduced measures that initially brought a medium risk to democracy but that now pose a high risk after imposing additional measures. Only one country is at a low risk; however this is not because its emergency measures did not threaten democratic standards, it is because its high court overruled its emergency lockdown measures.

Responding to the pandemic appears to be almost impossible without undermining democracy measures in Africa. One reason for this is that many African countries have not yet transited to democracy. Many are still electoral autocracies or electoral democracies. Very few are liberal democracies.

To protect democracy under Covid-19 policy makers should: 1) enable other branches of the State – that is, the legislature and judiciary to continue playing their roles as institutions of representative democracy; and 2) not constrain media freedom *de-facto*, as there is no democracy without alternative sources of information from the State.

*This Policy Brief is of interest to:* democratic practitioners in the State in general and in the legislature, executive, judiciary, media and civil society in particular.
The Risk of Covid-19 Pandemic Emergency Measures to Democratic Standards in Eastern and Southern Africa

Since ‘the Third Wave of Democratization’ swept sub-Saharan Africa in the 1990s many of its countries have already experimented with up to six multiparty elections. But after three decades of experimenting with democracy, many African countries have not passed the transition period and remain either as electoral autocracies\(^1\) or electoral democracies\(^2\). Only a few are liberal democracies (V-Dem Report, 2017, 2018, 2019, 2020). This picture becomes much darker for the subcontinent where states of emergency has been introduced in many countries, temporarily limiting freedoms and checks and balances, as provisions to react to the current Covid-19 pandemic. A recent study has shown that democracies are more likely to erode in a state of emergency. “Some leaders abuse such tools to foster more permanent autocratization by imposing measures that are disproportionate to the severity of crises and keeping emergency provisions in place once the factual situation improves” (Lührmann and Rooney 2020). In the world, 48 countries have a high risk of democratic declines during the Covid-19 pandemic and 34 countries are at medium risk. But 47 countries are not at risk of pandemic backsliding (Lührmann, Edgell and Maerz, 2020).

This Policy Brief analyses the risk of Covid-19 pandemic measures to democratic standards in Eastern and Southern Africa, using new data from the Pandemic Backsliding Project of the Varieties of Democracy Institute (V-Dem Institute, www.v-dem.net). The Pandemic Backsliding Project (Edgell, et al, 2020) “aims to track state responses to the Covid-19 pandemic as illustrative of the varieties of emergency measures and their execution, addressing how these decisions affect short- and long-term prospects for the political regime and democracy. The project seeks to answer the following questions: Which countries enacted what type of emergency provisions? To what extent were civil liberties and political institutions that provided constraints on executive power undermined or even suspended? Did the measures meet the UN standards of being “proportionate, necessary and non-discriminatory”? Which countries went back to the status quo after the end of the crisis and which did not do so?”\(^3\)

The project relies on the Pandemic Backsliding Risk Index, covering most countries and territories of the world. The index captures the extent to which democratic standards are at risk of decline during the Covid-19 pandemic. It is composed of indicators\(^4\) aggregated with the logic of sufficiency. This means that if one indicator falls in the higher category, the whole index is coded within the higher category. If the

\(^1\) Electoral autocracies conduct regular multiparty elections but those elections are not free and fair.

\(^2\) Electoral democracies conduct regular free and fair multiparty elections but the liberal principles of respect for personal liberties, the rule of law, and accountability are not yet satisfied.


\(^4\) Discriminatory measures; derogatory of non-derogatory rights; restrictions of media freedom; punishment for violation of restrictions; limitations of electoral freedom; limitations of the role of the legislature; judicial oversight; and arbitrary and abusive enforcement.
country regime (*Regimes of the World* indicated as *v2x_regime* in V-Dem dataset) is 0 (closed autocracy), it overrides all other codings. This is the case for Eswatini as we will see later in this Policy Brief. The Pandemic Backsliding Risk Index was constructed utilizing the V-Dem network to collect data on Covid-19 responses by governments in 142 countries5. The data was collected from online sources between 6 and 13 April 2020.

All Eastern (Burundi, Kenya, Rwanda, Tanzania and Uganda) and Southern (Botswana, Eswatini, Malawi, Mozambique, Namibia, South Africa, Zambia and Zimbabwe) African countries assessed adopted some sort of state of emergency to respond to the Covid-19 crisis. Some harder than others. The state of emergency responses varied from school closures to isolation and quarantine policies, health screenings in airports and border crossings, international flight suspensions, domestic travel restrictions, visa restrictions, limits on public gatherings, public service closure, emergency administrative structures activated or established, border closures, partial lockdown, full lockdown, military deployment, testing policies and mass testing. To what extent are democratic standards at risk from Covid-19 pandemic measures in Eastern and Southern Africa?

**Findings**

The Pandemic Backsliding Risk Index data reveals that: only one country (Malawi) has introduced emergency measures that are not likely to pose a threat to democratic standards in the long-run; two countries (Burundi and Tanzania) imposed measures at medium risk of pandemic backsliding; and nine (Botswana, Kenya, Mozambique, Namibia, Rwanda, South Africa, Uganda, Zambia, Zimbabwe) did so at high risk. One country (Eswatini) is already a closed autocracy (V-Dem Report 2020), limiting the space for further substantial backsliding.

The reason why Malawi’s response is classified as not posing a threat to democracy is because the country did not take hard actions during the period that the study data was collected: 6-13 April 2020. Subsequently we know that the Malawian President Peter Mutharika took action on 14 April 2020 imposing a 21-day lockdown to begin on 18 April 2020.6 That Tanzania’s response is classified as a medium risk to democratic standards might be explained by the fact that the country did not pose *de-jure* but *de-facto* measures. In mid-April, the Tanzanian President John Magufuli was seen “out shopping surrounded by a crowd of people”.7

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5 Edgell et al. (2020) combining this with existing V-Dem data on democracy and freedom (Coppedge et al., 2020).

6 Following the President’s decision on 14 April 2020, protests broke out on the streets; the President was sued by a civil society group; and the high court ruled against him because he did not put in place the necessary socio-economic protection measures, [https://mg.co.za/article/2020-04-23-malawis-president-ordered-a-lockdown-the-court-said-no/](https://mg.co.za/article/2020-04-23-malawis-president-ordered-a-lockdown-the-court-said-no/) retrieved on 29 April 2020.

Since low risk countries (only Malawi) are not affected at all or only affected slightly in most of the indicators of the Pandemic Backsliding Risk Index, the rest of this policy brief will focus on medium and high risk countries. The difference between countries that imposed measures at medium risk of pandemic backsliding from those at high risk resides on a number of indicators of the Risk Index. Medium risk of pandemic backsliding countries imposed *de-facto discriminatory measures* while high risk countries *de-jure*. The latter, on *derogation of non-derogable rights*, tended to violate any of the International Covenant on Civil and Political Rights (ICCPR) provisions: right to life; freedom from torture and cruel/inhuman treatment; prohibition of slavery and servitude; prohibition of imprisonment due to inability to fulfill a contractual obligation; no conviction for a crime which was not a crime at the time of commitment; and right as a person before the law.

**Restriction of media freedom.** The emergency measures put some limitations on how the media can report on Covid-19 in medium risk countries; and strict limitations in high risk countries in a way that also negatively affects the media’s ability to critically report on the government’s actions more broadly. In Zimbabwe, a journalist was halted by police on his way to report on the Covid-19 lockdown⁸ and another one arrested for writing an article on President Mnangagwa.⁹ In Kenya, “the police use violence as a tactic to intimidate journalists from covering [Covid-19] news”.¹⁰ In Uganda, two journalists were assaulted by the state authority while covering implementation of lockdown.¹¹

**Punishments for violation of restrictions on media freedom.** In medium risk countries it is likely that journalists receive fines as a punishment for violation of restrictions on media freedom under the emergency provisions but in high risk countries of pandemic backsliding journalists are likely to be imprisoned and / or even have their licenses revoked. In Zambia, the broadcast regulators pulled, with immediate effect, the broadcast license of Prime TV, known for critical government coverage and which had been recently covering the Covid-19 pandemic.¹² But this is now happening to Tanzania - a country that during the period of this study’s data collection (6-13 April 2020) was at medium risk of pandemic backsliding. However on 20 April 2020 Tanzanian authorities suspended the license of a Daima daily newspaper journalist for six months for reporting on Covid-19. This came just days after the Mwananchi daily newspaper had its license suspended after it posted a photo of President John Magufuli out shopping surrounded by a crowd of people.¹³

**Limitations of electoral freedom.** Medium risk countries are likely to limit electoral freedom by enhancing remote voting options only for a selected group of citizens while

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high risk countries are likely to limit electoral freedom by severely restricting campaigning for opposition parties and candidates. There is a “concern about a clampdown on political opposition” for Burundi’s 17 May 2020 general election in a context where the election campaign starts as coronavirus cases are on the rise.¹⁴

**Limitations of the role of the legislature.** In medium risk countries, the role of the legislature is affected to a large extent – that is, the executive has the right to rule by decree on many issues, which may exceed Covid-19 related issues due to vague formulation in emergency laws. Nevertheless, in high risk countries the role of the legislature is affected completely – that is, the legislature has been dissolved or suspended with reference to Covid-19. In high risk countries that responded with a full lockdown (Botswana, Kenya, Rwanda and South Africa), the legislature tends to not function at all and the executive does everything. In Mozambique the legislature was suspended without scrutinizing the 2018 public account bill which was on the parliament’s agenda.¹⁵

**Judicial oversight.** In medium risk countries the judiciary is affected somewhat – that is, the High Court's power to conduct normal executive oversight over measures taken by the executive to address the Covid-19 pandemic are limited, but oversight in other areas is not affected. In high risk countries, however, the oversight role of the judiciary is affected to a large extent¹⁶ or completely¹⁷. In South Africa there is a restriction on “entry into courts”.¹⁸ In Rwanda the court is functioning online.¹⁹

**Arbitrary and abusive enforcement.** In medium risk countries arbitrary and abusive enforcement occurs sometimes – that is, a few isolated incidents of security forces engaging in some non-lethal violence have been reported. But in high risk countries it happens often – either there are several reports of security forces engaging in violence to execute the emergency measures and/or reports of deaths at the hands of security forces in response to Covid-19 enforcements or it is widespread with continued reports about use of violence, sometimes with lethal outcomes, by security forces when executing Covid-19 emergency measures taken.

Countries that introduced military deployment or curfew like Botswana, Kenya, Rwanda and South Africa are likely to have arbitrary and abusive enforcement.

“Numerous videos emerged allegedly depicting police and soldiers kicking, slapping, whipping and shooting lockdown violators” in South Africa.²⁰ “Rwandan

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¹⁶ The emergency measures exclude measures related to Covid-19 from judicial oversight and the High Court’s ability to conduct oversight in other areas is severely affected as well.

¹⁷ The High Court has been dissolved or suspended with reference to Covid-19.


authorities [have been making] arbitrary detentions, including of journalists and bloggers trying to expose abuse, and ensure that security forces respect rights when enforcing the measure”. In Kenya “the police [have killed] at least twelve people in attempt to enforce curfew”22. But also there have been authority abuses in countries that did not deploy the military or enforce a curfew. In Mozambique, for instance, the police violently beaten up a man who later died of his injuries and a disabled man was assaulted in the scope of Covid-19 enforcement measures.23 In Uganda “the police [have been photographed] hit[ting] vendors who refused to clear the streets”.24

“The Uganda police hit vendors who refused to clear the streets”

Conclusion and Discussion
The Covid-19 pandemic emergency measures pose risks to democratic standards in Eastern and Southern Africa. Of the thirteen countries assessed, one is already a closed autocracy, limiting the space for further substantial backsliding; and nine imposed measures that bring a high risk of pandemic backsliding by limiting freedom; the role of the legislature, the role of the judiciary; and enforcing pandemic measures

абусивно и произволно. Имаше два страни, които въввели мерки, които рисират среден риск за парадокс на пандемията, по време на изграждането на данните на проекта "Парадокс на пандемията". Сега те показват тенденции за прилагане на мерки с висок риск. Танзания е наказала медийни извършения за репортажи за COVID-19, ограничавайки медиен свобод; и изборите на Бурианди през май 2020 г. създават забъркани въпроси относно ограничаване на изборния свобод. Там само е една страница, която е на нисък риск, но това е заради факта, че нейният изпълнителен президент не е прилагал мерки като тези на другите страни в региона.

Този извод съветва, че смятане на пандемията е почти невъзможно без увличане на демократични стандарти в Източен и Южен Африка. Една причина за това е, че след три десетилетия на провеждане на мултиседмични избори много африкански страни все още не са преминали към демокрация. Режимът на африканските страни може най-добре да бъде описан като електорални аутократии, които провеждат мултиседмични избори за изпълнителна и/или законодателна власт, но тези избори не са свободни и справедливи или като изборни демократии, които провеждат свободни и справедливи избори регулярно, но либералните принципи не са удовлетворени. Откриха се и няколко либерални демократии. Защото нивата на демокрация в Африка са ниски, еригираните мерки на пандемията я правят още по-ниски.

**Policy implications**

В условията на това, за да съхраняват настоящите нива на демокрация, докато поддържат и функционирането на изпълнителната власт, политическите решения трябва да позволят на другите ветви на държавата да продължат да изпълняват своите роли. Парламентът е най-важната институция на представителна демокрация и той трябва да не бъде най-вече или напълно ограничаван, което е какво повечето от изпълнителните президенти в Източен и Южен Африка направиха. Също така, съдебната власт е важна институция на демокрация, която надниква в изпълнението на законоустановления и интерпретира ги при спорове. Граждани трябва да не бъдат най-вече или напълно ограничен в достъпа към нея. Емържънсън респондъци могат да бъдат въведени без увличане на парламента и съдебната власт.

Ако някои страни ограничават медиен свобод по закон (de-jure) при репортиране за емиграцията на COVID-19 в тринадесет страни, необходимо е да се поддържа медиен свобод в практика (de-facto), защото е недопустимо без институции независими от държавата, която могат да предоставят алтернативни източници на информация.

Да има другите ветви на държавата да функционират и алтернативни източници на информация от медиа или други наблюдателни агенции като обществено. екстензивно, изпълнителната власт би била спретната да бъде спретната да бъде спретната за произволно и абусивно прилагане на мерки и дори ограничаване на изборния свобод в страни, които ще провеждат избори в близко бъдеще.
REFERENCES


The **Centre for Research on Governance and Development (CPGD)** is an independent and interdisciplinary research institution, established in 2011, dedicated to supporting and conducting relevant, systematic and evidence based research for policy intervention in Mozambique.

CPDG is based in Mozambique, harnessing local expertise, to conduct research in the areas of governance and development, including: democracy, good governance and poverty with the aim of building an effective and capable state that is accountable and transparent, inclusive and responsive.

Our goal is to strengthen empirical social science capacity by supporting and conducting relevant systematic research to inform Mozambican decision-makers for policy intervention and implementation.

Our mission is to produce and promote evidence-based research for effective public policy and decision making in Mozambique.

Our main objectives are:

- To **produce scientifically reliable data** on Mozambican citizens, elites and political institutions,
- To **build institutional capacity** for systematic research in Mozambique, and
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- We **uphold integrity, neutrality and objectivity** in our work; and
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