



Centre for Research on
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**The Risk of Covid-19 Pandemic Emergency Measures to
Democratic Standards in Eastern and Southern Africa**

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Policy Brief 2 - The Risk of Covid-19 Pandemic Emergency Measures to Democratic Standards in Eastern and Southern Africa

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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 transitioned 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 autocracies¹ or electoral democracies². 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 indicators⁴ 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.

³ <https://www.v-dem.net/en/our-work/research-projects/pandemic-backsliding/> retrieved on 29 April 2020.

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

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/> retrieved on 29 April 2020.

⁷ <https://www.cnbcfric.com/africa-press-office/2020/04/21/coronavirus-tanzania-authorities-must-end-crackdown-on-journalists-reporting-on-covid-19/>, 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

⁸ <http://www.rfi.fr/en/africa/20200414-press-freedom-violations-throughout-african-continent-linked-to-covid-19-coverage> retrieved on 29 April 2020.

⁹ <https://ipi.media/covid19-media-freedom-monitoring/> retrieved on 29 April 2020.

¹⁰ <http://www.rfi.fr/en/africa/20200414-press-freedom-violations-throughout-african-continent-linked-to-covid-19-coverage> retrieved on 29 April 2020.

¹¹ <https://ipi.media/covid19-media-freedom-monitoring/> retrieved on 29 April 2020.

¹² <https://ipi.media/covid19-media-freedom-monitoring/> retrieved on 29 April 2020.

¹³ <https://www.cnbcafrica.com/africa-press-office/2020/04/21/coronavirus-tanzania-authorities-must-end-crackdown-on-journalists-reporting-on-covid-19/> retrieved on 29 April 2020.

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

¹⁴ <http://www.rfi.fr/en/africa/20200427-burundi-launches-election-campaigns-in-shadow-of-covid-19-successor-president-nkurunziza-coronavirus> retrieved on 29 April 2020.

¹⁵ <https://www.parlamento.mz/index.php/programa-de-trabalho-da-ix-sessao-ordinaria-28-fev-a-23-mai-2019> retrieved on 29 April 2020.

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.

¹⁸ <http://www.loc.gov/law/foreign-news/article/south-africa-directions-for-court-operations-during-covid-19-lockdown-issued/> retrieved on 29 April 2020.

¹⁹ <https://www.theeastafrican.co.ke/news/ea/Covid19-Rwanda-courts-go-online-during-lockdown/4552908-5532456-45197u/index.html> retrieved on 29 April 2020.

²⁰ <https://reliefweb.int/report/south-africa/state-abuses-could-match-threat-covid-19-itself> retrieved on 29 April 2020.

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”.²¹ 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”

Source: <https://www.bbc.com/news/world-africa-52214740> retrieved on 29 April 2020.

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

²¹ <https://www.hrw.org/news/2020/04/24/rwanda-lockdown-arrests-abuses-surge>, retrieved on 29 April 2020.

²² <https://www.independent.co.uk/news/world/africa/coronavirus-kenya-lockdown-curfew-police-brutality-deaths-a9468391.html>, retrieved on 29 April 2020.

²³ ²³ <https://clubofmozambique.com/news/young-man-dies-in-beira-after-being-beaten-by-police-in-quelimane-policeman-assaults-disabled-person-shows-video-footage-watch-158344/>, retrieved on 29 April 2020.

²⁴ <https://www.bbc.com/news/world-africa-52214740>, retrieved on 29 April 2020.

abusively and arbitrarily. Although two countries were found to have introduced measures bringing a medium risk of pandemic backsliding during the time *The Pandemic Backsliding Project* data was collected, now they are showing trends of imposing measures that bring a high risk. Tanzania has since punished media reporting on Covid-19 restricting media freedom; and Burundi's May 2020 election is raising concerns of limiting electoral freedom. Only one country is at low risk but it is because its executive president has not imposed emergency measures such as those of other countries in the region.

This finding suggests that responding to the pandemic is almost impossible without threatening democratic standards in Eastern and Southern Africa. One reason for this is that, after three decades of conducting multiparty elections many African countries have not yet transited to democracy. The regime of African countries can be best described either as electoral autocracies, suggesting that they conduct multiparty elections for the executive and or the legislature but those elections are not free and fair or as electoral democracies, suggesting they conduct free and fair elections regularly but liberal principles are not satisfied. Very few are liberal democracies. As the levels of democracy in Africa are low, the Covid-19 pandemic emergency measures make them much lower.

Policy implications

In order to retain current levels of democracy, while maintaining the executive to function, policy makers should also enable other branches of the state to continue to play their roles. The legislature is the most important institution of representative democracy so its role should not be largely or completely limited, which is what most of the executive presidents in Eastern and Southern Africa did. Since the judiciary is an important institution of democracy that oversees the implementation of laws and interprets them in case of disputes, citizens should not be largely or completely restricted access to it. Emergency responses could be introduced without undermining the legislature and judiciary.

Although no country restricted media freedom by decree (*de-jure*) from reporting on the enforcement of Covid-19 emergency measures in the thirteen countries assessed, policy makers should not constrain media freedom in practice (*de-facto*) as there is no democracy without institutions independent from the State that can provide alternative sources of information.

Having other branches of the State functioning and alternative sources of information from media or other watchdog agencies like civil society, the executive would be prevented from arbitrary and abusive enforcement and even constraining electoral freedom in those countries who will conducting elections in the near future.

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