

The Twin Crises of Public Health and Rule of Law

By Elizabeth Andersen and Ted Piccone

The COVID-19 pandemic strikes in the midst of a global rule of law crisis in which respect for key principles of good governance has been eroding in many countries for a number of years. These twin crises of public health and rule of law make this pandemic particularly dangerous. The pandemic is putting additional stress on the rule of law and threatens its further erosion. At the same time, gaps in the rule of law risk worsening the COVID-19 crisis and undermining our ability to respond effectively.

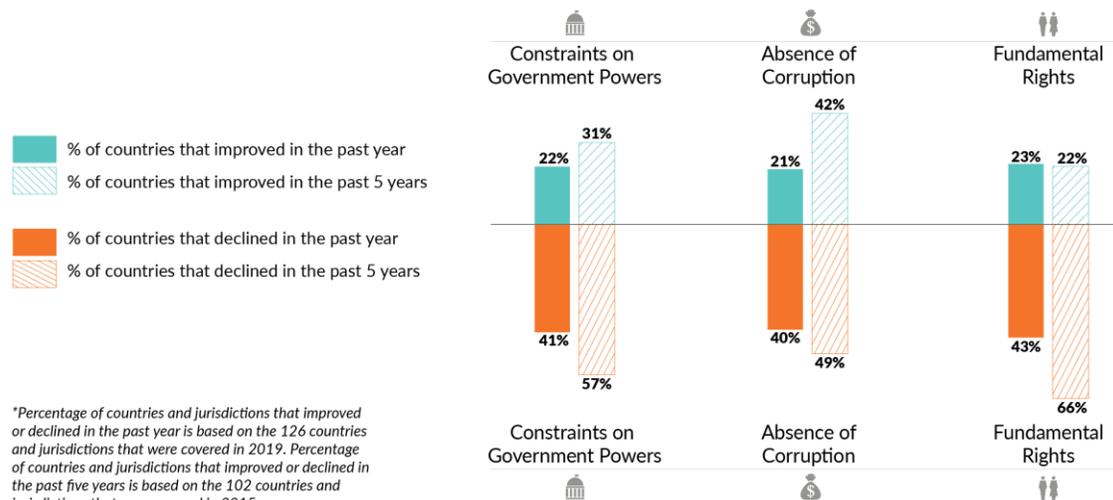
Defining and measuring the rule of law

[The rule of law](#) is a durable system of laws, institutions, norms, and community commitment that delivers accountability of both government and private actors; [just laws that protect fundamental rights; open government; and accessible justice](#). Strong rule of law societies ensure citizens have effective, transparent and accountable institutions that can defend liberty, provide for public safety (including public health) and facilitate prosperity. The rule of law nurtures trust in institutions and underpins a social contract among citizens, both indispensable to solving a public health crisis like the COVID-19 pandemic in which a collective approach is the only way to contain and control a disease that threatens everyone, regardless of status. Data suggest a positive correlation between rule of law and public health, with countries with better rule of law experiencing lower rates of maternal and infant mortality, longer life expectancy, and [lower incidence of chronic diseases](#).

Unfortunately, just at the time when our societies need strong rule of law to respond effectively to the pandemic, these critical norms of good governance are deteriorating around the world. For the third year in a row, the recently launched [2020 World Justice Project \(WJP\) Rule of Law Index](#)[®] reported more countries' rule of law scores declining than improving. We see the trend in established democracies as well as in less free states and in every region of the world. The persistent decline is particularly pronounced in the Index factors that measure "Constraints on Government Powers," "Fundamental Rights," and "Guarantees Against Corruption," three areas especially susceptible to erosion during emergencies.

Fundamental Rights, Constraints on Government Powers, and Absence of Corruption Show Greatest Decline

WJP Rule of Law Index 2020



*Percentage of countries and jurisdictions that improved or declined in the past year is based on the 126 countries and jurisdictions that were covered in 2019. Percentage of countries and jurisdictions that improved or declined in the past five years is based on the 102 countries and jurisdictions that were covered in 2015.

†Percentages may not add to 100%.

Impact of the pandemic on the rule of law

The COVID-19 pandemic risks accelerating the negative trends in each of these three rule of law dimensions. The global health crisis requires swift government action to order institutions closed, restrict citizens' movement, mobilize resources for medical supplies, and disburse significant funds to sustain livelihoods and save economies. These actions can save lives. But unconstrained or abused, these extraordinary government powers can erode democratic checks and balances, violate fundamental rights, and give rise to fraud and corruption. As outlined below, in a number of jurisdictions, the pandemic response has been characterized by such negative rule of law developments.

Abuse of emergency powers

There is no question that a deadly pandemic like COVID-19 calls for strong measures to protect all citizens, especially the most vulnerable. International law contemplates and authorizes such measures, including their intrusion on fundamental rights. Yet it imposes limits on these powers--that they be necessary, proportionate, and non-discriminatory--and where these limits are not respected, emergency decrees can erode the rule of law.

Even before COVID-19 struck, government leaders around the world were increasingly turning to emergency decrees as tools to [undermine and attack political opponents, including judges, lawyers, and journalists](#). The pandemic is another opportunity for leaders with authoritarian tendencies to abuse their emergency powers for political gain. Prime Minister Viktor Orbán of Hungary is the leading example of this phenomenon. On March 23, 2020, he won backing from a Hungarian parliament controlled by his allies for

open-ended emergency powers that [grant him virtually unfettered control of government](#). These include such powers as canceling elections and referenda, criminalizing the publication of false or distorting facts that interfere with disease control, and shutting down all but the Constitutional Court, which his allies control. As of this writing, according to the COVID-19 Civic Freedom Tracker compiled by the International Center for Not-for-Profit Law and the European Center for Not-for-Profit Law, 84 countries had [adopted some form of emergency decrees in response to the COVID-19 crisis](#).

As governments assert new powers, many of the traditional institutional checks on these powers are hobbled by the crisis. The pandemic has had an acute effect on legislatures and judiciaries, for example. These institutions play critical roles as frontline responders to the crisis and as bulwarks against abuse of executive powers, yet public health concerns have shuttered their doors for all but the most urgent business. Moreover, some emergency declarations and laws leave no room for parliamentary approval or oversight. In India, for example, Prime Minister Modi's government invoked the National Disaster Management Act to centralize all government responses to the pandemic, without parliamentary approval. Similarly, courts in India are only hearing "extremely urgent" issues, in some jurisdictions excluding matters of bail and threatening the right to personal liberty, which under India's constitution cannot be suspended, [even in an emergency](#).

Civil society and media under attack

A strong rule of law society requires checks on executive powers not only by separate branches of government but by citizens and journalists exercising their fundamental rights of expression, opinion, participation, and association. Unfortunately, as dozens of studies have catalogued, the political space for civil society organizations and the media to carry out this [vital role continues to shrink](#),

The pandemic has several immediate and direct effects that close off freedoms of expression and association even further. The lockdowns imposed far and wide to contain the disease have forced citizens off the streets just as popular protests were gathering steam in such places as Chile, Colombia, Hong Kong, and Algeria. Journalists trying to report from frontline hospitals and clinics face new risks of contracting the disease just as the demand for credible reporting skyrockets.

Good public health practice calls for tracking how the virus spreads, to whom, and how quickly. Mobile phones can be a vital tool for contact tracing, but [they can also become a tool for violating rights to privacy](#), particularly against a regime's critics. In several countries, such as China, Russia, and [India](#), authorities are exploiting the crisis by combining data from location tracking apps, CCTV cameras with facial recognition, mobile phone data, drones, and credit card records to create, as one Russian opposition party put it, a "cyber-gulag" unlikely to end after the pandemic subsides.

Some governments have gone further to exploit the crisis as an excuse to silence critics. Opposition leaders have been arrested and [sent to jail for criticizing their government's response to the crisis](#), or, as in Turkey's case, [simply left in disease-](#)

[ridden prisons while others are set free](#). New emergency laws and decrees criminalizing the spreading of misinformation about the virus and censoring reports about government missteps are popping up in Thailand, Egypt, and Jordan, with obvious risk of abuse and manipulation for ulterior ends. Authorities in Iran, Yemen, Oman, Jordan, and Morocco have [suspended newspaper printing and distribution, claiming it is necessary to mitigate spread of the coronavirus](#). Perhaps worst of all, courageous whistleblowers, such as Dr. Li Wenliang, who tried to warn others of the new coronavirus in Wuhan, China, have been silenced by police, with [deadly results](#).

A major challenge in the fight against corruption

Despite more than two decades of increasingly robust global efforts to combat corruption, including through the UN Anti-Corruption Convention, the OECD Anti-bribery Convention, and myriad national and regional enforcement mechanisms, corruption remains a persistent rule of law problem in every region of the world. It can be a particularly acute problem in the public health sector, affecting both the quality and quantity of health care.

In a 2019 study, Transparency International reported that “in many countries, deep structural problems drive frontline healthcare workers to absent themselves from work, solicit gifts and extort bribes from patients, steal medicines, and abuse their positions of power in a variety of other ways, usually without facing any consequences.” The organization estimates that corruption in the sector costs \$500 billion per year and [dramatically impacts the quality of care](#). In a 2019 World Justice Project survey of public health professionals in 128 countries, respondents estimated that an average of 29% of “public funds allocated towards health-care expenditures is [illegally diverted away from its intended target towards other ends](#).”

Against this backdrop, the coronavirus presents a “perfect storm” for corruption, as massive resources are rushed to address both the health crisis and the economic side-effects, while [procurement oversight and enforcement efforts are relaxed or diminished by the exigencies of the crisis and social distancing](#). Past health crises and natural disasters have been plagued by corruption challenges. In the United States, for example, the aftermath of Hurricanes Katrina, Rita, and Wilma saw numerous cases of corruption, with over 1,439 people charged by 2011 including for crimes of fraudulent charities, government and private-sector benefit fraud, identity theft, and [government-contract and procurement fraud](#). In the case of the Ebola crisis, rampant corruption prior to the outbreak had weakened health care systems in Liberia, Sierra Leone, and Guinea, and [the resultant low trust in government undermined official warnings about the virus](#). During the pandemic, [public corruption led to the diversion of funds and supplies](#), while petty corruption compromised containment measures as [citizens bribed their way around restrictions on their movement](#).

In the current crisis, media and watchdog reports from numerous countries highlight cases of price-gouging and lucrative contracts awarded without proper procurement processes to well-connected corporations. In Colombia, the inspector general has reportedly launched fourteen coronavirus-related investigations, [most into overpricing of](#)

[emergency goods](#). In Italy, when it came to light that a public contract for 32 million face masks was awarded to an agricultural company that specializes in high-tech greenhouses, [the responsible agency annulled the contract and initiated an investigation](#).

As citizens, businesses, and governments scramble to source critical medical supplies, they face a rising risk of counterfeit or fraudulent transactions. A [March 2020 Europol bulletin](#) cautioned against criminal profiteering, fraud, cybercrime, and money laundering in the context of the crisis, [citing a number of cases already under investigation](#). Funds aimed at addressing the economic crisis are also vulnerable to corruption. The U.S. Department of Labor Office of Inspector General has warned against the risk of fraud in distribution of unemployment insurance benefits as state agencies struggle to process claims from [more than 30 million people](#).

The coronavirus pandemic presents a serious challenge to global efforts to combat corruption, testing the anti-corruption laws and tools developed over the past three decades. Policy makers should draw on lessons learned from past crises to strike an appropriate balance between taking urgent action and maintaining safeguards that can help ensure that action serves its intended beneficiaries.

A Rule of Law Response to the Pandemic

The COVID-19 crisis risks making an already deteriorating global rule of law situation much worse. This is not only bad for the rule of law, it also bodes ill for efforts to contain the virus. A successful response to a global health challenge such as we are facing requires an accountable government that generates timely accurate information and direction for all its citizens, mobilizes resources efficiently and effectively--free of fraud and corruption--and garners citizen trust and compliance. Rule of law provides the foundation for such a response, holding government accountable through institutional checks and balances and a robust civil society and free media. Without the rule of law, we risk squandering critical time and resources and compromising our ability to build the whole-of-society response that is necessary to contain the virus.

We have identified a number of worrying signs in early efforts to contain the COVID-19 pandemic, but it is still possible to mount a rule of law response. This will require a redoubling of efforts to uphold the rule of law, even as we take urgent action. Emergency laws must comply with international standards and be limited in scope and duration. Technology and innovation must be harnessed to permit the continued functioning of institutional checks such as parliaments, ombudspersons, audit agencies, and courts. Principles of integrity and open government, such as those espoused by the Organization for Economic Cooperation and Development and the Open Government Partnership, should be embraced to help ensure critical resources reach those in need. And civil society and a free media must be defended and supported in their work to hold all to account. All of us have a role to play and a stake in the outcome. Both our life, and our liberty, hang in the balance.

Authors Biography



Biography of **Elizabeth Andersen** Executive Director World Justice Project

Elizabeth "Betsy" Andersen is Executive Director of the World Justice Project, leading its global efforts to advance the rule of law through research, strategic convenings, and support for a global network of advocates and reformers. Ms. Andersen has more than 20 years of experience in the international legal arena, having served previously as Director of the American Bar Association Rule of Law Initiative and its Europe and Eurasia Division, as Executive Director of the American Society of International Law, and as Executive Director of Human Rights Watch's Europe and Central Asia Division.



Biography of **Ted Piccone** Chief Engagement Officer World Justice Project

Ted Piccone is the Chief Engagement Officer at the World Justice Project, where he leads WJP's efforts to advance the rule of law through strategic partnerships and convenings, coordinated advocacy, and locally-led initiatives around the world. Mr. Piccone has more than 30 years' experience in international relations, policy, and law, most recently as a Senior Fellow specializing in international order and strategy and Latin America at the Brookings Institution. Mr. Piccone was a senior foreign policy advisor at the State Department, National Security Council and the Pentagon, and Executive Director of the Democracy Coalition Project.

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