

# Elections, human rights and COVID-19

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A recent policy report published by the British Academy suggests that in most cases elections and referendums can be conducted safely and democratically during the COVID-19 pandemic.

Participation in democratic electoral events is a core political right, so it is important to think through electoral rights in relation to the conditions countries face during major health crises. This is relevant for both human rights and health policy. Governments that fail to respect rights may suffer a loss of legitimacy that undermines the willingness of the public to comply with COVID-19 regulations – as seen, for example, in Lebanon and Malawi.

Electoral rights are set out in a number of binding international legal instruments. International law stipulates that elections must be held regularly on the basis of equal and universal suffrage, and with free expression of the will of electors. Article 21 of the Universal Declaration of Human Rights (1948) states that “The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.” The UN International Covenant on Civil and Political Rights (ICCPR) (1966) stipulates that “everyone” has the right “to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors” (Art. 25).

UN General Assembly Resolution 66/163 on “Strengthening the role of the United Nations in enhancing periodic and genuine elections and the promotion of democratization” (2011) goes into greater detail as to what states’ commitments under international law entail. In particular, this resolution notes: “the importance of ensuring orderly, open, fair and transparent democratic processes that preserve the right of peaceful assembly”, that “transparency is a fundamental basis for free and fair elections, which contribute to the accountability of Governments to their citizens, which, in turn, is an underpinning of democratic societies”, and also “the importance of adequate resources for the administration of efficient and transparent elections at the national and local levels, and recommends that Member States provide adequate resources for these elections, including to consider establishing internal funding where feasible”. The resolution also acknowledges “the importance of international election observation for the promotion of free and fair elections and its contribution to enhancing the integrity of election processes in requesting countries, to promoting public confidence and electoral participation and to mitigating the potential for election-related disturbances.”

Regional political rights treaties, including those governed by the Organization of American States, the Council of Europe, the Organization for Security and Co-operation in Europe and the African Union, set out similar commitments.

Several points are worth making about the electoral obligations that states have under international law. First, they are fairly general; for example, elections must be held ‘periodically’, but there is no commitment to hold elections at particular intervals – that is left to countries to decide for themselves. Second, these obligations can be achieved by means of a

variety of different institutional arrangements; the commitments emphasise general objectives such as ‘free expression’, ‘fairness’, ‘openness’, ‘transparency’ and ‘orderliness’ rather than specific procedures, beyond the requirement for universal, equal suffrage and secret voting. In other words, there is no prescribed recipe for delivering democratic elections, but there are prescribed standards according to which electoral processes must be assessed. This is relevant during the pandemic, as jurisdictions each need to decide how best to adjust their electoral administration systems so as to maximise the extent that they are able to adhere to the international legal norms of free expression, fairness, openness, transparency and orderliness.

In this they will also be guided by domestic legislation, and it is important to remember that most country’s constitutions do provide a prescribed recipe for elections, including information about when and how they should be held. In democracies these are often – though not always – directly linked to a set of rights and freedoms codified in the constitution or in legislation. For many citizens, then, whether the government complies with the constitution and relevant national legislation is likely to be a much more pressing issue than global human rights standards. In Ethiopia, for example, the decision of Prime Minister Abiy Ahmed to postpone the elections has been extremely controversial, with some opposition parties and government critics alleging that their rights have been violated.

Third, the importance of resourcing elections adequately is emphasised; this entails a commitment by states not simply to pay lip service to protecting electoral rights, but to undertake concrete actions to make sure those rights are protected in practice, even if this puts a strain on the public purse. There is emerging evidence that elections held during the COVID-19 pandemic are considerably more expensive than elections held at other times. Countries (and their publics) must be prepared for this, and they need to be prepared to foot the bill for high-quality elections. Elections are important enough that states have to make electoral conduct a priority, whatever other economic challenges they may face. Recent research suggests that the adequate resourcing of elections is the result of the interplay of factors such as negotiation, understandings and the agency of actors, not necessarily how developed a country is. This underlines the importance of maintaining effective working relationships between electoral authorities and all those involved in managing resources during the pandemic.

The International Foundation for Electoral Systems has identified four indicators that help to specify the circumstances under which electoral proposals designed to address pandemic-related concerns fall within the guardrails of international human legal principles. If any emergency measures that are adopted restrict electoral rights, such restrictions must be:

- Proportional: The measures taken must be commensurate to the problem.
- Nondiscriminatory: The measures must not discriminate on the basis of individual or community characteristics, including, but not limited to, gender or gender identity, language, religion, social or ethnic origin, disability or sexual orientation.
- Temporary: The measure must be specifically limited in duration and make provisions for an end point.
- Limited in geographic and material scope: The measures must be appropriately narrow and targeted to the problem, in both geographic scope and significance. (p. 7)

Thus, international principles allow elections and referendums to be postponed in that they allow for the derogation of certain rights during an emergency, but postponement can only be justified under limited conditions. Measures adopted must be ‘justifiable’ in terms of the characteristics of the emergency. ICCPR General Comment 29 also emphasises the importance

of notification and transparency in enacting emergency legal provisions. If, by contrast, emergency measures expand political rights, then it may be appropriate to retain them after the pandemic.

It is also worth noting that electoral rights are not the only rights that states are committed to honouring. Civil and social rights also form important parts of human rights frameworks, and elections held during COVID-19 can affect these rights also.

The rights to life, liberty, due process and freedom from torture and hate speech are important civil rights that are potentially threatened by any phenomenon that increases violence in society. Preliminary evidence presented in [the British Academy policy report](#) suggests that the COVID-19 pandemic may be increasing violence in several ways: (1) the pandemic exacerbates the vulnerabilities of marginalised communities, including women facing increased domestic violence; (2) COVID elections may be more vulnerable to the intimidation of oppositions, even if physical violence is not significantly increased; (3) the pandemic appears to be associated with a rise in post-electoral protests, and (4) hate speech (including in particular hate speech against women running for office) and incitement to violence on social media appear to have gone up during COVID-19, or at a minimum have continued unabated. In addition, security forces are often used for pandemic-related relief and humanitarian work, and where these entities are loyal to the government and/or party in power, they may be used to squelch opposition to or demands for equality and minority rights. All forms of violence have serious direct effects on the population in which they occur. They also affect elections indirectly by making it much harder to engage in voter education campaigns and by suppressing turnout.

Holding elections and referendums in countries with ongoing violent conflicts is particularly challenging, as elections might risk triggering even more violence. However, delaying elections unnecessarily because of concerns that elections might spread COVID-19 could further increase social unrest and distrust in government. Under pandemic conditions, it is important for citizens to be able to exercise their right to vote, as this enables them to vote out governments that have been unable to manage the health crisis. Both democracy and civil peace will be enhanced by this vital accountability mechanism.

In addition to political and civil rights, many legal frameworks also recognise social rights, such as the right to health. Developed countries have at their disposal the bureaucratic capacity and the infrastructure to hold safe elections even under pandemic conditions, relying on a combination of measures including postal (mail-in) voting, early voting, increases in the size and number of in-person polling places and sanitary measures at polling stations. Developed states will undoubtedly find it a challenge to run elections during a pandemic; for instance poll worker recruitment has clearly been problematic in developed states that have held elections and referendums, and election resourcing will often be quite a bit down on the list of priorities. Developed states may also struggle effectively to extend absentee voting services, to adjust results processes to accommodate radical increases in postal voting, and to sufficiently address voters' health concerns in their voter information campaigns. However, the problems they face will typically be less acute than is the case in less developed contexts.

Many countries do not have reliable postal systems, voters in informal settlements lack postal addresses, and bureaucratic capacity is insufficient to ensure the sufficient numbers of polling stations are set up, provided with necessary sanitary measures and staffed by adequately trained personnel. Such countries might be said to face a difficult choice between prioritising political

rights and social rights. With careful planning and adequate resourcing of elections and referendums, it ought to be possible to deliver both, but this will require considerable political will and commitment to a high standard of electoral administration.

This brief assessment of the international human rights implications for elections held during pandemics indicates that each country must find its own path, depending on its institutions and the feasibility of holding elections without triggering a spike in cases. The countries that have successfully held elections suggest that this is possible in both wealthy and poor states: while South Korea has drawn great praise for safely holding a COVID election, Malawi – one of the poorest countries in the world – has also done so. Recent epidemiological evidence suggests that the use of mandatory facemask and other health measures can considerably reduce the risks of spreading COVID-19 during voting and campaign events such as mass rallies. The goal of different countries should therefore be the same: periodic elections held on a universal and equal basis by secret ballot, via fair and transparent procedures that guarantee free expression of vote choice, and an orderly electoral process. COVID-19 cannot and need not be an excuse to compromise any of these aims.