**Protecting Democracy During COVID-19 in Europe and Eurasia
and the Democratic Awakening in Belarus**

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In April, Alexander Lukashenko declared that no one in Belarus would die of coronavirus.[1] To allay concerns, he advised Belarussians to drink vodka, go to saunas, and drive tractors.[2] In Hungary, Orban took a different approach. He admitted there was COVID-19, and he used this as an excuse to construct a legal framework allowing him to rule by decree.[3]

Meanwhile, China is using the pandemic to project its political influence. When a plane carrying medical aid landed in Belgrade, the Serbian President greeted the plane and kissed the Chinese flag. Billboards soon appeared in Belgrade, with Xi Jinping's photo and the words "Thanks, Brother Xi" written in Serbian and Chinese.[4]

COVID-19 is not the root cause of Lukashenko's deceit, Orban's power grab, or China's projection of political influence. But the pandemic exposed – and in some countries, exacerbated – underlying challenges to democracy.

In my testimony, I will summarize pre-existing challenges to democracy. Second, I will examine how COVID-19 combined with pre-existing conditions to accelerate democratic decline in Europe and Eurasia. Third, I will share attributes of authoritarian and democratic responses to the pandemic. I will conclude with recommendations.

Pre-Existing Challenges to Democracy

According to Freedom House, 2019 marked the 14th year of decline in democracy around the world.[5] The "democratic depression" is particularly acute in Eurasia, where the rule of law and freedom of expression declined more than in any other region.[6] Indeed, Freedom House classifies zero countries in Eurasia as "free."

ICNL specializes in the legal framework for civil society, particularly the freedoms of association, peaceful assembly, and expression. Therefore, my testimony will focus on these three aspects of civic space, recognizing that additional challenges to democracy exist in Europe and Eurasia.

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[1] https://www.reuters.com/article/us-health-coronavirus-belarus/nobody-will-die-from-coronavirus-in-belarus-says-president-idUSKCN21V1PK
[2] Id.
[3] https://www.helsinki.hu/en/emergency-law-gives-carte-blanche-powers-to-government/ and https://www.helsinki.hu/en/assessment-of-the-transitional-act/
[4] https://www.euractiv.com/section/china/news/serbia-sets-the-stage-for-beijings-mask-diplomacy/1450727/
[5] https://freedomhouse.org/sites/default/files/2020-02/FIW_2020_REPORT_BOOKLET_Final.pdf
[6] https://fsi.stanford.edu/news/%E2%80%98democratic-depression%E2%80%99-could-be-around-corner and https://freedomhouse.org/sites/default/files/2020-02/FIW_2020_REPORT_BOOKLET_Final.pdf

Prior to the pandemic, civic space was already constrained in many countries in the region. For example:

- In Azerbaijan, Belarus, Turkmenistan, and Uzbekistan, the government has broad discretion to decide whether a civil society organization can register (i.e., incorporate). Illustrating the impact of these measures, in Turkmenistan, only a handful of civil society organizations ("CSOs") have successfully registered in the past 10 years.

- In Russia, a CSO that receives international funding and engages in broadly defined "political activities" must publicly identify itself as a "foreign agent," a term which is synonymous in Russian with "foreign spy".[7]

- In Uzbekistan, CSOs are required to notify the government before holding any event. The Ministry of Justice has the authority to attend the event or to prohibit the event from occurring.

- In Kosovo, the law requires all CSOs to have a specially trained compliance officer responsible for countering terrorist financing and money laundering, a burdensome requirement that applies even if the CSO has no budget and no staff.

- In Hungary, the "Transparency Law" placed undue registration and reporting burdens on CSOs receiving funding from abroad;[8] the Law on foreign branch campuses forced the Central European University to leave Hungary; and the Law on Assemblies provided police a wide range of reasons to ban protest without appeal through regular courts.[9]

- In Belarus, it is a crime to disseminate information "publicly insulting" the President. Activists Valeri Levonevski and Alexander Vasilyev spent two years in jail for publishing a poem about Lukashenko, which was deemed by a court to be an insult to the President.[10]

As these examples illustrate, in certain countries, democracy was already in fragile health.[11] After the outbreak of COVID-19, the risk of democratic backsliding significantly increased.

COVID-19: Emergency Measures and Challenges to Democracy

In Europe and Eurasia, at least 27 countries adopted states of emergency and other exceptional legal measures in response to COVID-19.[12] While certain restrictions are justified in the effort to curb the

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[7] The Russian law was inspired by the US Foreign Agents Registration Act, a 1938 law in need of focus and updating. https://scholarship.law.duke.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=4013&context=dlj

[8] Law No. LXXVI of 2017 on the transparency of organizations supported from abroad. The European Court of Justice ruled in June 2020 that the restrictions imposed on civil society organizations do not comply with EU law. See the European Center for Not-for-Profit Law's analysis and this summary.

[9] Law No. LV of 2018 on the right to assembly. For an analysis of additional challenges in Hungary, see https://www.theatlantic.com/international/archive/2018/04/nato-hungary-authoritarianism/557459/

[10] https://naviny.belsat.eu/ru/news/s-nih-nachinalas-zachistka-informatsionnogo-polya-belarusi-v-grodno-prezentovali-kalendar-istorii-svobody-slova/

[11] As discussed in this Subcommittee's hearing in May 2019, China also extended its influence in Europe and Eurasia prior to the outbreak of COVID. See, e.g., https://carnegieendowment.org/2019/05/09/on-china-s-expanding-influence-in-europe-and-eurasia-pub-79094.

[12] https://www.icnl.org/covid19tracker/

pandemic, many governments overreached and unduly burdened fundamental freedoms. For example, during this period:

- **Russia criminalizes "false information".** April 1 amendments to the criminal code criminalize public dissemination of "false information" that threatens public health during an emergency – punishable by fines of up to $25,000 and up to 5 years in prison.[13] The law has already been used to target and intimidate journalists.[14]

- **Turkey arrests citizens for social media posts and burdens civil society**. Turkey has arrested hundreds of people for making "provocative" posts about COVID-19 on social media.[15] The Minister of Culture also issued a letter prohibiting organizations from holding their general assembly meetings online, significantly restricting the operation of civil society organizations.

- **Belarus shuts down the internet**. The shutdown occurred during recent elections and subsequent protests, and the shutdown was reportedly accomplished using technology developed by a US company.[16]

- **Russia enforces quarantine measures using facial recognition technology**. Authorities used a network of 100,000 CCTV cameras in Moscow, controlled from a centralized COVID-19 control center, to enforce quarantine measures using facial recognition.[17] Activists filed lawsuits against Moscow's Department of Technology, which manages the capital's video surveillance program, seeking to ban the technology's use at mass events and protests, but the legality of the system was upheld.

- **Hungary granted the government sweeping new powers.** On June 18, the Parliament ended Hungary's "state of danger" and withdrew the law that gave Orban the power to rule by decree. In its place, though, lawmakers passed a new law that expands the powers of the government during a "state of medical crisis."[18] During such a state, the government is authorized to suspend existing laws and restrict fundamental rights such as freedom of movement and assembly without parliamentary approval. The government may declare a "state of medical crisis" unilaterally, based on the recommendation of a government-appointed medical officer.[19]

- **Kazakhstan restricts peaceful assemblies**. A recently enacted law requires citizens to obtain governmental approval to assemble, allows authorities broad discretion to ban an assembly, and even covers demonstrations where a single person is present.

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[13] https://apnews.com/dbbf02a747b11d8ffe3b07d5e33ff129
[14] https://ipi.media/new-fake-news-law-stifles-independent-reporting-in-russia-on-covid-19/
[15] https://www.reuters.com/article/us-health-coronavirus-turkey/turkey-rounds-up-hundreds-for-social-media-posts-about-coronavirus-idUSKBN21C1SG. See also https://osce.usmission.gov/on-human-dimension-violations-during-covid-19/
[16] https://www.bloomberg.com/news/articles/2020-08-28/belarusian-officials-shut-down-internet-with-technology-made-by-u-s-firm
[17] https://www.france24.com/en/20200324-100-000-cameras-moscow-uses-facial-recognition-to-enforce-quarantine
[18] https://www.euronews.com/2020/06/16/hungary-debates-end-to-emergency-powers-but-new-law-opens-up-potential-to-re-apply-them
[19] https://www.helsinki.hu/en/assessment-of-the-transitional-act/

- **Activists are at risk**. There are numerous examples, including the conviction of Amnesty International representatives on terrorism charges in Turkey,[20] the arrest of Sergei Tikhanovsky in Belarus,[21] and the poisoning of Alexei Navalny.[22]

- **Meanwhile, China projects its influence in the region**. According to a report published by the German Marshall Fund, during a five week period this Spring, "the Chinese Communist Party (CCP) and large Chinese companies made 70 prominent donations to 27 countries across Europe."[23] Moreover, "[o]n state media, embassy websites, and social-media platforms, the authorities used the Chinese donations to Europe to deliver the CCP's story."[24] Among other examples, China also threatened Czech leaders because of a visit to Taiwan,[25] and Chinese companies are providing surveillance technology to countries including Kyrgyzstan, Tajikistan, Uzbekistan, and Serbia.[26]

Common Authoritarian Tactics

Shifting from a geographic to thematic perspective, the following are common tactics adopted by authoritarian-leaning governments while responding to the pandemic:

1. **Engaging in deception and propaganda**. A time-tested technique of authoritarians is to conceal facts and engage in political propaganda. In the COVID-19 context, officials in Turkmenistan[27] and Tajikistan denied the existence of COVID-19, while Lukashenko tried to allay public concern by telling people to drink vodka. Trust in government is important for public consent for COVID-19 responses.[28] Nonetheless, many leaders with authoritarian tendencies have reverted to mendacity and manipulation, undermining both public health and democracy.

2. **Constraining independent information.** Azerbaijan, Hungary, Kazakhstan, Kyrgyzstan, Russia, Turkey, and Uzbekistan are some of the countries in the region that criminalized the dissemination of "false information" about the pandemic.[29] According to a report by the US Mission to the OSCE, more than 200 people , including journalists and activists, have been prosecuted for supposedly spreading "fake news" related to COVID-19 in Russia.[30] Other countries, including Poland and Serbia, restricted access to government information.[31] Belarus also revoked press credentials of foreign journalists and otherwise restricted independent

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[20] https://www.nytimes.com/2020/07/03/world/europe/turkey-human-rights-conviction.html
[21] https://www.hrw.org/news/2020/05/22/belarus-activists-journalists-jailed-election-looms
[22] https://www.npr.org/2020/08/24/905423648/navalny-was-poisoned-but-his-life-isnt-in-danger-german-hospital-says
[23] https://www.gmfus.org/publications/masks-chinese-coronavirus-assistance-europe
[24] https://www.gmfus.org/publications/masks-chinese-coronavirus-assistance-europe and
https://apnews.com/76dff4b113e82d85716262895909f151
[25] https://www.dw.com/en/czech-china-taiwan/a-54764477
[26] https://eurasianet.org/china-taking-big-brother-to-central-asia and
https://www.theatlantic.com/magazine/archive/2020/09/china-ai-surveillance/614197/
[27] https://thediplomat.com/2020/08/death-and-denial-in-turkmenistan/
[28] https://www.oecd.org/gov/trust-in-government.htm
[29] Page 114, https://www.osce.org/files/f/documents/e/c/457567_0.pdf
[30] https://osce.usmission.gov/on-human-dimension-violations-during-covid-19/
[31] Page 53, https://www.osce.org/files/f/documents/e/c/457567_0.pdf

media.[32] Globally, we have seen governments, including China, silence COVID-19 whistleblowers. Accurate information is necessary for evidence-based, effective responses to the pandemic. But authoritarian-leaning leaders seek to restrict the freedom of speech and expression, block access to information, and attack the press and whistleblowers.

3. **Burdening civil society.** Despite civil society's essential role in the COVID-19 response, governments with more authoritarian tendencies continued to take steps to constrain the space for civil society. Turkey adopted decrees that restrict the operations and activities of CSOs, including banning all in-person workshops and trainings and prohibiting online general assemblies.[33] President Lukashenko issued a decree further restricting international funding for civil society organizations in Belarus.[34] More generally, constraints on the freedom of information and access to information, restrictions on peaceful assemblies, and over-broad surveillance have impeded the ability of civil society to pursue their work.

4. **Repressing peaceful protests**. Governments that do not listen to their people hear from them in the streets. In some countries, the protests are directly related to the government's COVID-19 response.[35] In other countries, the pandemic helped ignite a tinder box of societal concerns, whether related to elections, public health, racial justice, or other issues. As a result, during the COVID-19 era, we are witnessing a significant number of protests around the world.[36] Some countries, such as Kazakhstan and Uzbekistan, are adopting legal restrictions on protests. Other countries are responding with force and intimidation. For example, in Belarus, peaceful protests were met with violent crackdowns from security services and arbitrary arrests.[37] In addition, Belarussian authorities are threatening to remove children from their families if parents participate in protests, based on the argument that the parents are engaged in an "immoral way of life" and are not properly implementing their responsibilities, thereby placing children in a "socially dangerous position."[38] Throughout the region, the authoritarian response is to seek to repress protests instead of seeking to address the root causes of societal concern.

5. **Imposing surveillance.** Some governments have incorporated surveillance technology into their efforts to halt the spread of COVID-19, without sufficiently considering the privacy and human rights implications of surveillance technology. In Poland, people required to quarantine are given a choice: either receive unexpected visits from the police or download the "home quarantine app."[39] In Russia, Moscow's quarantine app is mandatory for anyone with the virus or "suspected of having it." The app tracks users via GPS – accessing their location, calls, camera, network info, and other data – and randomly issues requests for selfies to prove that they are at home. If they fail to do so, they receive a $56 fine each time. Thousands have complained that

[32] https://thehill.com/policy/international/europe/514263-belarus-strips-press-credentials-for-several-foreign-journalists

[33] http://www.balkancsd.net/novo/wp-content/uploads/2020/04/78-5-Balkan-Civil-Society-in-the-COVID-19-Crisis.pdf

[34] Page 113, https://www.osce.org/files/f/documents/e/c/457567_0.pdf

[35] https://www.dw.com/en/violence-breaks-out-at-new-serbia-protests/a-54098931

[36] https://carnegieendowment.org/publications/interactive/protest-tracker

[37] https://www.atlanticcouncil.org/blogs/ukrainealert/bipartisan-us-congress-appeal-calls-for-greater-leadership-in-support-of-democracy-in-belarus/

[38] https://www.currenttime.tv/a/belarus-znak-protesty-deti/30817300.html

[39] https://www.privateinternetaccess.com/blog/polands-covid-19-selfie-app-raises-privacy-questions-will-everyone-eventually-be-tracked/

the fines were wrongly issued due to app malfunctions. Authorities had raised $3 million with the app by early June.[40]

6. **Prioritizing politics over an integrated governmental response.** An effective response requires close collaboration between national and subnational leaders. In Turkey, mayors affiliated with the opposition were elected in Istanbul and Ankara. According to a recent report, President Erdoğan "actively tried to undermine them whenever possible—announcing weekend curfews on short notice to leave the opposition mayors flat-footed, canceling charity fundraisers that the mayors organized, and shutting down opposition-run food kitchens—even at the cost of weakening the country's broader response to the pandemic."[41] Similarly, the mayor of Budapest is associated with the opposition party. Orban has worked to undermine the mayor's effectiveness, draining the city of resources and casting blame for infections and deaths in nursing homes.[42] This approach prioritizes politics over public health, and it undermines an effective approach to combatting COVID-19.

7. **Eroding democratic checks and balances**. Some countries, including Azerbaijan, Kazakhstan, and Serbia, transferred authority from the legislative branch to the executive branch. Among other civic space problems, this "restricted the right to freedom of assembly through governmental decisions."[43] In terms of the judiciary, in Kazakhstan, "civil society organizations consistently reported difficulties for lawyers to effectively defend their clients" because entering court buildings could be considered a violation of the quarantine.[44] Russia and other countries suspended virtually all judicial proceedings while their countries were in lockdown.[45] In many countries in the region, COVID-19 led to the concentration of power in the executive branch and the erosion of democratic checks and balances.

These are common tactics in authoritarian-leaning governments. That said, democratic governments have also embraced some of these approaches. It is important for democracies to lead by example, and to advance that goal, below I summarize examples of good practices adopted by democracies in the region.

Healthy Democratic Responses

The COVID-19 pandemic does not have to be a crisis for human rights – many governments have demonstrated that it is possible to safeguard rights while effectively countering the virus. The following are a few examples[46] from countries in the region:

1. **Facilitating 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. Toward that end, both Portugal and Georgia[47] have developed a website, app, and mass media

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[40] https://apnews.com/ca08db0bc06f0a9d20e205104680c881

[41] https://foreignpolicy.com/2020/04/17/erdogan-turkey-coronavirus-relief-politics-akp-chp-brother-tayyip-soup-kitchen/

[42] https://www.france24.com/en/20200424-virus-hit-hungary-care-home-on-frontline-in-orban-powerplay. Borrowing Tom Wolfe's term from the 1970s, some national leaders are also turning local politicians into "flak catchers."

[43] Page 107, https://www.osce.org/files/f/documents/e/c/457567_0.pdf

[44] Page 76, https://www.osce.org/files/f/documents/e/c/457567_0.pdf

[45] https://meduza.io/en/feature/2020/04/08/law-and-order-under-lockdown

[46] Additional examples are available at https://www.osce.org/files/f/documents/e/c/457567_0.pdf

[47] https://stopcov.ge/en

campaign presenting information on the pandemic and government actions to address it. According to Ireland's Freedom of Information website, officials must comply with the Freedom of Information Act, despite the pandemic.[48] In addition, France, Germany, Italy, Romania, and Sweden undertook steps to make public information about the pandemic available to people with disabilities.[49]

2. **Developing responses with public input.** Public participation in designing COVID-19 responses bolsters their efficacy, while encouraging compliance with measures that may be disruptive or inconvenient. Scotland published a Route Map that describes an evidence-led, transparent, and phased approach to varying restrictions, and it releases supporting evidence to inform external review.[50] Other countries utilized technology to encourage public participation. French parliamentarians opened a platform designed to collect citizen input on the way forward after the pandemic subsides.[51] In Lithuania and Germany, members of the government, corporate sector, start-up community, and civil society organized virtual "hackathons" to solicit innovative solutions to the crisis.[52]

3. **Empowering civil society 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. Some governments have taken steps to ensure that civil society has the resources it needs to help respond to the crisis. For example, Denmark allocated 15 million Danish Krone for Danish civil society organizations to work on COVID-19 related issues. The UK Government has matched £10 million in donations to the Disasters Emergency Committee Coronavirus Appeal, which supports the work of CSOs helping to stop the spread of the virus.[53]

4. **Protecting peaceful protests.** In Denmark, for example, the law prohibiting 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. Similarly, according to OSCE/ODIHR, "In Romania, the General Directorate of the Gendarmerie in Bucharest urged people not to participate in a planned assembly and cautioned them that organizing and conducting an assembly was prohibited, but in the same message published an infographic with instructions how to behave during an assembly."[54]

5. **Ensuring 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. In Norway, authorities have worked with a private company to develop an app which warns users if they have had contact with someone infected by COVID-19 and shares

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[48] Page 55, https://www.osce.org/files/f/documents/e/c/457567_0.pdf

[49] Page 55, https://www.osce.org/files/f/documents/e/c/457567_0.pdf

[50] https://www.gov.scot/publications/coronavirus-covid-19-scotlands-route-map-supporting-evidence-20-august-review/

[51] https://lejourdapres.parlement-ouvert.fr/

[52] https://www.opengovpartnership.org/collecting-open-government-approaches-to-covid-19/

[53] https://www.gov.uk/government/news/uk-government-matches-another-5-million-of-donations-for-coronavirus-appeal-after-huge-public-response

[54] Page 110, https://www.osce.org/files/f/documents/e/c/457567_0.pdf

anonymous movement data with the authorities. Use of the app is voluntary, users receive clear information about the purpose, storage, and nature of the data collected, and users can delete their data at any time. Similarly, a Dutch draft COVID-19 App Law extensively regulates which data will be processed and how it will be used. Under the draft, the use of the COVID-19 app must be voluntary, and it is illegal to force anyone to use the app.[55]

6. **Cross-party cooperation to public health.** Germany's early success in containing the pandemic is attributable, in part, to cross-party cooperation at various levels of government.[56] Among other examples in the region, cooperation across political parties helped Denmark[57] and the Netherlands[58] respond to the pandemic.

7. **Ensuring responses are lawful and subject to oversight and review.** Legislatures have critical roles to play in developing, authorizing, and overseeing COVID-19 responses. Countries including Denmark, Estonia, Luxembourg, Norway, and Portugal, have taken steps to allow Parliaments to work efficiently and safely during the pandemic.[59]

<u>Recommendations</u>

The following actions would help safeguard democracy in the era of COVID-19:

- Enact legislation requiring the Department of State and USAID to develop a strategy to address democracy and human rights issues in the aftermath of COVID-19, including provisions to provide support for democratic institutions, civil society, independent media, access to information, and human rights defenders. One option is H.R. 6986, the Protecting Human Rights During Pandemics Act.

- Incorporate democracy efforts into COVID-19 international emergency and recovery assistance.

- Enact legislation that will safeguard Americans from intrusive use of surveillance technologies, such as H.R. 7356, the Facial Recognition and Biometric Technology Moratorium Act.

- Enact National Emergencies Act reform legislation, such as H.R. 1755, the ARTICLE ONE Act.

- Modernize the 1938 Foreign Agents Registration Act to focus the Act on agents of foreign governments and to ensure that it enables international civil society activity and cross-border philanthropy.

- For Belarus, continue diplomatic support, both bilaterally and multilaterally, to forge a path for free and fair elections with the participation of international observers, the release of political prisoners, the cessation of violence and arrests of peaceful protestors, the accountability of

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[55] https://www.tweedekamer.nl/kamerstukken/wetsvoorstellen/detail?cfg=wetsvoorsteldetails&qry=wetsvoorstel%3A35538
[56] https://www.wsj.com/articles/local-practical-apolitical-inside-germanys-successful-coronavirus-strategy-11588325403
[57] https://www.nytimes.com/2020/03/28/business/nordic-way-economic-rescue-virus.html
[58] In the Netherlands, for example, the Prime Minister and Minister of Health cooperate with the chairs of 25 security regions in the COVID-19 response. The chairs are the mayors of large cities in those regions. See also https://nltimes.nl/2020/08/04/amsterdam-rotterdam-prepare-mandatory-face-masks-certain-areas
[59] Pages 66-67, https://www.osce.org/files/f/documents/e/c/457567_0.pdf

perpetrators for human rights violations, the protection of media freedom, and the safeguarding of civil society.

- Hold additional hearings on backsliding countries, the export of US technology to undermine democracy, and the projection of Chinese influence in the region.

- Support international initiatives to enable legislators, government officials, civil society representatives, and others to share lessons learned on how to protect democracy during pandemics.