



Africa Criminal Justice Reform
Organisation pour la Réforme de la Justice Pénale en Afrique
Organização para a Reforma da Justiça Criminal em África



Overview and key findings COVID-19 restrictions and the impact on criminal justice and human rights

Kenya, Malawi, Mozambique, South Africa & Zambia

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Project history

- October 2021, we published '*Criminal justice, human rights and COVID-19 - A comparative study of measures taken in five African countries: Kenya, Malawi, Mozambique, South Africa and Zambia.*'
- The focus was on the constitutional and legal provisions for dealing with the pandemic and how states used the regulatory frameworks at their disposal.
- Needed more information on what was experienced - consultative workshops in Kenya, Malawi, Mozambique and Zambia between Dec 2021 and March 2022.
- The findings serve to inform the broader campaign "Poverty is not a crime" focusing on the criminalisation of poverty and status, working towards the decriminalisation and declassification of certain actions.

Report structure

- **Overview and key findings - COVID-19 restrictions and the impact on criminal justice and human rights**
by Muntingh, L., Mangwanda, J. and Petersen K.
- **Annexure 1: Kenya - COVID-19 restrictions and the impact on criminal justice and human rights**
by Mangwanda, J. and Petersen K.
- **Annexure 2: Malawi - COVID-19 restrictions and the impact on criminal justice and human rights**
by Petersen, K. and Mangwanda, J.
- **Annexure 3: Mozambique - COVID-19 restrictions and the impact on criminal justice and human rights**
by Lorizzo, T. and Petrovic, V.
- **Annexure 4: South Africa - COVID-19 restrictions and the impact on criminal justice and human rights**
by Petersen, K., Mangwanda, J., Muntingh L. and Redpath, J.
- **Annexure 5: Zambia - COVID-19 restrictions and the impact on criminal justice and human rights**
by Mangwanda, J. and Petersen K.

Overview comments

- Governance is fundamentally about how the state uses its power and accounts for it. In constitutional states, state powers are typically set out in the constitution and from there flows the enabling legislation, regulations, standing orders and so forth. Constitutions also typically provide for emergency situations that threaten the stability and well-being of the nation, such as a war, internal unrest and natural disasters.
- SOE's are usually tightly regulated (e.g. time limits, parliamentary approval, limits on renewal) and states did not opt for this but rather for a longer 'state of restrictions' akin to but not the same as an SOE.
- Frequently used disaster management legislation and health legislation to issue subordinate law such as regulations, decrees, directions, directives, and standing orders . These can typically be issued by the executive.
- The central aims, as per WHO, were to restrict contact between people and the movement of people. A central concern was the potential impact on the health care system and that it may collapse if overloaded.
- The measures adopted in Africa largely aimed to limit mobility, restrict gatherings and mandating certain protective measures (masks, sanitising and social distancing)

Overview comments

- Active response was restrictions imposed and their policing, and the passive response was the closing (e.g. education) and scaling down (e.g. courts) of services.
- The impact of the restrictions on mobility and gathering were not only visible during the various types of lockdowns and curfews imposed, but the economic impact was soon evident and will remain visible for years to come, especially for the poor.
- The large-scale and lengthy interruption in access to education will similarly have an impact in years to come.
- Numerous instances were encountered where the rule and its consequent enforcement simply did not make sense to the ordinary public and were perceived to be irrational and void of logic. Irrational rules and/or irrational enforcement diminishes trust in the state and in particular in the enforcement agencies.
- COVID-19 restrictions and their enforcement were largely focused on policing public spaces that normally see high concentrations of people.

Overview comments

- Not all people have an equal risk of being arrested and it is generally accepted that those who are perceived to have less power are more at risk of arrest.
 - The general pattern appears to have been one where those people dependent on public spaces for their income due to the concentration of people there to whom they can sell their goods, were not only deprived of the crowds due to restrictions, but also became a target of enforcement.
 - It was then typically poor people - dependent on a daily income - who faced the higher risk of exposure to law enforcement.
- Not only space was policed but time as well: curfews were used widely and subsequent research as a measure to restrict the spread of COVID-19 is inconclusive.
- New rules created new bribery, corruption and extortion commodities; the threat of arrest and detention.
- Appears that restrictions were more rigorously enforced in poorer areas and also appear to have been increased excesses in law enforcement; Not wearing a mask and breaking curfew is also easy to police.
- Daily income earners were hit hard – informal economy and especially women: when desperation turns to defiance.

Overview comments

- New terminology: essential and urgent
 - Example: SA JICS – ICCV excluded from definition of essential services - for nearly 6 months prisoners were denied an independent external complaints mechanism.
 - Who decides what court matter are urgent? Despite guidelines, there is discretion and it opens the door for manipulation & bribery.
- General restriction on prisons and places of detention
 - Restriction on visits
 - In SA increase in inter-prisoner violence as well as official-on-prisoner violence
 - Prison releases
- New administrative requirements: a test, a certificate, permit, authorisation to travel
- General restriction on the functioning of the courts: what to prioritise? Delays in duration of pretrial detention
- Oversight mechanisms (NPM) under OPCAT did not function as could have been expected (SA and Moz)
 - Detention conditions deteriorated (dependence on families)
- Overall impression is that law enforcement officials interpreted the ‘state of restrictions’ to mean that they have more latitude to use coercion and force.

Overview comments

- High reliance on the criminal justice system to enforce restrictions; one shoe fits all.
- The anticipated impact of the pandemic was very much focussed on health and did not pay sufficient attention to other impacts and consequences:
 - (1) impacts on rights, especially due process rights as well as civil and political liberties
 - (2) the immediate impact on the economy and particularly sectors that are large employers of poor and low income people (e.g., tourism, accommodation, informal trade and services)
 - (3) the cost of loss *vis a vis* the cost of recovery - returning to what the situation was will take more than the losses incurred
 - (4) the cost of interrupting the existing and continuing investments, such as education, oversight agencies, any investment in girls (i.e., health and education) and crime prevention
 - (5) the cost of associated corruption to the economy and trust in the state
 - (6) the cost to civil society organisations who are dependent on donors who had redirected their support
 - (7) the cost of social and economic relief funded by the fiscus or loans
 - (8) the cumulative impact of exclusion i.e. mental health costs.

Thank you

