



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



# Criminal justice, human rights and COVID-19 - a comparative study of measures taken in five African countries

## Overview

Lukas Muntingh, 13 Oct 2021



# Overview

- The spread of COVID-19 and the subsequent state responses to the virus have had significant consequences for citizens in southern and east Africa where ACJR is active.
- states opted for different responses and that there were subsequently different reactions from civil society.
- The limits placed on civil and political liberties in an effort to address COVID-19 seems to have facilitated violent and coercive responses from operational-level law enforcement functionaries.
- There were generally restrictions placed on criminal justice systems, placing them in holding patterns for longer or shorter periods of time.
- Apart from civil and political rights, the lockdowns also impacted on socio-economic rights. With large portions of the populations of these states living in poverty, they are dependent on the informal economy for their livelihood.
- With the formal economy placed on partial hold, this had dire consequences for the poor and those living in poverty; self-isolation and social distancing impossible in many environments.
- Raises the question on the use of armed police and the military to enforce a public health intervention.
- There is a need for analysis, elucidation and promotion of the proper role of law enforcement and criminal justice in such crises, particularly in the developing world, where it is often the hubris of the state to pretend that with lockdowns it is managing the load on the public health system.

# Overview

- COVID-19 lock-downs presented a unique opportunity to investigate and analyse criminal justice systems and their performance under unusual circumstances that is not a state of war or large-scale political instability. It is because the right to liberty is fundamentally affected by a lock-down that it requires closer scrutiny on how states implemented it.
- Lock-downs also result in the widespread criminalising of behaviour that is otherwise not a crime and this has significant implications for our understanding of crime, but also begs the question whether criminalisation (and arrest) is really an appropriate response to a public health crisis.
- A crisis is also an opportunity to consider options that have hitherto been considered unpalatable or not unacceptable.
- A lock-down by its very nature has an exclusionary purpose and result, and thus weakens the right to individual liberty ostensibly to protect the larger group, while at the same time granting the state more power to control the population. But limiting the right to liberty in this manner, may indeed be letting the proverbial genie out of the bottle and once out, the genie is often not too enthusiastic to return to the bottle of its own accord.
- There was thus a need to
  - describe what happened under lock-downs and how this was enabled by legislation and its enforcement.
  - identify problems and lessons to be learnt to strengthen institutions of state designed to protect democracy as well as the criminal justice system in general.
  - understand how rights are limited as well as what the impacts of such limitations are, and what measures have been taken, or not, to limit abuses of power in future.

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- This work falls squarely into our work on the campaign against the criminalisation of poverty and status ([www.pettyoffences.org](http://www.pettyoffences.org)) and that COVID-19 brought a change in context, but that much of the underlying theory of the campaign underpins the response to COVID-19 and advancing human rights in a criminal justice context.
- Covers five country reports which are the appendices; were used as the basis to investigate the issues further.
  - This was done by describing the process by which a State of Emergency (SoE) or State of Disaster (SoD), as the case may be, were declared with particular reference to stakeholder consultation with the judiciary, legislatures, civil society, academic community and broader public.
  - The second focus was to analyse the legal frameworks of the five countries utilised to enforce SoE and SoD with a view to identify strengths and weaknesses in design.
- From these, four cross cutting issues are reported on in the four comparative chapters, being:
  - surveying the measures taken to respond to COVID-19;
  - litigation and responses to lockdown measures;
  - the impact on civil and political rights, and
  - the impact on detention monitoring and oversight mechanisms.
- We are grateful to the support from the Open Society Foundations (Human Rights Initiative) and the Sigrid Rausing Trust for supporting our work and making this research possible.

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Thank you

