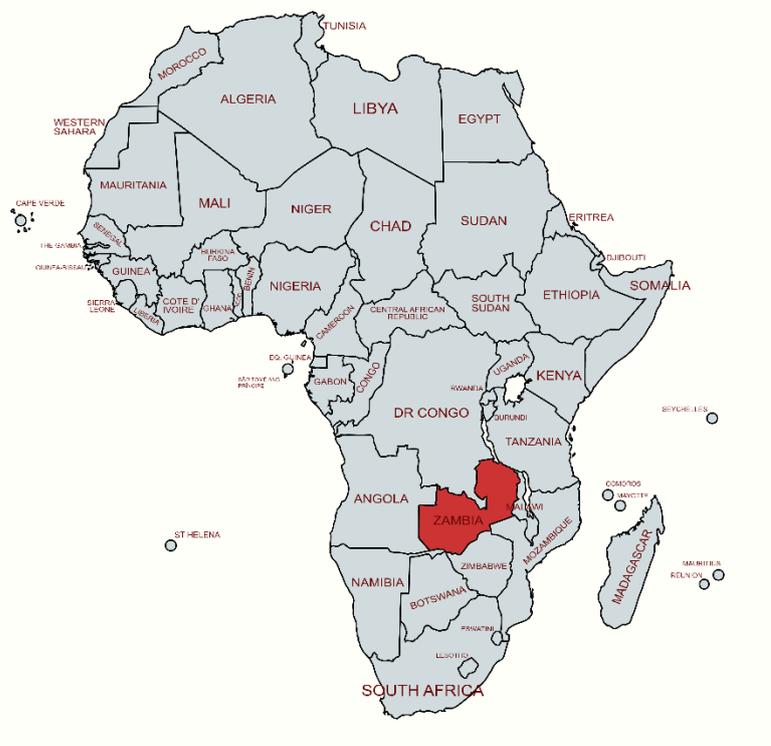


Annexure Five

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

Zambia



By

J Mangwanda & K Petersen

2022

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Africa Criminal Justice Reform
c/o Dullah Omar Institute
University of the Western Cape
Private Bag X17
Bellville
7535
SOUTH AFRICA

www.acjr.org.za

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1. Introduction

On 2 December 2021, Africa Criminal Justice Reform (ACJR) together with the Zambia Law Development Commission and Ubuntu Justice Initiative hosted a stakeholder engagement workshop in Lusaka, Zambia to discuss the socio-economic impact of COVID-19 in Zambia and its impact on criminal justice and human rights. The workshop formed part of a larger project by ACJR on State responses to COVID-19 with particular reference to the criminal justice system.¹

The workshop was attended by 22 participants representing civil society organisations, government officials and oversight institutions.² The objectives of the workshop were three-fold. First, to discuss the State's response to the COVID-19 pandemic and document the limitations of rights implemented during the COVID-19 period. Second, to document the socio-economic consequences of State responses on the public. Third, the workshop aimed at understanding good-practice examples in the criminal justice and human rights sector for future use.

This report summarises the views of workshop participants and is further supported by contextual information. It covers the following:

- Government's COVID-19 measures
- Problematic COVID-19 measures
- Enforcement of COVID-19 measures
- Penalties, sanctions and prosecutions for violations
- The impact of COVID-19 on criminal justice system
- Socio-economic impact of COVID-19 restrictions
- The operation of oversight institutions
- Access to information and public awareness
- Good practice for future use

2. Documenting rights violations

2.1. Zambia government COVID-19 measures

In March 2020, the Zambian government invoked provisions of the Public Health Act which regulates public health matters in response to COVID-19.³ In addition to the legislative provisions, President

¹ L Muntingh et al., "Criminal Justice, Human Rights and COVID-19 - a Comparative Study of Measures Taken in Five African Countries" (Africa Criminal Justice Reform, 2021), <https://acjr.org.za/acjr-publications/combined-covid-19-report-13-10-2021-final.pdf>.

² Appendix: Stakeholder Participation List.

³ Republic of Zambia, "Public Health Act" (1995).

Lungu made pronouncements consisting of rules relating to the wearing of masks, social distancing as well as movement restrictions. The rules applied to all people at all times, but their enforcement was reportedly stricter in informal housing areas across the country as opposed to more affluent areas. The government's COVID-19 response and resultant measures, as gleaned from desktop research, are highlighted in an earlier report.⁴

In August 2021, Zambia held a general election which saw Edgar Lungu of the Patriotic Front voted out and replaced by Hakainde Hichilema of the United Party for National Development.⁵ Workshop participants reported that in the lead-up to the elections, presidential updates on COVID-19 restrictions became less frequent. Following the election of President Hichilema, many people were under the impression that the COVID-19 restrictions had been relaxed, although no formal announcement was made to this effect. According to workshop participants, it was and remains a commonly held view that the COVID-19 rules belonged to the former government. Perhaps it was an effort of the new government to distance itself from the challenges faced by the previous government.

2.2. Problematic COVID-19 measures

Zambia is a developing country ranking amongst the countries with the highest levels of poverty and inequality globally.⁶ Workshop participants noted a number of problematic COVID-19 measures issued by the government, including rules relating to the closure of small businesses and bars which were supposed to be uniformly applied, but whose enforcement was selective and based on geographical location. It was reported that in poorer areas of Lusaka, law enforcement officials forcefully closed bars and assaulted bar owners, whereas in more affluent areas, these rules were lightly enforced, if at all. This confirms existing observations that those perceived to have less power, are more likely to feel the brunt of law enforcement and be arrested without a warrant.

The Constitution declares Zambia a "Christian nation" and workshop participants noted that the COVID-19 rules stipulated that religious services should not exceed one hour. However, many people felt that this restricted their right to practice religion and continued to attend religious services in

⁴ Muntingh et al., "Criminal Justice, Human Rights and COVID-19 - a Comparative Study of Measures Taken in Five African Countries."

⁵ Electoral Institute for Sustainable Democracy in Africa, "Zambia: 2021 Presidential Election Results," *EISA*, August 31, 2021, <https://www.eisa.org/wep/zam2021results.htm>.

⁶ World Bank, "Country Overview: Zambia," September 23, 2021, <https://www.worldbank.org/en/country/zambia/overview#1>.

excess of an hour. People found violating this rule were not arrested, but were stopped by law enforcement officials and told to return home.

Perhaps one of the more problematic rules was the restriction on physical meetings, especially in the months leading up to the general elections in August 2021. Workshop participants were of the view that the implementation of this rule was biased and in favour of the ruling party which often held meetings, whereas, opposition parties were not allowed to gather to engage on election-related issues. Moreover, as part of these restrictions, civil society organisations also had to apply for permits to host meetings, and in some instances, these permits were denied. Further investigation is required to determine if this undermined fundamental human rights such as the right to freedom of speech.

The general lack of clarity and predictability of government-imposed measures at any given point was a further challenge faced by the population (during both the Lungu and Hichilema administrations). For example, in November 2021 the Minister of Health announced that all persons entering a government building or facility must be vaccinated.⁷ The statement was later retracted as it was argued that vaccination is not compulsory and this rule was therefore discriminatory towards the unvaccinated. It is unlikely that the government had the capacity to vaccinate all Zambians, since at the end of December 2021, less than 10% of the population had been fully vaccinated.⁸

2.3. Enforcement of COVID-19 measures

Since the onset of the pandemic, there was strict enforcement of COVID-19 measures by law enforcement officials. In June 2020 the Zambian Police Service issued Standing Operating Procedures (SOP) to safeguard human rights, particularly of vulnerable people and provide guiding principles to security and law enforcement officers in responding to the pandemic.⁹ The SOP was premised on the Statutory Instruments regulated by the government.¹⁰ The Zambia Human Rights Commission,

⁷ Xinhua, "Zambia Tightens COVID-19 Preventive Measures to Avert 4th Wave," *Xinhua Net News*, November 29, 2021, http://www.news.cn/english/africa/2021-11/29/c_1310340791.htm.

⁸ Worldometer, "Zambia Population Vaccination Statistics," December 31, 2021, <https://www.worldometers.info/world-population/zambia-population/>.

⁹ T Malumo, "ZP Launches Standard Operating Procedure on COVID - 19," *Zambia Police*, 2021, <http://www.zambiapolice.gov.zm/index.php/112-news/372-zp-launches-standard-operating-procedure-on-covid19>. United Nations Development Program, "Supporting the Fight Against COVID19: Zambia Police Service Launches Guidelines to Equip Police Officers and to Safeguard the Vulnerable," June 15, 2020, <https://www.zm.undp.org/content/zambia/en/home/presscenter/pressreleases/2020/Supportingthefightagainstcovi19zambiapoliceservicelaunchesguidelines.html>.

¹⁰ Republic of Zambia, "Statutory Instrument No 021 The Public Health (Notifiable Infectious Disease) (Declaration) Notice" (2020), <https://www.enotices.co.zm/download/statutory-instrument-no-21-of-2020-the-public-health-notifiable-infectious-disease-declaration-notice-pdf/>; Republic of Zambia, "Statutory Instrument No 022 The Public Health (Infected Areas) (Coronavirus Disease 2019) Regulations" (2020),

the Ministry of Justice, the United Nations Development Program and the *Deutsche Gesellschaft für Internationale Zusammenarbeit* (GIZ - German Development Aid Agency) provided financial and technical support in the development of the SOP.¹¹

Despite the existing SOP, there were still reports of unlawful and harsh enforcement of COVID-19 rules by law enforcement officials. This included assaults and humiliating demands for people to perform frog-jumps for violating measures despite calls by the Zambia Human Rights Commission on the police to adhere to the SOP.¹² The targeted groups were primarily street vendors, security guards, and waitresses since their working hours often resulted in them infringing the curfew. The workshop participants reported that law enforcement officials assaulted bar owners and confiscated alcohol from non-complying bars and taverns. In response, the Bars and Nightclub Owners Association presented a petition to President Lungu regarding the harsh enforcement of rules and the negative effects that the COVID-19 measures had on their businesses. They also wrote to the Inspector-General of Police informing him of their intention to hold a peaceful protest.¹³ It is not clear whether the planned protest took place. In many regards it then appears, as it also did in other countries, that enforcement was being done for the sake of enforcement and not necessarily to curb the spread of the virus.

2.4. Penalties, sanctions and prosecutions for rights violations

Formal and informal penalties were imposed for violations of COVID-19 restrictions in the country and those found violating restrictions were arrested, and fined up to 2 500 ZK (US\$ 141) and some even spent nights in police custody.¹⁴ The workshop participants were unanimous that the formal penalties were not proportionate to the alleged crime committed and it was also reported that a number of prosecutors solicited bribes from people.

The representative from the Zambian Human Rights Commission indicated that there were complaints and cases involving human rights violations by officials on people. However, the majority of these

<https://www.enotices.co.zm/download/statutory-instrument-no-22-of-2020-the-public-health-infected-areas-coronavirus-disease-2019-regulations-pdf/>.

¹¹ Malumo, "ZP Launches Standard Operating Procedure on COVID - 19."

¹² Human Rights Commission Secretariat, "HRC Calls for Observance of Respect for Human Rights during the Enforcement of Guidelines on Preventing the Spread of Coronavirus," *Zambia Human Rights Commission*, April 13, 2020, <http://www.hrc.org.zm/index.php/multi-media/news/349-hrc-calls-for-observance-of-respect-for-human-rights-during-the-enforcement-of-guidelines-on-preventing-the-spread-of-coronavirus-2>.

¹³ T Mwila, "Bar and Night Club Owners Write Police to Protest Over Continued Closure of Their Businesses", *Zambia 24*, 26 June 2020, <https://zambia24.com/bar-and-night-club-owners-write-police-to-protest-over-continued-closure-of-their-businesses>.

¹⁴ Republic of Zambia, Statutory Instrument No 022 The Public Health (Infected Areas) (Coronavirus Disease 2019) Regulations.

cases were political in nature in the lead up to the August 2021 elections and will be reported in the Commission's 2021/22 annual report.¹⁵

3. The impact of COVID-19 measures on the criminal justice system

The COVID-19 pandemic and the responding measures had a notable impact on the criminal justice system and affected the due process rights of arrested persons and detainees. Some of the problems highlighted during the workshop included delays at police station-level as suspects spent long hours at police stations as they had to be tested for COVID-19 before being taken to prison. At court level, the lack of audio-visual link-up (once this became available) as a result of regular power-cuts often frustrated court proceedings. This resulted in delayed bail applications and delayed trials. There were also instances where prisoners were not brought to court for their cases. A circular detailing the operations of courts during COVID-19 was issued by the Minister of Justice dealing with court priorities, court hours, conditions for the relaxation bail conditions as well as the promotion of the use of police bail and bond in order to reduce overcrowding.¹⁶

A representative from the Prison Care and Counselling Association (PRISCA), which provides paralegal assistance to awaiting trial prisoners, noted that paralegal services were not suspended during the pandemic and concerns were raised regarding the lack of social distancing in prisons generally, given the prison overcrowding situation in Zambia which is a longstanding problem. The threats posed by COVID-19 did not prompt government to make any renewed effort to address the problem. The prisoner population in Zambia stands at 23 062 against the holding capacity of 10 500 representing a countrywide overcrowding of about 219.6%.¹⁷ While there were presidential pardons issued during the peak of the pandemic period, these were not motivated by the need to curb the spread of the virus and were done ahead of celebrations such as Independence Day and Africa Day.¹⁸

¹⁵ D Muchena, "Killings and Brutal Crackdown against Dissent Set the Tone for August Election," *Amnesty International*, June 28, 2021, <https://www.amnesty.org/en/latest/news/2021/06/zambia-killings-and-brutal-crackdown-against-dissent-set-the-tone-for-august-election/>.

¹⁶ Zambia Judiciary, "Memorandum from the Judiciary on Corona Virus (COVID-19) – Precautionary Measures (Superior Courts)," March 19, 2020, <https://acjr.org.za/resource-centre/the-judiciary-coronavirus-covid-19-superior-courts-precautinary-measures.pdf>; Zambia Judiciary, "Memorandum from the Judiciary on Corona Virus (COVID-19) – Precautionary Measures (Subordinate and Local Courts)," March 19, 2020, <https://acjr.org.za/resource-centre/the-judiciary-coronavirus-covid-19-subordinate-courts-and-local-courts-precautions.pdf>.

¹⁷ "World Prison Brief Data: Zambia," *World Prison Brief*, 2022, <https://www.prisonstudies.org/country/zambia>.

¹⁸ Huaxia, "Zambian President Pardons 700 Prisoners to Mark Independence Day," *Xinhua Net*, October 23, 2021, http://www.news.cn/english/2021-10/23/c_1310264394.htm; J Kunda, "Zambian President Pardons 579

With regard to whether prisoners were allowed to access their normal amenities and privileges during the COVID-19 period (i.e., the provision of exercise, contact with visitors, provision of ready material, etc.), it was explained that there already exists very few amenities and privileges available to prisoners, and these were further reduced during COVID-19 peaks.¹⁹ For instance, prison visiting hours were drastically reduced from 30 minutes to only five minutes to enable family members to drop off food and medication parcels. The number of visitors per prisoner was also reduced from two people to one person. Unfortunately, many families and relatives were not notified of these restrictions and some had to return home upon hearing the news at the prison entrance. The ban on prison visits was lifted in August 2021, some 18 months after the initial introduction. Workshop participants noted that unlike the section where prisoners sentenced to death are kept (condemned section), prisoners were still allowed to leave their cells in the morning for one hour for prayers and exercise, but their movement was restricted to the hallways as they were not permitted to go outside. There were no known prison protests that occurred during the pandemic.

4. Socio-economic impact of COVID-19 restrictions

The socio-economic impact of COVID-19 restrictions were severely felt by the population. It appears that government did not put in place means to support people, especially the poor and marginalised during the pandemic. Zambia's informal economy was hardest hit by the pandemic as it employs over 70 percent of the country's population.²⁰ Workshop participants reported that street-vendors, transport operators, and small business owners (i.e., hair salons and barber shops) were unable to operate as usual due to capacity restrictions, resulting in fewer customers and reduced income.

An assessment of the impact of COVID-19 on household income and food security confirms that the pandemic affected the livelihoods and food security of Zambians in both rural and urban areas.²¹ Local evidence shows that price gouging, reduced customers and business income affected urban

Prisoners Ahead of Africa Day," *Anadolu Agency*, May 24, 2021, <https://www.aa.com.tr/en/africa/zambian-president-pardons-579-prisoners-ahead-of-africa-day/2252812>.

¹⁹ P Phiri, "First HIV, Now Coronavirus: Keeping Zambia's Prisoners Healthy Gets Even Harder," *Global Press Journal*, April 12, 2020, <https://globalpressjournal.com/africa/zambia/first-hiv-now-coronavirus-keeping-zambias-prisoners-healthy-gets-even-harder/>.

²⁰ K Muloko and S Mitelo, "Impact of COVID-19 on Household Incomes and Food Consumption – The Zambian Case" (Food Security Policy Research, Capacity, and Influence, July 2021), https://www.canr.msu.edu/prci/publications/Policy-Research-Notes/PRCI_PRN_1_Impact%20of%20COVID-19%20on%20Household%20Incomes%20and%20Food%20Consumption-The%20Zambian%20Case.pdf.

²¹ Muloko and Mitelo.

households more than their rural counterparts.²² Moreover, it was also found that the pandemic and its associated restrictions of movement and assembly also resulted in reduced household income.²³

On 20 March 2020, the government closed all learning and educational institutions. The schools closure affected about four million learners and it is estimated to have deprived 1.2 million children of poor families who rely on school feeding schemes.²⁴ The Ministry of General Education made provision for remote learning (alternatives to in-class learning) during school closures. Educational programmes were launched on the national broadcaster and ‘Smart Revision’ which an online service that allows final year students to prepare for examinations. However, workshop participants reported that these programs were not accessible to a large proportion of students, particularly those from poor backgrounds. It was reported that a large proportion of rural Zambian households do not have access to a television (37%), radio (40%) and the internet (17.7%) and that power supply interruptions equally limited the effectiveness of these programs.²⁵ Pupils from rural areas were the most disadvantaged, as only 11% of rural households in Zambia have access to electricity.²⁶ In June 2020, schools reopened for examinations only and all learning institutions were reopened in September 2020. It could not be determined how many children returned to school once classes resumed. However, evidence has shown that temporary school closures may have also led to the permanent drop-out of children from vulnerable households, especially in rural areas.²⁷

5. Access to information and public awareness and engagement

The dissemination of COVID-19 related information and updates on the government's response to the pandemic was important to ensure that the public is educated about the virus and are aware of their duties in response to the measures. The workshop participants noted that President Hichilema and government officials had regular media briefings to inform the country about the virus. A

²² Muloko and Mitelo.

²³ A Finn and A Zadel, “Monitoring COVID-19 Impacts on Households in Zambia” (World Bank, July 2020), <https://openknowledge.worldbank.org/bitstream/handle/10986/34459/Monitoring-COVID-19-Impacts-on-Households-in-Zambia-Results-from-a-High-Frequency-Phone-Survey-of-Households.pdf?sequence=1>.

²⁴ Finn and Zadel; A Nkwaine and C Simwanza, “Understanding the Implications of the Covid-19 School Closure on Learners in Zambia” (SAIPAR, 2020), <https://saipar.org/wp-content/uploads/2020/12/Understanding-the-Implications-of-the-Covid-19-School-Closure-on-Learners-in-Zambia.pdf>.

²⁵ Nkwaine and Simwanza, “Understanding the Implications of the Covid-19 School Closure on Learners in Zambia.”

²⁶ Nkwaine and Simwanza.

²⁷ Finn and Zadel, “Monitoring COVID-19 Impacts on Households in Zambia.”

representative from the Zambian National Public Health Institute indicated that the dissemination of COVID-19 related information through daily media updates on the COVID-19 infection rate, recovery rate, death rate and vaccination rates occurred on a regular basis. This information was also made available on the government's public health website. Despite these updates, workshop participants noted that there were many vaccine misconceptions promoted on social media, resulting in vaccine hesitancy amongst the population.²⁸ It was the general view of participants that the government as well as civil society organisations could have done more to dispel these misconceptions.

Workshop participants noted that there was limited opportunity for public engagement regarding COVID-19 measures as there appeared to be a top-down approach when measures were issued by the government. Citizens from lower socio-economic strata of society were not considered, and the public, academics and civil society organisations did not participate in the policy-making processes of COVID-19 measures. This reportedly changed in September 2021 when the newly elected President Hichilema appointed a COVID-19 National Advisor tasked with coordinating the country's response to the virus.²⁹ Workshop participants reported that since December 2021, there had been more engagements between various state and non-state groups relating to the country's COVID-19 measures.

6. The operation of oversight institutions during COVID-19

Human rights institutions and oversight bodies play an important role in promoting and protecting human rights. They can monitor the human rights situation in the country, investigate and resolve complaints, and engage the government on laws and policies that do not comply with the Constitution and international human rights standards. In 2010 Zambia signed the Optional Protocol to the Convention against Torture (OPCAT), but has not yet ratified it.³⁰

Zambia has a Human Rights Commission and a representative of the Commission was present at the workshop. It was noted that the Commission was operational throughout the pandemic. At the outbreak of the pandemic, staff members worked on a rotational shift basis whilst others worked from

²⁸ J Haruyama, "The Truth Is Not Known': COVID-19 Vaccine Hesitancy as a Failure of Biomedicine's Moral Legitimacy in Zambia," August 20, 2021, <http://somatosphere.net/2021/vaccine-hesitancy-zambia-moral-legitimacy.html/>.

²⁹ "President Hichilema Appoints Covid-19 National Response Coordinator," *Lusaka Voice*, September 15, 2021, <https://www.lusakavoice.com/2021/09/15/president-hichilema-appoints-covid-19-national-response-coordinator/>.

³⁰ United Nations Human Rights Office of the High Commissioner, "UN Treaty Body Database: Zambia," 2022, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=194&Lang=EN.

home. During this time, the Commission undertook a number of activities, including; offering support and advice to members of the public and government departments; monitoring law enforcement agencies' actions to ensure that they were proportionate and protect human rights; investigating complaints of human rights abuses; and educating the public on COVID-19 by disseminating information through electronic and print media.

In 2020 the Commission (with the support of GIZ) visited prisons and police cells to monitor conditions, assess the levels of compliance with COVID-19 guidelines and to ensure that prisoner rights were safeguarded and protected. During the monitoring visits the Commission learnt that in some provinces court sittings had been revised by reducing the number of prisoners attending a court sitting to reduce the risk of spreading the virus. As a result of these measures, some prisoners complained about them not appearing in court, with some alleging that they were unaware of their next date of appearance. This situation negatively impacted due process rights which requires that a person charged with a criminal offence should be brought before a court as soon as reasonably practicable in line with the Constitution.³¹

Moreover, the Commission representative reported that before a prisoner was taken to a detention facility, he or she had to be examined in hospital and were only admitted to a facility upon production of a medical certificate. It was also observed that there were mandatory hand washing points at all detention centre gates and visitors, as well as correctional officers, had to wash their hands before entering the facilities.

Prisoners were also sensitized about COVID-19 and were encouraged to report any symptoms to a staff member for the health and well-being of all. Hand washing points were placed in courtyards for them to use when they were outside their dormitories and prisoners that had face masks were required to put them on, but not all prisoners had face masks. The Commission was informed that prisoners with complaints of any illness were taken to an external clinic or hospital for medical attention if the prison had no clinic. The representative of the Commission noted that social distancing at detention facilities was not possible due to over-crowding.

The representative of the Commission further noted that people coming to report cases at police stations were required to wear face masks and observe other COVID-19 guidelines, but there were inadequate amounts of Protective Personal Equipment (PPEs) available for police officers at police stations. The Commission also found that suspects at police stations were not screened for any diseases before they were placed in the cells. The representative from the Commission also reported

³¹ Republic of Zambia, "Article 18, Zambia Constitution" (1991).

that complaints were received against the police alleging assaults and harsh enforcement of measures. In April 2020 the Commission called on law enforcement officials to observe and respect constitutional requirement pertaining to the rule of law and human rights during the enforcement of COVID-19 measures.³²

In addition to the above, the Commission also produced and distributed educational material on COVID-19 to various provinces focusing on government measures during the pandemic, tips on how to protect oneself against the virus and information on the activities of the Commission during the pandemic (i.e., receiving and investigating complaints and human rights violations).

7. Good Practice for future use in the criminal justice sector

The workshop participants shared some good practice initiatives introduced by the government within the criminal justice sector that can be used in the future. These are noted below.

7.1. Political Leadership

Gleaning from the workshop discussions, there appears to have been a change in the country's handling of the pandemic after the general election took place in August 2021. The previous government had a top-down approach in its regulation of COVID-19 measures, which were often communicated through presidential announcements. However, the incoming government appointed a COVID-19 Advisor which assisted in better co-ordinating the country's response and allowed for engagements between state and non-state actors in the COVID-19 decision-making process.

7.2. The use of temporary measures

Workshop participants noted a few temporary measures, which served a purpose at the peak of the pandemic, but which should be carefully considered before implementation in the future. This includes the amendments made to the Correctional Services Act to allow the Commissioner of Prisons the power to set up temporary facilities for COVID-19 patients. This arrangement worked well as a temporary measure, but such power should not be considered as a long-term solution in fear that it is often difficult to roll it back, leading to permanent detrimental consequences.

³²Human Rights Commission Secretariat, "HRC Calls for Observance of Respect for Human Rights during the Enforcement of Guidelines on Preventing the Spread of Coronavirus."

7.3. Relaxation of bail requirements

Workshop participants also commended the decision to relax bail and bond conditions which helped decongest the already overcrowded detention facilities. This is a more sustainable solution as opposed to the moving of prisoners from highly congested prisons to less congested prisons which was done at the start of the pandemic.

7.4. Active civil society

Workshop participants commended the inception of the 'Triple C Coalition' which was formed at the peak of the pandemic and which meets once a month at the Lusaka Magistrate Court to discuss issues of prisoners and suspects in detention facilities. The coalition provides state and non-state actors the opportunity to address the many challenges faced within the justice system. On a more general note, participants also noted that because of government and civil society organisation sensitisation campaigns, there are now improvements in the overall hygiene practices of Zambians such as the washing of hands and sanitisation.

8. Conclusion

The stakeholder engagement workshop held in Zambia offered a platform for civil society and officials from oversight institutions to discuss the socio-economic impact of COVID-19 and its impact on criminal justice and human rights. There are many lessons to be learnt, especially with regards to how the enforcement of measures should be implemented, especially during a public health crisis. The Standard Operating Procedures issued to guide law enforcement officials in the enforcement of COVID-19 restrictions, was a good initiative. However, its implementation was inconsistent and many rights violations were reported. The uncertainties surrounding the ungazetted regulations pronounced by the previous president also exacerbated rights violations as law enforcement officials were left to interpret these regulations, much to the disadvantage of people. The appointment of a COVID-19 Advisor was a positive step in stream-lining the government's response to the pandemic and also offered an opportunity for public engagement which is a key feature of democracies.

The socio-economic impact of the pandemic will have a long-lasting impact on the Zambian population, especially on low-income earners, such as owners of restaurants, hair salons as well as informal traders. It is important that the government is cognizant of this and implements policies to mitigate the effects of the pandemic. The views from the stakeholder engagement workshop hosted in Zambia reaffirm the point that a criminal justice approach was not and is not the appropriate

response to a public health crisis. Instead, when dealing with a pandemic, it is important that the upholding, promotion and advancement of human rights should be a central focus of all government endeavours.

Appendix: Stakeholder Participation List

The Stakeholder Engagement Workshop was attended by 22 representatives from the following organisations:

1. Africa Criminal Justice Reform (ACJR)
2. Jesuit Centre for Theological Reflection (JCTR)
3. Law Association of Zambia (LAZ)
4. Legal Resources Foundation (LRF)
5. Legal Aid Board (LAB)
6. Media Institute of Southern Africa – Zambia (MISA ZAMBIA)
7. Paralegal Alliance Network (PAN)
8. Undikumbukire Project Zambia (UP-Zambia)
9. Prison Care and Counselling Association (PRISCCA)
10. Ubuntu Justice Initiative (UJI)
11. University of Zambia Law School (UNIZAM)
12. Zambia Correctional Services (ZCS)
13. Zambia Human Rights Commission (ZHRC)
14. Zambia Law Development Commission (ZLDC)
15. Zambia National Public Health Institute (ZNPHI)

Bibliography

- Electoral Institute for Sustainable Democracy in Africa. "Zambia: 2021 Presidential Election Results." *EISA*, August 31, 2021. <https://www.eisa.org/wep/zam2021results.htm>.
- Finn, A, and A Zadel. "Monitoring COVID-19 Impacts on Households in Zambia." World Bank, July 2020. <https://openknowledge.worldbank.org/bitstream/handle/10986/34459/Monitoring-COVID-19-Impacts-on-Households-in-Zambia-Results-from-a-High-Frequency-Phone-Survey-of-Households.pdf?sequence=1>.
- Haruyama, J. "'The Truth Is Not Known': COVID-19 Vaccine Hesitancy as a Failure of Biomedicine's Moral Legitimacy in Zambia," August 20, 2021. <http://somatosphere.net/2021/vaccine-hesitancy-zambia-moral-legitimacy.html/>.
- Huaxia. "Zambian President Pardons 700 Prisoners to Mark Independence Day." *Xinhua Net*, October 23, 2021. http://www.news.cn/english/2021-10/23/c_1310264394.htm.
- Human Rights Commission Secretariat. "HRC Calls for Observance of Respect for Human Rights during the Enforcement of Guidelines on Preventing the Spread of Coronavirus." *Zambia Human Rights Commission*, April 13, 2020. <http://www.hrc.org.zm/index.php/multi-media/news/349-hrc-calls-for-observance-of-respect-for-human-rights-during-the-enforcement-of-guidelines-on-preventing-the-spread-of-coronavirus-2>.
- Kunda, J. "Zambian President Pardons 579 Prisoners Ahead of Africa Day." *Anadolu Agency*, May 24, 2021. <https://www.aa.com.tr/en/africa/zambian-president-pardons-579-prisoners-ahead-of-africa-day/2252812>.
- Malumo, T. "ZP Launches Standard Operating Procedure on COVID - 19." *Zambia Police*, 2021. <http://www.zambiapolice.gov.zm/index.php/112-news/372-zp-lauches-standard-operating-procedure-on-covid19>.
- Muchena, D. "Killings and Brutal Crackdown against Dissent Set the Tone for August Election." *Amnesty International*, June 28, 2021. <https://www.amnesty.org/en/latest/news/2021/06/zambia-killings-and-brutal-crackdown-against-dissent-set-the-tone-for-august-election/>.
- Muloko, K, and S Mitelo. "Impact of COVID-19 on Household Incomes and Food Consumption – The Zambian Case." Food Security Policy Research, Capacity, and Influence, July 2021. https://www.canr.msu.edu/prci/publications/Policy-Research-Notes/PRCI_PRN_1_Impact%20of%20COVID-19%20on%20Household%20Incomes%20and%20Food%20Consumption-The%20Zambian%20Case.pdf.
- Muntingh, L, J Mangwanda, J Redpath, K Petersen, and T Lorizzo. "Criminal Justice, Human Rights and COVID-19 - a Comparative Study of Measures Taken in Five African Countries." *Africa Criminal Justice Reform*, 2021. <https://acjr.org.za/acjr-publications/combined-covid-19-report-13-10-2021-final.pdf>.
- Mwila, T. "'Bar And Night Club Owners Write Police To Protest Over Continued Closure Of Their Businesses.'" *Zambia 24*, June 26, 2020. <https://zambia24.com/bar-and-night-club-owners-write-police-to-protest-over-continued-closure-of-their-businesses>.
- Nkwaine, A, and C Simwanza. "Understanding the Implications of the Covid-19 School Closure on Learners in Zambia." SAIPAR, 2020. <https://saipar.org/wp-content/uploads/2020/12/Understanding-the-Implications-of-the-Covid-19-School-Closure-on-Learners-in-Zambia.pdf>.
- Phiri, P. "First HIV, Now Coronavirus: Keeping Zambia's Prisoners Healthy Gets Even Harder." *Global Press Journal*, April 12, 2020. <https://globalpressjournal.com/africa/zambia/first-hiv-now-coronavirus-keeping-zambias-prisoners-healthy-gets-even-harder/>.

- Lusaka Voice. "President Hichilema Appoints Covid-19 National Response Coordinator," September 15, 2021. <https://www.lusakavoice.com/2021/09/15/president-hichilema-appoints-covid-19-national-response-coordinator/>.
- Republic of Zambia. Article 18, Zambia Constitution (1991).
- . Public Health Act (1995).
- . Statutory Instrument No 021 The Public Health (Notifiable Infectious Disease) (Declaration) Notice (2020). <https://www.enotices.co.zm/download/statutory-instrument-no-21-of-2020-the-public-health-notifiable-infectious-disease-declaration-notice-pdf/>.
- . Statutory Instrument No 022 The Public Health (Infected Areas) (Coronavirus Disease 2019) Regulations (2020). <https://www.enotices.co.zm/download/statutory-instrument-no-22-of-2020-the-public-health-infected-areas-coronavirus-disease-2019-regulations-pdf/>.
- United Nations Development Program. "Supporting the Fight Against COVID19: Zambia Police Service Launches Guidelines to Equip Police Officers and to Safeguard the Vulnerable," June 15, 2020. <https://www.zm.undp.org/content/zambia/en/home/presscenter/pressreleases/2020/Supportingthefightagainstcovi19zambiapoliceservicelaunchesguidelines.html>.
- United Nations Human Rights Office of the High Commissioner. "UN Treaty Body Database: Zambia," 2022. https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=194&Lang=EN.
- World Bank. "Country Overview: Zambia," September 23, 2021. <https://www.worldbank.org/en/country/zambia/overview#1>.
- World Prison Brief. "World Prison Brief Data: Zambia," 2022. <https://www.prisonstudies.org/country/zambia>.
- Worldometer. "Zambia Population Vaccination Statistics," December 31, 2021. <https://www.worldometers.info/world-population/zambia-population/>.
- Xinhau. "Zambia Tightens COVID-19 Preventive Measures to Avert 4th Wave." *Xinhua Net News*, November 29, 2021. http://www.news.cn/english/africa/2021-11/29/c_1310340791.htm.
- Zambia Judiciary. "Memorandum from the Judiciary on Corona Virus (COVID-19) – Precautionary Measures (Subordinate and Local Courts)," March 19, 2020. <https://acjr.org.za/resource-centre/the-judiciary-coronavirus-covid-19-subordinate-courts-and-local-courts-precautions.pdf>.
- . "Memorandum from the Judiciary on Corona Virus (COVID-19) – Precautionary Measures (Superior Courts)," March 19, 2020. <https://acjr.org.za/resource-centre/the-judiciary-coronavirus-covid-19-superior-courts-precautinary-measures.pdf>.