



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



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

## Kenya

Janelle Mangwanda  
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# Kenya government response to COVID-19

- The government invoked a Curfew Order and issued Public Health Rules to control the spread of COVID-19.
- COVID-19 measures included the mandatory wearing of masks in public places, the suspension of public gatherings, the establishment of a curfew and the closure of most public spaces (e.g., schools, hotels, bars, and churches).
- The COVID-19 rules were amended regularly during 2020 and 2021, depending on the infection rate.
- Although the COVID-19 measures were applicable to everyone, the enforcement of measures was concentrated in urban centres (i.e., Eldoret, Kisumu, Mombasa, Nairobi and Nakuru).
- The curfew declared in March 2020 was completely lifted in October 2021.

# Enforcement of measures and documenting rights violations

- The enforcement of COVID-19 rules was uneven, unreasonable and frequently arbitrary. This was observed through arrests targeting touts, street vendors and sex-workers in less affluent areas, while very few elite people and those from affluent areas were targeted.
- A number of COVID-19 measures were regarded as problematic:
  - Mandatory mask wearing in public spaces and the fact that violations attracted a fine of Ksh 20 000 (US\$ 173).
  - Presidential directives were issued indicating different curfew times in areas where COVID-19 infections were high.
  - The zoning out of certain geographical areas or counties which were placed under 'lockdowns'.
  - Forced isolation at government quarantine facilities of people who displayed COVID-19 symptoms, travellers, those who violated the curfew and those found without face masks in public.

Reports of police brutality and fatalities as a result of the enforcement of COVID-19 rules.

- 15 people were killed by police officers during the first nine weeks of the curfew.
- Amnesty International reported that the police had unlawfully killed 167 people, including some of those arrested for violating COVID-19 restrictions. According to AI, only 28 prosecutions were initiated against suspected perpetrators of unlawful killings and enforced disappearances.

# Socio-Economic Impact of COVID-19 measures

- Kenya is a lower-middle income economy with a population of 55.5 million. It is estimated that 36.1 percent of the population live below the international poverty line of US\$1.90 a day.
- The general view was that **initially the government did not consider the socio-economic condition of the population** when imposing COVID-19 measures.
- Subsequently, government undertook three main initiatives to ease the burden of restrictions.
- 1) Tax concessions and financial assistance.
- 2) Relief fund in the form of cash transfers for low-income earners to the value of Ksh 10 000 (US\$ 87) per month.
- 3) The provision of relief food packages to some informal settlements.

# Business

- County-specific lockdowns in major cities made it difficult for farmers to bring their produce to the cities unless they had a permit to enter counties under 'lockdown.'
- Street traders and hawkers had to reduce their working hours and were severely affected by the curfew and county-specific lockdowns.

# Gender issues and access to social services

- The pandemic had a disproportionate impact on women and girls who faced significant challenges such as job losses, increased household and care duties, and vulnerability to sexual and gender-based violence.
- In April 2020 the outgoing Chief Justice David Maraga raised concerns over the fact that within the first two months of the lockdown, 35.8 percent of cases filed in courts across the country related to sexual and gender-based violence.
- Women also had challenges accessing reproductive health facilities. In response to these challenges, several gender-based violence desks, safe houses, toll-free numbers and virtual justice centres were launched between 2020 and 2021.
- There was a rise in mental healthcare issues. While the Kenyan Ministry of Health embarked on efforts to deliver mental healthcare, this was done against the backdrop of an under-resourced system characterized by inaccessible services, an acute shortage of mental health workers and limited funding.

# School Closures

- A study conducted on the impact of the COVID-19 lockdown on the education system found that it increased female adolescent pregnancies.
- It is reported that within the first five months of the pandemic, almost 4000 school-going girls became pregnant. When schools reopened some 10 months later in 2021, there was extensive school dropout among secondary schoolgirls.
- While virtual learning was possible for some students in urban areas, the unbalanced access to computers, laptops and internet connection meant that children from rural areas were disadvantaged.
- The lack of electricity in villages such as Kajiado, Narok, Samburu, Turkana and Kilifi resulted in marginalised children in these villages not being able to access virtual learning even if they wished to.

# Public Transportation

- The COVID-19 measures restricting the number of people in public transport vehicles resulted in the doubling of fares rendering transportation unaffordable to the poor and working class.
- Collusions between law enforcement officials and public transport operators increased during the COVID-19 period as public operators often obeyed the capacity restrictions in urban areas but once outside city limits, would load passengers in excess of the restriction, but were not penalised.

# Arts and Culture

- In April 2020 the Ministry of Sports, Culture and Heritage announced an emergency relief package of Ksh 100 million (US\$ 866 724) for artists, actors and musicians to continue to entertain during the pandemic through television and radio.
- The sports industry was also impacted by the restrictions. In March 2020, the Kenyan Athletic Authority ordered the closure of training camps and clubs to curb the spread of the virus.
- Children who contribute to household expenses through earnings made from sports were deprived of this income, pushing some children to become hawkers to support their families.

# Dissemination of information

- The President and government officials held regular media briefings and kept citizens informed about COVID-19 preventative measures and updates through mainstream media (newspaper and radios and television) and social media.
- The government also raised awareness about the dangers of COVID-19 to children through educational cartoons.
- When updates on the virus were provided via television and other communication channels, people from disabled communities (the blind and those hard of hearing) were not considered in the method of conveyance.
- Counties made press releases on COVID-19 related data and village chiefs were educated on the dangers of the virus so as to relay this information in local dialects.
- Biggest concern: the limited public participation in the development of COVID-19 measures.

# Innovative and effective responses to COVID-19

- Community-led initiatives such as dialogues focusing on human rights sensitisation as well as the provision of psycho-social support.
- The reporting and following up on human rights violations by civil society organisations during the pandemic.
- Provision of legal aid assistance through paralegals and pro-bono lawyers.
- The provision of food relief, medical assistance as well as masks and sanitizers to low-income earning communities by aid agencies such as the Red Cross Society.
- The Red Cross Society created zones where inmates found with COVID-19 could be quarantined.
- The collaboration between the Law Society of Kenya, CSOs and paralegals providing legal aid and assistance.
- The Kenya Law Society reduced the fees for Continuous Professional Development Studies which advocates are subjected to before getting the renewal of practicing certificates. The rates normally range from Ksh 2000-5000 (US\$ 17- US\$ 43), but this was reduced to Ksh 1500 (US\$ 13) and a two-months grace period was given to those who failed to pay on time.

# Recommendations for the future

- **INNOVATIVE APPROACH:** There is a need to have a multi-agency approach including civil society organisations, medical institutions, and the education sector in dealing with a pandemic rather than leaving it to the criminal justice sector to handle.
- **PUBLIC HEALTH MEASURES** - State responses and measures should consider the socio-economic realities of its citizens. It is important that in the future, the Kenyan government takes proactive measures to ensure that the poor and most vulnerable in society are considered and catered for and that funds destined for social and poverty alleviation reach the intended persons.
- **EDUCATION DURING A CRISIS** - The challenge of internet connectivity during COVID-19 for school-going children has drawn attention to the importance of well-operational telecommunication systems. The Kenyan government must invest in education and distance learning mechanisms.
- **UNLIMITED PROVISION OF HEALTH CARE AND SOCIAL SERVICES** - It is recommended that in future, the government must ensure that all healthcare and social services continue to be provided to the population despite the presence of an epidemic or pandemic.
- **PUBLIC PARTICIPATION** - There was little to no participation available to citizens as far as making recommendations during COVID-19. It is important that in the future, a more inclusive and participatory approach is taken when dealing with pandemics and public health crisis.

# Conclusion

- Most countries within southern and east Africa already suffer from inequalities and high levels of poverty and unemployment. The pandemic and accompanying measures have created further socio-economic challenges which will take years to recover from.
- It is crucial that poverty and status are not criminalised irrespective of the public health crisis.
- Measures must be **necessary, proportional, reasonable, lawful, non-discriminatory and time bound** while at the same time upholding the human rights of citizens.

Thank you