



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 & the impact on criminal justice & human rights

Zambia

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Introduction

- The spread of COVID-19 and governments response to the virus had significant consequences for citizens, various institutions of the state - and in particular criminal justice systems (CJS) around the world.
- The restrictions placed CJS on hold for periods of time and affected the rights of victims and due process rights of arrested and detained persons.
- It was therefore important to understand how COVID-19 measures restrictions impacted the CJS and human rights/oversight institutions and what can be done to strengthen the situation in the future.

Overview of presentation

- Presentation briefly highlights three areas of the report on Zambia:
 1. The impact of COVID-19 measures on the CJS.
 2. The impact of COVID-19 measures on oversight and detention monitoring.
 3. Good initiatives undertaken in the CJS during COVID-19.

The impact of COVID-19 on the CJS

- COVID-19 measures created a number of challenges – courts, detention facilities.
- **Limited court operations**
- Courts continued to operate however, some courts reduced the number of awaiting trial detainees (ATD) from attending court to reduce the risk of spreading the virus. (ZHRC)
- Some ATD complained about not being brought to court for their cases, with some alleging they were unaware of their next court date. (ZHRC)

The impact of COVID-19 on the CJS

- **Overcrowding at police cells**
- Before an accused was admitted to a detention facility, he/she had to be tested for COVID-19 and was only admitted upon production of a medical certificate. Workshop participants highlighted this as a problem – resulted in long delays at police stations waiting to be tested for COVID-19 and as a result - overcrowding at police cells.
- **Use of audio visual link-up**
- At court level, problems with the use of lack of audio-visual link-up (once this became available) and regular power-cuts often frustrated court proceedings. This delayed court proceedings – incl. bail applications and trials.

The impact of COVID-19 on the CJS: Courts

- **Legal representation and paralegals continued to operate during the pandemic to render assistance to indigent accused persons.**
- **Overcrowding in prison facilities**
- Prison overcrowding in Zambia is a longstanding problem.
- 219.6% overcrowded.
- Prison Care and Counselling Association (PRISCA) and ZHRC highlighted concerns regarding the lack of social distancing in prisons.
- Despite the overcrowding situation, the threats posed by COVID-19 did not prompt government to make any renewed effort to address the problem.

The impact of COVID-19 on the CJS

- While there were presidential pardons issued during the peak of the pandemic, these were not motivated by the pandemic and were done ahead of celebrations. (i.e. Independence & Africa Day)
- **Visitations/amenities at prison facilities**
- 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.

The impact of COVID-19 on the CJS

- 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.
- 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.

The role of human rights institutions

- 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, policies and conduct that is inconsistent with the Constitution and international human rights law.
- Zambia has a Human Rights Commission (ZHRC) and a representative of the Commission was present at the workshop.
- **Were they operational during COVID-19, were they permitted to function during the pandemic?**

The role of human rights institutions

- ZHRC was operational throughout the pandemic.
- At the outbreak of the pandemic, staff members worked on a rotational shift basis whilst others worked from 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; investigating complaints of human rights abuses; and educating the public on COVID-19 by disseminating information through electronic and print media.

The role of human rights institutions

- In April 2020 the Commission called on law enforcement officials to observe and respect the rule of law and human rights during the enforcement of COVID-19 measures.
- In 2020 the Commission (with the support of GLZ) 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.
- **Some of the findings:**

The role of human rights institutions

- a) Some problems were identified – inmates had difficulties accessing courts, impact on due process rights of arrested and detained individuals. Also found prolonged detention at police stations due to mandatory COVID-19 testing.
- b) Prisons complied with sanitisation but social distancing at prisons was not possible due to over-crowding.
- c) Inadequate amounts of Protective Personal Equipment (PPEs) available for police officers at police stations.
- d) Suspects at police stations were not screened for any diseases before they were placed in the police cells.
- e) Complaints were received against the police alleging assaults and harsh enforcement of measures.

Good practice initiatives

- Despite the challenges that were present, workshop participants shared some good initiatives introduced by the government
- The circular issued by the Minister of Justice detailing the operations of courts during COVID-19 allowed for the relaxation of bail conditions, promoted the use of police bail and bond in order to reduce overcrowding.
- Although there were challenges in communicating limitation on visits to prisons –allowing families to drop off food and other supplies safeguard wellbeing of detainees.

Good practice initiatives

- Similarly, introduction of virtual courts can have a impact despite challenges encountered – if problems addressed.
- A coalition 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.

Concluding remarks

- COVID-19 lock-downs presented a unique opportunity to investigate and analyze criminal justice systems and their performance under unusual circumstances.
- Through hosting these consultations, we identified some problems, some good initiatives and lessons can be learnt from them to strengthen institutions and in particular the CJS.
- Less evasive restrictions on courts and detention facilities in comparison to other countries.

Concluding remarks

- It is important that COVID-19 measures implemented during crisis situations protect due process and fair trial rights of accused persons
- In order to address mishaps that had occurred (i.e. court missed dates of ATD) consider implementing task team for tracking. Crisis management task teams can also help ensure pandemic preparedness.
- Virtual proceedings – can be a good and bad. Fundamentally, its use should safeguard the rights of people to a fair trial. If this cannot be guaranteed it should not be used. Address issues that frustrate the use of such proceedings - equipment, infrastructure (i.e. address load shedding), the training of court personnel.

Concluding remarks

- Overcrowding remain a challenge in all countries surveyed but more efforts were done in other countries to address these challenges (i.e. release of low risk offenders, petty offenders) beyond shifting people around various facilities.
- Much more could have been done to reduce overcrowding in detention facilities.
- The issue of overcrowding in detention facilities should be addressed beyond the pandemic. The release of offenders for petty offences, the review of sentences of petty offenders, enhancing access to free bail and bond at police stations - are some other good examples.
- Important that these innovations should not only be prioritised during crisis periods only. There should be a concerted effort amongst criminal justice actors to implement alternatives to imprisonment (diversion, ADR)

Thank you

