



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

## Malawi

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# Malawi Government Response to COVID-19

- The COVID-19 pandemic could not have come at a worse time. Change in government (presidential re-elections in June 2020).
- Curfews, lockdowns, movement and gathering restrictions limited citizens' rights.
- Mutharika government declared a State of Disaster and a lockdown was ordered to restrict population movement as a measure of curbing the spread of the virus.
- However, the decision to declare the State of Disaster was challenged and overturned in the High Court as the court ruled that the proposed lockdown measures resulted in a derogation of fundamental rights and the government had not put in place measures to cushion the effects of the intended lockdown on the poor.
- COVID-19 measures applied to all persons and geographical areas, **but** rules were predominantly enforced in cities and larger towns, such as Blantyre and Lilongwe, as opposed to rural areas and townships.

# Documenting Rights Violations

- The general view was that **the government did not consider the socio-economic condition of their population** when imposing COVID-19 measures which were often irrational, unreasonable and frequently arbitrary.
- 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.
- In general, the widespread enforcement criminalised 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. i.e. disproportionate price of fines and masks.
- Standard Operating Procedures were not issued to guide law enforcement officers in the policing of COVID-19 measures, which contributed to enforcement problems.
- The measures relating to social distancing, hand-sanitisation and mask wearing had unintended consequences for people living with disabilities.

# Socio-Economic Impact of COVID-19 measures

- Malawi is one of the poorest countries in the world with 50.7 percent of the population living below the international poverty line of US\$ 1.90 per person per day.
- Owing to the poor socio-economic conditions in the country, a number of measures such as the restrictions on movement and market hours, severely impacted people's livelihood.
- A grant of 35 000 MK (US\$ 43.00) was introduced by government to assist the poor after the failed lockdown attempt at the start of the pandemic, but not all citizens benefitted from the grant.
- The distribution of cash transfers/grants was riddled by **corruption** due to unclear eligibility criteria and the misappropriation of funds.

# Transportation and Food Insecurity

- Travel bans and restrictions on movements at the start of the pandemic made food imports into the land-locked country difficult.
- There was consequently an increase in the price of general goods and services especially in rural areas.
- This also created a sharp increase in transportation fares by up to 150%.

# Access to healthcare and social services

- Accessing health services such as physiotherapy, family planning, and diabetic clinics at the peak of the pandemic was a challenge since COVID-19 tests were a prerequisite for accessing these health facilities. This again placed resources out of reach for poor people.

# School Closures

- On 23 March 2020, the Ministry of Education issued a directive for all schools to close due to the rising infection rate. Almost six million school-going children stayed home for nearly eight months.
- While the government promoted remote learning for children through the Malawi Broadcasting Corporation and sourced cheaper data from mobile service providers for tertiary education students for online teaching, a greater number of learners were challenged as **limited access to internet connectivity** and computer resources, especially in rural areas rendered online studies impossible.
- Children with intellectual and learning disabilities were further marginalised as special-needs schools and facilities were completely shut down during the peak of the pandemic

# Dissemination of information

- The dissemination of updated COVID-19 related information was done through **mainstream media and social media**. However, information was not relayed in an appropriate manner for persons with disabilities and impairments.
- The information shared included updates on COVID-19 statistics, vaccine availability and the work of the COVID-19 taskforce.
- No public participation in the development of COVID-19 measures lead to **doubts on accuracy** of some COVID-19 information.
- The majority of workshop participants believed that people **were not educated enough** about the virus. **Public misconceptions** about the gravity of the virus and vaccine resulting in vaccine hesitancy which remains a challenge to date. **Only 10.7% of the population is vaccinated as of 30 August 2022.**



# Recommendations for potential future pandemics or public health crisis

- **PUBLIC HEALTH MEASURES** - State responses and measures should consider the socio-economic realities of its citizens. It is important that in the future, the Malawi 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 Malawi 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

