



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 & human rights

Kenya, Malawi, Mozambique, South Africa & Zambia

## The impact of COVID-19 on the criminal justice system

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# Overview

- The implementation of COVID-19 mitigation measures created additional challenges for the criminal justice systems in the countries surveyed.
- As a result, there have been limited hearings, delays in the prosecution of cases, delays in bail applications for accused persons, prison overcrowding – thus impacting the rights of accused/detainee.
- Presentation briefly highlights three areas of the main report:
  1. Impact on Court operations and access to justice
  2. Impact on prisoners rights and detention
  3. The Role of Human Rights institutions

# Access to justice

- **The prioritisation of cases impacted access to justice, fair trial rights**
- In Mozambique, courts were only dealing with new cases and cases involving people in detention for up to a period of four months and in Kenya, South Africa, Malawi and Zambia, courts were prioritising 'urgent cases.'
- Regarding "urgency"-this lead to confusion as to what matters would be dealt with in court
- It also created an opportunity for inconsistency in the application of the hearing of cases; the risk being the exclusion of cases that should have been considered as urgent.
- This situation infringed both on victims' rights to justice and on accused persons due process and fair trial rights.

# Access to justice

- **Virtual proceedings:** Most countries (except for Mozambique) used virtual proceedings to mitigate against the loss of court time. It's a good initiative but proceedings were frustrated due to limited infrastructure, lack of training and in some cases electricity outages.
- **Access to legal aid** was curtailed in some countries i.e. Mozambique and Kenya
- All these difficulties increased the backlog in criminal cases and affected access to justice for victims of crimes and general fair trial rights of arrested and detained persons.
- Despite the challenges faced by criminal justice systems, each report highlights some good practices undertaken to ameliorate the effects of the COVID-19 measures in the respective countries.

# Prisoners rights and detention

- In all the countries surveyed, restrictions on prisoners' access to amenities such as visitation rights severely curtailed access to food, medicine and other essentials.
- In Kenya and South Africa in particular, prisoners were not able to physically consult their lawyers.
- Such provisions limited prisoner's constitutional right to legal representation and other fair trial and due process rights.
- The postponement of court cases resulted in the prolonged detention of remand detainees and, along with an influx of new cases, put strain on already overcrowded prison systems.

# Human Rights Institutions

- Human rights institutions should play a pivotal role during pandemics in ensuring that the treatment of prisoners and their conditions of detention are monitored and protected.
- There was a general sense that human rights institutions were operational during the pandemic in each country, and that a considerable amount of prison visits and monitoring took place.
- Few challenges i.e. South Africa, Kenya and Mozambique
- In Mozambique, participants opined that the Human Rights Commission could have done more to assist during the pandemic and that civil society did more to ameliorate the effects of the pandemic.

Thank you

