

Distance Conscious and Human Rights-Based COVID-19 Policing Guidelines

Recommendations for the National Police Service of Kenya

Art. 28 The dignity of every person is inherent. This right must be respected and protected.

Art. 29 Every person has the right to personal freedom and security. This includes the right not to be subjected to any form of violence or manner of torture, whether physical or psychological; or, be treated or punished in a cruel, inhuman or degrading manner.

Art. 244 The objectives of the National Police Service are to comply and train staff to the highest standards of competence and integrity, and to respect human rights and fundamental freedoms and dignity.

Constitution of Kenya

A police officer shall use non-violent means first and force may only be employed when non-violent means are ineffective or without any promise of achieving the intended result. The force used shall be proportional to the objective to be achieved, the seriousness of the offence, and the resistance of the person against whom it is used, and only to the extent necessary while adhering to the provisions of the law and the Standing Orders.

Sixth Schedule of the National Police Service Act

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INTRODUCTION AND CONTEXT

On the very day the 7pm to 5am curfew was introduced to reduce social interaction and prevent the spread of COVID-19, the National Police Service Inspector General issued 11 guidelines to commanding officers for law enforcement of the curfew. The March 27 guidelines instructed officers to identify themselves as police officers, enforce the curfew by stopping, searching and detaining vehicles, individuals and premises, and to use proportionate force where non-violent means were inadequate.

Article 244(c) obligates the Police Service to comply with constitutional standards of human rights and fundamental freedoms. Despite this, the March 27 guidelines omitted any reference to protecting the rights of people during curfew management. They did not provide guidance on non-violent measures to enforce the curfew or the free movement of essential and critical service workers. They also did not provide for permissible exceptions for emergencies. This might include people taking themselves or others for medical treatment and lawyers attending to clients who are arrested and need assistance with bail or bond.

Lastly, they did not outline distance conscious policing procedures to protect the public and officers from the further transmission of COVID-19. These gaps and the choice to release the guidelines on the very day of the curfew, left very little time for officers to internalise or to receive clarification and training on the guidelines.

In the first five nights of the curfew, at least seven people were killed, sixteen hospitalised and tens hurt in the police operations across seven counties. Journalists, health-workers and human rights defenders complained of intimidation and assaults by police officers. Four Police Officers have been interdicted on allegations of use of excessive and lethal force, use of teargas and batons.

Our Police Officers remain without the basic personal protective equipment necessary to safely engage with the public. On April 1, His Excellency the President apologised for the excessive force that was used during the curfew. It is important that we learn from this experience, new and more effective guidelines are issued.

The success of the curfew and any possible future lockdown depends on collaborative, inclusive human rights-based and distance conscious approach to policing. Preventing COVID-19's transmission requires authorities to foster trust with communities. This will ensure their participation and behavioural change in following the sanitation and social distancing guidelines. It will encourage compliance with the curfew, reduce human rights violations and deepen the professionalism of the Service where it has been lacking. These seven guidelines are offered to the National Police Service to support them to manage the safety of the public within a human rights-based and distance conscious policing framework.

Guideline 1: The principle of protecting life and dignity must be clear to all Police Officers.

1. The Office of the Inspector General publicly declares a zero-tolerance policy for all acts of unlawful, excessive and disproportionate use of force, including sexual and gender-based violence.
2. No law enforcement operation shall be planned or conducted in such a way that from the outset, it accepts the killing or serious injury of persons.
3. Lethal force will only be permitted for protecting officers and persons against an imminent threat of death or serious injury. Officers must have a range of equipment and training at their disposal that allows for a differentiated use of force to ensure harm and injury is kept to a minimum. The use of firearms will not be justifiable in the case of crowd dispersal.
4. Police Officers shall assess the circumstances, assist those in need and only if, and when needed, resort to the use of force or firearms having first issued adequate warnings and at all times, prioritize the protection of by-standers.
5. Police Officers are encouraged to enlist trusted and respected local community, civic and religious leaders to encourage compliance with the curfew regulations.
6. Commanding Officers will conduct refresher sessions with officers on mitigation and prevention of sexual offences including early warning indicators and ensure complaint processing and survivor-centred services are implemented at all police stations before curfew/lockdown deployment.

Guideline 2: The Principle of Protecting the safety and wellbeing of Police Officers

7. Urgent consideration must be given to the protection and well-being of the law enforcement officials deployed. Personal protective equipment must be availed, excessive length of duty must be prevented and the possibility for rest, breaks, food and water created.
8. Public health COVID-19 prevention training, psycho-social therapy and counselling will be availed for all officers that require it.

Guideline 3: The principle of humane and safe public order management

9. Police Officers will not use firearms as a tool to manage public movement and compliance with the curfew deadlines to be off the streets and in homes.

10. Police cordons, the use of tear gas and water cannons will be discouraged especially in residential areas. Congestion, water and tears risk the transmission of COVID-19 to large numbers of people. Roads or other escape routes will be identified and communicated to the public where crowds have to be dispersed
11. Both Police-women and men will manage rapid response and crowd control operations, especially at night, to ensure gender sensitivity during deployment.

Guideline 4: The principle of command responsibility

12. Commanding Officers will submit as required by the law, all original mass deployment plans and report any lethal discharge of weapons to the Independent Policing Oversight Authority (IPOA).
13. Police Officers and their Commanding Officers will be held personally criminal liability for unlawful acts during their duty, covering up or failing to report a crime.
14. Police officers are entitled to refuse unlawful orders. Should an Officer choose to knowingly execute unlawful orders, such orders shall not serve as an acceptable defence.
15. Commanding Officers are required to urgently report to IPOA and the Internal Affairs Unit to investigate and recommend, where appropriate, the removal and punishment of police officers found culpable of acts of excessive and unlawful force.
16. Depending on rank, the Inspector General or the National Police Service Commission will take disciplinary action against any officer who knowingly frustrates and/or refuses to record statements from survivors in police stations.
17. Commanding Officers will be held personally accountable not only for unlawful orders they have given, but also for failings and other omissions that resulted in death or serious injury.

Guideline 5: The principle of the right to grievance redress

18. Police Officers and their Commanding Officers are reminded that all victims have the right to file a complaint, medical assistance, legal and psychological support, be informed of the progress and outcome of an investigation, have their privacy protected and full reparation, including compensation, rehabilitation, restitution and guarantees of non-repetition.
19. Policer Officers are reminded that compensation for rights abuses may not in all cases be borne by the state but also by officers who are found to be criminally liable.

Guideline 6: Monitoring and investigating mechanisms

20. A special team will be established at Jogoo House to document and act on complaints against police officers alleged to have perpetrated violations against members of the public. The team will include expertise on gender-based violence, the rights of persons living with disabilities and children's rights and safety.
21. The Jogoo House-based special team will submit daily progress reports to the Inspector General and share also with the Independent Policing Oversight Authority, Internal Affairs Unit and the Kenya National Commission for Human Rights.
22. The complaint mechanisms under the Internal Affairs Unit (IAU) will be urgently activated to receive allegations of police misconduct or violence by members of the National Police Service.

Guideline 7: Deployment of non-police service personnel

23. The National Police Service shall retain responsibility for the management of the curfew. Should Ancillary forces be tasked with curfew management, they shall be fully acquainted and their deployment be compliant with the Constitution, Police Service Standing Orders, these principles and guidelines.

