

COMMUNIQUE ON POLICE BRUTALITY AND STATE RESPONSES: QUARANTINE AS THE NEW DETENTION

HELD ON WEDNESDAY 29, APRIL 2020

Introduction

1. The Kenyan Section of the International Commission of Jurists (ICJ Kenya), held its third in a series of Human Rights, Justice and Rule of Law webinars on Police brutality and State responses with a focus on quarantine centres as the new detention facilities.
2. Over 150 people participated in the webinar, and 200 others followed the deliberations through social media and online streaming services including YouTube, Twitter, Facebook and WhatsApp.
3. The participants were diverse group, drawn from different fields of expertise and sectors, namely, civil society, human rights defenders and the private sector.
4. The topic of the webinar was informed by the need to address the measures that have been put in place by the government of Kenya in response to COVID-19. In exercising their mandates and functions, the Cabinet Secretary for the Ministry of Interior and Coordination of National Security and the Cabinet Secretary for the Ministry of Health passed two sets of rules to be used during this period. These were the Public Health (Prevention, Control and Suppression of Covid-19) Rules, 2020 and the Public Health (Covid-19 Restriction of Movement of Persons and Related Measures) Rules, 2020.
5. The webinar specifically addressed the enforcement of The Public Health (Covid-19 Restriction of Movement of Persons and Related Measures) Rules, 2020 in particular, those deemed to have violated the directions on curfew and social distancing. Notably, Rule 11 of the Rules states that; “a person who commits an offence under these Rules shall, on conviction, be liable to a fine not exceeding twenty thousand shillings or to imprisonment for a period not exceeding six months or both”.
6. However, in implementing the directives, one of the remedies to curb further spread appears to be arrest and forceful detention of suspects to quarantine facilities at their expense contrary to Rule 11.
7. In the discussion the panellists and participants acknowledged that;
 - a. The offences and the penalties in the Rules were excessive, punitive and enforcement merely served to expose people to more risk of contracting COVID-19;
 - b. The 14-day quarantine safety measure have since been weaponized by the police to harass, violate, intimidate, punish or induce bribes from Kenyans;
 - c. There was an urgent need for psycho social support especially for persons in quarantine facilities;

- d. There was an increase in the number of Gender Based Violence (GBV) during this period;
 - e. State security agencies have systematically violated individual's right to privacy rights through tracking COVID contacts;
 - f. As jurists there was need for further interrogation of the Data Protection Act 2020;
8. In concluding the discussions, the following Resolutions were adopted:
- A. To the National Police Service (NPS):
 - i. Observe and respect the rule of law and human right during the pandemic, these fundamental rights and freedoms have not been suspended;
 - ii. Enforce the law in accordance with provisions of Articles 49(1) (f)) and 50 of the Constitution of Kenya which provides that all arrested persons must be presented before the courts within 24 hours, unless a weekend intervenes;
 - iii. Issue Bail and Bond in accordance to Article 49(1) (h) of the Constitution of Kenya and the National Council on Administration of Justice (NCAJ) Guidelines during COVID -19 pandemic period;
 - iv. Desist from detaining persons within the quarantine centres. The detention at the quarantine centres is neither a punishment prescribed in law therefore illegal nor basis to circumvent the regulations;
 - v. Respect the dignity of every person in accordance with Article 28 of the Constitution of Kenya and adhere to Police Standing orders;
 - vi. Put in place appropriate measures to allow for reporting, investigation and documentation of cases of GBV during the pandemic;
 - vii. Consciously and deliberately adopt a human rights-based approach towards COVID-19 Policing Guidelines. The guidelines should seek to ensure that Police Officers are protected from exposure to COVID-19 in the implementation of their duties.
 - B. To the Judiciary:
 - i. Put in place measures to expedite cases of Sexual and Gender Based Violence that occur during the lock down and for the Chief Justice to issue practice directions;
 - ii. Put in place mechanisms to allow for those arrested in violation of the Public Health Act to be brought before courts to take plea;



C. To the Legislators:

- i. The Senate committee on Justice, Legal Affairs and Human Rights and the Justice and Legal Affairs Committee of the National Assembly to interrogate the regulations and directives issued by the Cabinet Secretary for Health and the enforcement of the regulations.

D. To the National Council of Administration of Justice (NCAJ):

- i. Issue guidelines on the administration of cases of persons found in violation of the Public Health Act and Rules in order to safeguard against security agents weaponizing quarantine in a bid to extort and harass Kenyans;
- ii. Coordinate all criminal Justice actors to work jointly in implementing the diversion policy to ensure petty offenders are not detained;
- iii. Implore the government to establish a tribunal or other access to justice mechanism to look into complaints arising out of abuses and violations occurring in the context of enforcement of quarantine measures.

E. To the Independent Policing Oversight Authority (IPOA)

- i. Urgently conduct investigations of all instances that have led to death of 15 Kenyans;
- ii. Update on mechanisms put in place to investigate cases of many countless Kenya's injured by police officers in the implementation of the curfew and other regulations during the pandemic;

F. To the Ministry of Health:

- i. Ensure that quarantine centres across the country meet the conditions enshrined under the Persons Deprived of Liberty Act as well as the WHO Guidelines;
- ii. Provide timely information and psychosocial support to persons placed under mandatory quarantine to ensure mental wellbeing;
- iii. Proactively disclose payment of fees associated with isolation at a quarantine facility; we note that there have been discrepancies in the application of these measures;
- iv. Work in tandem with County Governments to ensure that standardisation of service and administrative processes for persons under quarantine in different parts of the country;



- v. Give directions for release of those Kenyans who are detained within the quarantine facilities for failure to raise the fees. We note with great concern that the action is illegal and has further resulted in Kenyans taking drastic measures including escaping from quarantine centres which posits a danger to themselves and the public at large;
- vi. The Cabinet Secretary for Health to issue clear directions on the period for quarantine to ensure that the measures for quarantine are not weaponised by security agents.

G. To the Civil Society Organisations:

- i. Continue to provide technical support in the development of relevant guidelines, standards, and directions that conform to Constitutional and international human rights standards;
- ii. Demand accountability and transparency from the National Government in the management of resources allocated towards the fight against COVID-19;
- iii. Engage in awareness creation to the public on human rights and access to justice during the period of the pandemic;
- iv. Enhance vigilance in monitoring human rights violations in order to ensure accountability and remedial action for the citizenry;

SIGNED



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