

Annexure Two

COVID-19 restrictions and the impact on criminal justice and human rights

Malawi



By

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2022

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1. Introduction

On 7 December 2021, Africa Criminal Justice Reform (ACJR) together with the Centre for Human Rights Education Advice and Assistance (CHREAA) hosted a stakeholder engagement workshop in Blantyre, Malawi, to discuss the socio-economic impact of COVID-19 in Malawi and its impact on criminal justice and human rights. The workshop formed part of a larger project by ACJR on State responses to COVID-19 with particular reference to the criminal justice system.¹ The workshop was attended by 25 relevant key stakeholders including civil society organisations and officials from oversight institutions.² The objectives of the workshop were three-fold. First, to discuss the State's response to the COVID-19 pandemic and documenting the limitations of rights implemented during the COVID-19 period. Second, to document the socio-economic consequences of lockdowns with particular reference to detainees and their families and the impact of lockdown enforcement on the ability of citizens to exercise their socio-economic rights. Third, the workshop aimed at understanding good-practice examples in the criminal justice and human rights sector for future use.

This report is a summary of workshop participant views supported by additional contextual information. It covers the following:

- Malawi government COVID-19 measures
- Problematic COVID-19 measures
- Enforcement of COVID-19 measures
- Penalties, sanctions and prosecutions for violations
- The impact of COVID-19 on criminal justice system
- Socio-economic impact of COVID-19 restrictions
- Operation of oversight institutions during COVID-19
- Access to information and public awareness
- Good practice for future use

¹ L Muntingh et al., 'Criminal Justice, Human Rights and COVID-19 - a Comparative Study of Measures Taken in Five African Countries' (Bellville, South Africa: Africa Criminal Justice Reform, October 2021), <https://acjr.org.za/acjr-publications/combined-covid-19-report-13-10-2021-final.pdf>.

² Appendix : Stakeholder Participation List.

2. Documenting rights violations

2.1. Malawi government COVID-19 measures

In June 2020, when many, if not most other countries were implementing a range of restrictive measures responding to COVID-19, Malawi held a re-run presidential election. Four months prior, the Constitutional Court annulled the presidential results of the 2019 general elections (presidential, parliamentary and local government) due to massive fraud and widespread irregularities.³ Lazarus Chakwera of the Malawi Congress Party won the re-run election and came to power, taking over from Peter Mutharika of the Democratic Progressive Party.

At the onset of the pandemic, under the Mutharika government, a State of Disaster was declared and a lockdown was ordered to restrict population movement as a measure of curbing the spread of the virus.⁴ 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.⁵ The controversy developed amidst the change of government, and while the intention of the newly elected Chakwera-government was to declare a State of Emergency, this did not happen. Instead, the new government declared another State of Disaster and put in place public health regulations establishing a curfew and restrictions on market trading hours, but not a lockdown.⁶ The measures imposed by the government are highlighted in an earlier report.⁷

Although the COVID-19 measures applied to all persons and geographical areas, workshop participants noted that the rules were predominantly enforced in cities and larger towns, such as Blantyre and Lilongwe, as opposed to rural areas and townships. At the time of the workshop in December 2021, the country was still under a State of Disaster, however, the COVID-19 measures have been gradually

³ Matonga G 'Malawi's Supreme Court affirms nullification of presidential election' *Mail and Guardian* 8 May 2020 <https://mg.co.za/africa/2020-05-08-malawis-supreme-court-affirms-nullification-of-presidential-election/>

⁴ President Peter Mutharika, 'Declaration of State of Disaster by Malawi President Peter Mutharika', United Nations Malawi, 20 March 2020, <https://malawi.un.org/en/46778-declaration-state-disaster-malawi-president-peter-mutharika>.

⁵ 'S v President of Malawi & Ors. | Ex Parte: Kathumba & Ors. (Judicial Review 22 of 2020) [2020] MWHC 7 (17 April 2020); | MalawiLII', accessed 28 February 2022, <https://malawilii.org/mw/judgment/high-court-general-division/2020/7>.

⁶ President Peter Mutharika, 'President Peter Mutharika Speech'.

⁷ Muntingh et al., 'Criminal Justice, Human Rights and COVID-19'.

relaxed by the government.⁸ The more notable changes in measures occurred between April 2020 and September 2021 and relate to gatherings and the curfew. The curfew at the time of the workshop was from 00:00 – 06:00 compared to 19:00-06:30 in April 2020. In terms of gatherings, previously, only between 50-100 persons could gather, but the rules relating to gatherings gazetted in September 2021 allowed for the gathering of 200 people. Other changes to restrictions imposed by the government included the attendance of funerals, although this was not gazetted.

2.2. Problematic 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.⁹ Most people live on a hand-to-mouth basis and rely on the informal economy for survival. This requires people to leave their homes on a daily basis to earn a living. Owing to the poor socio-economic conditions in the country, a number of COVID-19 measures instituted by the government at the start of the pandemic, such as the restrictions on movement and market hours, severely impacted people's livelihood.

The workshop participants noted that 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. The enforcement of the mask-wearing requirement was particularly controversial as it adversely impacted the poor. For the average Malawian a mask was unaffordable, even if it only cost 100 MK (equivalent to US\$ 0,12). As a result, people found not wearing a mask were arrested and fined up to 10 000 MK (US\$ 12.00), which is well in excess of the price of a mask. These developments in enforcement should be seen against the overall trend that most Malawians, especially those who were already financially precarious, suffered a general decline in income and the fines imposed would then only serve to push them and their dependents deeper into poverty and vulnerability.

The measures relating to social distancing, hand-sanitisation and mask wearing had unintended consequences for people living with disabilities. A representative of Parents of Disabled Children in Malawi (PODCAM) reported that there were a number of instances within districts in Blantyre, and around the country where persons living with disabilities were negatively affected as a result of COVID-19 measures. Firstly, persons relying on wheel chairs could not physically reach hand-washing points

⁸ 'Public Health Act (Chapter 34:01) | MalawiLII', accessed 28 February 2022, <https://www.malawilii.org/akn/mw/act/1948/12/eng%402014-12-31>.

⁹ The World Bank, 'The World Bank in Malawi', World Bank, 20 December 2021, <https://www.worldbank.org/en/country/malawi/overview>.

that were set up at government institutions. Secondly, persons with hearing impairments found it difficult to lip-read people wearing masks. Thirdly, the PODCAM representative also reported instances where asthmatic persons were arrested or fined for removing masks despite having the medical condition. In response to some of the challenges faced by persons living with disabilities, PODCAM initiated community projects to train parents in making re-usable masks.¹⁰

More than just being problematic, the enforcement of some COVID-19 measures was regarded by many as irrational. For instance, it was reported that family members from the same household travelling together in their car or even individuals travelling alone by car, were stopped for not wearing a mask, fined and even arrested. This is despite the statement made by the National Police spokesperson that the police would not arrest people for not putting on a mask when they are in their private vehicles.¹¹ It was reported that these arrests were counter-productive because arrested persons were placed in police cells with people not wearing masks for up to three nights, exposing them to a greater risk of contracting the virus.¹² It then seems that the aim was rather to punish people than to manage a public health crisis.

Moreover, the workshop participants highlighted that the lack of education and awareness of the virus was a challenge. For instance, ordinary people did not understand the nature of viruses, how pandemics work and the gravity of the COVID-19 situation. Most participants agreed that civil society organisations (CSOs) and government could have done much better in sensitizing people, especially those living in the rural areas about the dangers of COVID-19. It can be assumed that in the absence of clear and effective communication, that uncertainty prevailed and vulnerability increased.

2.3. Enforcement of COVID-19 measures

The workshop participants noted that the enforcement of COVID-19 measures in cities, and in particular Blantyre was generally harsh, and often involved police officers assaulting and harassing people. The government did not issue any Standard Operating Procedures to guide law enforcement officers in the policing of COVID-19 measures, which contributed to enforcement problems. Moreover,

¹⁰ Msenga Mulungu, 'Families of Children with Disabilities Are Severely Hit Economically Due to Covid: Steps Taken in Malawi to Train Parents on Making Masks.', *Disability Inclusive Development: A Repository of Community Initiatives from Global South* (blog), 1 September 2020, https://disability-rights-repository.org/2020/09/01/malawi_pwd_families/.

¹¹ Owen Khamula, 'Malawi Police Arrest People for Not Wearing Face Mask in Public', *AllAfrica.Com*, 11 August 2020, <https://allafrica.com/stories/202008110519.html>.

¹² Owen Khamula.

it was reported that widespread corruption occurred as bribes were solicited by the police, and this would sometimes, according to participants, be as much as 4 000 MK (US\$ 5.00).

A number of civil society organisations played an active role by helping people affected by the enforcement of COVID-19 measures. The representatives from CHREAA and Paralegal Advisory Service Institute (PASI) reported that their organisations received a number of complaints against the police ranging from harassment of street hawkers, assault of people for failing to wear masks as well as complaints from prisoners about being denied access to their relatives. The two organisations provided advisory services to people and brought the complaints to the attention of the Court Users Committee meetings. Court User Committees are forums where criminal justice stakeholders meet monthly to discuss issues relating to the administration of justice in order to improve communication and co-ordination between the police, courts, prisons and communities. These organisations also issued press releases condemning the malpractice of law enforcement officials. Besides the initial resistance to the State of Disaster and proposed lockdown, the other notable resistance to COVID-19 measures was the sex worker protest organised by the Female Sex Workers Association (FSWA) in January 2021 against police harassment and the restrictions on movement preventing them from earning a living.¹³

2.4. Penalties, sanctions and prosecutions for rights violations

The sanction for violating COVID-19 measures involves a fine of up to 20 000 MK (US\$ 24.00) and three months imprisonment.¹⁴ The workshop participants noted that there was no uniformity in the application of COVID-19 penalties. They agreed that the penalties were disproportionate and inappropriate given the alleged crime and the context and noted that government was punishing people for its own failures. For instance, they argued that since the State did not provide masks to people, it could not punish people because they were not wearing masks as the masks were unaffordable to many people.

In respect of rights violations committed by law enforcement officials, the workshop participants mentioned that there were incidents of assaults by police as well as unlawful and arbitrary detention, but no deaths were reported at the hands of law enforcement officials. Moreover, they were not aware of any prosecutions against officials for rights violations and felt that this would continue to feed a culture of *de facto* impunity.

¹³ 'Malawi Sex Workers Protest at "targeted Police Brutality" after Covid-19 Curfew', The Guardian, 30 January 2021, <http://www.theguardian.com/global-development/2021/jan/30/malawi-sex-workers-protest-at-targeted-police-brutality-after-covid-19-curfew>.

¹⁴ 'Public Health (Corona Virus Prevention, Containment and Management) Rules, 2020', 9 April 2020, <https://africanlii.org/akn/mw/act/gn/2020/5>.

3. The impact of COVID-19 on the criminal justice system

The COVID-19 pandemic as well as the measures imposed by government created a number of challenges in the criminal justice system directly impacting on the rights of arrested and detained persons. For example, normal court operations were disrupted due to internal directives issued by the Office of the Chief Justice outlining measures aimed at adjusting the operations and processes of the judiciary to minimize the risk of COVID-19 infection to staff and public users of Courts. Among others, workshop participants noted that the directives required judicial officers and registrars to review their case lists and adjourn non-urgent matters.¹⁵ It was reported that three problems emerged as a result of this measure.¹⁶ First, the directives lacked guidelines on how they ought to be implemented, leading to judicial officers using their discretion on what they considered to be appropriate in the circumstances. The inevitable result was inconsistency and uncertainty. Secondly, this resulted in a lack of uniformity amongst different court registries, as they issued their own directives to give effect to the Chief Justice's directives. Lastly, there was no specifications on what matters should be categorized as 'urgent matters.' As a result of the prioritisation of 'urgent matters,' bail applications were delayed, and in some cases up to almost four months. This created huge challenges for arrested persons and police facilities.

Whilst the measures allowed judicial officials, where practical, the option to use tele-and video-conferencing facilities, the workshop participants felt that these virtual hearings had limited impact as they were mostly applied in the High Court and only inmates with lawyers and resources to conduct these proceedings benefited. Thus, it is clear that the poor were excluded as they did not benefit from such proceedings because they did not have access to the technology and their cases were not sufficiently serious to be enrolled in the High Court.

Legal professionals, such as paralegals and lawyers, were not formally restricted from consulting with clients. However, participants noted that a number of lawyers personally refrained from coming into contact with inmates during the peak of the pandemic out of fear of contracting the virus. Malawi has a longstanding problem with prison overcrowding and prior to the pandemic, the prison occupancy

¹⁵ Fiona Atupele Mwale, 'COVID-19 and Malawi Courts: A View from the Bench', African Women in Law, accessed 28 February 2022, <https://www.africanwomeninlaw.com/posts/COVID-19-AND-MALAWI-COURTS%3A-A-VIEW-FROM-THE-BENCH>.

¹⁶ Fiona Atupele Mwale.

rate was just above 207%.¹⁷ As a result of prison overcrowding, most prisons in the country were not accepting awaiting trial prisoners, resulting in arrested persons being detained in police cells for weeks and even up to months. It appears that police cells became *de facto* remand facilities. Police holding facilities are as a rule not suitable for longer term detention (i.e., in excess of a few days). Prolonged detention in such police cells must be considered to meet at least the requirements of ill treatment.¹⁸

There were increased calls from civil society for government to decongest prisons. Civil society organisations sent letters to the Minister of Homeland Security advocating for the release of low-risk prisoners.¹⁹ As a result, on 15 August 2020, the President announced that he would pardon prisoners convicted of trivial offences, having served half their sentence, and who had shown good behaviour in prison.²⁰ The President also reduced sentences for every prisoner by six months and this resulted in the further release of an undisclosed number of prisoners. The exact total of prisoners released during the COVID-19 period was not been made available and the government has not been transparent in this regard.

The Malawi Prison Service suspended visits by families and other persons to prisons in March 2020 to prevent the spread of the virus in prison facilities,²¹ thereby 'locking down' prisons. This had a negative impact on prisoners who rely on food, medication and other supplies brought by visitors.²² In the absence of such support, it can be assumed that detention conditions and the treatment of prisoners worsened and that this situation had an adverse impact on the mental and physical well-being of prisoners. Despite this, no prison protests were reported. The restrictions on prison visits were only lifted in September 2021.²³ Furthermore, with the exception of prisoners in isolation, amenities such as basic exercise as well as some farming activities continued for prisoners during the pandemic.

¹⁷ The prison capacity in Malawi is 7 000 and its prison population, including pre-trial detainees / remand prisoners, total was 14500 as at December 2020. See: <https://www.prisonstudies.org/country/malawi>

¹⁸ 'UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment' (1987), sec. 16, <https://www.ohchr.org/en/professionalinterest/pages/cat.aspx>.

¹⁹ Lameck Masina, 'Malawi Government Under Pressure to Pardon COVID-19 Prisoners', VOA, 27 July 2020, https://www.voanews.com/a/africa_malawi-government-under-pressure-pardon-covid-19-prisoners/6193522.html.

²⁰ Lameck Masina, 'Malawi President Pardons Prisoners to Reduce COVID-19 Spread', VOA, 15 August 2020, https://www.voanews.com/a/covid-19-pandemic_malawi-president-pardons-prisoners-reduce-covid-19-spread/6194474.html.

²¹ 'Prisons Lift Visitation Ban', *Biz Malawi Online* (blog), 19 October 2020, <https://www.bizmalawionline.com/prisons-lift-visitation-ban/>.

²² Marie Claire Van Hout, 'COVID-19: Urgent Need to Find Alternatives to Prison Sentences in Malawi', *Health and Human Rights Journal* (blog), 14 September 2020, <https://www.hhrjournal.org/2020/09/covid-19-urgent-need-to-release-women-from-prison-in-malawi/>.

²³ 'Prisons Lift Visitation Ban'.

4. Socio-economic impact of COVID-19 restrictions

The COVID-19 measures imposed by the government resulted in a number of socio-economic consequences for ordinary people. The general view of people is that they were not considered in the government's response to the pandemic.

While 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, not all people benefitted from the grant and the eligibility criteria was not clear.²⁴ Moreover, there was a lack of transparency in respect of the amount government spent on the distribution of the COVID-19 grants.

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, services and transport. The government imposed a vehicle carrying capacity of 60 percent on public transport. In response, operators simply increased their fares by up to 50 percent to make up for lost income, much to the detriment of the poor. 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.

On 23 March 2020, the Ministry of Education issued a directive for all schools to close due to the rising infection rate. It was estimated that almost six million school-going children were at home for nearly eight months as a result of the government's COVID-19 prevention measures.²⁵ It was reported that the Ministry of Education with support from 'Education Cannot Wait' and UNICEF implemented an Emergency Radio Education Programme for the six million children enrolled in primary schools across the country to keep children engaged in learning during the school closure.²⁶ As a result, in May 2020, lessons on literacy, numeracy and science were aired on the Malawi Broadcasting Corporation radio stations for learners in standard one through to standard eight.²⁷ Despite these efforts, workshop participants believed that the majority of children's ability to access education through these sources were limited and it did not accommodate all children. Children with intellectual and learning

²⁴ Aljazeera, 'Malawi Launches Cash Aid for Poor amid COVID-19 Pandemic', 29 April 2020, <https://www.aljazeera.com/news/2020/4/29/malawi-launches-cash-aid-for-poor-amid-covid-19-pandemic>.

²⁵ Nidhi Singal et al., 'Impact of Covid-19 on the Education of Children with Disabilities in Malawi: Reshaping Parental Engagement for the Future', *International Journal of Inclusive Education*, 23 November 2021, 1–17, <https://doi.org/10.1080/13603116.2021.1965804>.

²⁶ Singal et al.

²⁷ Singal et al.

disabilities were further marginalised as special-needs schools and facilities were completely shut down during the peak of the pandemic.²⁸ In September 2020, schools began reopening in a phased manner, however, there were sporadic openings and closures as rates of infection fluctuated in the country.

5. Access to information and public awareness and engagement

Since the start of the pandemic, the public was provided with daily COVID-19 information through media briefings on television and radio. The information shared included updates on COVID-19 statistics, vaccine availability and the work of the COVID-19 taskforce. The majority of workshop participants believed that people were not educated enough about the virus. They were of the opinion that the information regarding vaccine safety did not reach poorer rural areas and as a result, vaccine hesitancy remains a challenge to date. Furthermore, representatives from the disability sector felt that the information was not relayed in a disabled-friendly format, and therefore people with hearing and sight disabilities were excluded. The workshop participants noted that there was no public participation in the development of COVID-19 rules and measures. Moreover, they doubted the accuracy of some COVID-19 information due to limited resources and capacity in Malawi. An example made is the veracity of deaths in the villages. It is believed that due to capacity and resource restraints in Malawi, it would be difficult to ascertain which deaths were COVID-related and which were not.

²⁸ Singal et al.

6. The operation of oversight institutions during COVID-19

The two main human rights oversight bodies in Malawi are the Human Rights Commission (Commission)²⁹ and the Inspectorate of Prisons.³⁰ Representatives of both institutions were present at the stakeholder engagement and were able to provide an overview of the work their institutions did during the pandemic.

The Commission, has an A-rating and is fully compliant with the United Nations Paris Principles.³¹ It was reported that the President established a Presidential Taskforce at the start of the pandemic of which the Commission formed part, however, when there was a change in the composition of the taskforce, the Commission was left out. The Commission was operational during the pandemic, although at the start of the pandemic half of the staff members worked from home on a rotational basis. In exercising its mandate, the Commission was involved in monitoring district council's (local government) preparedness to handle COVID-19. They also visited prisons and police cells to determine the impact of COVID-19 on facilities (i.e. conditions of detention and overcrowding) and to determine the adequacy of state resources made available to ensure the well-being of inmates. The Commission also had engagements with civil society organisations working in the disability sector, to understand how COVID-19 impacted people with disabilities. Furthermore, the Inspectorate of Prisons also continued to inspect and monitor prisons. Members of the Inspectorate noted that during the onset of the lockdown, they made three inspection visits in February, May, August 2020 and one in February 2021. They also made a submission to Parliament regarding the conditions of detention and recommended the release of some low-risk prisoners.

²⁹ The Malawi Human Rights Commission is an independent national human rights institution established by the Constitution of the Republic of Malawi under section 129, with the primary function of protecting and investigating violations of the rights accorded by the Constitution or any other law. See website at: <http://www.mhrcmw.org/mhrc/>

³⁰ The Inspectorate of Prison derives its mandate from Chapter 17, Section 169 of the Constitution of the Republic of Malawi. See website at: <https://www.mps.gov.mw/about-us/oversight-functions/prison-inspectorate-board>

³¹ See GANHRI website: <https://ganhri.org/membership/>

7. Good practice for future use in the criminal justice sector

The workshop participants shared some good practice initiatives introduced by the government in the criminal justice sector that can be used in the future.

7.1. Camp courts

The use of camp courts in prisons was accelerated during the pandemic and ensured that cases were expedited, and where possible, also eased congestion in pre-trial detention facilities. Camp courts is an initiative where courts sit in prisons, as a way of quickly delivering justice to those who are in pre-trial detention. Furthermore, the intensification of visits to police cells with a magistrate to assess cases was also a productive initiative preventing unnecessary detention and alleviating pressure on the criminal justice system. Workshop participants noted that although the use of remote proceedings in the higher courts facilitated access to justice for some, this should have been extended to the lower courts as well.

7.2. Magisterial directives

There were directives issued by individual Chief Resident Magistrates which were helpful. For instance, in the Blantyre district, the Chief Resident Magistrate directed the police that anyone arrested between 8:00-15:00 should be brought to court on the same day in order to expedite the justice process. Also, another directive noted that nobody should be sent to prison as a result of a COVID-19 penalty. These good practices were as a result of decisions taken by members of the Blantyre Court Users Committee.

7.3. Committee on task force in prisons

CHREAA and PASI noted that the taskforce on prisons set up by the State during COVID-19, was a good initiative to monitor the conditions and treatment of prisoners during the pandemic, as they received monthly updates from doctors about the situation within prisons. The taskforce played a pivotal role in ensuring that the rights of inmates in the justice sector were protected.

The initiative to pardon petty offenders during the pandemic was also a good way to alleviate pressure on the criminal justice system. To this end, it is believed that effective collaboration and advocacy by

civil society organisations during the pandemic for the release of petty offenders contributed to the government's decision to pardon offenders.

7.4. Government initiatives

There were a number of effective government initiatives. This included providing regular updates on the COVID-19 situation in the country, raising awareness about COVID-19 and ensuring that services continued to be delivered during the pandemic by introducing a shift system for public officials. The government also did well in its efforts to secure vaccines by March 2021, and the provision of mobile vaccine facilities in rural areas ensured that vaccines were accessible to all people. The government's efforts to promote remote learning for children through the Malawi Broadcasting Corporation and their efforts to source cheaper data from mobile service providers for tertiary education students for online teaching was an innovative and efficient response to problems arising from the COVID-19 context. There were some good proactive initiatives undertaken by the State to ameliorate the effects of the pandemic in places where people are deprived of their liberty such as prisons and police cells. Accelerating the use of camp courts at prisons and establishing the prison taskforce are some good examples that can be replicated in future crisis situations.

8. Conclusion

The stakeholder engagement workshop held in Malawi offered a platform for members of civil society and oversight institutions to discuss the socio-economic impact of COVID-19 and its impact on criminal justice sector. It is clear from the discussions that the COVID-19 pandemic and the accompanying restrictions negatively impacted on an already ailing economy and brought about even greater economic hardship for the poor to earn a livelihood. The increased transport costs and price gauging resulted in greater food insecurity and the strict enforcement of COVID-19 restrictions did not consider the socio-economic position of poor and marginalised people. Although the state made provision for a cash transfer (a social grant) to some people, it was limited to an unknown number of grantees for a short period of time and the eligibility process was not transparent.

Civil society played a constructive role during the pandemic. Whether it was with assisting with COVID-19 awareness raising efforts or the provision of personal protective equipment to the public. The legal efforts by civil society organisations to successfully challenge the initial State of Disaster and lockdown in March 2020 due to the fact that the State of Disaster constituted a substantial derogation of

fundamental rights and failed to provide social cushioning for the poor, illustrated the progressiveness of civil society organisations to monitor and protect the rights of people during the pandemic.

It is important that in the future, the government consider the poor and marginalised when considering rights limiting measures that may disproportionately affect them. In order to better understand the challenges that the COVID-19 pandemic had on the rights of people and the criminal justice system there is a need to conduct an assessment with different role players to reflect on the negative and positive measures undertaken by the state during the pandemic. The assessment could for example focus on areas such as law enforcement, the court system, prisons, victim services providers, education, and socio-economic relief and impact. It will be important to hone into these areas that require improvement in order to prevent such mistakes from happening in future.

9. Appendix: Stakeholder Participation List

The Stakeholder Engagement Workshop was attended by 25 representatives from the following organisations:

1. Africa Criminal Justice Reform (ACJR)
2. Article III
3. Centre for Community Organization and Development (CCODE)
4. Centre for Human Rights Education Advice and Assistance (*CHREAA*)
5. Child Rights Advocacy and Paralegal Aid Centre (CRAPAC)
6. Desire Child Development Centre
7. DIGO Organisation
8. Female Sex Workers Association (FISWA)
9. Human Rights Defenders Coalition (HRDC)
10. Malawi Human Rights Commission (MHRC)
11. Mpumulo Org
12. Paralegal Advisory Service Institute (PASI)
13. Parents of Disabled Children in Malawi (PODCAM)
14. Reprieve
15. Southern Africa Litigation Centre (SALC)
16. Sub-Saharan Child and Community Development *Trust* (SACCODE – Trust)
17. Women’s Legal Resources Centre (WOLREC)
18. YADE
19. Youth and Society (YAS)
20. Youth Watch Society (YOWSO)

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