



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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30 August 2022



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Introduction

- The spread of COVID-19 and governments response to the virus had significant consequences for citizens, various institutions of the state - and in particular criminal justice systems around the world.
- Restrictions were placed on criminal justice systems, placing them on hold for periods of time.
- It was therefore important to understand how COVID-19 measures restrictions impacted the criminal justice system (particularly looked at courts and prisons) and what can be done to strengthen the situation in the future.

Overview of presentation

- Presentation briefly highlights three areas of the report on Malawi:
 - ❑ The impact of COVID-19 measures on the criminal justice system.
 - ❑ The impact of COVID-19 on detention monitoring and oversight.
 - ❑ Good initiatives undertaken in the criminal justice system during COVID-19

The impact of COVID-19 on the criminal justice system (CJS)

- **Measures prioritising “urgent cases”**
- Normal operation of courts were disrupted due to internal directives issued by the Office of the Chief Justice.
- An example – was the directives requiring judicial officers and registrars to review their case lists and adjourn non-urgent matters.
- Three problems emerged as a result of this measure

The impact of COVID-19 on the CJS

- ❑ 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.
- ❑ Secondly, this resulted in a lack of uniformity amongst different court registries.
- ❑ Third, as a result, bail applications were delayed, and in some cases up to almost four months.
- This created huge challenges for arrested persons and police facilities.

The impact of COVID-19 on the CJS

- **Police cells became *de facto* remand facilities**
- Malawi has a longstanding problem with prison overcrowding and prior to the pandemic, the prison occupancy rate was above 207%.
- An influx of new cases, put strain on already overcrowded prison systems.
- As a result of prison overcrowding, most prisons in the country were not accepting awaiting trial prisoners. This resulted in arrested persons being detained in police cells for weeks and even up to months.

The impact of COVID-19 on the CJS

- **Virtual Proceedings**

- There were measures allowing 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.

The impact of COVID-19 on the CJS

- **Measures suspending visits to detention facilities**
- The Malawi Prison Service suspended visits by family and other persons to prisons in March 2020 to prevent the spread of the virus in prison facilities.
- This had a negative impact on prisoners who rely on food, medication and other supplies brought by visitors.
- The restrictions on prison visits were only fully lifted in September 2021.

The operation of oversight institutions during COVID-19

- The two main human rights oversight bodies in Malawi are the Human Rights Commission and the Inspectorate of Prisons.
- **Were they allowed to function during the pandemic?**
- No restrictions were placed on institutions and they were able to exercise their oversight and monitoring role. 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.

Good practice initiatives in CJS for the future

- **Camp courts**
- 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.
- 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.
- **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.

Good practice initiatives in CJS for the future

- **Magisterial directives**
- There were directives issued by individual Chief Resident Magistrates which were helpful.
- E.g. 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.

Good practice initiatives in CJS for the future

- **Taskforce on prisons**
- The taskforce on prisons was set up by the State during COVID-19 to monitor conditions in detention and the treatment of prisoners.
- The taskforce included CSOs working in the prison sector. They received monthly updates from doctors about COVID-19 infections in prisons.
- The taskforce played a pivotal role in ensuring that the rights of inmates in the prisons were protected.

Good practice initiatives in CJS for the future

- **Pardoning of petty offenders**
- 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 during the pandemic.
- The initiative alleviated pressure on overcrowding in prisons.
- However, there were concerns surrounding transparency – the exact total of prisoners released was not made available.

Concluding recommendations

- **COVID-19 measures implemented in the CJS must be clear, and protect due process and fair trial rights.**
- Measures postponing “non-urgent cases,” without clear guidelines, prevented accused persons accessing justice in a timely, fair and effective manner and suspended due process and fundamental fair trial rights.
- **The use of virtual proceedings**
- Any future use of remote proceedings must not exclude anyone, should be catered for in legislation and respect and protect due process and fair trial rights of accused persons.

Concluding remarks and recommendations

- **Prison overcrowding should be addressed beyond the pandemic**
- The release of offenders for petty offences to address prison overcrowding should not only be prioritised during crisis periods. There should be a concerted effort to implement alternatives to imprisonment. i.e. diversion, non-custodial measures
- It is important that measures implemented by authorities to reduce overcrowding are transparent.
- **Moratoriums placed on prison visits must be as a last resort, for the shortest period of time** and detainees should also be provided with basic needs such as food and medicine.

Conclusion

- CSOs in Malawi should be commended for their efforts during the pandemic.
- Despite the challenges, CSOs played a remarkable role by providing the necessary guidance on the protection and promotion of human rights and urging governments to fulfil their human rights obligations and providing services. E.g. strategic litigation against initial lockdown, prison oversight, task team members, collaborative effort to release petty offenders from prison.
- They demonstrated resilience, creativity and adaptability and devoted large part of their response to helping at risk and excluded groups adversely affected by the pandemic and pandemic measures.

Thank you

