

FEATURE

Covid-19 and the Right to Health of Prisoners in Uganda

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Introduction

The World Health Organization (WHO) declared Covid-19 a world-wide pandemic on 11 March 2020 and called upon states to take measures to contain it. In response, the Government of Uganda imposed a nationwide 'stay-at-home' lockdown from 22 March to 6 June 2020. Furthermore, it adopted measures such as the suspension of prison visits and a temporary shutdown of prison facilities, with the aim of containing the spread of the virus in areas such as Rubanda Government Prison (The Independent 2020) and Amuru Prison (Daily Monitor 2020). This was followed by mass testing at prison facilities such as Amuru Prison, which found that 152 inmates and one staff member had contracted Covid-19 (Daily Monitor 2020). On 8 October 2020, results from 33 samples taken from inmates and prison staff in Rubanda Government Prison showed that six inmates and one staff member had tested positive for Covid-19 (The Independent 2020).

The mass testing conducted at Amuru District Prison recorded what was then the highest number of new infections in a single day. The infected persons were transferred to an auxiliary isolation facility, but the high number of infections brought to the fore concerns about the right to health for an estimated 64,000 people who were in detention across the country.

Uganda is a signatory to international and regional instruments that guarantee the right to health of all persons, including prisoners. While the Constitution of Uganda does not expressly guarantee the right to health, there is consensus that the right may be derived from various provisions in the Constitution with a bearing on health (Twinomugisha 2007). This article, therefore, considers whether the state is fulfilling its obligations with regard to realising the right to health for prisoners during the Covid-19 pandemic.

Implications of the outbreak for prisonst

The outbreak of the pandemic has highlighted the vulnerability of prisoners in Uganda, where prisons are characterised by poor hygiene, overcrowding, and a lack of adequate health care (African Commission 2015) that expose inmates to the risk of contracting the coronavirus (Cadman 2020).

These conditions make it difficult to implement the WHO's guidelines of maintaining social distance (World Health Organisation 2019) and regular hand-washing to reduce the spread of the Covid-19. Prisoners do not have unconstrained access to ablution facilities and cleaning agents and are instead entirely dependent on



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the state for their well-being (International PEN and Others (on behalf of Saro-Wiwa) v Nigeria (2000) AHRLR 112). Wetsman (2020) has argued that vulnerable communities, such as those held in prisons and jails, are often most at risk during public health emergencies since they have less protection than others from an outbreak of disease.

Legal framework for prisoners' right to health

1 International legal framework: The soft law

The right to health of prisoners is enshrined in a number of soft law provisions related to the prisoners' right to medical care, such as the 1990 UN Basic Principles for the Treatment of Prisoners, which recognise prisoners' right to access health services despite their legal situation. The UN Standard Minimum Rules for Treatment of Prisoners (2015: rule 18) stipulate that prisoners have a right to access water and other toilet articles necessary for their health and cleanliness. It further recognises prisoners' right to access necessary health-care services free of charge without discrimination based on their legal status, and requires that the prisoners enjoy the same standards of health care as those available in the community.

The 1988 UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Principle 24) requires that all detained or imprisoned persons have access to medical care and treatment whenever necessary. The Kampala Declaration on Prison Conditions in Africa 1996 (para 2) stipulates that prisoners should retain all rights which are not expressly taken away by the fact of their detention; this includes the right to health. Furthermore, the 1990 UN Rules for the Protection of Juveniles Deprived of their Liberty (rule 49) recognises the right of every juvenile to adequate medical care, which should be provided through the appropriate health facilities and services of the community in which the detention facility is located.

However, the above rules are only soft law, and so not binding upon states. This grants states such as

Uganda the discretion to determine whether or not to uphold those norms (Lines 2008). Nigel (1999) has argued that the Standard Minimum Rules create a merely moral or political influence, while Betteridge (2004) has noted that states have an ethical duty to comply with the above instruments.



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2 International legal framework: The hard law

Uganda is a signatory to international human rights instruments that recognise the right to health. Every person in Uganda enjoys this right, including prisoners. These instruments include article 25(1) of the Universal Declaration of Human Rights (UDHR); article 11(f) of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); the International Covenant on Economic, Social and Cultural Rights (ICESCR); article 16 of the African Charter on Human and Peoples' Rights (ACHPR); and article 5 of the Convention on the Rights of the Child.

Although the International Covenant on Civil and Political rights (ICCPR) does not contain explicit provisions related to the right to health, the United Nations Human Rights Committee (UNHRC) has noted that matters regarding the right to health of persons in detention may arise under article 10, the right to humane treatment, or article 6, the right to life (Cabal and Pasini v Australia (2003)). Lines (2008) has argued that both the right to humane treatment and right to life do oblige all states that have ratified the ICCPR to protect the well-being and lives of persons in custody, thereby requiring states to undertake measures aimed at protecting the health of prisoners.

As a signatory to these treaties, Uganda has committed itself to protecting the right to health enshrined in them. This imposes duties on the state regarding

the realisation of the right to health for prisoners during the coronavirus pandemic, as will be discussed below.

Government obligations to prisoners' health rights

All human rights, including economic, social and cultural rights, impose both positive and negative duties on states, in this case Uganda. These duties include the duty 'to respect, protect, promote and fulfill the above rights'; furthermore, no hierarchy is accorded to any of these duties and all should be discharged through administrative and judicial remedies (African Commission on Human and Peoples' Rights 2010). The government's obligations with respect to the right to health are three-fold and entail the duty to respect, protect and fulfill it (CESCR Committee, General Comment No. 14: para 33), as will be elucidated below.

1 Obligation to respect

This obligation obliges states to desist from interfering directly or indirectly with the enjoyment of the right to health (CESCR Committee, General Comment No. 14: para 33). The African Commission on Human and Peoples' Rights has noted that states are obliged to refrain from directly threatening the health and environment of their citizens (Social & Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESCR) vs Nigeria 1996). The above position was taken in the case of *The Center for Health, Human Rights & Development & 2 Ors vs The Executive Director, Mulago Referral Hospital & Anor* (2017), where Lady Justice Lydia Mugambe noted that the duty to respect obliges states parties to refrain from interfering directly or indirectly with the enjoyment of economic, social and cultural rights, including the right to health of prisoners.

The duty to respect also requires states to refrain from denying or limiting equal access to health care to all persons, including prisoners (CESCR Committee, General Comment No. 14: para 34). Furthermore, the obligation to respect mandates states to take positive measures to ensure that all branches of government (legislative, executive and judicial) at all levels (national, regional and local), as well as all organs of state, do not violate economic, social and cultural rights (African Commission on Human and Peoples' Rights 2010).

The adoption of measures such as curfew and the nationwide lockdown, which included a ban on public transport that limited the movement of some prison medical officers who did not have their own means of transport, denied prisoners equal access to health care, thereby violating this obligation. Prisoners mostly rely on the external community, including their family members, for essential medicines and supplies, such as sanitary items, which the prison facilities cannot provide. By suspending prison visits without considering the vulnerable state of prisoners, the government interfered with prisoners' rights to health. Even during a pandemic, the government should ensure that the external community has access to prisoners to assist them with their needs.

2 Obligation to protect

This obligation obliges the state to undertake measures aimed at ensuring equal access to health-related services provided by third parties, as well as ensuring that third parties do not limit people's access to health-related information and services (CESCR Committee, General Comment No. 14: para 34). The duty to protect encompasses the monitoring and regulation of commercial and other activities of non-state actors that affect people's access to and equal enjoyment of economic, social and cultural rights. It

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also ensures the effective implementation of relevant legislation and programmes, and provides remedies for such violations (African Commission on Human and Peoples' Rights 2010).

This obligation was violated by the introduction of the nationwide lockdown, which included the ban on public transport and the suspension of prison visits since, as mentioned, prisoners with special needs could not be assisted by friends and family members. Furthermore, the government did not issue standard operating procedures (SOPs) to enable the prisoners to have access to health-related services provided by third parties.

“...the prisons to assist with social distancing, more needed to be done.”

3 *Obligation to fulfil*

This duty mandates the state to ensure that all persons, including prisoners, have equal access to the underlying determinants of health, such as basic sanitation, potable drinking water, nutritiously safe food, and adequate housing and living conditions (CESCR Committee, General Comment No. 14: para 35). It also obliges states to take positive measures aimed at assisting and enabling individuals and communities to enjoy the right to health (CESCR Committee, General Comment No. 14: para 35). Furthermore, states are obliged to undertake appropriate legislative, budgetary, judicial administrative, promotional and other measures towards the full realisation of the right to health (CESCR Committee, General Comment No. 14: para 33). Although the government pardoned a total of 833 prisoners in April 2020 to curb the spread of Covid-19 and decongest the prisons to assist with social distancing, more needed to be done. Ugandan prisons are highly overcrowded and operate at an average capacity of 319 per cent (World Prison Brief 2020).

The government is obliged to adopt measures aimed at enabling and assisting individuals and communities to gain access to the right to health on their own.

Where individuals and communities are unable to gain access to these rights for themselves, the obligation is 'to take measures necessary to ensure that each person within its jurisdiction may obtain basic economic, social and cultural rights satisfaction' (African Commission on Human and Peoples' Rights Charter 2010).

Therefore, the government's failure to conduct mass testing for all of its citizens, including those in all the prison facilities in Uganda, despite several calls from the prison authorities (The Independent 2020) and Members of Parliament (The Independent 2020), shows the reluctance of the government to fulfill its duty in regard to the right of prisoners to health.

Conclusion

The government should ensure that the prisoners have unhampered access to health-related services including medical care and treatment whenever the need arises, irrespective of Covid-19.

Furthermore, the government should ensure that all persons detained in prison, whether convicted or remanded, should undergo mandatory coronavirus testing prior to admission. This would enable prison authorities to allow early isolation and treatment of those infected before they come into contact with other inmates (World Health Organisation 2020).

The government should also develop guidelines and SOPs aimed at ensuring that the external community has the necessary access to prison facilities and prisoners of their choice, especially those with special needs, including the elderly, sick, pregnant mothers and women with dependent children. This is because prisoners tend to rely on the external community to access health-related supplies including medicine (Penal Reform International 2020).

The government should also adopt measures aimed at the provision of essential personal hygiene items, such as sanitisers and soap, to all prisoners. These are vital tools in the fight against the coronavirus.

The prison facilities should develop a comprehensive database of all the prisoners in their custody for planning purposes in case of any future public health emergencies like the coronavirus. Prisoners tend to be neglected when it comes to providing services because the government does not have details of the prison population.

The government should also speed up the development of a national emergency response strategy, in line with the National Disaster Management Policy 2010, which would aid in ensuring that the current health facilities respond to the health-related needs of prisoners

Finally, the government should conduct robust preparation through the Ministry of Disaster Preparedness to ensure that the country and its prison facilities are properly prepared to deal with any future pandemics.

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