

Kenya's COVID-19 Measures and their Impact on Civic Space

The Kenyan government has introduced or relied upon several measures to address the coronavirus pandemic. This overview outlines these measures, and where relevant, cites instances where a measure has restricted or may restrict civic space.

Measures that have Restricted Civic Space

THE COMPUTER MISUSE AND CYBERCRIMES ACT (2018)

SUMMARY: Section 22(1) of the Act defines as an offense the intentional publication of false, misleading or fictitious data or misinformation with the intent that the data be considered or acted upon as authentic.

RESTRICTION ON CIVIC SPACE: Law enforcement has relied on this provision to arrest individuals who post information about COVID-19 online. This can limit the amount of information that the public can access about the pandemic, thus undermining public awareness about the pandemic. The United Nations Special Rapporteur on the promotion and protection of freedom of opinion and expression has stated that “the penalization of disinformation is disproportionate, failing to achieve its goal of tamping down information while instead deterring individuals from sharing what could be valuable information.”

PUBLIC ORDER (STATE CURFEW) ORDER, 2020 (MARCH 25, 2020) AND PUBLIC ORDER (STATE CURFEW) VARIATION ORDER, 2020 (MARCH 25, 2020)

SUMMARY: This Order establishes a curfew between 7 pm and 5 am for 30 days from March 27th. It exempts certain categories of workers from the curfew, primarily those

STATE OBLIGATIONS TO PROTECT HUMAN RIGHTS DURING A PUBLIC EMERGENCY¹

To protect and promote a healthy civic space while responding to the COVID-19 pandemic, governments should:

- clearly articulate threats presented by COVID-19;
- narrowly tailor and minimize restrictions or limitations on rights and freedoms when enacting pandemic responses;
- publicly announce COVID-19 response measures including a state of emergency, legislation, and policy;
- adopt short term response measures with possibility for review;
- respect the rule of law; and
- if restricting human rights and freedoms, formally derogate from human rights treaty obligations to ensure transparency and accountability for its actions.

working in the medical and health sector, food and natural resources sector, but also notably “licensed broadcasters and media houses.” The Public Order (State Curfew) Variation Order amends the Public Order (State Curfew) Order, 2020 to include additional employees and officers to the list of exemptions from the curfew. The curfew has been adjusted to 9 pm to 4 am, and was last extended for 30 days on August 26th.

RESTRICTION ON CIVIC SPACE: This measure restricts the ability of individuals subject to the curfew to organize and assemble freely, thus undermining the full exercise of the freedoms of association and assembly. Furthermore, there have already been [multiple reports](#) of police brutality while enforcing coronavirus measures such as the curfew. On April 16th, in [Law Society of Kenya vs. Hillary Mutyambai, Inspector General National Police Service et al.](#), the High Court of Kenya at Nairobi ruled that the polices’ unreasonable use of force in enforcing the Public Order (State Curfew) Order, 2020 is unconstitutional. Additionally, the pending case [CM & 8 Others v. the Attorney General et al.](#) challenges the constitutionality of the government’s power to impose mandatory quarantine of individuals alleged to have violated curfew and other COVID-19 measures.

PARLIAMENTARY OVERSIGHT OF COVID-19 RELATED LEGISLATION AND OPPORTUNITIES FOR PUBLIC PARTICIPATION

Kenya has established an Ad Hoc Committee on the COVID-19 Situation within the Senate, as well as the COVID-19 Information Communication Technology (ICT) Advisory Committee for the purposes of coordinating ICT-specific responses to the pandemic. The Ad Hoc Committee included civil society and the public in its initial hearings on the COVID-19 response and its impact on governance, amongst other issues. More recently, the Committee presented the **Pandemic Response and Management Bill, 2020** in mid-May. The Bill was drafted through a participatory process, including sixty-three submissions from the public and virtual meetings with various stakeholders. The Bill mainly addresses economic and social issues, rather than the fundamental rights typically associated with civic space, and is thus outside of the focus of this overview.¹

PUBLIC HEALTH (PREVENTION, CONTROL AND SUPPRESSION OF COVID-19) RULES, 2020 (APRIL 3, 2020)

SUMMARY: These rules lay out requirements for responding to and reporting on COVID-19 cases and define offenses and punishments. The rules allow health officers and associated personnel to “enter any premises” to investigate COVID-19 cases. Health officers may also order suspected carriers of the virus to stay at a hospital “or other suitable place” for examination and detention. Persons who aid or intend to aid the “escape” of an individual from isolation or quarantine can be punished by up to 2 months of imprisonment or a fine of up to 20,000 Kenyan shillings. Additionally, any violation of the rules may result in a fine of up to 20,000 Kenyan shillings,

imprisonment of up to 6 months, or both. Continued violation of the Rules may result in a fine of up to 1000 Kenyan shillings for each day the violation continues.

RESTRICTION ON CIVIC SPACE: The broad powers of health officers and associated personnel to investigate COVID-19 cases and order detention of suspected carriers of the virus may result in restrictions on civil society and civic space. For example, the containment of “suspected” carriers of COVID-19 could infringe upon those individuals’ ability to gather to discuss pressing issues, even if there is no confirmation of exposure to the virus. These broad powers are especially concerning because violations of orders issued under these powers result in a burdensome fine or imprisonment. Additionally, in the pending case, [MUHURI vs. the Attorney General et al.](#), the High Court of Kenya at Mombasa is considering whether it is constitutional for the government to force individuals suspected of COVID-19 infection to quarantine while requiring them to cover the expenses incurred in complying with the order, including medical, accommodation, and upkeep expenses. The legal challenge also seeks an order requiring local government and counties to cover the costs of treatment and health care for COVID-19 patients.

Other COVID-19 Measures

THE PUBLIC HEALTH ACT, CHAPTER 242 (2012)

SUMMARY: The Kenyan Government has relied upon Section 36 of The Public Health Act to issue several measures in response to COVID-19. Section 36 details the rules for prevention of disease and allows the Minister responsible for health matters to issue rules for a wide range of actions to combat a “formidable epidemic, endemic or infectious disease,” terms which are not further defined in the Act. These activities include but are not limited to sanctioning house visitation, prohibiting a person from leaving an infected area without a medical examination, disinfection, or other preventative measure, and prohibiting the use of a building if such usage would spread the disease.

EXECUTIVE ORDER NO. 2 OF 2020

SUMMARY: In response to the World Health Organization’s declaration of the COVID-19 outbreak as a public health emergency, the order issues directions for hospital and facility preparations, and establishes a National Emergency Response Committee on Coronavirus comprised of government officials from different departments. The Committee is authorized to coordinate on COVID-19 response measures.

PUBLIC HEALTH (COVID-19 RESTRICTION OF MOVEMENT OF PERSONS AND RELATED MEASURES) RULES, 2020 (APRIL 6, 2020) AND ASSOCIATED ORDERS FOR THE NAIROBI METROPOLITAN AREA, MOMBASA COUNTY, KILIFI COUNTY, AND KWALE COUNTY

SUMMARY: These rules allow the Cabinet Secretary of Health to declare an area to be “infected.” The Cabinet Secretary may impose restrictions on an infected area, including restricting movement into and out of the area, prohibiting gatherings including a grouping, assembly, crowd, or procession in any public space. Violations of the rules are punishable by a fine of up to 20,000 Kenyan shillings or imprisonment of up to 6 months or both.

PUBLIC HEALTH (COVID-19 RESTRICTION OF MOVEMENT OF PERSONS AND RELATED MEASURES) VARIATION RULES, NO. 2 OF 2020 (APRIL 17, 2020)

SUMMARY: These rules limit transportation by ferry to 5:30 am to 6:30 pm, and set hygiene practices for ferry transportation.

THE PUBLIC FINANCE MANAGEMENT (COVID-19 EMERGENCY RESPONSE FUND) REGULATIONS (2020)

SUMMARY: This regulation establishes a fund for COVID-19 response, and outlines the procedures for running the fund.