

MEASURES AGAINST COVID-19 ARE COMMENDABLE, BUT SHOULD NOT BE IMPLEMENTED AT THE EXPENSE OF THE HUMAN RIGHTS OF VULNERABLE AND MARGINALISED PERSONS

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In response to the COVID-19 threat, the President of Uganda announced a series of measures with a view of curbing the spread of COVID-19 in the country. Among these measures are the mandatory quarantining of travellers to Uganda, closure of schools and bars, banning of social events with more than ten persons, then the closing of all Uganda's borders, discouraging public transportation, and most recently, completely banning the sale of non-food items in markets, banning the use of public transportation (boda bodas, taxis and buses) and restricting all private vehicles to carrying three persons at a time. These measures have been given the force of law through a number of statutory instruments made under the Public Health Act by the Minister of Health. The Chief Justice also announced measures to mitigate the spread of COVID-19, including limiting courts to handling only urgent cases, taking pleas for 'serious cases' and bail applications for a period 32 days from the 19th of March 2020.

Human Rights Awareness and Promotion Forum (HRAPF) applauds the government, particularly the President, the Ministry of Health and the Judiciary for the proactive and timely measures taken to protect the lives and health of the people of Uganda. These are much-needed steps to take in the battle against the spreading pandemic. We urge all persons to respect the measures put in place by the government to stop the spread of COVID-19.

However, HRAPF is concerned about the potential for the abuse of the basic rights of several Ugandans, particularly the poor and marginalised, in light of these measures. In particular, HRAPF notes with concern the potential and actual impact on the non-derogable rights to a fair and speedy trial, and the right to freedom from cruel, inhuman and degrading treatment and punishment. The measures that have been announced so far have continued to disproportionately affect the poor, whose daily earning depends on the means of earning which have been affected by the recent announcements by the President. This amounts to a violation of the right to equality and freedom from discrimination, which protects against discrimination on social and economic status.

The courts are focusing more on handling paper work, writing judgments and handling bail applications. This is of course reasonable in light of the threat of COVID-19. However, it is important to consider that, according to the World Prison Brief of 2019, Uganda's prisons are operating at 319.2% of their official capacity for accommodation of inmates, 49.8% of whom are on remand. These include a significant number who are on remand for petty offences such as being rogues and vagabonds, being common nuisances, etc. According to a study conducted by HRAPF on the enforcement of the Idle and Disorderly laws in 2016, 9.9% of the population of Luzira prisons were either on remand or serving sentences for petty offences in 2012 while the percentage was at 8.7% in 2013. The study also highlighted the fact that more than 40% of persons arrested on petty offences often end up pleading guilty just to avoid pre-trial detention periods that stretch

up to three months or more at times, and that the majority of those arrested were poor people working in the informal sectors (such as market vendors, street hawkers, boda boda riders, sex workers, etc.), and that the enforcement of these laws occasions discrimination against persons based on their socio-economic status.

Given the crowding of the prisons, as well as the high rates of arrests over petty offences, it is indeed a huge concern that courts seek to limit themselves to 'serious cases' during this period. Petty offences cases would be easier to dispose of, as they are less complicated and sentences such as community service can be imposed, which would benefit the community, and decongest prisons and police cells. The Police Spokesman, Fred Enanga, was quoted in the Press stating that the Police will not be arresting people for petty offences during this time, but that they will continue to conduct arrests for 'serious' offences, which include violating the presidential directives. Indeed, the Police has been conducting arrests of persons perceived to be flouting the presidential directives. Most of those arrested are poor and vulnerable people, who will be unable to endure a full lockdown without state support as they must necessarily eke out a living in a situation where their sources of income have been closed as part of the anti-COVID-19 measures. It is important to note that these arrests are bound to further congest the police cells and thus put people at more risk of contracting COVID-19.

In addition, there are some very valid questions about the steps that the Police and Prison authorities are taking in order to protect inmates in overcrowded police cells and prisons from COVID-19. One tragic result of this so far has been the escape of 20 inmates from Arua Main Prison reportedly due to COVID-19 fears, during which 3 were shot dead. This kind of panic is not unfounded as the crowding in both the prison and police cells certainly breeds an environment that supports the proliferation of the coronavirus, and the current measures instituted by the state and the judiciary are unlikely to resolve this. In addition, police, military and LDU personnel have been reported to be beating persons perceived to be violating the presidential directives, particularly boda boda riders, as an alternative arresting them.

The complete ban on public transport has also severely curtailed the ability of the vast majority of Ugandans to work and earn a living as they do not have the private means of transport to meet the President's requirements. In the meantime, the middle class who can afford private transportation are perfectly free to continue work, with a few precautions like hand washing and sanitisation, as offices have not been closed by presidential directive- only markets and other 'crowded' informal places of work. Boda boda riders, taxi drivers, taxi touts and conductors, clothing sales persons and people in a variety of business (except for food, medicine and sanitisers) are essentially out of work, and there seem to be no government efforts to address this.

HRAPF therefore calls upon the State to ensure adequate protection for the rights of all Ugandans by holding all security personnel seen violating the right to dignity of Ugandans responsible, and by working with the judiciary to ensure that people are not incarcerated for long periods over petty offences and offences related to flouting the presidential directives on COVID-19.

HRAPF also calls upon the government to support the poor and vulnerable people who can no longer earn a living with basic needs, particularly food, water and medical treatment. This is the duty and responsibility of the government to her citizens, and never has the need for welfare support been greater than it is right now.

HRAPF calls upon the President to revise his earlier Directive on stopping arrests of persons for being 'idle and disorderly' and extend it to cover all petty offences, which are offences punishable with imprisonment of one year or less, or by small fines.

HRAPF further urges Parliament to hasten efforts to amend the Penal Code Act in order to do away with the offences of being idle and disorderly and rogue and vagabond, and such other petty offences in accordance with the president's earlier directives on the same. It is also urgent that Parliament considers passing a law that provides for other mechanisms of handling petty offences (and offences relating to the flouting of the presidential directives on COVID-19), which regime would provide for fines and cautions without detention, as is the case with minor traffic offences under the Traffic and Road Safety Act.

Finally, HRAPF calls on the Inspector General of Police (IGP) to issue a circular to all police officers forbidding the mass arrest of people for petty offences and violations of the measures against COVID-19, and advise police officers to instead make use of cautions, police bonds, and to refrain from beating people. It is also imperative that the IGP's circular reminds the police officers of the prohibition against torture, inhuman and degrading treatment, as well as the provisions of the Human Rights (Enforcement) Act, 2019 which also impose individual liability on police officers who violate human rights.

HRAPF also calls upon the Chief Justice to reconsider his position and specifically include persons in police cells or prisons for petty offences, as well as persons arrested for violating the presidential directives among those for whom the courts shall be open without the requirement for a certificate of urgency.

Respecting human rights and fighting COVID-19 can go hand in hand and do not need to clash. Indeed, it is in such times, that the most vulnerable and marginalised among us need the state's support and protection.

Taking human rights to all

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