



Independent Medico-Legal Unit
A World Free From Torture, Violence and Discrimination

THE SITUATION OF HUMAN RIGHTS PROTECTION IN THE MEASURES TO COMBAT COVID-19 PANDEMIC

**A STATUS REPORT PREPARED BY THE INDEPENDENT
MEDICO-LEGAL UNIT (IMLU)**

8th April 2020

Background information

The COVID-19 pandemic is now a major global health threat, with 1,227, 962 cases and 70,000 deaths confirmed worldwide as of the 6th April 2020.¹ Since the initial identification of the virus in China, global spread has been rapid, with 182 of 202 countries having reported at least one case. The experience in countries to date has emphasized the intense pressure that a COVID-19 epidemic places on national health systems, with demand for intensive care beds and mechanical ventilators rapidly outstripping their availability in even relatively highly resourced settings. This has potentially profound consequences for resource-poor settings, where the quality and availability of healthcare and related resources (such as oxygen) is typically poorer.

For Africa, where most countries have relatively weak health systems, the slow arrival of COVID-19 bought precious time to prepare. In collaboration with the World Health Organization and the Africa Centers for Disease Control (CDC), national governments have been mobilizing precautionary measures, most notably flight restrictions, enhanced screening at international airports, isolation, and contact tracing, as well as training of health personnel in anticipation of a potential epidemic.

¹ <https://www.worldometers.info/coronavirus/>

Kenyan Measures to Mitigate the Spread of Covid-19

Kenya announced its first confirmed case on Friday 13th March 2020, followed by a set of guidelines by the government on how to prevent further infections and manage the situation through the National Emergency and Response Committee. Some of the measures unveiled by the government to curb the spread of coronavirus include the closure of all schools, colleges and universities effective 16th March 2020, the suspension of all travel inside and outside the country, except cargo flights, effective 25th March 2020, banning all public gatherings, religious gatherings; invoked the Public Health Act, and other laws that ban prison visits, among other measures.

On 25th March 2020, the president announced a dusk-to-dawn curfew (7pm-5am), effective March 26, exempting 13 groups of workers offering essential services that include all categories of medical and health workers, national security, food and fuel distributors and retailers and licensed media. He also unveiled an economic stimulus package, reducing taxes to zero for those earning \$240 and below per month, while those earning above that will now only pay 25 per cent Pay As You Earn (PAYE) tax, down from 30 per cent².

When the cases reached 172 the Ministry of Health declared Nairobi (82% of cases), Mombasa, Kwale and Kilifi counties (18% of the cases) COVID-19 infected counties. Consequently, the President imposed a total 21- day ban on movement in and out Nairobi effective 6th April 2020, and Mombasa, Kwale and Kilifi effective 8th April 2020.

Other state agencies who have taken measures to manage the situation include the judiciary, the police, among others. In compliance with the directive from the National Emergency and Response Committee, the National Council for the Administration of Justice and the Chief Justice deliberated on the implications of the announcement by the Ministry of Health and agreed to scale down physical court activities throughout the country in order to allow further consultations and design appropriate measures to prevent the spread of the virus. Amongst other things, the judiciary directed that in regard to new arrests, all cases except serious ones will be dealt with at the police stations in accordance with guidelines to be issued by the Inspector General of Police.

The Judiciary further came up with mitigating factors³ to curb the spread including handling of criminal matters like the police bond where petty and traffic offenders to be

² <https://www.theeastafrican.co.ke/news/ea/Kenya-goes-into-dusk-to-dawn-curfew/4552908-5506824-9plkom/index.html>

³ <https://www.judiciary.go.ke/statement-on-justice-sector-operations-in-the-wake-of-the-covid-19-pandemic/>

released on either cash bail or free police bonds to be facilitated by the Ward Commanders in charge of Police Stations.

To enhance transparency and accountability, the Police have established a centralized record showing the number of people arrested and handled in all police stations and the terms of their release on bail or bond. This will be regularly monitored by Office of the Director of Public Prosecutions and periodic reports submitted to the NCAJ members.

For plea taking and urgent criminal hearings, the Office of the Director of Public Prosecutions remains open with one officer in charge of every regional office. In consultation with the Regional ODPP officers, Heads of Court Stations have been facilitating plea-taking for serious offences that are not subject to police bond. Magistrates across the country continue to review and revise bail and bond terms for petty offenders to facilitate their release from prisons as they await trial. Serious crimes, including defiance of national orders regarding the control of Covid-19, continue to be presented to court for plea taking. In consultation with the Police and the DPP courts are being convened at short notice to handle such cases.

In order to decongest prisons, files of inmates who are petty offenders jailed for less than six months and others who have less than six months to complete their jail terms have been presented to the High Court for review of their sentences. This has led to the release of 4,800 inmates serving less than 6 months, significantly helping to decongest the prisons. The exercise is continuing.

New inmates are currently being isolated to reduce the risk of infection and movement of inmates has been highly restricted. Prison visits have been suspended, including visits to the staff quarters. Prison labor has also been reduced to a bare minimum.

To facilitate the handling of civil matters and in specific fling of urgent matters and pleadings on March 20, 2020 the Chief Justice gazetted the Practice Directions on Electronic Case Management to guide the integration of ICT in judicial proceedings. The Practice directions are being used by various courts across the country to facilitate use of technology in the delivery of justice. The system is working well as is evidenced by the fact that in the first one week, 1779 matters were handled at various High Court stations. Tribunals, on the other hand, have handled 244 Applications under Certificates of Urgency in the last two weeks, the bulk of them being from the Business Premises Tribunal and the Rent Restriction Tribunal.

On judgments and rulings and in line with safety guidelines issued by the National Emergency Response Committee on Coronavirus, Judges and Magistrates are executing their duties albeit from home. The Judges and Magistrates have taken this opportunity to write their pending judgments and rulings. Video conferencing technology has been

adopted to deliver some of these judgments as was evident in Mombasa, Malindi and Eldoret and more courts will deliver judgments in this manner in the days ahead. Judges and Magistrates shall continue to utilize this period of working from home to write pending Judgments and Rulings and details of Judgments and Rulings ready for delivery shall be published weekly in the Judiciary, KLR and LSK websites.

Execution of warrants of arrest, court decrees and orders made prior to March 15, 2020 were all suspended until further notice and the Police, Court Bailiffs and Auctioneers instructed not to carry out execution of warrants, orders or decree issued before March 15, 2020.

The Law Society of Kenya has continued to communicate to its members on the essential services being offered by the courts and the resolutions above.

Human Rights Situation in Kenya after the Curfew Directive

On 25th March 2020, the President through his address on the state interventions to cushion Kenyans against economic effects of covid-19 pandemic announced that the national security council has sanctioned and caused the issuance of a public order number one on the coronavirus pandemic, with the key aspect that effective Friday, 27th March, 2020; a daily curfew from 7 p.m. to 5 a.m. shall be in effect in the territory of the republic of Kenya, with all movement by persons not authorized to do so or not being personnel who provide critical and essential service providers being prohibited between those hours. Further, he vested the management of the Kenya Ferry Services to be performed by the Coast Guard, the National Police Service and the National Government Administration Officers. Violating the curfew will be met with imposing a Sh10, 000 (\$96) fine, three-month imprisonment or both if the offender is arrested by law enforcement agencies.

Since the declaration of the curfew to slow down Covid-19 infections, incidences of arbitrary and lethal use of force by police have been reported. The weapons used under the guise of enforcing the curfew are whips, batons, teargas, and live bullets. Violence has been used to clear the streets, sometimes two hours before the start of the curfew, a case in point in Mombasa officers where officers were filmed beating people waiting for a passenger ferry, as well as journalists covering the events.⁴ The police almost always fail to abide by the Sixth Schedule of the Police Standing Orders when dealing with public order management issues. By law, the use of force during law enforcement must be *lawful, necessary, proportionate* and *accountable*. Police officers should use only the amount of force necessary to mitigate an incident such as effecting an arrest or to protect themselves or others from harm.

However, the video clips⁵ show that the force was generally unnecessary, arbitrary, indiscriminate and abusive. It wasn't meant to mitigate any clear and present danger. In Mombasa, media reported that police started beating people who were queuing to board the ferry, the only means of transport home to the mainland after work. Although the government said the curfew is one of the measures to control the spread of the coronavirus, the way some officers are implementing could backfire by forcing people together.

⁴ <https://www.aljazeera.com/news/2020/04/fury-kenya-police-brutality-coronavirus-curfew-200402125719150.html>

⁵ <https://www.youtube.com/watch?v=zGpsJemuKhw>

In Mombasa, police forced crowds of people to lie down together, in some cases on top of each other, as they beat, kicked, and slapped them for allegedly violating curfew. The crowds of tear gassed travelers, who did not have protective gear, coughed and yelled hysterically as police descended on them with batons, kicks, and blows.

On 1st April 2020 Kenya's President Uhuru Kenyatta apologized⁶ for the violence by the police following the imposition of a nationwide curfew. "I want to apologize to all Kenyans for some excesses that were conducted, but I want to assure you that if we work together, if we all understand that this problem needs all of us, and if we pull in the same direction, we will overcome." He however fell short of committing to hold the officers responsible to account. In spite of the President's apology, these violations continue across the country as evidence by our monitoring report below

The anti-riot GSU were withdrawn from the Ferry Services on 26th March 2020 and replaced with general duty officers, as well as public health personnel in Mombasa after the brutality that was experienced during the first day of curfew. The Mombasa governor and security leaders also held a meeting at the ferry and announced new measures that were less violent and human rights complaint, including orderly queuing and releasing employees early (4pm) for them to get to the ferry early. This resulted to the government to issue a directive on 30th March 2020 to all employers to release forthwith the employees who are not designated as critical or essential service providers to leave the work place no later than 4.00 O'clock in the afternoon (Kenya Gazette Supplement No. 33) the Public Order Act cap.56 – the public order (state curfew) order, 2020. The ferry hours were also extended to 8.30pm from 7.00pm.

The DCI, IPOA⁷ and IAU have begun investigations into cases of torture and extra-judicial executions that have been reported to them and have stated that the respective officers will be held accountable once investigations are completed. Some of the initial actions taken against the officers concerned include interdictions of fourteen officers⁸ for misconduct during the enforcement of the curfew. Four of the officers were from Nakuru County who separately bartered a man in Mauche village within Njoro Sub-County and another in Kaptembwa within Nakuru Town West Constituency on the evening of 1st April 2020⁹.

⁶ <https://www.aljazeera.com/news/2020/04/kenyan-president-apologises-police-violence-curfew-200401140202740.html>

⁷ https://twitter.com/IPOA_KE/status/1244965842091233280

⁸ <https://www.capitalfm.co.ke/news/2020/04/cs-matiangi-says-14-police-officers-interdicted-over-misconduct-during-curfew/>

⁹ <https://www.kenyanews.go.ke/four-nakuru-police-officers-interdicted-over-curfew-brutality/>

IMLU'S Monitoring Report

The Independent Medico-Legal Unit has taken measures to encourage and monitor human rights protection during the curfew period.

We issued a joint statement¹⁰ with CSO members under the umbrella of the Police Reforms Working Group-Kenya condemning the violations meted against citizens on the first day of the curfew.

We further activated our human rights monitors in specific counties where violations have emerged including Kakamega, Busia, Nairobi, Mombasa, Kilifi Nakuru and Homabay counties. The monitors have provided preliminary reports that have allowed us to take necessary steps to respond effectively and efficiently to the needs of those affected. We have so far recorded *25 cases of torture and other forms of ill-treatment and extra-judicial executions (EJEs)* related to the curfew. Out of the 25 cases, 6 were deaths 19 were injuries from police beatings. We supported 3 autopsies and provided psychological support to the family of the 13-year-old Yasin Hussein Moyo who was shot by police from his family's balcony on 30th March 2020.

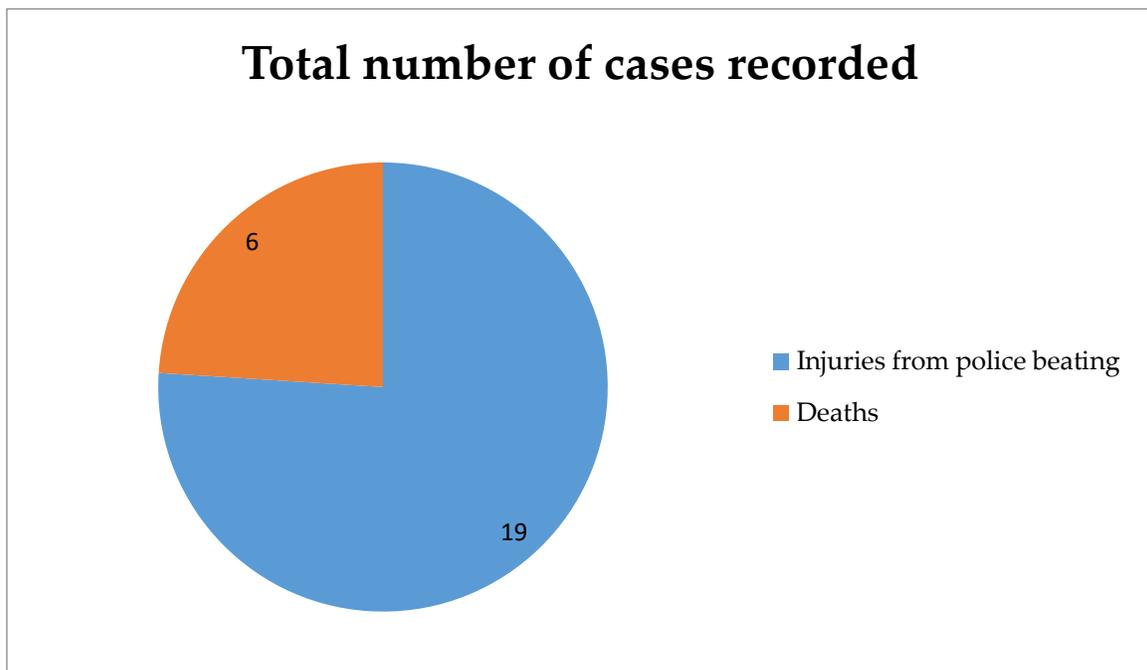


Figure 1 Total number of 25 cases were recorded, 19 injuries as a result of police beating and 6 deaths.

¹⁰ <https://defenderscoalition.org/police-must-stop-the-use-of-excessive-force-while-enforcing-the-curfew-law/>

Out of the 25 cases that we have recorded, 20 are male and 5 female and aged between 13 and 52 years.

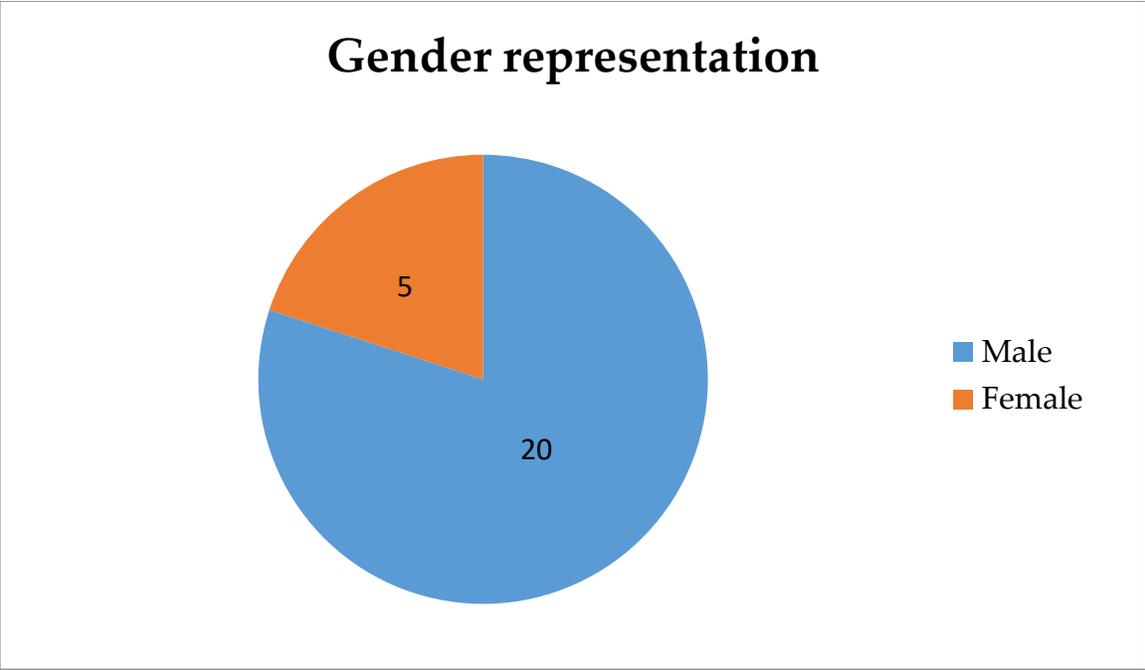


Figure 2 Representation of gender

Busia County recorded the highest number of cases (11) followed by Nairobi with (7), Kakamega and Nakuru had three each (6) and Kwale (1). Though Mombasa county was highly affected by police violence on the first night of the curfew (mainly ferry users), we were unable to record these incidences but will be triangulating our information with our peer organizations MUHURI and HAKI Africa.

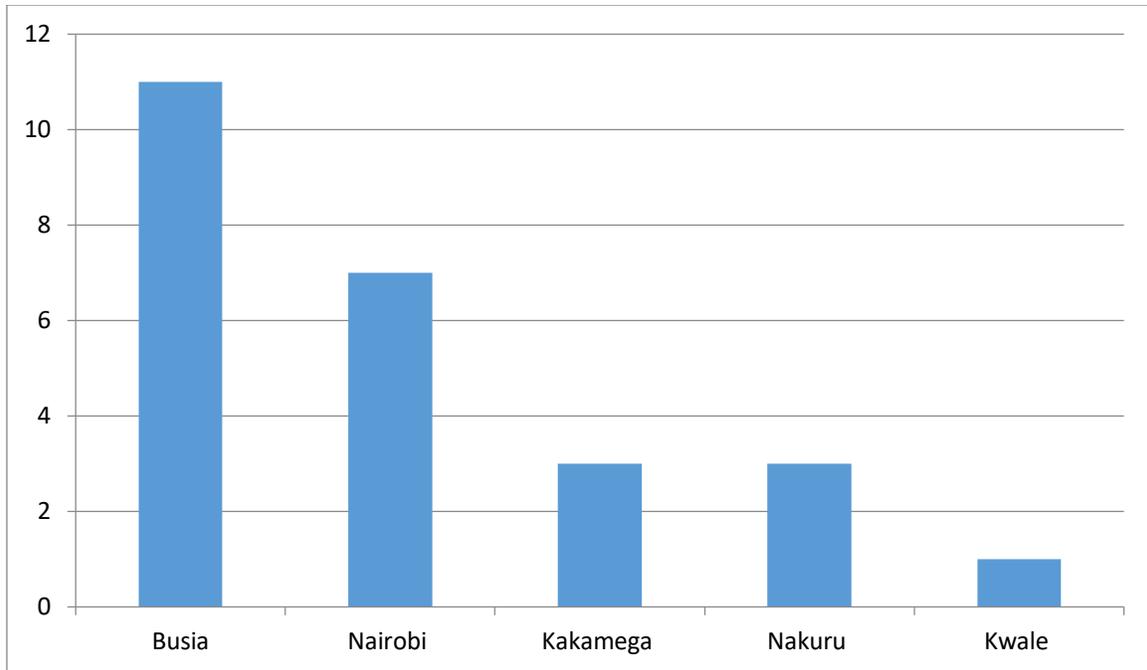


Figure 3 Cases recorded per County

The table below shows a summary of the cases that we have documented and are following up;

No.	Date	Name	Age	County	Injuries/ Death	IMLU's Intervention
1	2 nd April 2020	YHM	13	Nairobi	Death from police shooting	Monitor activated, postmortem conducted at the Mama Lucy Hospital Legal, Counseling assessment and support
2	1 st April 2020	EN	23	Kwale	Death from police beating	Monitor activated, postmortem requested In Kwale
3	29 th March 2020	RM	24	Nairobi	Injuries from police beating	Monitor activated, Medical support requested
4	3 rd April 2020	PGG	46	Nairobi	Death from police beating	Monitor activated, postmortem requested at the City Mortuary
5	5 th April 2020	DKK	23	Nakuru	Death from police beating	Monitor activated, postmortem conducted at the Nakuru ref. mortuary
6	1 st April 2020	MMK	32	Nakuru	Injuries from police beating	Monitor activated, medical support requested, case Ref to IPOA, KNCHR
7	30 th March 2020	FKK	Adult	Nakuru	Injuries (broken arm) from police beating	Monitor activated, medical support requested, case ref and taken by to IPOA, KNCHR Under No. 737/2020
8	2 nd April 2020	C	Adult	Nairobi	Injuries from	Monitor activated, medical

					police beating	support requested, client still admitted at the Mama Lucy Hospital, case Ref To IPOA, KNCHR
9	2 nd April 2020	MM	Adult	Nairobi	Injuries from police beating/arrested by officers from the Kayole Police Station and arrested and released without any charges	Monitor activated, medical support requested, case ref to IPOA, KNCHR/ released from the Kayole Police Station After intervention by KNCHR
10	2 nd April 2020	FM	19	Nairobi	Injuries from police beating/arrested by officers from the Kayole Police Station and arrested without any charges	Monitor activated, medical support requested, case ref to IPOA, KNCHR/ released from the Kayole Police Station After intervention by KNCHR
11	6 th April 2020	DK	Adult	Nakuru	Death by KWS Officers	Monitor activated, and documentation of the case on going in Nakuru.
12	2 nd April 2020	RJ – Mentally Challenged	35	Kakamega	Death by beating	Monitor activated, postmortem conducted at the Kakamega Ref. Mortuary
13	4 th April 2020	ZML -	Adult	Kakamega	Injuries from police beating	Monitor activated – a case of a deaf and dumb man who was allegedly assaulted by police officers from Mumias police station and is currently admitted at the Mumias Mission Hospital
14	30 th April 2020	PO	Adult	Kakamega	Injuries from police beating	Monitor activated - - case of a 40 year old man who was assaulted by police officers from Kakamega Police Station.
15	3 rd April 2020	BK	52	Busia	Injuries from police beating	Monitor activated - from Nambale Police Station (Mukhuyu village attack) - a case of 10 family members who were allegedly assaulted by police officers from Nambale Police Station.
16		GO	28			
17		RO	42			
18		BA	14			
19		DM	15			
20		SB	49			
21		EO	22			
22		WB	35			
23		JO	16			
24		GO	19			

25	29 th March 2020	JO-	Adult	Busia	Injuries from police beating	Currently admitted at the Aga Khan Hospital Kisumu allegedly assaulted by police officers from Nambale Police Station
----	-----------------------------	-----	-------	-------	------------------------------	---

Once we verify the cases (above), we plan to formally petition the Inspector General of Police and other relevant policing agencies to investigate and bring to account all officers found culpable for use of unnecessary excessive force leading to the injuries and deaths.

We continue to collaborate with network of professionals, other CSOs and CBOs across the country to monitor the situation and report to us for further action.

Situation in 13 Stations Practicing Community Policing

In the last 3 years we have established partnerships with 13 police stations to enhance public/police trust and partnerships and improve policing services. In the last 2 weeks we have made deliberate efforts to monitor how these stations are complying with human rights standards, with very specific reference to the adherence of the bail and bond policy guidelines for arrested persons.

Reports from Chairpersons of 13 Police Stations' Community Policing Committees in four Counties (Nyeri, Kisumu, Isiolo and Nakuru) indicate that none of the stations has reported any non-compliance but instead applauded the Ward Commanders in charge of the stations in ensuring that the curfew is enforced in a humane manner, that which conforms to the law . This is an ongoing process that we intend to monitor and report during the curfew period.

Further to this, we supported the same stations with a number of Personal Protective Equipment (PPEs) including sanitizers, hand washing gels, disinfectants, gloves and masks as a way of complimenting the government's efforts to curb the spread of the virus, while acknowledging the officer's service to citizen while protecting themselves.



Figure 4 Ward Commanders from Mukurweini, Nyeri Central , Kongoni, Isiolo Central and Oldo Nyiro policie stations receiving the PPEs to support the fight against the spread of COVID-19 on 28th March 2020.

Conclusion

It's not likely we will see accountability for these excessive enforcement actions, if investigations are left to the police to investigate themselves. Kenyan police have a history of rights abuses, including during law enforcement operations, and the officers involved are rarely investigated or held to account. During and after the 2017 presidential elections, IMLU documented more than 38 cases of opposition supporters killed or tortured by police and pro-government gangs. Authorities have never investigated the killings.

It is therefore our view that the role of the Kenya National Commission on Human Rights, the Independent Policing oversight Authority will be critical pillars on which accountability for these atrocities will depend.

It is also our view that the role of governance, health and human rights NGOs and activist groups will be critical in the push back against police impunity.

We find it shocking that the police have failed to appreciate COVID-19 poses more of a public safety risk rather than a security risk, hence the need to use policing measures more amenable to reducing the risks that appertain to safety. One of these key measures is community/police collaboration embedded in Community Policing Approach, under Section 96-100 of the National Police Service Act 2011, and the Inspector General's guidelines on Community Policing.

The authorities should ensure police respect the law and avoid abusive conduct while enforcing the curfew, and other restrictive measures that may apply in the near future. Otherwise, excess use of force could undermine government's ability to win popular support and cooperation in an effort to control the spread of the virus.

We will continue to monitor the situation while providing support for victims and their families to seek justice and hold the perpetrators to account.

Dated: 8th April, 2020

IMLU