



## Restrictions to Freedom of Assembly and Association in Africa in the wake of COVID-19

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### Introduction

Freedom of assembly and association (FoAA) are protected under international, regional and national instruments. Restrictions on the enjoyment of civil and political rights are permitted under Articles 12, 18, 19, 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR) in order to protect public health. The International Covenant on Economic, Social and Cultural Rights (ICESCR) permits the restriction of the enjoyment of the right to the highest attainable standard of physical and mental health, subject to the conditions under Article 4. Further, General Comment No. 14 on the Right to the Highest Attainable Standard of Health (Art. 12) recognises that the right to the highest attainable standard of health includes an obligation of states to control the spread of infectious diseases.

Across Africa, measures adopted by governments to contain COVID-19 have adversely impacted FoAA. For instance, [Kenya](#), [Mauritius](#), [Nigeria](#), [Rwanda](#), [South Africa](#), [Uganda](#), [Zimbabwe](#), [Ghana](#), [Senegal](#), and [Burkina Faso](#) are among the countries that have announced curfews, travel bans, compulsory quarantines, restrictions on public gatherings and closure of education institutions. Some of these measures have boosted the use of digital technologies. But in some countries, the measures imposed by states raise fundamental questions on their commitment to protecting human rights while containing the pandemic.

### Restrictions to Freedom of Assembly and Association in Africa in the Context of COVID-19

#### Limitations on Communication

COVID-19 has attracted internet control measures by governments to limit misinformation flow. Governments have justified limitations by citing the need to prevent the spread of false and misleading information. Indeed, there have been increasing cases of misinformation on the virus on social media. Most of the information is not verified and may be unauthentic, and could thus [obstruct effective responses to the virus](#).

In countering the fake and false news on COVID-19, governments have limited freedom of expression in a number of ways. In some countries such as [Uganda](#), the government has issued statements that point to criminalising of sharing false information or false news. Meanwhile, [17 people](#) in Egypt, a journalist in [Guinea](#), and two persons in Kenya who posted on [Twitter](#) and in a [blog](#) post were arrested on allegations of spreading fake news about COVID-19. In [Kenya](#), [South Africa](#) and [Zimbabwe](#), it is criminal to spread fake news on COVID-19. These measures not only have a chilling effect on freedom of expression, but they have also instilled fear and limited association and assembly online and offline in many countries in the region.

#### Intrusive Surveillance Practices

A number of countries have [instituted technology-based measures](#), notably invasive surveillance and data-based tracking, which affect the enjoyment of various rights, including the right to privacy and personal data protection, freedom of expression, association and assembly online. These include Kenya, which is reportedly [monitoring the mobile phones](#) of individuals who are under self-isolation. In South Africa, telecom companies have agreed to give the government [location data](#) to combat Covid-19. And in Uganda, a presidential adviser coordinating the Covid-19 fight said April 3 that an "intensive surveillance" campaign was being launched with the aid of telecom companies to trace more than 2,000 individuals.

There is concern due to poor transparency and the haste with which the surveillance has been introduced; as well as the limited precedent and oversight mechanisms around these practices. What data is being collected? Is the data handed by private actors to state agencies de-identified aggregate data or is it personally identifiable information? Who has access to the data and what safeguards exist to guard against its abuse?

What mechanisms do governments have with private/ telecom companies for data release and cooperation with tracking? While these questions remain unanswered, the surveillance activity has infringed many citizens' rights, including to privacy, assembly and association.

Prior to the Corona-19 pandemic, in many African countries there was limited judicial oversight over surveillance, poor legal and practical safeguards over personal data, and a growing mix of measures to undermine digital rights. A plausible fear is that, during the coronavirus pandemic and in its aftermath, some governments could shift the surveillance apparatus and lessons learnt to surveil on activists, critics, and opponents, and deny them the enjoyment of various rights.

### **Limitations on Operations of Actors**

The imposition of curfews, travel bans, restrictions on public gatherings, mandatory social distancing, closure of education and business institutions, and compulsory 14-day quarantines in order to contain COVID-19 not only adversely impacted FoAA, but have also crippled, restricted and limited the work of key actors such as civil society, non-governmental organisations, small and medium enterprises (SMEs), academia and journalists. In enforcing these measures, there have been physical attacks of individuals which has further curtailed individuals' capacity to work. In Uganda, [journalists were severely beaten](#) during the enforcement of the curfew by security forces. Similar attacks on journalists have happened in [Kenya](#). Moreover, the implementation of mandatory quarantines has proven to be expensive. In Kenya, individuals have been burdened with the unexpected high costs of expensive quarantine facilities without government subsidies, the option to stay at home, or to move to cheaper facilities.

### **Abuse of Emergency Powers**

Across the [continent](#), especially where bans and curfews have been imposed, state security agencies have invoked disproportionate measures, ranging from the use of excessive force, violent tactics and degrading treatment including humiliation and bullying. In [Kenya](#), a 13-year-old boy was killed by a stray police bullet, a taxi driver died after he was assaulted by police, and hundreds were tear-gassed and assaulted by police hours before the 30-day curfew commenced as they awaited to board a ferry.

In [Nigeria](#), a man was shot dead for purportedly flouting the 14-day stay at home order. In [Uganda](#), two men were shot and injured, several women [tortured](#), and scores of street vendors were beaten up by police and soldiers enforcing the 14-day nationwide COVID-19 restrictions and curfews. In [Rwanda](#), police shot and killed two people for violating the two-week lockdown, a [woman](#) was raped by a soldier, and others were reported being assaulted and robbed by soldiers enforcing the lockdown. In [South Africa](#), three people have [died](#), 55 people were arrested and scores were hit with rubber bullets and water cannons or beaten up by soldiers with whips on the first day of the 21-day national lockdown. In [Chad](#), two journalists from the state-owned Télé Tchad were assaulted and detained by police while covering enforcement of Covid-19 measures. In [Senegal](#), police beat up people found outside after a night curfew.

Attacks on individuals have widely resulted in arrests, battery, persecutions, detentions and in extreme cases, death. Consequently, the capacity of individuals to assemble and associate online and offline has been limited in fear of the undesirable consequences such as finding oneself in the rough hands of security agencies.

### **Validity of Restrictions in the Coronavirus or other "Emergency" Contexts**

- States should bear the burden of providing justifications for limiting FoAA on grounds of national security or public order in response to the pandemic, and such limitations should be consistent with international human rights standards.
- Restrictions are valid and justifiable only if they are specific, time-bound, proportionate and limited to the legitimate aims strictly necessary to contain the pandemic.
- Restrictions should not be arbitrary, excessive, vague, overly broad, unreasonable, discriminatory, violate international human rights standards, or not be in accordance with the law.
- Travel bans must be carefully implemented to ensure that they do not unjustifiably limit freedom of movement, assembly and association.

- Interruptions to internet access and online communication to limit information flow are not justified.
- Criminalisation of expression and the dissemination of false news limit information exchange. Any limitations should clearly define and specify what qualifies to be fake news or misinformation. Government should make any such regulations in consultation with civic organisations and human rights defenders.

**Specific guidance of state authorities for protecting public health while ensuring the freedoms of assembly and association to the greatest extent possible**

- The response measures and the restrictions on FoAA should be specific, time-bound, proportionate and limited to the legitimate aims strictly necessary to contain the pandemic.
- The measures adopted should be the least restrictive and should be subject to regular review.
- The use of emergency powers should be in line with international human rights standards, medical processes and should comply with and adhere to the rule of law.
- The protection of human rights and compliance with state obligations must be at the centre of all prevention, preparedness, containment, and treatment measures in order to safeguard public health.
- The measures should contain appropriate safeguards against potential breaches, including providing clear guidelines for the conduct of security agencies and ensuring meaningful legislative and judicial oversight of executive conduct.
- State authorities must act in an open, transparent and accountable manner. The public announcement in South Africa of the appointment of a respected judge to provide oversight so that privacy is not compromised in combating Covid-19, is such an example of transparency.
- State authorities should carefully assess the potential consequences and impact of possible measures on FoAA before making declaratory orders or taking actions, to ensure minimal limitations while achieving maximum public health protection.
- Due to the centrality of the internet to working, learning, accessing information (including on preventing the spread of the coronavirus), and to the enjoyment of freedoms such as expression, opinion, association and assembly, governments should promote greater access to the internet and online services for citizens, including those with low levels of income.
- Proactively and consistently communicate reliable health information on the pandemic including on the measures put in place, useful contact information, the rate of spread, impact of the disease on the public as well as the possible control measures by the public.
- States should put in place measures to support groups and people who are most at risk, such as the elderly and frontline medical personnel, and compensate individuals whose rights have been limited to ensure they are sufficiently cushioned against the effects of the restrictions, including ensuring availability and accessibility of basic commodities, implementing food distribution, price controls, tax rebates and cash payments.
- National Human Rights Institutions should continue to monitor and document human rights violations occurring during the restriction periods and provide remedies for those affected.

**Guidance to state authorities for quickly and orderly reinstating full protection for the freedoms of assembly and association after an emergency has ended**

- Make public announcements specifying the end of the restrictions and the reinstatement of FOAA. This should specifically aim to assure citizens of confidence to enjoy their rights.
- Inform all security agencies of the removal of all restrictions on freedom of assembly and association. This will iron out cases of indiscriminate attacks and arrests of individuals by security agents who may not be aware of the end of curfews, compulsory quarantines and bans on business operations and public transport.
- Dismantle the surveillance apparatus constituted as part of combating the spread of the coronavirus and destroy all the data collected during the tracking exercise as it would have served the purpose for which it was collected.
- Issue transparency reports detailing the Corona virus-linked surveillance activity, including tools and technologies used, state agencies and private entities involved, number of persons whose phones and

data were tracked, the types of data that was collected, which entities accessed the data, and what safeguards were instituted to guard against misuse of the data and the surveillance apparatus.

- Repeal all laws, decrees, declarations and guidelines that could have intended to limit freedom of assembly and association in the wake of COVID-19. There should be express declarations and statements that such interim or temporal measures were not aimed at limiting assembly and association but at containing COVID-19 and should not be applied in the aftermath of COVID-19.
- Free all persons who were arrested and detained for violating curfews and complete lock downs. This will symbolise restoration of freedoms related to assembly and association.

### **About CIPESA**

The Collaboration on International ICT Policy for East and Southern Africa (CIPESA) is a leading centre for research and analysis of information aimed to enable policy makers in the region to understand ICT policy issues, and for various multi-stakeholders to use ICT to improve governance and livelihoods. CIPESA produces and publishes research, commentaries, and briefing papers that spark thinking and dialogue on effective and inclusive ICT policy issues. [www.cipesa.org/resources](http://www.cipesa.org/resources)

