



UPHOLDING HUMAN RIGHTS AND THE RULE OF LAW DURING A PANDEMIC – LESSONS FROM THE JUDICIARY IN AFRICA’S RESPONSE TO THE COVID-19 PANDEMIC

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Inclusive Governance Initiative



BACKGROUND

Across the world, COVID-19 resulted in use of extraordinary laws, law enforcement limiting rights, including through extreme restrictions on freedom of movement and access to services, as well as laws criminalising behaviours, in the interests of public health. The panic occasioned by the pandemic raised concerns that rule of law might take second place in courts and police actions, with a disproportionate impact on marginalized groups.

LESSONS LEARNED

Initial court responses to pandemic restrictions were deferent to the State to decide adequate measures to curb the pandemic. Typical arguments used by the courts focused on the Precautionary Principle, Doctrine of Necessity and Greater Good principle. Courts were however alive to the need for the State to use its powers in accordance with the law and in a proportionate manner. Courts were willing to set aside measures which ignored the potential negative impact on vulnerable communities but only where that impact was adequately demonstrated by the appropriate applicants. Courts further urged States to restrict policing powers and address impunity and lack of oversight of the police.

DESCRIPTION

The project monitored the response of the courts in Africa during the COVID-19 pandemic to assess adherence to the rule of law. Engagements with LGBTI organisations indicated that the measures put in place to address the pandemic were often blind to the real-life impact on marginalised groups. These measures impacted the rights of LGBTI persons including their mental health, safety and security within homes and in public spaces, freedom of association, health and access to health services, and financial resilience. The measures also impacted the ability of marginalised groups to access the courts to assert their rights.

CONCLUSIONS / NEXT STEPS

The courts’ pandemic jurisprudence which cautioned the executive and police from overstepping their powers, were ineffective where the executive and police did not acknowledge and implemented the judgments. The rights violations occasioned by a breakdown of the rule of law and police impunity could have been better addressed had there been additional complaints mechanisms available and accessible to seek redress.

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