

SAFETY MEASURES FOR MEDIA COVERING THE COVID-19

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Overview

1. The World Health Organisation declared the COVID-19 a global pandemic and urged governments around the world to act swiftly in putting in place prevention and management measures.
2. In Kenya, the President, following detection of three positive cases announced measures aimed at containing the situation and mitigating the effects, including imposing a curfew between 7 pm and 5 am.
3. The Ministry of Health continues to issue factual and authoritative information on the same including contacts in case of emergencies. It gives regular updates and briefings on the same (0800721316-toll free/0729471414/0732353535).
4. It's a developing story that's likely to be with us for the long haul, thus requiring media coverage for some time, therefore we must be prepared.



Factual Reporting

1. Focus should be on the individual protection of those exposed, affected and infected. Societal safety and related coping mechanisms and factual reporting of the science of the outbreak in a way that minimizes harm to the society

2. Remember as journalists to:

- Seek and report the truth on the Corona virus outbreak
- Minimise harm to individuals, the society and the scientific community
- Be transparent and accountable to yourself, the community, Kenyans and the nation
- Be independent and professional in your reporting of the Coronavirus



Live Interviews and Programmes

1. Minimise live interviews and those that require sharing of microphones. Limit yourselves to interviews done via phone when possible.

- Where face to face interviews must be done, keep at a distance of one to two meters between yourself and the interviewee
- Provide an extra microphone, which must be disinfected immediately after use.



2. Don't place your equipment on the ground or on surfaces when in an infected zone or highly exposed environments including isolated health facilities.

3. Equipment such as cameras, recorders and microphones which are widely shared amongst staff must be disinfected using fast acting microbial wipes, before and after every use and their operators required to wear gloves.

4. Programmes that require studio audience presence should be stopped.
- Where audience must appear, guests must be seated at least one meter from each other.
 - This protocol also applies to the distance between the anchor/host and the nearest guest.
 - Anchors/Radio hosts must wash their hands before and after their show and avoid touching their faces at any time.

Media Managers

1. Sanitisers must be put at all entrances to the media houses with special consideration being given to studio entrances.
- Guests and anchors must clean their hands before entering the studio.
 - Crews must wash hands with water and soap before and after each production and where necessary put on masks and gloves.





2. Editing benches, computers, mixers in the gallery and other equipment must be disinfected before and after every production or editing session.

3. As a golden rule, treat the victims of the coronavirus with dignity and respect their right to privacy. Minimize interviews with them, photos of victims should be avoided and their names excluded from stories to minimize unnecessary exposure.

Self-Care

1. Journalists who have reported from active outbreak zones are required to stay away from the office or interacting with news sources, members and others for a period of days. Alert relevant offices immediately you feel unwell.



2. The Ministry of Health has advised on the use of masks. Please adhere to the guidelines to minimize exposure levels.



3. Ensure you track your stress levels and seek for assistance should you feel the trauma is taking a toll on you. MCK is on standby to assist.

Practical Steps for Journalists to, Reduce Threats and Risks

1

Be vigilant to security – state that you are a journalist and show your credentials.

2

Have key contacts both in media and in security especially in senior positions.

3

Avoid going alone to report during the curfew. Have a colleague accompany you.

4

Avoid confrontation with security agents and members of the public.

5

Never violate curfew regulations without proper permission from the authorities.

6

Editors, ensure you have insurance cover for your journalists and equipment.

7

If you feel unsafe, please share with your line manager/editors about your fears.

8

Minimise breaking news from field sites at the expense of your safety.



These tips have been adopted from several internal editorial and safety guidelines from media houses in Kenya, MCK safety guidelines and international best practices.

SECTION 2

THE LAWS ON PROTECTION OF JOURNALISTS



The novel Corona virus has thrust journalists and media practitioners into a tumultuous situation which they are trying to navigate through. During this pandemic, journalists and media practitioners play a crucial role in dissemination of information. They continue to work in extremely difficult circumstances which put them at risk of not only contracting the virus but their safety and security is often compromised. It is important to note that there are international convention treaties and national legislations that provide for safety and protection of journalists.

They should operate in a free and safe space without interference.

Press freedom violations including attacks and violence against journalists violates the Kenya Constitution that provides for the protection of all Kenyans and freedom of expression in particular. In this regard a citizen of Kenya, and,

indeed, any person in Kenya enjoys all these rights without exception, including journalists and media professionals.

In the wake of the Corona Virus Disease 2019 (COVID – 19) pandemic the government has made changes to legislations and policies but nonspecific to journalists or health reporting. However, the following laws still apply to journalists and media practitioners during this period.

INTERNATIONAL LAWS/TREATIES



Article 2 (5) of the Constitution states that the general rules of international law and any treaty or convention ratified by Kenya forms part of the law of Kenya.

1. International Covenant on Civil and Political Rights that says

Article 19 (2) provides that: *States parties should put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression. Paragraph 3 [of Article 19] may never be invoked as a justification for the muzzling of any advocacy of multi-party democracy, democratic tenets and human rights.*

Nor, under any circumstance, can an attack on a person, because of the exercise of his or her freedom of opinion or expression, including such forms of attack as arbitrary arrest, torture, threats to life and killing, be compatible with Article 19. Journalists are frequently subjected to such threats, intimidation and attacks because of their activities. All such attacks should be vigorously investigated in a timely fashion, and the perpetrators prosecuted, and the victims, or, in the case of killings, their representatives, be in receipt of appropriate forms of redress.

2. Universal Declaration of Human Rights

Article 19 of the *Universal Declaration of Human Rights* is clear that “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”.

3. African Charter on Human and People's Rights

Article 9(1) of *Africa Charter on Human and Peoples Rights* states that “every individual has the right to receive information.”

- UNESCO passed Resolution 29 on “Condemnation of violence against journalists” in 1997 following serious concerns about the killing of journalists in many countries and the evidence of the spread of impunity – that is, the persistent failure of the lawful authorities to bring those responsible to justice.
- The UN Security Council Resolution 1738 (2006) condemns attacks against journalists in conflict situations recalling and acknowledging that journalists engaged in dangerous professionals’ missions in areas of armed conflict shall be considered civilians, to be protected as such.
- The UN Plan of Action on the Safety of Journalists and the Issue of Impunity “recommends working in cooperation with governments, media houses, professional associations and NGOs to conduct awareness raising campaigns on a wide range of issues such as existing international instruments and conventions, the growing dangers posed by emerging threats to media professionals, including non-state actors, as well as various existing practical guides on the safety of journalists”.

NATIONAL LAWS



a. The Constitution of Kenya

1. Freedom of the media

The supreme law upholds media freedom under Article 34.
“(1) Freedom and independence of electronic, print and all other types of media is guaranteed, but does not extend to any expression specified in Article 33 (2).

(2) The State shall not –

(a) exercise control over or interfere with any person engaged in broadcasting, the production or circulation of any publication or the dissemination of information by any medium; or

(b) penalize any person for any opinion or view or the content of any broadcast, publication or dissemination.”

the only limitation or regulation of this freedom is what is expressed in Article 33 (2), namely:-

“(2) The right to freedom of expression does not extend to –

(a) Propaganda for war;

(b) Incitement to violence;

(c) Hate speech; or

(d) Advocacy of hatred that –

(i) Constitutes ethnic incitement, vilification of others or incitement to cause harm; or

(ii) Is based on any ground of discrimination specified or contemplated in Article 27 (4)”

2. Freedom of Expression

Article 33 protects and entrenches the Freedom of Expression in all its manifestations, including the freedom to seek, receive or impart information or ideas, including artistic creativity, academic and scientific research, but with limited exceptions to propaganda for war, incitement to violence; hate speech or advocacy of hatred.

3. Access to information

In that regard, Article 35 of the Constitution provides that;

- 1) *“Every citizen has the right of access to—*
 - a) *information held by the State; and*
 - b) *information held by another person and required for the exercise or protection of any right or fundamental freedom.*
- 2) *Every person has the right to the correction or deletion of untrue or misleading information that affects the person.*
- 3) *The State shall publish and publicise any important information affecting the nation.*

4. Right to Privacy

Article 31 provides that;

“Every person has the right to privacy, which includes the right not to have –

- (a) Their person, house or property searched.*

(b) Their possessions seized.

(c) Information relating to their family or private affairs unnecessarily required or revealed; or

(d) The privacy of their communications infringed.

This law also applies to journalists when conducting interviews or health reporting during this period. COVID-19 patients' identity should not be released without their consent. The media house, journalist or media practitioner ought to secure written consent of all individuals who may be featured in any publication or broadcast. Publication of a photograph or information of a COVID 19 patient without their consent is actionable as a breach of privacy. In some instances, consent would only be valid where the person was fully informed about all relevant and exposure.

5. Rights of arrested Persons.

Article 49 basically protects the interests of the arrested person, including journalists. This law applies where a journalist has been wrongfully detained or arrested. The article provides as follows:

49. Rights of Arrested Persons

- (1) An arrested person has the right—*
- (a) to be informed promptly, in language that the person understands, of (i) the reason for the arrest; (ii) the right to remain silent; and (iii) the consequences of not remaining silent;*
 - (b) to remain silent;*
 - (c) to communicate with an advocate, and other persons whose assistance is necessary;*
 - (d) not to be compelled to make any confession or admission that could be used in evidence against the person;*
 - (e) to be held separately from persons who are serving a sentence;*
 - (f) to be brought before a court as soon as reasonably possible, but not later than— (i) twenty-four hours after being arrested; or (ii) if the twenty-four hours ends outside ordinary court hours, or on a day that is not an ordinary court day, the end of the next court day;*
 - (g) at the first court appearance, to be charged or informed*

of the reason for the detention continuing, or to be released; and

(h) to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.

The rights are also protected under article 9 of the International Covenant on Civil and Political Rights. It states as follows:

“Article 9

- 1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.*
- 2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.*
- 3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be*

entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

- 4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.*
- 5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation."*

However, in these circumstances if a journalist is arrested during this period of coronavirus and it's not a serious case they will be issued with a police bond at the police station. If it is serious they will be taken to court to take a plea.

Article 26 (1) "Every person has the right to life". Sub-section (3) of the same Article further elaborates that "a person shall not be deprived of life intentionally, except to the extent

authorized by the Constitution or other written law”

Article 28 guarantees the inherent right to human dignity and to have that dignity respected and protected.

Article 29 provides for the freedom and security of the person, in particular, the right not be deprived of freedom arbitrarily or without just cause. This Article is categorical with regard to detention without trial, being subjected to any form of violence from either public or private sources; subjected to torture in any manner, whether physical or psychological and treated or punished in a cruel, inhuman or degrading manner.

Article 41 which states inter alia: “Every person has the right to fair labour practices, including fair remuneration and reasonable working conditions,” provides for Journalists and media professionals labour rights that must be respected.

b. Employment Act

An employer does not have the right to terminate a contract of employment without notice or with notice less than that which an employee is entitled. The employment act

provides justifiable grounds of summary dismissal. Section 47(3) grants the employee a right to seek redress in industrial court.

c. The Media Council Act 2013

The Media Council of Kenya established through the Media Council Act 2013 regulates the media and protect its freedom. The Media Council of Kenya under Section 6 of the act is mandated to protect the rights and privileges of journalists the conduct and discipline of the journalists' advice government on media related policies.

Conclusion

The above-mentioned laws currently protect the safety of journalist during this period. COVID-19 is novel and few countries have developed regulations to fit this current situation especially on the spread on misinformation, for example South Africa through Government Gazette dated 18th March 2020 passed regulations under the Disaster Management Act, criminalizing statements intended to

deceive any person about COVID-19 or the government's response to the pandemic. Generally, since 2018 about 50 states have taken legal action against misinformation.

However, in Kenya the main law that guarantees safety and protection of journalists is the Constitution whose provisions are highlighted above. In regard to misinformation in Kenya, Article 33 can be used in specific circumstances and the Computer Misuse and Cyber crimes Act which came into full effect following decision of the court on its constitutionality.

ISSUED BY

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