

THE PUBLIC HEALTH (PREVENTION, CONTROL AND SUPPRESSION OF COVID 19) RULES 2020

(LAWYERS HUB COMMENTS)



About the Lawyers Hub Kenya

The Lawyers Hub is a Legal-Tech organization incorporated within the Republic of Kenya serving the global south. It exists to provide innovative and technology-driven solutions to policy, legal practice and access to justice with a particular focus on technology-driven enterprises and policy alternatives. In the year 2020 alone, the Lawyers Hub has convened policy makers, academia and legal-tech organizations from 20+ countries within the African Continent, curated rapid tech solutions under the Global Legal Hackathon and developed key policy briefs for the African Continent on Artificial Intelligence, Data Privacy & Digital Identity, Tech and Migration, and Taxing the Digital Economy. In this regard, we offer our submissions on the proposed regulations.

NARRATION FOR THE AMENDMENTS AND RECOMMENDATIONS

The Covid 19 pandemic has hit the world below the belt and this raises the need to come up with stringent measures to combat further spread of the virus as well as deal with current infections to a mitigated conclusion. However, the attempt to curb the spread should not lead to derogation of some of the inherent rights and freedoms of individuals which otherwise have nothing to do with the spread or curbing the spread.

Individuals have the right to privacy, which should not be unnecessarily breached, which includes the right not to have personal data collected, stored or revealed unnecessarily. The fight against the spread of the virus must be done under strict guidelines to ensure that data such as the DNA of individuals are not collected in the process.

Any other information and/or data of individuals collected via the individuals consent shall not be used for any other reason and such information shall only be held for a reasonable time. The wishes of the families of the deceased persons because of the virus should be respected and the disposal of the bodies of their loved ones should be in line with their practical wishes.

The rules should also not criminalize infections. It should be a collective responsibility of everyone to report any suspected case of infection but should be the role of the government to ensure any suspected infections are evacuated, tested and put into isolation facilities or quarantined. Access to information should be given priority and the state should offer education through national and local media to keep people informed of the ways to suppress the Covid 19 Virus.

The rules should as we provide for the access to emergency treatment as stipulated under Article 43(2) of the Kenyan Constitution 2010. The medical practitioners helping in the fight should as well be protected in the rules due the high risk that is posed to them in the line of duty and the state should provide adequate and appropriate equipment and measures to ensure that they are well protected.

The following are our proposed amendments

Concerning paragraph 3(2) of the rules the Lawyers' Hub is in the view that the death of a COVID 19 patient has serious implications on people who have been in contact with such persons. As a result, we recommend that, if such death occurs, any person who is in the premise where the deceased was residing and/or any person who has been in contact with the deceased should be evacuated immediately and presented to a testing center and consequently transferred to an isolation center where the person/s shall be monitored for 14 days.

The person/s shall further be required to give details of any person they have come into contact with for tracing, testing and isolation purposes. We also propose that no medical officer shall not collect any unnecessary data of individuals including DNA data and any other information or data collected shall not be used for any other purpose and such information and data shall be kept for a reasonable time. The rules of confidentiality to a patient shall apply.

The rules are silent on suspected carriers who cannot have other persons notify medical officers as per paragraph 2 as they may be unemployed or living alone. Responsibility should also individuals.

In addition to paragraph 2, we propose leveraging on technology including USSD for contract tracing purposes as per the provisions of the Data Protection Act, 2019. Concerning paragraph 4(a) of the rules, where a person residing in a premise has been tested positive for the COVID 19, persons residing in that premise should be immediately transferred to a testing center and consequently moved to an isolation center for monitoring for 14 days. The persons should give details of any person/s they have come into contact for testing, monitoring and isolation purposes.

Concerning paragraph 8. We are of the view that the Ministry shall train and have persons to supervise burials of persons who have died of COVID 19. The wishes of the family if the deceased person should also be respected and persons shall be allowed to either bury or cremate their loved ones.

The trained persons shall be in charge of the disposal of the bodies. Where bodies are unclaimed within a specified period deemed appropriate by public health official, government should take responsibility to bury or cremation after notification in a newspaper of nationwide circulation.

Concerning paragraph 10(3) we are of the view that trying to aid an isolated person to escape is a very grievous offence and perpetrators should face a more serious fine and charge. We propose reviewing the sentence to one year and fine to Kenya Shillings One Hundred Thousand. However, given the special circumstances around how the disease is spread, we propose the augmentation of existing guidelines in relation to imprisonment of those thought to commit an offense under the rules to mitigate spread in prisons.

A clause on restriction on visitation is crucial to these regulations; we propose the introduction of a clause to read:

No person/s; except a medical officer, health officer, medical practitioner or any other authorized person, will be allowed to visit a patient who is suspected to be a carrier of, or know to have contracted COVID-19 and is currently under isolation or quarantine in a medical facility,

Concerning paragraph 11 we propose addition of further sub-sections to read;

6. Any person who is suspected to be a carrier of the COVID 19 Virus shall be tested and isolated for 14 days monitoring.

7. If a person who has been isolated as a suspected case turns to be positive, he shall be required to give details of person/s they have come into contact with for testing, monitoring and isolation.

(5) A medical officer or public health officer who wishes to enter a premises where a person resides shall provide their identification and such entry shall be done within reasonable time of the day.

Add paragraph 14. The state shall employ us of technology to aid the implementation of these regulations to enhance easier testing, isolation and communication to suppress the virus.

We also note that the regulations are silent on public gatherings and spread of COVID-19. We welcome the introduction of a clause on closure of public places, bans on gatherings and exemptions with regard to essential services. This clause should take into consideration the socio-economic needs of persons as well as the economic needs of the country in light of the pandemic.

Considering the stigma around the disease, we emphasize that the Rules reflect the rights and principles of Data Protection as per the Data Protection Act, 2019, protecting the personal data of those suspected to be carriers of, or know to have contracted COVID-19.

The Rules remain silent on testing of asymptomatic persons. The suppression of COVID-19, being a disease that can be spread by people without symptoms, is heavily reliant on testing. There is therefore need to include a clause on testing procedures.

SUMMARY OF OUR PROPOSED AMENDMENTS AND JUSTIFICATION

RULE	PROPOSED AMENDMENT	JUSTIFICATION
3 (2)	<p>Amend paragraph 3 by adding the following sub-clauses immediately after sub-clause 2</p> <p>(3) Any person who has been in contact with a deceased person due to Covid 19 shall be evacuated immediately and presented to a testing center and consequently transferred to an isolation center where the person/s shall be monitored for 14 days.</p> <p>(4) The contact person/s shall give details of any person they have come into contact with for tracing, testing and isolation purposes if need be.</p> <p>(5) A medical officer or public health officer who wishes to enter a premises where a person resides shall provide their identification and such entry shall be done within reasonable time of the day.</p> <p>(6) Any medical officer shall not collect any unnecessary data of individuals including DNA data and any other information or data collected shall not be used for any other purpose and such information and data shall be kept for a reasonable time. The rules of confidentiality to a patient shall apply.</p>	<p>Death of a COVID 19 patient has serious implications on people who have been in contact with the deceased. It is imperative that such contacts should be traced and tested and where need be, put in isolation facilities.</p> <p>Identification removes the possibility of anyone masquerading as health officer from entering people's residents for other purposes other than the one intended by the rules. Reasonable time of entry erodes the possibility of anyone taking advantage of the provision to enter a premise at any time they wish including odd night hours that is insecure.</p>
4(a)	<p>Amend paragraph 4 by deleting and substituting sub-clause (a) thereof and add a further sub-clause to read;</p> <p>(a) Where a person residing in a premises has been tested positive for the COVID 19, persons residing in that premise shall be immediately transferred to a testing center and consequently moved to an isolation center for monitoring for 14 days.</p> <p>(a) (1) The persons shall give details of any person/s they have come into contact for testing, monitoring and isolation purposes.</p>	<p>In our view it is very dangerous to ask people to remain in premises where there is a confirmed case of Covid 19, this is due to the fact that the Virus is easily spread through surfaces and this would put a lot of lives at risk if evacuation and testing of people who might have had contact with contaminated surfaces are not monitored. The most prudent thing to do is evacuate and test everyone in such premises.</p>
8	<p>Amend paragraph 8 by adding the following words immediately after the word health officer;</p> <p>“and in supervision of trained personnel to conduct disposal of Covid 19 deaths” and the wishes of the family if the deceased shall be regarded as practically possible.</p>	<p>We are of the view that the Ministry shall train and have persons to supervise burials of persons who have died of COVID 19. This will allow closing any loophole for exposure to the virus from the deceased person to people conducting the burials/disposals. The family can be allowed to exercise their wishes either to bury the deceased or cremate him.</p>

SUMMARY OF OUR PROPOSED AMENDMENTS AND JUSTIFICATION

RULE	PROPOSED AMENDMENT	JUSTIFICATION
10(3)	Amend paragraph 10 sub-clause 3 by deleting the words “two months” and “twenty thousand” and substitute them thereof with the words “one year” and “one hundred thousand”	We are of the view that trying to aid an isolated person to escape is a very grievous offence and perpetrators should face a more serious fine and charge.
11	Amend paragraph 11 by adding the following sub-clauses immediately after sub-clause 5. 6. Any person who is suspected to be a carrier of the COVID 19 Virus shall be tested and isolated for 14 days monitoring. 7. If a person who has been isolated as a suspected case turns to be positive, he shall be required to give details of person/s they have come into contact with for testing, monitoring and isolation.	If a person is suspected to be a carrier the first thing that should happen is immediately testing the person and if need be isolating the person or quarantining the person to contain spread of the virus in case the person is actually a carrier. The person should be quarantined for at least 14 days to determine their status to finality giving regard to the mutations of the virus.
14	Amend by adding another paragraph immediately after paragraph 13 to read 14. The state shall employ us of technology to aid the implementation of these regulations to enhance easier testing, isolation and communication to suppress the virus.	This will help to combat and suppress the spread because technology is more effective and efficient.