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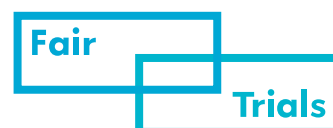
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APCOF
African Policing Civilian Oversight Forum

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Fair Trials

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Contents

Introduction

Much has been written (for a policing audience) about the role of the police during the present pandemic and (for a human rights audience) about protecting human rights during such pandemic. This short paper seeks to bridge these two narratives by highlighting one of the lessons learnt during the COVID-19 pandemic: rights-based responses to policing during a pandemic are good for the police and are good for policing.

Human rights and policing are often described as though they are in opposition to each other: that policing inherently threatens our human rights; and that human rights are obstacles to effective policing. Experiences from the COVID-19 pandemic, and other epidemic diseases, exposes this as a false dichotomy. Policing approaches that have been nested in human rights considerations have proven most successful in enabling the police to do their work, in maintaining public trust in the police, and in achieving cooperation in effecting the highest levels of compliance with public health legislation.

COVID-19 is a cluster of diseases caused by a novel coronavirus (Sars-CoV-2) that originated in late 2019. Since the disease first appeared, the virus has spread around the world, resulting in many deaths and becoming one of the few truly global pandemics of the modern age. COVID-19 has created unprecedented challenges for governments the world over. A wide range of government responses have followed. These have included border closures, national lockdowns, curfews, vast economic expenditure by many governments, including economic stimuli, and furlough schemes.

The job of ensuring compliance with legislation and other public health rules and regulations has fallen to the police. The approaches to law enforcement have been wide-ranging and varied, including everything from strict, even violent, enforcement through to the use of discretion and strategies aimed at persuasion and community engagement.

This paper highlights five key lessons from this international experience:

1. Tough approaches that rush to enforcement, punishment and prosecution are not the best way of encouraging compliance;

2. New rules need to be defined clearly and explained effectively and consistently;

3. Policy decisions are needed to prioritise limited resources in order to enable the police to do their work in challenging circumstances;

4. New rules need to be applied equitably, and measures need to be introduced to ensure they do not cause undue harm to poor and marginalised people; and

5. Proper planning is key to ensuring law enforcement responses are effective, justified and proportionate, and that they have legitimacy.

Approaches that rush to enforcement, punishment and prosecution are not the best way of encouraging compliance

Throughout the world, much COVID-19 legislation has involved significant restrictions being placed on the rights of citizens. For example, in Africa, it has been reported that 35 countries enacted state-of-emergency legislation mandating nightly curfews, restricting movement and assembly, including restrictions on movement within and between countries, and, in some cases, restrictions on media and communications.[1] Penalties for breaches of regulations have also varied among nations, and, at times, within nations, from fines through to more extreme measures such as imprisonment (e.g. in Egypt, breaches of regulations are punishable with up to 15 years in prison with no right of appeal).[2] The requirement that police enforce this legislation has often placed them in direct conflict with members of the public who are concerned about the erosion of their rights. This has been brought into sharp focus as many jurisdictions maintained restrictions on freedoms even as COVID-19 cases subsided.[3]

A human right lens emphasises the importance of ensuring that limitations on rights are justified and are applied proportionately. These considerations apply even in the context of a global pandemic: protecting public health may provide a legitimate reason for limiting rights like the right to protest, but these limitations need to be justified and applied proportionately. There is no doubt that, during COVID-19, this has required challenging balancing acts, particularly for the police given their traditional role in maintaining public order and criminal investigations – in essence in enforcing the law.

But human rights are not an obstacle to effective policing. Indeed, experience during COVD-19 has shown that the proportionate use of law enforcement powers has been good for the police and good for policing.

Four Es approach to policing – building public trust

Many police forces have utilised versions of a 'four Es' approach to policing the COVID-19 pandemic. Such approaches focus upon *Engaging* in a friendly and supportive manner with members of the public, *Explaining* the health rules and why they are needed, *Encouraging* individuals to adhere to the rules. *Enforcement* of the rules using various sanctions is seen as the last resort and is used only if other methods of persuasion fail.[4] Thus, police officers using these approaches are actively attempting to employ enforcement powers in a more proportionate way, that is, where non-coercive approaches have not succeeded. They do this not just to ensure respect for human rights, but also because adopting this approach (derived from the procedural justice literature) helps to achieve and maintain community trust in the police, thereby encouraging public cooperation.

Building this trust involves: active engagement on the part of the police with their communities, being prepared to develop a dialogue with these communities, and being sensitive to the needs, challenges and, ultimately, the life contexts of these communities.

This approach is particularly crucial when dealing with harder-to-reach groups. Certainly, enforcement first and/or violent approaches to forcing compliance appear to be counterproductive in achieving compliance and maintaining police–public trust. Versions of the four Es approach have been shown to be useful in maintaining community trust in the police and in maintaining compliance with public health legislation.

One caveat to this, however, is the level of pre-existing trust between the police and the local community. Where the level of trust is low, for example where the police have a history of violent and aggressive policing or do not generally listen to community concerns, it will be very difficult for the police to engage with communities. Indeed, communities may, out of fear, reject police attempts to engage with them. That said, it is worthwhile for the police to persevere in attempting to engage with communities, for several reasons. The approaches described above may actually begin to develop trust between the police and communities, which will make policing a lot easier over time, as community members are more likely to comply with police instructions.

Engagement approaches are also less costly compared with draconian approaches that frequently involve large numbers of often armed or especially equipped police to implement them. At a pragmatic level, engagement approaches, even if trust is difficult to develop, are at the very least less likely to cause harm to individual health (eg. injuries due to aggressive police action or health risks due to individuals ignoring the rules following aggressive police action), damage property, or adversely affect social cohesion.

Focusing on the goal of public health

It is a gross oversimplification to see the role of police as simply enforcing the law. While the police have been given additional powers of enforcement during the pandemic, they have been given these powers for a reason – to protect public health.

In recent years, the police in some jurisdictions have evolved to the extent of having a broader focus on issues such as public safety and crime prevention. With this evolution, there has come a relatively recent realisation that the police share a common mission with Public Health.[5] While Public Health and police sectors have different roles and mandates, they intersect at various key points in protecting and promoting the health, safety and security of populations and individuals. COVID-19 has emphasised the important role and potential of the police as public health actors.

Cooperation between Public Health and the police has been hampered by a lack of knowledge and a misunderstanding of, or lack of trust in, each other's working practices, assumptions, aims and goals. For example, there have been a number of public health agencies that regard the police as a public health risk as a result of abuses of power committed by police officers.[6] Clearly, in such a climate, developing effective working practices can be very challenging.

There have, sadly, been examples of police action that has been counterproductive to the aims and objectives of other stakeholders. Most obviously, as mentioned above, violent enforcement methods have frequently led to individuals protesting against police action. Around the world, there have been a number of examples of protests, some violent, against both lockdowns and police enforcement action.[7] Draconian approaches have been used by some police officers to enforce legislation, including injurious and fatal violence – for example, during the early days of the pandemic in Uganda, Kenya and South Africa, violent police enforcement of stay-at-home regulations resulted in many injuries to members of the public and some deaths.[8] In Nigeria, for example, the police have been accused of using a range of tactics, including violence, extortion and sexual assault.[9] Indeed, during the early days of the COVID-19 pandemic in March 2020, in some nations more people died at the hands of the police than of COVID-19.[10]

This is obviously counter to the needs of public health agencies, as protest activities increase contact between individuals, with the result that there is an increased risk of spreading infection. Police action with regard to certain hard-to-reach communities, such as undocumented migrants, has also led these individuals to avoid health care for fear of being discovered by the police, leading to an attendant risk of disease not being detected and of infection being spread among an individual's contacts.

Recommendations

1. Legislation should be public health-focused and the police should be encouraged to seek compliance through engagement and education, not police enforcement actions.

2. The police should utilise, engage and explain approaches vis à vis the public that are designed to maintain trust rather than adopt draconian or violent enforcement approaches.

3. The police need to communicate clearly with communities in order to explain their decisions and need to be ready to listen to community concerns. This will enhance the perception of procedural justice, which, in turn, can maintain community trust and cooperation.

4. Legislative action should seek to limit unnecessary enforcement actions during the pandemic where the risk of contraction of the disease outweighs the benefits of enforcement or where it places unreasonable demands on the police.

LESSON 2

New rules and police powers need to be defined clearly and explained effectively and consistently

In response to COVID-19, many countries adopted emergency legislation, including new criminal offences and police powers, many of which have restricted human rights. Human rights law requires such restrictions to be 'prescribed by law', and further requires the law to be sufficiently clear and precise to enable citizens to regulate their behaviour and to foresee the consequences of their actions. Failure to provide this clarity during the pandemic has given rise to significant challenges, not only in respect of human rights, but also regarding the police and policing.

Examples of these challenges have included:

1. **Often wide variations in policing practices**: Within the same jurisdiction, different police officers have interpreted legislation differently and have applied different sanctions for the same behaviours, (e.g. the Spanish Ombudsman instituted an investigation into inconsistencies in the levels of fines imposed for the same type of breaches of legislation).[11] In Tunisia, a lack of clarity in the meaning of a presidential decree led to confusion as to what constituted a breach and to wide variations in policing practices, including arbitrary detention.

2. **Accusations of politicised policing**: In many Western democracies, especially following the murder of George Floyd in the United States,[12] the police and the courts have had to strike a balance between supporting the rights of individuals to engage in actions such as protests and the public health risks that these can present. There have, however, been accusations of Public Health being politicised to prevent certain actions or protests.[13] For example, in the United Kingdom, permission was denied for a vigil in London in memory of a female homicide victim on the grounds that this breached COVID-19 lockdown rules. However, outside London permission for similar events was granted. When an unofficial vigil went ahead in London, police made arrests and there was the deeply disturbing spectacle of police being pictured restraining a woman in a face-down position.[14] [15]

3. **Allegations of disproportionality**: There have been overzealous responses where police action has seemed disproportionate to the issue at hand, for example in the United Kingdom, two women, out walking as part of their legitimate right to exercise, were stopped and fined by the police for breaching COVID-19 regulations because, whilst they were walking, they were drinking cups of herbal tea. Possession of the tea was a breach of regulations because the police officers interpreted this as indicating that the women were not just exercising but engaged in a picnic – something that was explicitly prohibited. This situation caused considerable criticism of the police in the media, among the public and by many politicians.[16]

4. **Rules impossible to follow, including for the police**: As nations have moved from lockdown to a gradual easing of lockdown, the need to reinstate lockdown in some areas within a jurisdiction following increases in infection rates has presented further challenges for the police. Here, the police have had to enforce different rules within the same jurisdiction, often at very short notice and with little time to plan.[17] For the police, this lack of specificity regarding their role represents a significant challenge. On the one hand, a lack of specificity means that the police can be flexible in their responses and not constrained to particular roles or responsibilities. On the other, this can translate into a series of wide-ranging, unspecified expectations, some even contradictory, and duties being assigned to them that can very easily overwhelm their capacity to carry them out.

All too often during pandemics, legislation has been rushed through that is unclear and the police have been given little time to consider its meaning and implications or what powers they have. The inevitable variations in practice and interpretation have opened up the police to accusations of arbitrary policing, inconsistency and unfairness (with the attendant challenges this creates).

The police should be presented with legislation in good time so that they are able to plan their responses. Legislation also needs to be clearly articulated and explained. It should also be open to adequate scrutiny and review by relevant stakeholders, especially in terms of its fairness, through regular, mandated reviews. Where legislation appears unfair and disproportionate, then it should be reformed or repealed. Importantly, also, to prevent the perception of government overreach, legislation should include sunset clauses.

Recommendations

1. Criminal justice responses that are created by governments need to be defined clearly and communicated effectively to all stakeholders.

2. Where governments change legislation, this needs to be clearly articulated and the police need to be given sufficient time to accommodate the changes coming into force.

3. Legislation needs to be explicit about police powers within the context of public health legislation, and about the degree of discretion they have in enforcing these powers.

4. The police should play a consultative role in developing future pandemic legislation.

5. Legislation should be subject to continuous scrutiny and review, with sunset clauses to minimise perceptions of government overreach.

LESSON 3

Policy decisions are needed to prioritise limited resources in order to enable the police to do their work in challenging circumstances

Courts in most countries reduced their capacity during COVID-19 in order to minimise the risk of infection. This included cancellation of, and delays in, many court hearings. For example, in South Africa, reports suggested that, as of September 2020, there was a backlog of around 49,000 cases.[18] This resulted in accused persons waiting longer for their trials, many accused persons being detained longer (often in dangerous prison conditions or with severe lockdowns), and victims and witnesses waiting longer for the conclusion of legal proceedings. In this context, many human rights advocates have called for prisoner releases and for policy decisions to be taken to reduce arrests, divert cases from the criminal justice system, and to decriminalise certain offences.

Sadly, there has been a lack of political willingness to recognise that difficult choices are needed to allow the police to prioritise their resources. Essentially, governments have expected the police to continue with 'business as usual' despite delays within the court system, changing crime patterns during the pandemic, challenges regarding police absenteeism, and loss of resources. This has had significant effects on the police.

Threats to public trust

As gatekeepers to the criminal justice system, the police have often been frustrated by delays in the justice system, with some court hearings cancelled at short notice, delays in processing some cases, some cases not being processed at all, and their inability to reassure victims of crime that their cases will be heard anytime soon.[19] Any tough policy decisions have effectively been left to the police, with the associated risk that it is the police who take the blame when the public does not agree with the decisions. Prioritising certain offences over others has undoubtedly had a negative impact on the attitudes of members of the public to the criminal justice system and has adversely affected the confidence some have in it.[20] At its most extreme, members of the public and the police have committed egregious violations of the law. For example, there have been reports of police officers using violence, threats, extortion and sexual violence to maintain compliance and as punishments for perceived infringements of various laws.[21]

The police have had to prioritise certain investigations and have developed different ways of dealing with some offences, for example through an increase in the issuing of on-the-spot fines or the imposition of other penalties for offences that are more usually referred to court.[22] There have also been various attempts at decriminalisation of certain offences, for example in British Columbia (Canada) the police have utilised diversionary approaches to individuals in possession of controlled drugs, diverting them towards treatment centres rather than imposing fines or directing them to the courts. In Chicago, the police department directed officers to issue citations and misdemeanour summons rather than arrest individuals for certain non-violent offences. In Philadelphia, the police decided not to issue tickets unless there was a public safety issue. In Denver, suspects arrested for

certain crimes such as minor burglary were released by the police on warrant for them to return to the police only after the end of the COVID-19 crisis.

Given the harm a public perception of arbitrariness entails in terms of public cooperation and trust in the police, it is important that the police clearly communicate the reasons for particular approaches or decisions. This is especially necessary where the police use novel methods of disposal, diversion or decriminalisation. The police also need to be ready to listen to community concerns and to engage in constructive dialogue with communities. Such an approach is the most likely to maintain community trust in the police and policing strategies, as it illustrates that there are reasons for the decisions, that the public are given a voice and are listened to, and that decisions are not arbitrary.[23] Failure to do this is likely to compound concerns of unfair and inconsistent policing and undermine trust.

It is interesting, however, that we could find no examples of governments changing legislation regarding offences or mandating diversionary practices as a result of the COVID-19 pandemic. Instead, most of the changes were introduced at a local police level, often in response to the challenges the police themselves faced. To fully experience the benefits of diversion or decriminalisation, governments need the will to develop appropriate legislation and policy. Leaving this to be decided at a local level by the police themselves involves the risk of the police using different approaches in different areas in the same jurisdiction, leaving them open to accusations of inconsistency, arbitrary practices and unfairness that can harm public trust and cooperation.

Health risks for the police

One consistent challenge for the police during any pandemic is minimising their risk of infection without compromising their ability to carry out the task of policing. This is because much police work requires some engagement with members of the public, many of whom will be of unknown infection status. Strategies to minimise infection have generally involved minimising contact with members of the public. This has often meant restricting public access to police premises, triaging calls for service in order to prioritise those requiring police attendance and using technological solutions such as video conferencing. As viruses can pose an infection risk if they are present on surfaces within vehicles or buildings, there has also been a need to clean police resources after exposure to a potentially infected person. In addition, to prevent infecting others, staff suspected of being exposed to the disease have been subject to quarantine, and staff who became ill were required to stay away from work until they were no longer an infection risk.

Changes in crime patterns during a pandemic can also impact how staff are deployed.[24] For example, there has been a near universal increase in levels of domestic violence and online crimes such as fraud, whereas, during lockdowns, there has been a significant reduction in crimes such as street robbery and crimes associated with street violence.[25] These factors combine to create significant workloads for the police, combined with a reduction in the availability of resources. Without a reduction in workload, staff absenteeism results in increased workloads for remaining staff or redeployment into areas of police activity in respect of which they may have limited experience or training. It has, almost universally, again fallen to the police to devise strategies to address the many challenges associated with the reduction of available police resources. Instead of policy decisions being taken to reduce the demands on policing (e.g. through decriminalisation), additional responsibilities have been given to the police.

Taken together, and in the already fear-inducing context of a pandemic, where staff are apprehensive about becoming infected and infecting friends, colleagues and family members, these factors can lead to an increase in workplace stress and reduced staff morale. During COVID-19, this loomed especially large in poorly resourced policing contexts where personal protective equipment (PPE) was inadequate.[26] Police leaders need to be sensitive to the

mental health needs and well-being of their staff, and support services should be rendered that help officers identify mental-health challenges faced by themselves and their colleagues and provide support such as mentoring or counselling that has been shown to be effective.[27] There have been examples of innovative practice during the COVID-19 pandemic with some police agencies specifically providing mental health support for officers. For example, in the United Kingdom, the National Police Wellbeing Service provided a series of self-help, web-based resources to support police officer mental health.[28]

Where police contact with the public is necessary, this has generally involved using some form of PPE, such as masks and gloves. Sadly, in many cases, police agencies were not equipped with adequate supplies of good-quality PPE. PPE itself, though, gives rise to challenges. Using PPE such as face masks essentially creates an element of anonymity. There are therefore risks that more draconian approaches may be used or the potential for police corruption related to on-the-spot fines where the identity of the police officer concerned is obscured by a face mask. Here, it is imperative that police officers clearly identify themselves during interactions with the public, especially where they are imposing some form of sanction, and that PPE is not used to dodge accountability.

Assessing the wider implications of technological solutions

Many jurisdictions have also begun to make greater use of various technological solutions to reduce the backlog in court cases. This includes some hearings being conducted via video conferencing, and evidence-in-chief in some cases being given by victims of crime via recorded video.[29] There are, however, challenges associated with these approaches. In low-income countries, technological solutions may be difficult to implement owing to non-existent or poor infrastructure. In addition, members of the legal profession, some judges, and members of the public have expressed serious doubts about changes to traditional court methods, citing concerns over the rights of accused persons/defendants.[30] These technologies can also create additional responsibilities for the police and place considerable strain on them. For example, in England and Wales, the police were expected to keep individuals in police custody whilst arranging video-based hearings. The police were responsible for making arrangements, and for providing and maintaining the technology. These initial roles fell to the police, as there was no other agency available to carry out this work. However, it proved to be an additional responsibility at a time of reduced police capacity.[31]

Recommendations

1. Governments need to be sensitive to the capacity and capability of local police to effectively police public health regulations.

2. The police and the courts: need to be sensitive to how court closures and delays affect the confidence of the police and the public in the criminal justice system; must actively develop strategies that seek to prioritise the prosecution of certain offences; and must employ methods of disposal such as diversion to reduce unnecessary contacts and arrests so that justice can be seen to be done in as timely a manner as possible.

3. Governments need to consider legislative approaches that decriminalise certain offences in order to encourage policing consistency within a jurisdiction. Governments also need to develop policies that encourage diversionary responses.

4. The police need access to adequate supplies, and training in the use, of PPE.

5. Police leaders need to consider the impact of policing during COVID-19 on their staff and support services should be set up.

LESSON 4

New rules need to be applied equitably, ensuring they do not cause harm to poor and marginalised people

One of the key challenges facing the police during a pandemic is how to engage with affected communities. As noted, there are many ways in which the police can do this. However, some of these, most notably violent, draconian or otherwise inconsistent and unfair approaches, have led to outcomes that are counterproductive to public health, human rights and trust in the police.

There is much research that demonstrates that an essential component of policing is the legitimacy of a policing agency to exercise power over and to 'police' a community. Legitimacy is nested within the level of trust that a policed community has for the policing agency. Where legitimacy is low, community members are less likely to cooperate with non-coercive requests by the police. Trust in the police is itself related to the historical relationships between communities and the police, as well as the policing strategies that are utilised. Where policing strategies are unfair, inconsistent, and fail to adequately involve those who are policed through providing explanations for actions and listening to their concerns (as exemplified by violent policing methods), trust in the police is generally low. Policing approaches to communities are therefore critical in obtaining and maintaining cooperation with regard to rules and regulations during a pandemic.[32]

During a pandemic, the most marginalised members of communities are generally the most likely to suffer negative impacts.[33][34][35] For example, in the United Kingdom, people living in the most disadvantaged areas were more than twice as likely to die from COVID-19 infection than others[36] – a pattern repeated elsewhere. Similar effects have been noted in other recent epidemics like the Ebola outbreaks.[37] COVID-19 has also demonstrated that disadvantage is associated with the experience of greater levels of police enforcement action. For example, during COVID-19, it was individuals from disadvantaged and other vulnerable communities, such as racial and ethnic minorities, who were significantly more likely to receive warnings and fines and more likely to be arrested than others.[38][39] The reasons for this are complex. One possibility is that, for many members of these groups, staying at home during lockdown is very difficult if not impossible. There may be many reasons why this is so, including overcrowding, a need to obtain food and water, or being employed in a job where there is no possibility they can work from home. In low-income countries, many of the poorest and most disadvantaged individuals have no option but to leave their homes, as they need to collect water and food, or because of overcrowding at home.[40] Strict enforcement by the police in these circumstances compounds disadvantage and marginalisation, as it risks criminalising the vulnerable because of their vulnerability. It has compounded social division and has led to protests that were sometimes violent during COVID-19[41][42] and other pandemics.[43][44]

Where the police have used approaches to individuals/communities that have been cognisant of their context and challenges and have made use of discretionary police powers with this in mind, greater compliance has been achieved. Examples of good practice

during COVID-19 have included approaches taken by the police in Nepal, Bangladesh and Pakistan. In these nations, the police identified several disadvantaged and vulnerable groups, including sex workers, HIV sufferers and various immigrant groups who were blamed by other members of the community for spreading the infection. The police were aware that, if these individuals ventured from their homes to get food or water or attempted to work, they would be in danger of being confronted by violence. To prevent this, the police organised deliveries of food and water to these individuals. Thus the police effectively tailored their approaches to the specific needs and challenges of such groups.

The take-home from this is that 'one-size-fits-all' strategies can be counterproductive and can cause significant social harm to the most vulnerable.

There are a number of communities that may be described as 'hard to reach'. These consist of various groups who may not wish to engage with the police or other officials. This may be due to a range of factors, including fear of the authorities or a desire not to draw attention to themselves. Groups that fall into this category can include undocumented immigrants, trafficked individuals, and some marginalised, disadvantaged and vulnerable individuals such as people who are homeless, people who have mental health issues and individuals wanted by the authorities. Frequently, the fears such individuals have centre on reprisals or sanctions by authorities or other members of the community. It is, however, the case that, for many so-called hard-to-reach groups, one of the major challenges they face is a lack of trust in the authorities, as they often fear sanctions if they engage at all with anyone in authority.[45]

Members of these groups often avoid contact with the authorities, often have limited recourse to health care, and may be unfamiliar with health regulations. Engaging such groups is difficult for the authorities, and this has been experienced internationally during COVID-19.[46] Failure to engage with such groups is, however, risky not only for these groups, but also for the rest of the community. This is because, should members in a group become infected, they are unlikely to be tested and may not be able to engage in social isolation and other health-protective behaviours. This can, in itself, lead to these groups becoming a source of infection within a larger community. Whilst this is clearly a risk to the health of such a group, it may further compound their disadvantage should other community members begin blaming them for spreading the infection.[47] The importance of engaging with hard-to-reach communities was demonstrated during the 2018 Ebola epidemic. Authorities in Uganda feared that the virus would spread into their country from the neighbouring Democratic Republic of the Congo, the epicentre of the outbreak. In adopting a whole-community information campaign, authorities specifically targeted those groups whom they considered to be the hardest to reach and at greatest risk because they comprised individuals who, it was deemed, could be the most likely to spread the virus. This process of engagement is acknowledged to have contributed to stopping the virus crossing into Uganda.[48] Broadly speaking, during COVID-19, where the police have, as with other groups, used strategies in respect of hard-to-reach communities and have actively sought to engage with them, exploring the challenges that individuals face and attempting to police with discretion based upon these approaches, higher levels of compliance have been achieved. In addition, levels of trust in the police have been maintained. As noted above, maintaining levels of community trust in the police is critical because post-pandemic police officers will still need to police communities – and this task will be much more challenging if trust has been adversely affected by draconian or heavy-handed approaches.

Another related challenge has been general politicisation of pandemic-related responses in some jurisdictions. This has, for example, included vaccine nationalism, the use of vaccination status as a pretext to allow some activities such as socialisation or travel, and the use of pandemic rules to block activities like protests. Such rules and regulations have disproportionately affected those who were already the most disadvantaged. This has led to accusations of policy inequity, with some community members viewing the measures

imposed as being part of a broader political agenda and accusing governments of policy overreach. Where communities have lost trust in the logic of rules and regulations, this has compounded feelings of frustration and has led to protests, with some targeting and blaming the police.

Recommendations

1. The police should work together with local communities with regard to evolving responses.

2. The police need to be cognisant of the particular context, needs and challenges of particular communities or groups that make compliance with rules a challenge for them.

LESSON 5

Proper planning and scrutiny are key to ensuring that law enforcement responses are effective, justified and proportionate, and that they have legitimacy

One major challenge facing the police during the COVID-19 pandemic has been that, throughout the world, their role has been so poorly defined. This appears to stem from a generalised lack of consideration of the role of the police within health emergencies embedded in national pandemic plans.[49]

Building relationships with other agencies

The police have needed to engage with various key stakeholders in developing their responses. Where this has not happened, there has been duplication of effort, a failure to share relevant information, wasted resources, 'turf wars' concerning who has lead responsibility, and behaviour by one agency that is inconsistent with the aims or needs of another.[50] For example, in Indonesia, disagreements were reported between various government agencies over how to respond to COVID-19 and about who had lead responsibility.[51]

However, developing effective working relationships during emergency situations, especially where the relationships were non-existent prior to this, is not without its challenges. There are many reasons why agencies do not develop good working relationships prior to emergencies or why agencies struggle to work together during them. In particular, there can be significant lack of trust between agencies that contributes to an unwillingness to share information or practice. This often stems from different histories, working practices, training, aims, and stereotypes about each other. Engagement and the development of good working relationships, as well as coordination and cooperation between the police and other agencies, are some of the ways of reducing these challenges.

However, the onset of a pandemic or other emergency is not the best time for agencies to start their attempt to engage with each other. Rather, the police and other stakeholders such as Public Health, non-governmental organisations (NGOs), government leaders, and informal groups such as local community groups and other local leaders need to develop working relationships during more stable times, such as prior to a pandemic or other health emergency.

There are many challenges in achieving this, and mutual distrust is a significant barrier. However, previous attempts to develop multiagency working have been successful where different agencies have been involved in joint planning, training and emergency simulation exercises and have had to work together to solve problems.[52] In addition, opportunities for members of different agencies to work within other agencies and become familiar with their aims, objectives and working practices have been beneficial. However, perhaps one of the best ways to encourage trust between agencies is through the development of informal interpersonal relationships between members of different

agencies. As well as resulting in interagency familiarity, joint training and working also serve to develop these crucial informal relationships between members of different agencies. An interesting example of the development of multiagency working during COVID-19 occurred in Eswatini. Here, as a result of limited resources, a decision was taken to co-locate public health and the police in an effective fusion centre where information could be shared between agencies and joint working strategies and approaches could be developed between the police and public health officials.[53]

It should also be noted that jurisdictions that had formal standing initiatives between public health and police services were able to utilise these initiatives to reach out to vulnerable populations. These collaborations allowed for the police and community-based agencies to effectively communicate so as to ensure that people were safe and gained access to critical services.

Police involvement in pandemic planning

The International Health Regulations (2016)[54] require participating nations to produce pandemic plans. These plans should detail how they intend to respond to an epidemic or pandemic. In practice, these plans are mostly focused on responses to pandemic influenza, as, until COVID-19, influenza had been considered to be the most likely disease to become a pandemic.[55] During COVID-19, many of these plans formed the basis of national-level responses to the pandemic.[56] The majority of the plans are detailed in specifying the respective roles of public health authorities, medicine and medical practitioners, hospitals, and other functions of government during a pandemic-related health emergency. However, an exploration of these plans reveals that none of them present any detailed consideration of the role of the police during a pandemic. In the few plans that do mention the police at all, they do so in broad-based and general terms, typically stating that, during any future pandemic, the police will carry out their *usual duties*, *assisting and supporting other agencies where possible*, as well as *other duties as necessary*.[57]

There are perhaps many reasons for this relative neglect of policing. Most existing pandemic plans were written by government officials and individuals with medical/public health expertise, often without any involvement by representatives from the police. Not surprisingly, then, there is perhaps a lack of appreciation or knowledge of the sort of contributions the police may be able to make. In addition, there is also a general perception among many in government and public health of the police being the service of last resort whose role is to do whatever is required when there is no one else available.[58] Such a view is very challenging for the police, as it often leaves them filling in gaps left by other services and can contribute to a sense among the police of being overwhelmed.[59] There is also a trend of some distrust of the police among some in Public Heath, who regard the police themselves as a health problem owing to policing strategies that appear discriminatory or violent.[60] The police themselves may also have not been afforded an opportunity to adequately engage with governments/stakeholders or may not have made an effort or taken the opportunity to discuss their contribution.

The practical effect of this is that, because of the absence of the police from government pandemic-planning processes, the resulting legislation has often failed to adequately consider the capability and capacity of the police to implement or otherwise work within such planning. In fact, internationally, many police agencies have frequently complained that much of the legislation relating to COVID-19 has, at best, been vague, has been modified frequently by government, and has presented them with little or no guidance regarding their powers of enforcement or what was expected of them. [61] [62] The police were therefore often left in an invidious position of uncertainty, unsure about the aims of particular legislation or their powers within it, and, as a result, uncertain of how best to police it. In this context, it is perhaps not surprising that police agencies resorted to the policing tactics and approaches that they normally used, irrespective of their suitability to

policing a pandemic disease. Consequently, police agencies that generally employed strict enforcement or even draconian strategies to achieve compliance with legislation used similar strategies in response to COVID-19, whereas agencies which generally used less confrontational tactics persisted with these.

Considering the implications of this for future pandemic policing, a strong recommendation that follows is that the police should be included in pandemic planning. This would allow early consideration of the challenges that pandemics can create for the police, ensure the practicality of policing various suggested rules and regulations, and more clearly specify what is expected of the police during a future pandemic. Governments need to be especially sensitive to the capacity and capability of their local police agencies to effectively police public health legislation. Legislation also needs to be explicit regarding what powers the police have, and about the level of discretion the police have in using these powers.

Recommendations

1. The police need to engage with a range of other stakeholders in developing plans for pandemic responses. Stakeholders include Public Health, NGOs, political leaders, local community groups and other local leaders.

2. Together, they need to develop working relationships prior to a pandemic or other health emergency. This can be done effectively through joint planning, training and emergency simulation exercises, and these should be an ongoing feature of the working relationships between different agencies.

Conclusion

In this paper, we have explored some of the key challenges that have been experienced by the police during the COVID-19 and other epidemics/pandemics. We have considered police responses and have identified some responses that have been more successful than others in achieving public compliance with public health rules.

Unfair, arbitrary, inconsistent, overzealous or violent policing has a number of negative consequences. These include a breakdown in public trust of the police and other government institutions, an associated reduction in public cooperation with the police and government, and harm to the perceived (by the public) legitimacy of the police to exercise power over the public.[63] Internationally, during the COVID-19 pandemic, particularly where legislation has provided for extreme punishments for minor infractions (e.g. arrest and detention for not wearing a face covering), members of the public have been much more reticent in complying with government guidelines, often finding ways of working around legislation (with an associated risk of increased infection rates).

Another consequence of these legislative challenges is that individuals have been more willing to protest against lockdowns. Draconian police action, and severe and inconsistent penalties, has contributed to public fear of both the police and the virus. This, in turn, has contributed to greater acceptance of conspiracy theories regarding COVID-19 (such as whether or not it is real, and that COVID-19 has been invented by government to control the populace),[64] thereby fuelling public health challenges such as vaccine hesitancy and greater resistance to public health regulations.[65]

Essentially, people want to be heard and listened to by authorities; they want legislation, rules and regulations and penalties to be justified, proportionate, transparent and to be applied consistently. Further, where they trust the authorities, they are more likely to cede some of their freedoms in return for protection from the effects of a pandemic disease, but only so long as the limitations on their freedom are time-bound and appropriate to the circumstances. Perceptions of inconsistency and arbitrary approaches on the part of the police significantly undermine trust, as does violent enforcement.

Fundamentally, our findings illustrate the central importance of trust in the police and the authorities for achieving compliance with public health legislation, rules and regulations. Where the police and governments can develop strategies designed to enhance trust, they are likely to achieve greater levels of cooperation and compliance with legislation on the part of the public. Respect for the concepts of legal certainty, legitimate justification, and proportionality – which underpin human rights – is key to achieving this.

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22

ABOUT THIS REPORT

Governments' attempts to manage the COVID-19 pandemic led many to introduce extraordinary law enforcement powers. The security forces, and specifically the police, have been extensively deployed to enforce measures to curb the transmission of COVID-19. Unsurprisingly, this has resulted in the abuse of power and the disproportionate use of force in enforcing lockdown regulations. This approach to the management of complex public health crises and states of emergency sets a dangerous precedent for the future. This report explains why rights-based policing are most effective when it comes to managing public health crises and outlines key lessons that can be learned from the policing of the COVID-19 pandemic.

ABOUT GLEPHA

The Global Law Enforcement and Public Health Association (GLEPHA) is a not for profit, membership-based association governed by a Board of Directors elected by the membership and governed according to its own constitution.

Law enforcement is both a sector and an activity; public health is likewise a sector and an activity: together they have common goals of inclusive wellbeing and safety of the communities they serve. There are many professions engaged in these endeavours, and too often professional and disciplinary boundaries constrain our ability to develop optimum strategies to achieve these goals. Issues of governance and collaborative leadership are fundamental to effective alliances.

Bringing the law enforcement and public health sectors together to address complex issues requiring an inter-sectoral approach is a rapidly emerging field, being explored in all jurisdictions and for a multitude of problems. Recognising the recurrent failure of approaches devised within isolated individual sectors, GLEPHA sees it of prime importance to bring together practitioners, policymakers, and academics to explore the nature of the myriad interactions between the police and public health sectors across the widest range of social, humanitarian, security, and public health issues.

ABOUT FAIR TRIALS

Fair Trials is an international NGO that campaigns for fair and equal criminal justice systems. Fair Trials' team of experts expose threats to justice and identify practical changes to fix them. The organisation produces original research, campaigns to change laws, supports strategic litigation, reforms policy and develops international standards and best practice. Fair Trials supports local movements for reform and builds partnerships with lawyers, activists, academics and other NGOs. It is the only international NGO that campaigns exclusively on the right to a fair trial, providing a comparative perspective on how to tackle failings within criminal justice systems globally.

ABOUT APCOF

The African Policing and Civilian Oversight Forum (APCOF) is a network of African policing practitioners from state and non-state institutions. It is active in promoting police reform through strengthening civilian oversight over the police in Africa. APCOF believes that strong and effective civilian oversight assists in restoring public confidence in the police; promotes a culture of human rights, integrity and transparency within the police; and strengthens working relationships between the police and the community.

APCOF achieves its goals through undertaking research and providing technical support and capacity building to state and non-state actors including civil society organisations, the police and new and emerging oversight bodies in Africa.

APCOF was established in 2004, and its Secretariat is based in Cape Town, South Africa.