

Law, Religion, Health and Healing in Africa



Edited by
M. Christian Green
Faith Kabata
Fortune Sibanda



15 THE KENYAN COVID-19 PREVENTION PROTOCOLS: AN UNEXPECTED BOOST IN THE OBSERVANCE OF THE FEMALE HIJAB

Moza Ally Jadeed¹

INTRODUCTION

When the outbreak of Covid-19 was announced in Kenya on 12 March 2020,² both the president and the National Emergency Response Committee on Coronavirus (NERCC) issued directives to curb the transmission of the virus and reduce its related fatalities.³ The Cabinet Secretary for Health, who chairs the NERCC,⁴ made a press release on 13 March 2020 and called for maintenance of social distance by one metre from persons who are coughing or sneezing.⁵ Shortly thereafter, the president made a national address on 15 March 2020 and put in place further public health measures. These included: travel restrictions, quarantine, closure of schools and alteration of working schedules. Both public and private institutions were encouraged to allow their staff, except for staff in critical or essential services, to work from home and to avoid congregate meetings, such as social gatherings, congestion in public transport and crowding in shopping malls.⁶

All these measures were heightened or relaxed, depending on the prevalence rate of the disease in the country, via subsequent directives until 11 March 2022, when a majority of the measures were lifted up. The requirement to social distance, for example, increased to one and a half metres, regardless of whether the other person was coughing and sneezing or not.⁷ It also became mandatory for every

1 Lecturer, Faculty of Law, University of Nairobi. The author thanks Badru Jaffar and Ali Dzimba for their insightful comments during the writing of this chapter. She dedicates this chapter to Dr Mwanakombo Mohammed Noordean who introduced the author to the conference. Until her demise, Dr Noordean was a Senior Lecturer of Swahili Studies at Moi University (Kenya). She brainstormed with the author on the possible contents of the chapter and reviewed the first draft of its abstract. Dr Noordean died in February 2022.

2 Kagwe M. 2020. "First Case of Coronavirus Disease Confirmed in Kenya", *Ministry of Health*, 13 March, 1.

3 NERCC is an ad-hoc multi-agency structure for coordinating, among other things, "Kenya's preparedness, prevention and response to the threat of the coronavirus disease". See National Emergency Response Committee on Coronavirus (Executive Order No 2 of 2020), para III. The president created NERCC on 28 February 2020.

4 See NERCC Executive Order No 2 of 2020, para V.

5 Kagwe, "Confirmed First Case", 2 n2.

6 See generally Kenyatta U. 2020. "Address to the Nation on Covid-19, Commonly Known as Coronavirus, at Harambee House, Nairobi", 15 March.

7 Kenyatta U. 2020. "Presidential Address on Enhanced Measures in Response to the Covid-19 Pandemic", 6 April, para 16.

person to wear a face mask in public.⁸ A nationwide curfew also ran from 7:00 pm to 5:00 am to minimise the spread of the virus during nighttime social gatherings.⁹ The curfew applied to every individual except personnel engaged in work designated “essential”.¹⁰ The government further locked out highly infected administrative counties from the rest of the country.¹¹ The Ministry of Health also developed guidelines to assist healthcare workers when managing a suspected or confirmed Covid-19 patient.¹² One of these guidelines included the usage of personal protective equipment (PPE), such as a medical mask and long-sleeved gown, to protect the healthcare personnel from contamination.¹³

The observance of these preventive measures was strict, and noncompliance attracted penal sanctions. In line with the social distancing measures, for instance, public transport commuting vehicles had to carry up to a maximum of 50% of their licensed capacity.¹⁴ Contravening this directive constituted a criminal offence. And its penalty was a fine of Kenya shillings 20 000 (approximately 172 US dollars)¹⁵ or a jail term of not more than six months.¹⁶ This same punishment extended to users of both private and public transport systems who failed to don a face mask that covered the mouth and nose.¹⁷ On the other hand, employers were mandated to release their non-essential staff from work by 4:00 pm to enable the latter to conform to the curfew rules.¹⁸ Otherwise, the employers risked the cost of accommodating these employees should the latter fail to make it to their homes by 7:00 pm.¹⁹ In fact, the police received strict instructions to implement the curfew.²⁰ Some people

8 Kenyatta, “Presidential Address on Enhanced Measures”, paras 16 and 17.

9 See Public Order (State Curfew) Order, 2020 (Legal Notice 36/2020), para 3.

10 See Public Order (State Curfew) Order, 2020, para 5 and the schedule (i.e. addendum to the order).

11 Kenyatta, “Presidential Address on Enhanced Measures”, para 30. The 2010 Constitution divided the country into 47 self-governing units called counties. See Constitution of Kenya, art 6(1).

12 See generally Ministry of Health and University of Nairobi. 2021. “Interim Guidelines on Management of Covid-19 in Kenya: Covid-19, Infection Prevention and Control (IPC) and Case Management”. Nairobi: Ministry of Health and the University of Nairobi.

13 MOH and U Nairobi, “Interim Guidelines on Management of Covid-19 in Kenya”, 67.

14 See Rule 5(3) of The Public Health (Covid-19 Restriction of Movement of Persons and Related Measures) Rules, 2020 (Legal Notice 50/2020).

15 This is as per the exchange rate issued by the Central Bank of Kenya on 13 May 2022. See Central Bank of Kenya. 2022. “Forex”, 13 May. Online at: <https://www.centralbank.go.ke/forex>

16 See Public Health (Covid-19 Restriction of Movement of Persons and Related Measures) Rules, 2020 [hereinafter Restriction of Movement Rules], rule 11.

17 See Restriction of Movement Rules, rule 5(4).

18 See Public Order (State Curfew) Variation Order, 2020, para 2.

19 Kagwe M. 2020. “Press Release on the Update of Coronavirus in the Country and Response Measures as at 28 March 2020”, *Ministry of Health*, 28 March.

20 Kagwe M, “Press Release on the Update of Coronavirus”, 5.

suffered severe physical injuries or died in incidents of police brutality when they failed to be at home at 7:00 pm.²¹

Unexpectedly, however, the enforcement of some of these public health protocols benefitted Muslim women who observe fully or nearly all the Islamic rules on modesty. Measures such as outlawing handshakes, wearing a face mask, lockdown except to go out for essential services, social distancing in public spaces and the wearing of long-sleeved gowns by healthcare practitioners favoured these *hijabi* women. These containment rules aligned with five *hijab* rules.²² And these rulings addressed: wearing a *niqab* (face veil),²³ a *jilbab* (an outer garment covering the head through the neck to the bosom or beyond) or *abaya*, (an outer garment covering the neck to the feet often worn with a separate head gear), staying at or working from home and keeping a distance from or shaking hands with unrelated males. Subsequently, there was a significant reduction of jeers, side-eyes and lack of appreciation of these women's expression of their Islamic faith in the country. Prior to the pandemic, *hijabi* women faced difficulties explaining to both Muslim and non-Muslim compatriots their choice to observe these forms of the *hijab*.

This chapter examines how the enforcement of these public health measures saved *hijabi* women from past psychological and physical injuries. It argues that the indifferent treatment suffered by these women before Covid-19 was discriminatory and that the limitations placed against the observance of the *hijab* served no objective purpose. Nor was the means to achieving that purpose proportionate. In essence, the chapter reveals that the response to the Covid-19 pandemic exposed the hypocrisy of both state and non-state actors towards the *hijab*. During the pandemic, it became normal to observe certain body coverings and societal behaviours akin to the *hijab* rulings.

Guided by the Muslim feminist method of a thematic reading of the Quran,²⁴ this chapter first traces the obligation to observe the *hijab*. The chapter conjoins this intratextual reading of the Quran with relevant pieces of Prophet Muhammad's *hadith* (sayings) to collate the *hijab* rules and to define a *hijabi* woman. The chapter also shares the popular conception of the *hijab* in Kenya. Working with an equivalent minority rights theory, that of critical race feminism,²⁵ the chapter then narrates the

21 "Nine Weeks of Bloodshed: How Brutal Policing of Kenya's Covid Curfew Left 15 Dead", *The Guardian*, 23 October 2020.

22 An Arabic word which means a veil, a drape or a screen. All the meanings of Arabic words in this chapter, unless contained in a quote, are derived from Baalbaki R. 1995. *Al-Mawrid: A Modern Arabic-English Dictionary*. Seventh Edition. Beirut: Dar El-Ilm Lilmaalayin.

23 A discussion on the Islamic legal position of the face veil follows in the subsequent parts of the chapter.

24 Barlas A. 2002. "Believing Women" in *Islam: Unreading Patriarchal Interpretations of the Qur'an*. Austin: University of Texas Press, 15-19; Wadud A. 1999. *Qur'an and Woman: Rereading the Sacred Text from a Woman's Perspective*. Second Edition. New York: Oxford University Press, xii and 2.

25 See, for example, Wing AK and Smith MN. 2005. "Critical Race Feminism Lifts the Veil? Muslim Women, France, and the Headscarf Ban", *University of California Davis Law*

different experiences of *hijabi* women before, during and after the Covid-19 containment measures. In particular, the chapter interrogates victims' stories and the author's observations in detailing these experiences. The chapter further embraces justice as plural and calls for the observance of both constitutional and legislative provisions which protect the *hijabi* women of unnecessary hindrances.

DEFINING A *HIJABI* WOMAN

This chapter construes a *hijabi* woman as any adolescent or older Muslim female who embraces all or nearly all the *hijab* rules. While the word *hijab* is understood conventionally to meaning a headscarf or a covering of a Muslim woman's head,²⁶ it is more than that. An intratextual reading of the Quran and a collation of the Prophetic sayings reveals that the requirement for *hijab* is for both sexes.²⁷ But as it relates to women, the stipulation entails covering the head, covering the bosom, wearing a loose-fitting outer garment, covering the face, lowering the gaze, concealing ornaments and decorations, except for what is apparently visible, along with keeping a distance from males within permissible degree of marriage,²⁸ avoiding shaking hands with such males, avoiding speaking with a melodious voice, refraining from wearing incense or perfume, refraining from striking one's feet when walking, walking on the roadside instead of the middle of the street, refraining from strutting before strange males and leaving one's house only to perform or seek an essential duty or need.²⁹

Importantly, the observation of this array of rules happens when the Muslim woman is in public.³⁰ And the word "public" in Islam means in the presence of an *ajnabiyy* (a strange member of the opposite sex). Thus, a woman may still be deemed to be in public, even in the privacy of her house, if an unrelated male (or related but within permissible degree of affinity) is present. Otherwise, in the absence of any of these males, a Muslim woman's obligation to the *hijab* fades. She uncovers and conducts herself appropriately,³¹ depending on the sex and her familial closeness with that other person(s) and the context within which they are interacting. But, even then,

Review 39:743-790; Crenshaw K. 1991. "Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color", *Stanford Law Review* 43(6):1241-1299.

26 Cohen-Almagor R. 2022. *The Republic, Secularism and Security: France versus the Burqa and the Niqab*. Cham: Springer, 8.

27 Barlas, "Believing Women" in *Islam*, 159. See also Quran 24:30 and 58. The first number in Quranic citations refers to a *surah* (Arabic word for a chapter of the Holy Quran), while the second relates to an *ayah* (plural *ayat*) which means a verse.

28 "Strangeness" means permissible degree of marriage. Once married, however, a husband and a wife move out of this category of distantness. Quran 24:31 outlines males within the private fold of women.

29 See generally Quran 24:31 and 33:59.

30 Cohen-Almagor, *The Republic, Secularism and Security*, 8.

31 Hafiz Ibn Kathir. 2003. *Tafsir Ibn Kathir (Abridged)*, vol VII. Second Edition. Riyadh: Darussalam Publishers, 70.

the Muslim woman remembers that she can only reveal her *awrah* (private parts) to her legitimate spouse.³² This last rule can, however, be suspended in case of an exigency, such as medical attention.

Basically, all of the *hijab* rulings derive from the Quran and the *sunnah*,³³ which are the elemental sources of *sharia* (Islamic law).³⁴ The institution of *hijab* is to establish and preserve sexual purity in the society. This is achieved by arresting any possible triggers to sexual corruption and sexual immorality and by moulding a character of bashfulness for both sexes.³⁵ Quran 24:30, 31 and 58, and 33:59 highlight this message, as do the prophetic sayings on separating the males and females,³⁶ avoiding handshakes and women's refraining from wearing incense or perfume.³⁷

Scholars, however, differ on the legal position of the *hijab* generally and each of its rulings. The pioneers of Muslim feminism,³⁸ for instance, dismiss the obligation of the *hijab*. They further opine that the ruling on covering the head is limited to seventh-century Muslims.³⁹ These scholars construe the word *khumuur*,⁴⁰ in Quran 24:31 to limit the reigning *hijab* ruling as covering of the bosom. While Sunni Muslims accept the *hijab* as obligatory, divergence exists among reputable contemporary orthodox scholars on the place of the face veil and gloves. Some find these two pieces of clothing obligatory.⁴¹ Others, however, construe these items as highly recommended.⁴² And both camps predicate their opinions on Quran 24:31 and relevant prophetic sayings.

Despite these varied theological and scholarly opinions, this chapter embraces the view that *hijab*, in itself, as a symbol of modesty, is an Islamic requirement. This

32 See Hadith 4017 in Abu Dawud SA. 2008. *English Translation of Sunan Abu Dawud*, vol IV. Khattab N (transl). Riyadh: Darussalam Publishers, 381-382.

33 The *sunnah* is made up of Prophet Muhammad's sayings, deeds, and his approval of the deeds of others.

34 Jadeed MA. 2020. *The Inheritance Rights of Muslim Women in Kenya: Reality or Rhetoric?* DPhil Thesis, University of Nairobi, 28. See also Quran 53:3-4, which expresses that the Prophet related "inspiration sent down to him".

35 Robert NB. 2005. *From My Sisters' Lips: A compelling celebration of womanhood – and a unique glimpse into the world of Islam*. London: Bantam Books, 185.

36 See Hadith 462 and 678 in Abu Dawud SA. 2008. *English Translation of Sunan Abu Dawud*, vol I. Qadhi Y (transl). Riyadh: Darussalam Publishers, 284 and 404.

37 Hadith 565 in Abu Dawud, *English Translation of Sunan Abu Dawud*, Qadhi (transl), I:349.

38 See, for example, Barlas, "Believing Women" in Islam; Mernissi F. 1992. *The Veil and the Male Elite: A Feminist Interpretation of Women's Rights in Islam*. Reprint Edition. Lakeland MJ (transl). New York: Basic Books.

39 See, for example, Mernissi, *The Veil and the Male Elite*, 85-101.

40 A derivative of the Arabic word *khimar*, which means a veil.

41 See, for example, Ibn Bazz AAA. 2016. *English Translation of Majmoo Al-Fatawa* [Collection of Legal Verdicts] of Ibn Bazz, vol I. Riyadh: Alifta, 205.

42 See, for example, Albani MND. 1974. *Hijab al-mar'ah al-Muslimah fi al-Kitab wa-al-Sunnah* [The Muslim Woman's *Hijab* from the Quran and Prophetic Tradition]. Beirut: al-Maktab al-Islami.

inference emanates from several Quranic verses, including the four mentioned above.⁴³ Quran 33:59, for instance, instructs the Prophet to tell his wives, daughters “and the believing women” to wear an outer garment whenever in public.⁴⁴ The precept identifies the reason for this garment as identifying these women as respectable. The phrase “and the believing women” lends itself to all ages.

This is so because the *asbab ul nuzuul* (the reasons for revelation) of Quran 33:59 persist today. While the letter of Quran 33:59 addressed the prevailing situation, when female slaves and non-Muslim women went out immodestly in seventh century Arabia, its spirit continues today. More than ever, it is important for Muslim women to cover their body and decorations to convey their modesty and keep off unsolicited male approaches.⁴⁵ Quran 33:39 is explicit that when Muslim women observe the *hijab*, they would be identified as respectful “and not molested”.⁴⁶

But while hiding that observing modesty is obligatory, the argument of the present study is that the body of *hijab* rulings has both *wajib* (obligatory) and *mustahab* (commendable) acts. This deduction stems from the very language of the Quran and prophetic sayings.⁴⁷ With respect to the five *hijab* rules under discussion, the argument is that obligations include covering the head, wearing an outer garment that at least covers the bosom, keeping a distance from strange males and avoiding shaking hands with strange males. Meanwhile, covering the face and leaving one’s home only to perform or seek an essential duty or service are highly recommended acts.⁴⁸ Moreover, the face veil only becomes obligatory when a woman accessorises her face through make-up or other decorations, such as false eyelashes.⁴⁹ This perspective fits well with Quran 24:31, which says of women that “they should not display their beauty and ornaments except what (must ordinarily) appear thereof”, meaning what is apparent.⁵⁰

As it differs among scholarly opinions, the construction of the *hijab* also differs among Kenyan Muslim women. But the common view is that the *hijab* relates to head coverings.⁵¹ Thus many Kenyan Muslim women, both Sunni and Shia, cover

43 Other precepts on the *hijab* are Quran 33:32, 33 and 53.

44 Ali AY. 2001. *The Meaning of the Holy Qur'an*. Eleventh Edition. Beltsville, MD: Amana Publications, 1077.

45 Wing and Smith, “Critical Race Feminism Lifts the Veil?”, 764.

46 Ali, *The Meaning of the Holy Qur'an*, 1077.

47 See Hadith 1825, 1833 and 1833 in Abu Dawud, *English Translation of Sunan Abu Dawud*, Khattab (transl), II:387-388, 391-392 and 422; and Hadith 641 in Abu Dawud, I:387.

48 See Quran 33:33. See also Hadith 565 in Abu Dawud, *English Translation of Sunan Abu Dawud*, I:349.

49 Abdul-Wahid AK. 2021. “Al-Albāni on the Niqab of the Muslim Woman, Whether It is Wajib or Not, the Permissibility of Uncovering Her Face and Hands – and the Danger of Displaying Her Beautifications in Public”, *Abu Khadeejah*, 7 April, 5.

50 Ibn Kathir, *Tafsir Ibn Kathir*, 68.

51 See, for example, Wangila MN. 2012. “Negotiating Agency and Human Rights in Islam: A Case of Muslim Women in Kenya”, *Contemporary Islamic Studies*, 5; Abdi ZA. 2021. “Let Us

their heads, but these coverings range from covering the hair, to parts of the hair or the full head, including the ears. Women with strong religious background, through school or family, wear an outer garment too. And some of them add the face veil and gloves.⁵² Muslim female students often observe the *hijab* through wearing a headscarf or a *jilbab* extending over the bosom or to the knees, with a pair of pants under their school skirts and dresses. Other Muslim women, however, do not find the *hijab* an obligation and do not cover their heads. They may wear tight-fitting clothes and other decorations in public.

KENYAN HIJABI WOMEN'S EXPERIENCES

Because of their different understandings of the *hijab*, Kenyan Muslim women have had a mixed experience with it. While some experiences have been positive, other experiences have been negative. This section of the chapter examines both the law and *hijabi* women's experiences before, during and after the Covid-19 pandemic, interrogating the prevailing law during each period to assess whether it is a driving force in these experiences.

Law in the pre-Covid-19 moment

While the law permitted Muslim women to observe the *hijab*, a number of them did not. From the time of colonialism until the advent of Covid-19 in March 2020, the law has favoured *hijabi* women. The law permitted women to observe any form of *hijab*. The Mohammedan Marriage and Divorce Registration Act (MMDRA),⁵³ for example, allowed *pardah-nisheen* women to send their agents to register their marriages or divorce on their behalf.⁵⁴ *Purdah-nisheen* women were adult females of Indian heritage, who secluded themselves in their homes and objected to attend public offices.⁵⁵ Women could also cover their heads and faces, as well as wear outer garments whenever they left their houses.⁵⁶

The now repealed 1963 Independence Constitution of Kenya cemented the observation of the *hijab* rulings through the recognition of freedom of conscience. Both Section 22 of the original constitution and Section 78 of the later amended version guaranteed a *hijabi* woman the right to observe any form(s) of *hijab*. This freedom, however, was subject to the interests of public safety, defence, public health, public

Muslim Women Wear *Hijab* in Peace, We Are Not Complaining", *Nation*, 24 March.

52 Dlużewska A. 2007. "The Impact of Islamization on the Interaction between locals and tourists in Kenya". Warsaw: Muzeum Historii Polski, 148 and 149.

53 Mohammedan Marriage and Divorce Registration Act (MMDRA), ch 155 (repealed).

54 MMDRA, s 10 (repealed).

55 MMDRA, s 2 (repealed).

56 See Hirsch SF. 1998. *Pronouncing and Persevering: Gender and the Discourses of Disputing in an African Islamic Court*. Chicago: University of Chicago Press, 50.

morality, public order and the rights and freedoms of others.⁵⁷ But such exceptions only merited if they were “reasonably justifiable in a democratic society” and contained in legislation.⁵⁸

When Kenya adopted the Constitution of Kenya, 2010, the rights of *hijabi* women were protected by Articles 32 and 27(4) and (5).⁵⁹ While Article 32 safeguards freedom of religion or belief (FoRB), Articles 27(4) and (5) proscribe discrimination on the basis of religion, belief and dress by both the state and individuals. Just like Section 78 of the repealed constitution, Article 32 permits a *hijabi* woman to observe any form(s) of *hijab*. But Article 32 of the 2010 Constitution is broader than Section 78 of the Independence Constitution because its proscription against forcing someone to act contrary to her religion is all encompassing.⁶⁰ It extends to innumerable situations and places. This includes compelling a *hijabi* to stop observing any of the *hijab* rules at any area, building or institution. Another important addition in Article 32 is the prohibition against denying someone employment, entry into an institution or the enjoyment of such other human rights and fundamental freedoms because of the expression of her faith.⁶¹

The limitations to enjoying FoRB under the Constitution of Kenya, 2010, are almost similar to those in the repealed law. But the present ones drop the grounds of public safety, defence, public health, public morality and public order. Again, for a limitation to succeed, it must meet three further concurrent conditions. First, the limiting legislation must contain a provision stating explicitly its “intention to limit that right” and “the nature and extent of the limitation”.⁶² Second, that provision must clarify and specify that FoRB is the subject of limitation. The provision must also be clear and specific about the “nature and extent of the limitation”.⁶³ Finally, that limitation must not be so constricting that it renders the bearer as if she had no such right in the first place.⁶⁴

The first dual preconditions to limiting FoRB in the present 2010 Constitution are similar to those in the repealed Independence Constitution. First, such limitation must be mandated by legislation.⁶⁵ Second, such limitation must be objective and merited in a country possessed of ideals such as human dignity, freedom and

57 Constitution of Kenya, 1963, s 22(5) (original independence constitution) and Constitution of Kenya, 2010, s 78(5).

58 Constitution of Kenya, 1963, s 22(5) and Constitution of Kenya, 2010, s 78(5).

59 The Constitution of Kenya, 2010, became operative on 27 August 2010.

60 Constitution of Kenya, 2010, s 78(3) and (4) cover oaths and religious instruction or observance in learning institutions only.

61 This provision was embodied in the freedom from discrimination clause in the repealed constitution.

62 Constitution of Kenya, 2010, art 24(2)(a).

63 Constitution of Kenya, 2010, art 24(2)(b).

64 Constitution of Kenya, 2010, art 24(2)(c).

65 *Seventh Day Adventist Churches (East Africa) Ltd v Minister for Education & 3 Ors* [2017] eKLR 15.

equality. This objectivity and merit, however, are discerned when all relevant factors are weighed. Examples of such cogent considerations are the relationship between the denial of the observance of *hijab* and its purpose – and whether there are other means of achieving this purpose without denying *hijabi* women the right to observe the *hijab* rules.

The Constitution of Kenya, 2010, also protects *hijabi* women under the nondiscrimination clause.⁶⁶ Under Article 27(4) and (5), the constitution outlaws both direct and indirect discrimination on the basis of religion, belief and dress by state and non-state actors respectively.⁶⁷ Direct discrimination is any different treatment, rule, law or policy which is predicated primarily – that is, intentionally – on any of these protected characteristics.⁶⁸ Indirect discrimination, on the other hand, occurs when an otherwise neutral treatment or policy nonetheless impacts *hijabi* women negatively because of any of these protected identities.⁶⁹ As is the case with FoRB, this protection from discrimination can also be limited. But its limitation must meet the rigours of the constitution. In addition to the Constitution of Kenya, 2010, several statutes further protect *hijabi* women. These include the National Gender and Equality Commission Act,⁷⁰ the Kenya National Human Rights Commission Act,⁷¹ Kenya Medical Training College Act⁷² and the Basic Education Act.⁷³

The pre-Covid-19 hijabi experience

Notwithstanding these legal guarantees and the absence of any legislation limiting FoRB or freedom from discrimination, *hijabi* women suffered scorn and negative differentiation. Some tertiary institutions and employment facilities that have a uniform code restricted the *hijab* to a headscarf that covers the head, ears and neck only. Meanwhile, other establishments insisted on the removal of the face veil before entry as a security measure. The reluctance of some women to shake hands with strange male colleagues, acquaintances and relations evoked side-eyes, disbelief and taunts. The decision of other *hijabi* women to stay in or work from their homes

⁶⁶ Cleveland SH. 2021. “Banning the Full-Face Veil: Freedom of Religion and Non-Discrimination in the Human Rights Committee and the European Court of Human Rights”, *Harvard Human Rights Journal* 34:227-228 (discusses the interplay between FoRB and freedom from discrimination).

⁶⁷ But characteristics such as culture, ethnicity and race can also work. See generally *Watkins-Singh, R (on the application of) v Aberdare Girls’ High School & Anor* [2008] EWHC 1865.

⁶⁸ See, generally, UN Human Rights Committee, “General Comment 28” in *Note by the Secretariat, Compilation of General Comments and General Recommendations Adopted by Human Treaty Bodies* (UN Doc HRI/GEN/1/Rev9 (Vol I), 2008) para 16.

⁶⁹ See, generally, International Centre for the Legal Protection of Human Rights (Interights). 2011. *Non-Discrimination in International Law: A Handbook for Practitioners* 1. London: Interights, 8.

⁷⁰ National Gender and Equality Commission Act (No 15 of 2011), s 8.

⁷¹ Kenya National Human Rights Commission Act (No 14 of 2011), s 8.

⁷² Kenya Medical Training College Act (Chapter 261), s 6.

⁷³ Basic Education Act (No 14 of 2013), ss 4, 27(d), 39(c) and (h), 59(1) and (k).

caused them to be perceived as submissive and housebound in a pejorative sense.⁷⁴ In a similar way, the introduction of the female-only public transport vehicles was dismissed as divisive and economically unsound. This section details some of these *hijab* violations.

Education and employment hijab bans

One of the most conspicuous infractions against *hijab* observance was the refusal by the Kenya Medical Training College (KMTC) to allow its students in the Department of Nursing to wear a *jilbab*. Until August 2018, some Muslim female nursing students across all the KMTC campuses in the country wore a *jilbab* – sometimes extending down to the knees – on top of their uniform both in the lecture rooms and during hospital rotations.⁷⁵ The uniform is a blue dress which has the institutional badge affixed on or just below the position of the left breast. Beginning September 2018 and after the summer vacation, however, most of the KMTC campuses issued a directive which banned the *jilbab*.⁷⁶ Instead, the administration called on the Muslim female students to wear a headscarf, which only covered the head, ears and neck. According to the principals of the various campuses, this change emanated from a letter from the Deputy Director (Academics) of KMTC. The letter had forbidden the *jilbab* as part of the nursing students' uniform and insisted on the headscarf.

The letter gave four reasons for banning the *jilbab*. First, the *jilbab* concealed the institutional badge on the students' dress. Second, the length of the *jilbab* posed a health risk. It was probable that its flowing nature would allow it to touch a patient and carry micro-organisms when the nursing student is attending to other patients. Third, the length of the *jilbab* also made the wearer take longer time to manage a patient, because they would need to adjust it every time it drooped. Fourth, the *jilbab* covered some students' chins.⁷⁷ The institution wanted the entire face visible.

Thus, in keeping with the letter's requirements, the campuses' principals implemented the *jilbab* ban, albeit in different ways. While some ordered an immediate switch to the headscarf, some principals first discussed it with both male and female Muslim students and with the Muslim leadership, deciding to keep the ban when no consensus was reached. Others staggered the change, providing two weeks to reflect on it and then requiring a short *jilbab* up to the waist to acclimatise the students to the shorter headscarf. Yet still other principals complained of the length of the *jilbab*, but they did not outlaw it. The ban on the *jilbab* was implemented on innumerable KMTC campuses. Students who defied the ban were ejected from

74 Beydoun KA and Sedique N. 2023. "Unveiling", *California Law Review* 111:29.

75 KMTC has 71 campuses. See <https://kmtc.ac.ke/campus-list> [Accessed 20 April 2022].

76 The author, alongside other Muslim lawyers, received complaints of *hijab* violations in KMTC campuses in 2019. She then collected information from *hijabi* students from Mwingi, Embu, Makueni, Siaya and Nairobi campuses.

77 Depending on how a *hijabi* covers, it is possible to cover the chin – even when the rest of the face remains uncovered.

classes, denied entry into hospitals to do rotations and faced disciplinary action. Many chose to wear the headscarf to avoid disruption of their studies.

Handshakes, transport, homework, face veils

Hijabi women also suffered sneers from distant males with whom they expressed reluctance to shake their hands, as well as from people who witnessed the refusal.⁷⁸ Those taking offence verbalised their displeasure or grudgingly remained mum. The misunderstanding arising from the refusal to shake hands with distant males has impacted some *hijabi* women's participation in public activities. A number of professional women would rather abdicate attending professional functions instead of appearing impolite or extreme for refusing to shake hands with male colleagues. When some Muslim private investors set up a fleet of women-only *matatus* for public transportation in the traditional Muslim port city of Mombasa in the 1990s, jeers also erupted.⁷⁹ Critics dismissed this arrangement as alienating. The initiative was faulted as reinforcing gender inequality and the belief that women are in need of protection from males. The resumption of similar taxis in Nairobi in 2019 was also discredited as unsustainable because of its high fares.⁸⁰ The decision by a majority of Muslim women to be stay-at-home mothers or to work from home received censure. Critics dismissed such women as "lazy" or taking the "easy" option.⁸¹ They also labelled them as subjugated and secluded. These labels exerted pressure on some Muslim women to value more their participation in the economy outside their homes. Such women would seek employment outside their homes, regardless of whether such pursuit was less cost-effective, was having a toll on their mental health or was preventing them from observing their *hijab*.⁸² The face veil also received criticism by some people, who decried it as extremism.⁸³ Some regarded it as a conduit of terrorism and treated its wearers as a security threat

78 Devlin P. 2017. "Australian Universities Back Handshake Ban for Muslims", *Mail Online*, 22 February.

79 *Matatu* is the Swahili word for the 14-seater vans – the popular means of public transport then. The 2019 Census estimated the Muslim populace in Mombasa at 37.8%. See Kenya National Bureau of Statistics. 2019. *2019 Kenya Population and Housing Census Volume IV: Distribution of Population by Socio-Economic Characteristics*. Nairobi: KNBS, December, 422. But the identity of Mombasa remains predominantly Muslim because of its relatively high Muslim population compared to many parts of mainland Kenya since pre-colonial era. Cussac A. 2008. "Muslims and Politics in Kenya: The Issue of the Kadhis' Courts in the Constitution Review Process", *Journal of Muslim Minority Affairs* 28(2):292.

80 Chason R. 2021. "Kenyan Women Love the Idea of a 'Women-Only' Rideshare. They Hate that the Option Costs More", *Washington Post*, 12 September.

81 Khatib H. 2001. *The Muslim Woman's Handbook*. Second Revised Edition. London: Ta-Ha, 30.

82 Shepherd-Banigan M et al. 2016. "Workplace Stress and Working from Home Influence Depressive Symptoms Among Employed Women with Young Children", *International Journal of Behavioral Medicine* 23:103.

83 See Ali FA. 2018. "Understanding the Role of Gender Relations in Radicalising and Recruiting Young Muslim Women in Higher Learning Institutions in Kenya", *The African Review* 45:90.

if they did not reveal their faces fully.⁸⁴ Others found that the face veil obscured the identity and communication of the wearer.⁸⁵ Consequently, some *hijabi* women were denied entry into buildings until they revealed their faces or removed the veil completely. Their production of identity documents was rendered inadequate. Security personnel in a local university, for example, prevented *hijabi* women from entering the university premises until the students revealed their faces.

All these infractions were painful and caused the *hijabi* women, what Adrien Wing, a critical race feminist, terms as “spirit injuries”, which are the “psychological, spiritual, and cultural effects of multiple types of assaults upon women”.⁸⁶ As demonstrated in their experiences, some *hijabi* women underwent self-doubt, denial, helplessness and shame and they made self-destructive career decisions.

Law in the Covid-19 moment

The outbreak of the pandemic was in many ways beneficial for *hijabi* women. The enactment of public health measures facilitated the observance and wearing of the *hijab*. During the pandemic, both the constitutional and legislative provisions protecting the *hijab* remained operational. What changed was the introduction of fresh rules and policy directives to help manage the infection. Through the advice of the National Emergency Response Committee on Coronavirus (NERCC) and medical practitioners, both the president and the Cabinet Secretary for Health (CS Health) put in place a number of public health protocols. Most of these measures targeted everyone in the country. There were lockdowns, social distancing, bans on handshaking, and wearing of a face masks. Healthcare personnel had to wear long-sleeved gowns when attending to an infected or suspected Covid-19 patients under these public rules. Generally, the observance of all these measures was mandatory or highly recommended, and failure to adhere to them attracted penal sanctions.

Social distancing

The first measure in addressing the Covid-19 pandemic was social distancing. This began with advice to keep a distance of about one metre from persons who were coughing or sneezing. But when some infected cases were found to be asymptomatic, the CS Health directed people to keep a distance away from others who did not come from the same households as themselves.⁸⁷ The president enhanced this distance to one and a half metres in his later address. And it became the law to maintain social distance in all public spaces including in public transport, shopping

84 Begum T. 2020. “How Making Face Masks Mandatory in England Makes Muslim Women Feel”, *The Independent*, 28 June.

85 Smith J. 2013. “Let’s Face It – the Niqab is Ridiculous, and the Ideology behind It – Weird”, *The Independent*, 21 September. See also Begum, “How Making Face Masks Mandatory in England Makes Muslim Women Feel”.

86 Wing and Smith, “Critical Race Feminism Lifts the Veil?”, 779.

87 Kagwe, “Press Release on the Update of Coronavirus 20 March 2020”, 6.

malls, supermarkets, workplaces, schools and all learning institutions.⁸⁸ The Public Health (Covid-19 Restriction of Movement of Persons and Related Measures) Rules, 2020, required that public transport commuting vehicles had to carry up to a maximum of 50% of their licensed capacity.⁸⁹

As part of the social distancing measures, the government encouraged both public and private institutions to alter their working schedules. Thus, all staff, except those offering essential services, were advised to work from home.⁹⁰ Employees who had underlying health conditions and those aged 58 years and above were mandated to work remotely from home. Both corporations and businesses were encouraged to introduce a 24-hour shift in place of the usual 8:00 am to 5:00 pm shifts to facilitate implementation of the social distancing rules, both at the offices and in the public transport system.⁹¹ Where employees were operating from the office, they similarly had to keep a distance from each other.⁹²

Contravening the social distancing rules amounted to a criminal offence, which was punishable under the Public Health Act. Such a contravention was construed as intent to spread the virus.⁹³ Thus, for instance, where *matatu* operators defied the rules, they suffered prosecution, suspension or revocation of their SACCO licences and bonding of their vehicles.⁹⁴ The penalty for failing to observe social distance in other public spaces was a fine of Kenya shillings 20 000 (approximately 172 USD)⁹⁵ or a jail term of not more than six months.⁹⁶ The social distancing directives also extended to some common social behaviour, such as shaking of hands. While no law prohibited handshaking when exchanging greetings, both the president and healthcare personnel discouraged the habit.⁹⁷ Instead there was a growing

88 Kagwe, "Press Release on the Update of Coronavirus 20 March 2020", 4.

89 See Public Health (Covid-19 Restriction of Movement of Persons and Related Measures) Rules, 2020 (Legal Notice 50/2020), rule 5(3)).

90 Kenyatta, "Address to the Nation on Covid-19 15 March 2020".

91 Kagwe, "Press Release on the Update of Coronavirus 20 March 2020", 6.

92 Kagwe, "Press Release on the Update of Coronavirus 20 March 2020", 6.

93 Kagwe M. 2020. "Update of Coronavirus in the Country and Response Measures as at 5 April 2020", NERCC, 5 April. 6.

94 Kagwe, "Press Release on the Update of Coronavirus 20 March 2020". A SACCO is a member-driven Savings and Credit Cooperative Organisation. As part of regulating the public transport system, the National Transport and Safety Authority requires every *matatu* operating publicly to join a SACCO before it licenses it to operate.

95 This is as per the exchange rate issued by the Central Bank of Kenya on 13 May 2022. See CBK, "Forex", 13 May.

96 See Public Health (Covid-19 Restriction of Movement of Persons and Related Measures) Rules, 2020, rule 11.

97 See Kenyatta U. 2020. "President Kenyatta Urges Kenyans to Observe Government Directives on Coronavirus", Office of the President of the Republic of Kenya, 7 April.

encouragement to use the fist-bumping, elbow-bumping or employing the *namaste* gesture (a non-contact Hindu greeting).⁹⁸

Lockdown and curfew

The nationwide lockdown was another form of social distancing. About three days after the emergence of the disease in the country, the president ordered the closure of all learning institutions.⁹⁹ About three weeks later, the president directed the closure of four highly infected areas for 30 days. These were: Nairobi Metropolitan Area (82% infection) and Kilifi, Mombasa and Kwale Counties (combined 14% infection).¹⁰⁰ There was also restriction of movement in and out of these areas whether “by road, rail or air”.¹⁰¹ The movement of food supplies and other goods by any of these means, however, continued.

Earlier, on 27 March 2020, the Cabinet Secretary for Interior and Coordination of National Government (CS Interior) had declared a nationwide dusk-to-dawn curfew. Under the Public Order (State Curfew) Order, 2020, the CS Interior mandated everybody to be indoors between 7:00 pm and 5:00 am.¹⁰² The initial curfew was to run for 30 days. But it was extended from time to time until 20 October 2021.¹⁰³ During this period, however, the timings of the curfew changed to between 10:00 pm and 4:00 am. At all times, nonetheless, the government encouraged people to stay at home.¹⁰⁴ The only workers who were exempted were those providing essential services, such as medical professionals and healthcare workers; national security, postal and courier services; and licensed banks, financial institutions and payment service providers.¹⁰⁵ The government ordered the police to enforce the curfew strictly.¹⁰⁶ Thus a person not in the essential category list could only be outdoors with the written permission of the police.¹⁰⁷

Wearing face masks

The directive to wear a face mask in public spaces was one of the heightened measures to curb the spread of Covid-19. Initially, the CS Health had called for a good respiratory hygiene. Thus, when announcing the first case of the coronavirus

98 See “Return of the Handshake as Covid Measures Put on the Back Burner”, *Daily Nation*, 20 February.

99 Kenyatta, “Address to the Nation on Covid-19 15 March 2020”.

100 Kenyatta, “Presidential Address on Enhanced Measures in Response to the Covid-19 Pandemic 6 April”, para 27.

101 “Presidential Address on Enhanced Measures in Response to the Covid-19 Pandemic 6 April”, para 29.

102 See Public Order (State Curfew) Order, 2020 (Legal Notice 36/2020), para 3.

103 Kimuyu H. 2021. “President Kenyatta Lifts Nationwide Curfew”, *Daily Nation*, 20 October.

104 Kagwe, “Press Release on the Update of Coronavirus 28 March 2020”, 5.

105 See schedule to The Public Order (State Curfew) Order, 2020.

106 Kagwe, “Press Release on the Update of Coronavirus 28 March”, 5.

107 See Public Order (State Curfew) Order, 2020, para 4.

patient in the country, the CS Health asked all those found in Kenya to cover their mouths when coughing.¹⁰⁸ The CS Health also called on people to sneeze “with a handkerchief, tissue or into flexed elbow”.¹⁰⁹ When the president announced enhanced public health measures three weeks later, he instructed everyone to wear a face mask “when outside the house”.¹¹⁰ The president indicated that he sourced this directive from medical professionals and experts.¹¹¹ The breach of any of these rules was an offence, and the penalty was similar to that of breach of social distance.

PPE for healthcare personnel

A medical face mask was a personal protective equipment (PPE) item that was essential for healthcare workers to prevent them from contracting Covid-19.¹¹² The rest of the PPE included eye-protection, gloves and a long-sleeved gown with a hood. Through guidelines on managing suspected or confirmed Covid-19 patients, the Ministry of Health mandated healthcare workers to use PPE.¹¹³ Specific areas where the employment of the PPE was mandated were when performing aerosol-generating procedures, such as intubation and cardiopulmonary resuscitation, and when collecting specimen from the upper respiratory tract.¹¹⁴ The government permitted the use of both disposable and reusable gowns.¹¹⁵ One of the recommended reusable gowns was a long-sleeved water-resistant, plastic-like gown, which was knee-length – very much like the *jilbab*.¹¹⁶

The Covid hijabi experience

The public health measures were largely observed. Both individuals and companies, for example, maintained the social distancing rules. Thus supermarkets, banks, utility companies and public spaces marked the queuing spots leading to the cashiers at least one and a half metres apart. And these facilities reminded their

108 Kagwe, “First Case of Coronavirus Disease Confirmed in Kenya”, 2.

109 Kagwe, “First Case of Coronavirus Disease Confirmed in Kenya”, 2.

110 Kenyatta, “Presidential Address on Enhanced Measures”, para 16. See also Public Health (Covid-19 Restriction of Movement of Persons and Related Measures) Rules, 2020, rule 6(1)(b).

111 Kenyatta, “Presidential Address on Enhanced Measures”, para 17.

112 MOH/U Nairobi. 2021. “Interim Guidelines on Management of Covid-19 in Kenya”, 67.

113 MOH/U Nairobi. 2021. “Interim Guidelines on Management of Covid-19 in Kenya”, 26.

114 MOH/U Nairobi. 2021. “Interim Guidelines on Management of Covid-19 in Kenya”, 27 and 31.

115 MOH/U Nairobi. 2021. “Interim Guidelines on Management of Covid-19 in Kenya”, 51 and 61.

116 MOH/U Nairobi. 2021. “Interim Guidelines on Management of Covid-19 in Kenya”, 62 (with a photo showing the gown).

customers constantly to observe the demarcations. Many people also refrained from handshaking.¹¹⁷

Meanwhile, the police enforced the nationwide curfew strictly. They were so strict that they employed excessive force on persons found outside beyond the curfew hours. Thus, as of October 2020, at least 15 people had been killed and several others had been injured by the police.¹¹⁸ On the first day of the curfew, Kenyans witnessed police beating men and women who were about to cross the Likoni channel to get to their homes.¹¹⁹ Following local and global outcry over this incident, the CS Interior varied the curfew order and mandated all employers to release their non-essential workers by 4:00 pm.¹²⁰

Law and the hijabi experience in the post-Covid-19 moment

When the country's infection rate remained below 5% for several months, the CS Health revised the public health protocols on 11 March 2022.¹²¹ Incidentally the rules relating to wearing face masks and social distancing in public spaces were adjusted. And these adjustments impacted *hijabi* women, too. As was the case before the disease, the constitutional and legislative provisions protecting the *hijab* remained unchanged. The government did lift the obligation to wear masks in public spaces. Instead, the CS Health encouraged the use of the masks in indoor functions. All public transport services were allowed to resume to full capacity, provided that their passengers wore face masks. Kenyans interpreted the adjustments of the containment measures differently. They stopped wearing the face masks both indoors and outdoors. Only air transport maintained the mask. Other public transport systems and utility facilities no longer separated their clients. Gradually, the handshake resumed too.¹²² And there is a growing unease for some *hijabi* women's refusal to shake hands with unrelated males.

DEMONSTRATING SIMILARITIES BETWEEN THE COVID-19 PROTOCOLS AND *HIJAB* RULINGS

Hijabi women's experiences before, during and after the pandemic reveal the hypocrisy of both state and non-state actors towards the *hijab*. In a bid to safeguard the right to health, the government and individuals permitted Muslim women to

117 Limboro CM. n.d. "Kenya's Response to Covid-19", Azim Preji University Practice Connect.

118 "Nine weeks of bloodshed".

119 Olingo A and Ahmed M. 2020. "Dozens Injured as Police Brutality Marks Start of Curfew", *Daily Nation*, 30 March.

120 The Public Order (State Curfew) Variation Order, 2020 (Legal Notice 43/2020).

121 Kagwe M. 2022. "Update on Covid-19 in the Country and Response Measures, as at 11 March 2022", NERCC, 11 March, 3.

122 "Return of the Handshake as Covid Measures Put on the Back Burner", *Daily Nation*, 20 February.

observe a myriad of measures alongside other Kenyans. Though these protocols mirrored some hitherto discredited *hijab* rulings, the Kenyan society was comfortable with the new arrangements.

The face mask, for example, covered the face. And while the authorities insisted the mask had to screen the nose and the mouth, it nonetheless covered the chin and parts of the cheeks. The physical effects of the mask were similar to those of the face veil.¹²³ As in the case of the face veil, the mask was questioned initially for obscuring the wearer's identity, facial expressions and ability to relate with others.¹²⁴ But unlike the negative reaction extended to the face veil, Kenyan society navigated these concerns and embraced the face mask. The face mask became a mandatory ticket for entering the public space. It was regarded as a safety measure, rather than a security scare. It became acceptable that the face mask was not necessarily a physical or psychological barrier to communication.¹²⁵

The long-sleeved reusable gown in health facilities has proven to be an alternative means to eliminating the health scare supposedly caused by the *jilbab*, without denying the *hijabi* nursing students the right to observe their *hijab*. The Covid-19 pandemic revealed the importance of this outer covering for healthcare professionals. That lesson now provides an opportunity for institutions like KMTC to introduce an overcoat alongside a headscarf as part of the nursing students' uniform during hospital rotations. KMTC can also require the students to tuck in the headscarf in the overcoat. Meanwhile, KMTC should allow the *jilbab* in the lecture rooms. Failing to consider these proposals gives KMTC's outright *jilbab* ban the appearance of sheer discrimination.

The social distancing directives of lockdown and curfew further showed parity between non-essential workers and *hijabi* women who chose to be stay-at-home mothers or those working remotely from home. Both groups have been mandated by circumstances or the law to stay at home or to work from the house. While the government implored employers to allow their non-essential staff to work from home, these employees could still enter the public space to seek essential goods, such as food, and services, such as medical attention. These are the same opportunities available to *hijabi* stay-at-home mothers or those working from home, even for those with a greater need to engage in activities outside the home, such as visiting relatives, attending funerals, pursuing knowledge and meeting clients.

Meanwhile, the social distancing rule requiring public transport systems to carry up to 50% of their licensed capacity required spacing of the passengers. This decongestion augured well with the *hijab* rule of keeping a distance from males within permissible degree of marriage. And thus, as it did in shopping malls and banks, the rule guaranteed absence of unnecessary groping and inappropriate

123 Ong S. 2020. "How Face Masks Affect Our Communication", BBC, 8 June.

124 Gori M. 2021. "Masking Emotions: Face Masks Impair How We Read Emotions", *Frontiers in Psychology*, 8.

125 Gori, "Masking Emotions: Face Masks Impair How We Read Emotions".

touching of females while receiving services. It was this very concern for the safety of female passengers that saw the introduction of women-only transport vehicles prior to the pandemic.

Finally, the social habit of handshaking when exchanging greetings was discouraged during the peak of the disease. As the president alluded, the absence of shaking hands did not mean loss of love or respect between the two people. As noted above, this reasoning was widely accepted. But *hijabi* women have argued similarly with regard to their hesitance to shake hands with unrelated males. It is not a show of disrespect, but rather an expression of higher ideals. And for *hijabi* women, it allows for conformity to their religious beliefs.

These similarities between the containment measures and the *hijab* rules demonstrate that it was unnecessary, and moreover illegal, to deny *hijabi* women the right to observe any form of their chosen *hijab* prior to the pandemic. The health exigencies during the pandemic made it possible for the rest of the citizenry to accommodate pieces of cloth, garments and social conduct hitherto described as antisocial. It gave *hijabi* women an unexpected boost and a welcome serenity in observing the tenets of their faith.

CONCLUSION

This chapter has demonstrated the similarities between some Covid-19 prevention protocols and five *hijab* rules. It has shown that the face mask can be likened to the face veil. The loose-fitting gown worn by healthcare professionals when attending to Covid-19 patients can be made an alternative to the outer garment long sought by the KMTC Nursing Department students during hospital rotations. The discouragement of shaking hands during greetings is no different from *hijabi* women's reluctance to shake hands with unrelated males. The social distancing in all public facilities, including transport, is not far removed from the interest in women-only vehicles that predated Covid. The curfews and orders to work or remain at home, except for those seeking or rendering essential services, mirrored the choices of some *hijabi* women to be stay-at-home mothers or to work from their houses.

This chapter has thus revealed that the pandemic presented a silver lining in the observance of the *hijab* in the country. Before the outbreak of Covid-19, *hijabi* women – whether students, professionals or ordinary women – faced difficulties in observing the five forms of *hijab*. Learning institutions, professional colleagues, utility companies and the general populace failed to accommodate some of the *hijabi* women's positions on their observance of the *hijab*. This failure pushed some of these women to make painful choices between their right to express their faith and to pursue such other rights such as education, freedom of movement and freedom of association. Yet the law, both legislative and constitutional, has upheld, since colonial days and up to the start of Covid-19, both freedom of religion and the freedom from discrimination on the basis of religion. And there has been no

legislation limiting any of these freedoms to justify the exclusions suffered by the *hijabi* women.

This chapter has shown that the *hijabi* women insisted on the five forms of *hijab* because they deemed them to be religious edicts for every adolescent or older Muslim female. While divergence exists among theologians and academics over the obligation of the *hijab* and some of its forms, the *hijab* as a symbol of modesty remains a requirement for Muslim women. While many Kenyan Muslims limit their obligation to headgear, a sizeable number, especially those from strong religious backgrounds also wear an outer garment, either an *abaya* or *jilbab*. Some also add the face veil. In the end, both the Kenyan government's containment measures and Kenyan *hijabi* women's experiences offer good moments for reflection for the country as it emerges from the pandemic. The strict observance of the health protocols created platforms for these women to observe their *hijab* without censure or explaining their positions. Even after the pandemic waned in March 2022 and the government lifted most of the Covid-19 regulations, the face veil has remained acceptable. But the resumed grimaces against *hijabi* women's reluctance to shake hands with distant males and the continued disapproval of an outer garment for Nursing Department students at KMTC both in the classrooms and during hospital rotations suggest that the issues are not entirely resolved. These double standards in the face of the right to health and freedom of religion or belief defeat Kenya's constitutional conviction to uphold the Bill of Rights.