



BY EMAIL

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RE: SUBMISSION ON THE SITUATION OF INDIGENOUS POPULATIONS IN THE REPUBLIC OF KENYA DURING THE COVID-19 PANDEMIC

Dear Mr. Rapporteur,

As part of your call for the preparation of your report, part of which will be devoted to the evaluation of the impacts of COVID-19 on the rights of indigenous peoples, a report to be presented to the General Assembly in October 2020, Kenya Human Rights Commission (KHRC) and Minority Rights Group (MRG) hereby submit information on the impact of COVID-19 on the indigenous communities in Kenya.

1. General Observation

Kenya Human Rights Commission position's with respect to the management and response of COVID -19 is that although the National Government and County Governments have come up with effective measures to prevent, manage and control the spread of COVID-19, such measures have not taken into consideration the interests of the minority and marginalized groups. As such the actions of the national and county governments seem to be in contravention of the inclusivity threshold contemplated in Art. 27 as read with Art. 54,56,174 and 232 of the Constitution of Kenya. They also do not have regards for human rights in the formulation and implementation of social and economic policies as envisaged in Articles 10 and 19 of the Constitution.

2. Background

On March 11, 2020, the World Health Organization declared the COVID-19 outbreak a global pandemic. According to the World Health Organization (WHO) status report as of 1st June 2020, COVID-19 has claimed the lives of 300,000+ against a total number of 6,000,000+ reported and confirmed cases. As of 1st June 2020; Kenya reported a total number of 2,093 COVID-19 confirmed and reported cases since the first case that was reported on 13th March 2020. In the last two months, the country has also reported 553 recoveries and 74 fatalities as a result of COVID-19.

3. Implication of Measure to Manage and Control COVID-19 on the Indigenous Minority

The growing numbers of infections and fatalities on the population resulted in the adoption of a myriad of interventions to contain and manage the disease by various states. In examining the case of Kenya, the National Government and County Governments put in place a number of measures to ensure an effective response to the COVID-19 pandemic.

Some of the measures put in place included the following:

- 1) Vide Executive Order No.2 of 2020 the national government established the National Emergency Response Committee on Corona Virus which was charged with the mandate of coordinating the country's preparedness, prevention and response to COVID-19. The effort of establishing Emergency Response Agencies to COVID-19 has also been replicated at the county level. Whereas Counties such as Mombasa, Laikipia, Kisii, Kakamega have established multi-agency committee's to coordinate issues of COVID-19, others like Kisumu County have set up COVID-19 Response Call Centres.

Key Concerns

It is however noteworthy that although the Government of Kenya and County Governments have set up Committee and/or call centers for effective response to the COVID-19 pandemic, PWD, children, marginalized indigenous groups who have been disproportionately affected by the crisis have been left out in the appointment process. The appointments seem to have focused on representation of various ministries within the national and county governments and left out representation from the community members, PWD and the indigenous minority groups.

- 2) The government announced the closure and suspension of learning on the 15th of March 2020 after the first COVID-19 case was reported. All children both in day and boarding schools were required to be at home by 18th of March 2020. This measure interrupted the learning of many children.

Key Concerns

The closure of schools impacted not only on the learning of the children but also the school feeding programme which many children relied on for their days meal. School closure also impact negatively on some indigenous communities because there has be a surge on child sexual violence cases and parents have opted in some communities to marry off their daughters at an early age in exchange for money to sustain themselves.

- 3) On the 28th of March 2020, by Public Order (State Curfew) Order 2020 published as Legal Notice No. 36 saw the imposition of a nationwide curfew to contain the spread of the coronavirus. The legal notice bars the citizens from holding public gatherings or movement between 7.00pm and 5.00am. The implication of this law is that all persons in Kenya are required to remain indoors apart from those offering essential services.

Key Concerns

For the indigenous community (Pare, Waata, Maasai and Turkana), this law has impacted negatively although in a bid to curb the spread of infection. Most of the indigenous community members are experiencing financial difficulty since their main source of livelihood which is pegged on the sale of produce from the livestock and farm produce has been interfered with. Majority of the Maasai community for example who engage themselves in animals trade have been rendered jobless due to cancellation of the animal trade business since most markets have also been closed. The Pare community in Taveta is also experiencing financial difficulty since they cannot be able to sell their produce in Tanzania as a result of the closure of Kenyan Boarder.

Human-Wildlife Conflict during COVID-19

The Maasai community has reported concerns over the encroachment of wildlife in their homestead and livestock during this lockdown period. The lions have come to their properties and attacked their cows and sheep which has resulted in loss of their only source of livelihood during this lockdown period.

One of the human rights defenders from the Maasai community was arrested and intimidated by the state agencies as a result of trying to voice out the concerns of the Maasai following the encroachment by the wildlife during the COVID-19 period and is yet to take his plea.

4. The Government has rolled out short term and long term interventions to cushion the vulnerable members of the society, and to revamp the economy. The interventions include the weekly stipend of Kshs. 1,000, to those adversely affected by this COVID -19 pandemic. “The Government has disbursed over Kshs. 1 billion in support of this initiative, “however little is said of how much the indigenous minority groups have benefited from the said fund.

Key Concerns

At the Laikipia County for example, there is the introduction of “*lisha jamii*” (Feed the Community) Program which is geared towards the provision of stipend to the vulnerable population in Laikipia, however many minority communities (Maasai, Turkana, Ingwe) haven't been captured since their main source of Data is NHIF database which does not capture the indigenous minority. In some sections of Laikipia West Gatrima and Kapsigirio village some indigenous minority have been asked to pay 100/, one hundred shillings to be considered as vulnerable group and get Captured for the relief beneficiary.

5. There is a discriminative approach in the sensitization of people and communities at the County level. The language being used in sensitization forums and in social media platforms is the language of the majority which more often than not cannot be understood by the indigenous minority who understand only their local language.
6. The indigenous minority have also not been able to access masks and sanitizers. Accessibility and availability of these items has been close to impossible.
7. The Pare indigenous minority who live at the border of Kenya and Tanzania state that their lives and livelihood have been impacted because of the closure of the Kenyan borders to Tanzania. They state that they have been selling their produce in Tanzania but are now unable to. Tanzanian residents who travel to Kenya to trade do not maintain the social distance and put on PPE's thus exposing the Pare to COVID-19. Despite reporting the said actions to the police, no action has been taken.
8. The indigenous communities have remained exposed to the emerging natural and human disasters situations especially the floods and conflicts in the Rift Valley and other parts of the country. Such as witnessed in Narok and Turkana counties have had more adverse effects on their lives, livelihoods and resilience as the rest of the country struggles with the effects of COVID-19.

Reasons wherefore KHRC recommends:

- 1) ALL the efforts in all the sectors observe an inclusive and human rights centred approach in the prevention and management of COVID-19.
- 2) Create a mechanism of assessing and reporting on the impacts of COVID and state responses to the indigenous communities.
- 3) Members of the indigenous minority groups are represented in all administrative appointments/positions that address the COVID-19.
- 4) Members of the indigenous minority groups are allowed to participate in policies and, laws touching on the prevention, management, and response to COVID-1.
- 5) Create mechanisms of preventing and protecting the indigenous communities against disasters and conflicts especially in the midst of national pandemics.