

WANTON IMPUNITY AND EXCLUSION

A REPORT BASED ON HUMAN RIGHTS VIOLATIONS AMID COVID-19 IN KENYA (APRIL - AUGUST 2020)

A compilation of the findings of the KHRC and grassroots partners from 27 counties on the human rights impact of coronavirus and related response.





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ABBREVIATIONS AND ACRONYMS

ACHPR	- African Commission on Human and Peoples' Rights
AFIDEP	- African Institute for Development Policy
AU	- African Union
CMOs	- Collective Management Organizations
COVID-19	- Corona Virus Disease
CRBs	- Credit Reference Bureaus
CSOs	- Civil Society Organizations
DCI	- Directorate of Criminal Investigation
EACC	- Ethics and Anti-Corruption Commission
FGM	- Female Genital Mutilation
GoK	- Government of Kenya
HURINETS	- Human Rights Networks
ICT	- Information and Communication Technology
ICU	- Intensive Care Unit
IDMC	- Internal Displacement Monitoring Centre
IDPs	- Internally Displaced Persons
IPOA	- Independent Policing Oversight Authority
IT	- Information Technology
KHIS	- Kenya Core Health Indicators
KHRC	- Kenya Human Rights Commission
LGBTIQ	- Lesbian, Gay, Bi-Sexual, Transgendered, Intersex and Queer Communities
MCAs	- Members of the County Assembly
MMSEs	- Micro, Medium and Small Enterprises
MPs	- Members of Parliament (both the National Assembly and the Senate)
MRCT	- Monitoring and Response Team
NCAJ	- National Council for the Administration of Justice
NERC	- Natural Environment Research Council
NGOs	- Non-Governmental Organizations

OHCHR	- Office of the High Commission for Human Rights
P3	- Police and Medical Examination Report
PPEs	- Protective Personal Equipment
PWDs	- Persons Living with Disabilities
SGBV	- Sexual and Gender-based Violence
TV	- Television
UHC	- Universal Health Care
UN	- United Nations
UNHCR	- United Nation High Commission for Refugees
UN-IFAD	- International Fund for Agricultural Development
USA	- United States of America
VAT	- Value-Added Tax
VOA	- Voice of America
VPS	- Vulnerable Populations in Society

GLOSSARY OF TERMS

Boda Boda: motorbike riders who commute people at a fee.

Kazi Kwa Vijana: a project aimed at increasing job opportunities for the youth

Mama Mboga: vegetable vendors in urban, peri-urban and even rural centres who are mainly women

P3 Form: the form issued by police or a hospital, is meant to be filled by a medic, contains sections that guide health professions on areas to examine in the build up for a police criminal case on abuse.

EXECUTIVE SUMMARY

This monitoring exercise between April and July 2020 so far, including media reports later in August to October, indicate that both the COVID-19 pandemic and response measures have created social and economic disruptions that threaten the livelihoods and human rights of thousands of vulnerable populations and the general public. This Report is, therefore, a compilation of the KHRC grassroots partners' findings, which are on the human rights impact of COVID-19 and the respective responses, from 27 of the 47 Counties in Kenya.

The main objective of the monitoring initiative was to: expose and provide an alternative narrative (besides that of the State and its institutions) and intervene on the impacts of their responses and those of COVID-19 to the human rights and fundamental freedoms of the identified vulnerable populations and the general public in the country.

Our monitoring was based on the national and international human rights obligations of the government and other actors as enshrined in the Constitution of Kenya and other international legal instruments. The comprehensive statement issued by the African Commission on Human and Peoples' Rights (ACPHR, or the Banjul Charter) on a human rights-centered approach to the COVID-19 and those by the different UN mechanisms remain instrumental.

Within the monitoring frame, the KHRC had four (4) of topical issues for human rights investigation. These were:

- a) Levels of Preparedness and Nature of Responses to the Pandemic at all levels;
- b) Excesses or responses by the State Security and Administrative Agencies;
- c) Inclusion and Accountability in the Key Decisions and Facilities related to COVID-19;
- d) Any other emerging human rights and governance issues.

MAIN FINDINGS

On the levels of preparedness and nature of responses to the pandemic at all levels, the KHRC found out that it remains wanting owing to the lack of political and technical capacities by both the national and County governments to make the requisite decisions towards the management, suppression and containment of the virus and its impacts to the vulnerable populations.

Moreover, different State and non-State actors (including the citizenry, civic and corporate actors) did not have the necessary protection and support systems against the novel, contagious virus. Thus infections continued unabated while responses led to many violations and exposures to the public, and more so the most vulnerable groups, as documented below.

The response could be summarized as 'muddling through'. For example, the measures were taken around contact tracing, isolation and quarantine which were initially punitive have shifted with the government now embracing home-based care.

With regard to the response of State security and administration agencies, there is a need for an independent audit of the conduct of state agencies, particularly the security apparatus and how they enforced COVID-19 related regulations. Those found to have taken advantage of their positions to violate rights must be held accountable.

In this case, the Independent Policing Oversight Authority (IPOA), the Directorate of Criminal Investigations (DCI) and the Ethics and Anti-Corruption Commission (EACC) and DCI should commence investigations into the alleged acts of killings and violence; laxity in the provision of security, bribery and extortion. Finally, there is a dire need for thorough training and exposure of our security agencies on accountable and human- rights-centered policing, crowd control and emergency response mechanisms and strict enforcement of that code of conduct.

On the matter of inclusion and accountability in making key decisions, the KHRC found out that most of the counties have established a COVID-19 coordination team. However, most of these teams have no representation from civil society and the public. What this means is that both the civil society and the public are not involved in the government's decision making process on issues related to COVID-19. As a result of non-inclusion, the civil society and the public has been unable to access relevant information related to the pandemic and thus unable to effectively hold the respective County government to account.

In most Counties, members of the public have not been involved in decision making by both the national and county governments. Actually, until now, the people are not aware of the total amount of funds received by their County governments towards the fight against COVID-19, neither do they know how the received funds have been utilized.

With special mention, under the prevention, control and suppression of COVID-19, we notice the use of any person without any distinction to nationality or lack of it. Whereas other laws on health also don't make such distinction, administrative practice does as most people are required to identify themselves before accessing health services. The stateless and the indigent persons suffered enormously.

The COVID-19 pandemic has, therefore, exacerbated the inequalities the poor and marginalised face in accessing justice. From KHRC's violations portal, 70% of the claimants who reported incidences of police brutality, evictions and sexual and gender-based violence to state agencies indicated that their matters had not been attended to and/or resolved thus the reason they approached KHRC.

Finally, on the matter of other emerging issues, this Report documents how the COVID-19 pandemic has forced most businesses and companies to shut down. Major organizations and businesses have had to adjust to working remotely with a majority of others cutting down their expenses through retrenchment of workers. The hospitality industry has been one of the most affected with most businesses forced to close down completely. Another sector that has been hugely affected is the informal sector which includes casual laborers.

Further, the excessive and persistent worry about the pandemic has caused stress which results in uncertainties such as fear of contagion, job security and health. This has led to depression and in some cases suicide.

Moreover, the COVID-19 pandemic forced governments and individuals to take different measures to reduce the spread of the virus. One such measure was closing down schools and other institutions of learning. However, this has introduced another unique pandemic. According to some public, media and government sources, during the months of lockdown, over 100, 000 Kenyan teenage girls became pregnant.

MAIN RECOMMENDATIONS

Beginning latter matter of emerging issues, on teen pregnancies, the government should prioritize alternative options such as part-time classes to encourage young parents to continue with their education. There should be more social and economic support to the young parents and awareness on sex education and the necessary protection measures. It's also a time to reconsider the existing sexual and reproductive health policies and program for their responsiveness.

Further, the government should prioritize the most affected sectors such as tourism and casual sectors by introducing a stimulus programme. Innovation should be nurtured and the government should prioritize engaging local vendors and labor for all projects before importing it, this helps create employment by tapping the local talent.

Also, the government should implement recommendations by the Mental Health Taskforce by declaring mental health a National Emergency. There should be measures to address the impacts of COVID-19 and the mental health concerns of the different populations at all levels in society. State and non-state actors need to provide adequate psycho-social supports to the different categories of populations impacted by the virus and responses across the board.

On the matter of inclusion and accountability in making key decisions, NCAJ should put in place mechanisms to ensure affordable and effective access to justice for the poor and the general public and continuous protection of the staff involved in the criminal justice chain at this time of the pandemic. The National Criminal Justice Reforms Committee of NCAJ needs to expedite the formulation, adoption and implementation of the expected legal, policy and administration changes with the criminal justice system in Kenya.

Further, still the government should immediately cease all evictions aimed at different communities during the COVID-19 period. Also, develop mechanisms for supporting and compensating the communities impacted by all displacements and evictions (from the historical to the currents ones). Moreover, there is need to urgently initiate public and policy conversations to create more understanding of the phenomenon of displacements, the impacts of COVID-19 and the necessary governance frameworks. This should be accompanied by ensuring all the policies and resources dedicated to COVID-19 responses address the pertinent needs and protects the rights of IDPs among other vulnerable communities.

Further, on accountability, there is need to create a more effective and representative COVID-19 Emergency Response Fund/ Agency, operating both at the national and county levels. Further, there is urgent necessity to also foster human rights-based response frameworks. Such would ensure that all actions by the state and non-state actors will protect and promote the rights of the people involved and negatively impacted.

There is the necessity to continuously enforce and provide adequate hygiene and safety essentials such as masks and hand sanitizers to all vulnerable populations at no cost, especially now that billions of Ksh have been granted to the GoK, in the wake of the phased opening of schools at all levels.

In the work front, the government and other actors should ensure companies adhere to the existing laws and that COVID-19 response mechanisms do not push workers further into further destitution. Further,

businesses must ensure the health and safety of workers, especially those with significant workplace intervention such as those in the spray department. Finally, employers must ensure access to healthcare and protective equipment for their employees in line with Section 101 (1) of the Occupational Safety and Health Act.

Finally, the government and other actors should put measures in place to measures to offer the requisite support and protection to the old people, persons with disabilities, the poor, children and women whose exposure to violence among other injustices has been increased in the context of COVID-19. Moreover, there should be additional measures to ensure their inclusion.

END

ACKNOWLEDGEMENT

The Kenya Human Rights Commission (KHRC) takes this earliest opportunity to acknowledge all the staff members and our grassroots' partners involved in the design and implementation of this project.

To begin with, we acknowledge our Monitoring and Response and Coordinating Team (MRTC) comprising of Martin Mavunjina (the Programme Advisor on Transitional Justice) who provided the overall leadership and coordination of the monitors mentioned below; Diana Gichengo (the Programme Manager Identity and Inclusion); Mary Kambo (the Programme Manager, Labour, Trade, Land and Resource Justice), Irene Soila (Programme Assistant, Political and Constitutional Reforms) and Davis Malombe (the Deputy Executive Director) for their technical leadership in the management of this project; especially the latter for compiling this Report.

The above MRTC, together with Martha Ndururi (the Office and Human Resource Administrator); Paul Anan (the Programme Advisor on Anti-Corruption and Devolution); Mary Kimemia (the Programme Assistant on Inclusion and Diversity); Duncan Kung'u (the Logistics Officer); Faith Kirui (the Internet Technology [IT] and Procurement Officer); Medika Medi (the Communications Advisor); Bernard Mugendi (the IT and Communications Assistant); Moses Gowi (the Communication and Urgent Action Assistant) and, finally, Sandra Oyombe (the Legal Affairs Advisor). All these staff were also deeply involved in the coordination of the different clusters of monitors and responses.

Moreover, we appreciate all our 68 monitors drawn from our Human Rights Networks (HURINETs) drawn from the more than 25 Counties in the country for their dedication, commitment and partnership. Indeed their phenomenal and timely briefs, reports and responses remained the cradle of this project. Thus, this report is in a big way informed by their insightful data and information received from their documentation.

With much gratitude, we take note of the role played by Peter Mbage (the Director of Finance and Administration), Richard Mutioh (the Finance Manager); and also, Felix Okoth (the Finance Officer). These staff members facilitated all the necessary logistical support and resources in the implementation of this project.

Overall, we salute deeply George Kegoro, our outgoing Executive Director, for providing the overall strategic and political guidance and leadership in the conceptualization and execution of the project. Yet again, we thank gratefully Tom Kagwe J.P., for the meticulous editorial work done on this Report.

Last but not the least, we remain grateful to the Norwegian Embassy; Swiss Embassy through Diakonia's *Haki Madini* [justice for minerals] Initiative; and last but not least, the Danish Embassy through the *Uraia* [citizenship] for providing the financial support, which facilitated the implementation of this project. However, the report does not reflect in any way their views; only those of the KHRC.

DEDICATION

This Report is dedicated to all Kenyans who, directly and indirectly whether physically, psychologically, physiologically suffered, the adverse effects of COVID-19 and responses by the State and non-State actors and the institutions underneath them. The latter were responsible for the inordinate social, economic and political exposures and injustices and human rights' violations meted on Kenyans and all other people across the Republic.

1 INTRODUCTION

The Kenya Human Rights Commission (KHRC) is one of premier and flagship Non-Governmental Organizations (NGOs) established on 9th April 1992; in the United States of America (USA) by brilliant minds and human rights advocates in exile courtesy of the oppressive Moi regime. We envision human rights States and societies. Our Mission is to foster human rights, democratic values, human dignity and social justice. Thus, the mandate is to enhance a human rights-centered governance structures and systems at all levels of society.

Therefore, we strive to ensure that the management or governance of the societal affairs (both in the public and private spheres) at the local or County, at the national level, and to some extent at the regional and global levels. These societal affairs should be undertaken within processes and outcomes that respect, protect and human rights for all, especially those interests of the marginalized and minority groups and communities.

To realize this mandate, the KHRC applies the strategies of community engagements; coalitions and movement building; research and documentation; as well as knowledge-sharing and advocacy in advancing KHRC's mandate. On 13th March 2020, following the Government of Kenya (GoK) announced of the first infected person with COVID-19.¹ The government and the people of Kenya received the news with shock and lots of anxiety. Subsequently, and as documented in Section C of this report, the government announced many measures and protocols aimed at responding to the worldwide pandemic.

The response was initially responded to as a health crisis with public health measures taking the centre stage through education and public appeal for adherence. There was the introduction of rules and regulation to guide the country through the pandemic in several areas including public finance and treasury, health with the KHRC participated by offering comments to the proposed rules and regulations. Similar to the rest of the nation, and the world at large, the KHRC was going through this unprecedented catastrophe without any prior experience of how to navigate through it.

The government went ahead to introduce other measures including restriction of movement in certain areas and during certain periods (read, curfew) were initiated. These measures alongside the health measures of face masking and restriction of gathering shifted the response from a health response to security response that curtailed human rights but also further led to outright human rights violations. The health response of quarantining affected persons had also become fronts for human rights violations particularly for Kenyans and Kenyan residents coming from foreign countries.

We received several complaints through our digital forums and traditional mediums of communication. As a result of all this reason, we initiated the “*Community and Rights Documentation and Response to COVID-19 Initiative*”. This is basically to monitor and address the actions by the State and non-State actors in the wake of the COVID-19 and document the impact of the responses on the political, social and economic rights of Kenyans as guaranteed by the Constitution of Kenya.

Our monitoring exercise between April and July 2020 so far, including media reports later in August to October, indicate that both the pandemic and response measures have created social and economic disruptions that threaten the livelihoods and human rights of thousands of vulnerable populations and the general public. This Report is, therefore, a compilation of the KHRC grassroots partners' findings, which are on the human rights impact of COVID-19 and the respective responses, from 27 of the 47 Counties in Kenya.²

¹ COVID-19-19 is a communicable respiratory disease caused by a new strain of coronavirus that occasion illness in humans. It spreads across people through infected air droplets that are projected during sneezing or coughing. It can also be transmitted when human have contacts with hands or surfaces that contain the virus and touch their eyes, nose, or mouth with the contaminated hands. COVID-19-19 was first reported in China in December 2019, but it has now spread throughout the world.

² These Counties are: Kisumu , Kakamega, Siaya, Migori, Kisii, Trans-Nzoia ,Turkana, Uasin Gishu, Baringo, Nakuru, Kericho , Narok, Kajiado , Taita Taveta , Kwale , Kilifi , Tana-River , Wajir , Mandera, Meru, Nyeri, Nyandarua, Kiambu, Murang'a, Nairobi, Machakos, and finally, Kitui.

2 OBJECTIVES AND METHODOLOGY OF OUR MONITORING PROJECT

2.1 The Objectives

The main objective of the monitoring initiative was to: expose and provide an alternative narrative (besides that of the State and its institutions) and intervene on the impacts of their responses and those of COVID-19 to the human rights and fundamental freedoms of the identified vulnerable populations and the general public in the country. Specifically, the project aimed to undertake the following:

- (i) To document and respond to the government's levels of preparedness and responses to the pandemic situation and its impacts to the identified vulnerable groups;
- (ii) To document and address the excesses or responses by the State security and administrative apparatus and its impacts to the identified vulnerable groups;
- (iii) To document and respond to governments levels of inclusion and accountability in the key decisions and facilities related to COVID-19 and its impacts to the identified vulnerable groups, that have been identifies above; and finally,
- (iv) To document and address to any other emerging human rights and governance issues whether related or not related to COVID-19 pandemic.

Within the monitoring frame, the KHRC had four (4) of topical issues for human rights investigation. These were:

- e) Levels of Preparedness and Nature of Responses to the Pandemic at all levels;
- f) Excesses or responses by the State Security and Administrative Agencies;
- g) Inclusion and Accountability in the Key Decisions and Facilities related to COVID-19;
- h) Any other emerging human rights and governance issues.

Moreover, the KHRC undertook more interventions for deepening society levels identification and engagements with COVID-19 and related human rights issues. Second, the KHRC executed such complimentary tasks as media monitoring. This was led by the staff members responsible for the different thematic issues, as seen above. Further, the KHRC hired consultants to undertake specialized information-gathering tasks. This Report captures the continuous monitoring and response to the decisions of the government and other actors at the national level and beyond.

All these interventions led to the preparation and dissemination of weekly policy briefs and press statements for engagements with the County, national and transnational state and non-state actors' mechanisms. We also carried out legal, policy, psycho-social and humanitarian responses in response to these issues.

2.2 Human Rights Considerations

Our monitoring was based on the national and international human rights obligations of the GoK and other actors as enshrined in the Constitution of Kenya and other international legal instruments. The comprehensive statement issued by the African Commission on Human and Peoples' Rights (ACHPR, or the Banjul Charter) on a human rights-centered approach to the COVID-19 and those by the different UN mechanisms remain instrumental.

Further, the ACHPR for instance urged that responses should be based on the relevant provisions of the Banjul Charter. With particular emphasis, Article 4 on the right to life, Article 9 on the right to access to information and Article 16 on the right to health, all of which were at risk from the COVID-19.

The ACHPR emphasized the obligation States' as Parties to the Charter to take appropriate measures to give effect to the rights, duties and freedoms enshrined in the Charter including through taking measures

necessary for preventing threats or loss to the life, safety and health of people and spelt out 12 areas of compliance by States' Parties in their response to the COVID-19.

These above thematic areas include the principle of legality, which imposes the duty on states parties to act within the law; the duty to observe non-discrimination and equality; the of members of the public to receive factual, regular, intelligible and science-based information; the primacy of timely preventive and containment measures; the duty to address challenges of non-compliance with public health measures by mobilizing wide support that will increase chances of compliance.

Other human rights obligations included in ACHPR's Statement are: the duty to protect prisoners; the duty to protect vulnerable groups; the duty to provide access to treatment for people who may be affected by the virus; the duty of civil society to provide solidarity to the State in addressing the coronavirus; the duty to respect human rights when applying public health emergency measures; the duty to provide mitigation measures for those adversely affected by the application of public health emergency measures; and finally, the duty to set up effective and efficient systems to monitor the measures adopted and to take corrective measures and to undertake an investigation in cases of allegations of violations of human and peoples' rights.

2.3 Target Groups

The monitoring targeted the Vulnerable Populations in Society (VPS), as described below:

- a) Those with pre-existing marginalization and injustices: women, youth, persons living with disabilities (PWDs); urban and rural poor; workers in the precarious labor and informal sector; people living in the streets; Lesbian, Gay, Bi-sexual, Transgender, Intersex and Queer (LGBTIQ) communities; commercial sex workers; those at the peoples' settlements (informal settlements usually referred to as 'slums'); indigenous communities; forced, including expose migrants (Stateless persons, IDPs, refugees, those deprived migration documents etc.); and also, victims of SGBV among others.
- b) Frontline health workers or professionals, who have remained exposed by the limited protection and support mechanisms.
- c) The general public which would be adversely impacted by the virus, state responses or any other human rights situations in the country.

1.1 The Monitoring Process and Reporting Framework

In the first phase, we engaged 68 monitors from among various diverse Human Rights Networks (HURINETS) in the country; whom the KHRC has incubated and assisted in their formation. From this, 53 came from 28 Counties where many violations had been reported between March and April 2020. These worked between April and June 2020.

The remaining or other 15 came from our partners' working in the Counties of Nakuru (in Naivasha), Kiambu (in Thika) and Meru, where the KHRC implements labour justice interventions targeting the flower farms. This was a special target because of the negative impacts of COVID-19 to the horticulture sector in the country. This phase ran from May to July 2020.

The main and specific objectives framed above formed the terms of reference for all monitors. The four (4) topical human rights issues and questions became the basis for shaping the monitoring tool. For workers, we made a few changes to fit their special circumstances. All monitors were trained on the respective questions and tools. They were also facilitated on ways that enabled them to gather information but also remain safe.

As expected, monitors shared reports, every weekly, on Monday, which formed the basis for periodical reports. Towards the end of June, all monitors shared two-pager briefs which summarized all their findings and recommendations for the last few months. On July 20th, 2020, we had a dialogue session with the monitors where we reflected on the partnership, challenges and recommendations to shape the second phase of engagement expected to run from July to September 2020. In addition to the monitors' reports, we also received reports from our digital sites as well as direct inquiries for help by Kenyans and Kenyan residents.

It is important to note, we also employed complementary research methodologies on related or other human rights violations. We undertook a great deal of literature reviews and hired consultants to undertake substantive tasks. For instance, the two topical reports on *displacements and forced evictions in Kenya* and *other emerging human rights issues* have benefited in a big way from this secondary source of literature. Most of these contents are contained in this Report.

Again and following the evictions in Kariobangi (a largely informal settlement community) in May 2020, the KHRC team worked with professional valuers to document the extent of loss and harmed experienced by the communities impacted by the evictions. The KHRC also undertook a videographic documentation of the impacts of COVID-19 to the people within the informal settlements in Nairobi through hiring Boniface Mwangi.³

Further still, the reports we got from the KHRC legal-aid clinic and the media platforms (both from social, traditional and other media) also provided insightful information towards this process of monitoring human rights abuses by the State and non-State actors.

2.4 This Monitoring Report

From the above considerations and processes, the KHRC has developed and structured this main Report along the same wavelength and has three (3) parts: Section 3.0 that is on *Key State and Non-State Initiatives in Response to the Pandemic*; Section 4.0 on *Key Findings and Recommendations*; and finally, Section 5.0, which is a *Detailed Analysis of the Situation*. Each Section peruses at the following issues (either topical or thematic and also the community perspectives) at different depths and lengths:

- a) Preparedness and response of the GOK towards the COVID-19 pandemic at the national and county levels.
- b) Displacements and forced evictions, which is about human rights concerns in the wake of the COVID-19 and beyond.
- c) Impact of the COVID-19 on flower farms workers in the three Counties mentioned above.
- d) Inclusion and protection of the vulnerable populations in the wake of the COVID-19.
- e) Responses and conduct of the State security apparatus in the wake of the COVID-19.
- f) Accountability and transparency issues on the government's response to the COVID-19.
- g) Lived experiences of stateless persons in the wake of the COVID-19.
- h) Exposure of the existing inequalities in the justice system in the wake of the COVID-19.
- i) Other emerging human rights issues in the wake of the COVID-19.

We have also included annexures, at the end of this Report, to provide more information on who was involved and the tools utilized and/or applied in this monitoring project.

³ Boniface Mwangi is an award-winning photo-journalist from Kenya, human rights activist and the founder of PAWA254 and #TeamCourage, both of which galvanize young people in the struggle against human rights violations through art, music and other forms of literary work.

3 KEY STATE AND NON-STATE INITIATIVES IN RESPONSE TO THE PANDEMIC

The government initiated the following measures to suppress the spread of COVID-19.

- a) Measures were undertaken to offer relief and increase disposable income to the people of Kenya, through 100% Tax Relief for persons earning a gross monthly income of up to 24,000; Reduction of Top Income Tax Rate (Pay-As-You-Earn) from 30% to 25%; Reduction of Resident Income Tax (Corporation Tax) from 30% to 25%; Reduction of the VAT from 16% to 14%, effective 1st April 2020; Reduction of the turnover tax rate from the current 3% to 1% for all Micro, Small and Medium Enterprises (MSMEs).
- b) Appropriation of Ksh. 10 Billion to the elderly, orphans and other vulnerable members of the society through cash-transfers by the Ministry of Labour and Social Protection, to cushion them from the adverse economic effects of the COVID-19 pandemic.
- c) Temporary suspension of the listing with Credit Reference Bureaus (CRB) of any person, MSMEs and corporate entities whose loan account fall overdue or is in arrears, effective 1st April 2020.
- d) Suspending travel for all persons coming into Kenya from any country with reported Coronavirus cases. Only Kenyan Citizens and any foreigners with valid residence permits were allowed to come in provided they proceeded on self-quarantine or to a government-designated quarantine facility.
- e) Suspending of learning in all educational institutions. Consequently, and to facilitate a phased approach, primary, secondary schools and tertiary institutions were suspended.
- f) Where possible, government offices, businesses and companies were encouraged to allow employees to work from home, except employees working in critical or essential services.
- g) Ksh.1 billion from the Universal Health Coverage (UHC) kitty was appropriated strictly towards the recruitment of additional health workers to support in the management of the spread of COVID-19.
- h) Cessation of all movement by road, rail or air in and out of: (a) the Nairobi Metropolitan Area; and (b) the counties of Kilifi, Kwale and Mombasa from Monday, 6th April 2020.
- i) Daily Nationwide Curfew from 7:00 p.m. to 5:00 p.m., in the entire territory of the Republic of Kenya.
- j) Voluntary reduction in the salaries of the senior ranks of the National Executive.
- k) The Ministry of ICT, Innovation and Youth Affairs, in collaboration with Kenya Copyright Board, Collective Management Organizations (CMOs) established a framework to ensure transparency for artist's earnings. It was projected that a total of 200m every month would be paid to musicians through the system and other platforms which would eventually translate to over Ksh. 2 billion going into the hands of Kenyan artists.
- l) The National Emergency Response Committee (NERC) directed the suspension of all churches, mosques, and other religious gatherings.
- m) To ensure adherence to social distancing guidelines, the government announced closure of all bars with restaurants only remaining open for take away services and all social and public gatherings including weddings, funerals were restricted to immediate family members only.

These also informed the responses by the private sector among other non-State actors. It is all interventions and impact on the people form the basis for our findings and recommendations below.

4 FINDINGS AND RECOMMENDATIONS

4.1 Key Findings

4.1.1 Preparedness and Response of the Government to COVID-19

With regard to this issue, it remains wanting owing to the lack of political and technical capacities by both the national and county governments to make the requisite decisions towards the management, suppression and containment of the virus and its impacts to the vulnerable populations.

Moreover, different State and non-State actors (including the citizenry, civic and corporate actors) did not have the necessary protection and support systems against the novel, contagious virus. Thus infections continued unabated while responses led to many violations and exposures to the public, and more so the most vulnerable groups, as documented below.

The response could be summarized as ‘muddling through’.⁴ For example, the measures were taken around contact tracing, isolation and quarantine which were initially punitive have shifted with the government now embracing home-based care.

Enforcement of the rights to health was heavily compromised during this period particularly for persons suspected of having contracted COVID-19 and the health personnel providing medical assistance. KHRC received reports of people held in quarantine centres by the government who had to pay very prices to access basic healthcare for a pandemic or who were isolated to be checked for COVID-19. Our monitors reported the lack of provision of protective equipment to medical personnel across all the 27 counties.

Throughout the monitoring period, we received inquiries of where testing was taking place with testing being reported to take place only in the isolation centres and in Nairobi City County, specifically in Kibera and Kawangware.

In Mandera and Nairobi, we received reports of people escaping from isolation and quarantine centres for fear of how they will meet the bills accumulated.

The monitoring reports gradually illustrated acceptance by Kenyans across the country of the reality of COVID-19. This was illustrated by initial contestation by people of their test results and non-disclosure of their status and subsequent disclosure of status and test results by several public personalities and people in the medical sector.

4.1.2 Displacements and Forced Evictions

These undermined the country’s efforts to suppress the spread of the virus. For loss of homes and livelihoods of thousands of persons without any alternative accommodation and income constitute grave violations, violates multiple human rights norms and exacerbates its potential impact on the rights to health and life. These happening during the rainy seasons aggravated exposures.

Further, it exposed the unpreparedness, impunity and insensitivity by the State and other actors in their failure to comply with legal and policy obligations.⁵ Especially this was seen with violations on court orders; lack of notices to and consultations with key populations; use of violence, threats and excessive force against the affected communities; and the Human Rights Defenders (HRDs) who stood in the way of forced evictions.

⁴ This is concept invented by Professor Charles Lindblom, which clearly states that administrators’ in government seldom make the correct decisions pertaining an issue. Policy makers just ‘muddle through’ and this is most possible since COVID-19-19 was an unprecedented catastrophe, which wrecked the world and the country. Visit, <https://www.istor.org/stable/973677?seq=1>, accessed Thursday October 08, 2020.

⁵ Both the national, regional and international frameworks on human rights, displacements and evictions.

4.1.3 Impact of COVID-19 on Flower Farms' Workers

While the impact of COVID-19 continues to be felt in every political, social and economic sectors, it is the floriculture sub-sector that is arguably the worst hit with last-minute flight cancellations that left growers with no choice but to dispose of flowers and other fresh produce worth millions of Ksh, on a daily basis.. As a result, more than 30 000 temporary workers were sent home with 40,000 permanent workers sent on paid leave. We have also witnessed massive layoffs and wage cuts.

The heavy rains experienced in the country in May and June led to the significant rise in water level in Lake Naivasha, a result of which communities living around the Lake, many of whom work in the flower companies, were displaced. This dealt a double blow to the affected people, many of whom had lost jobs in the wake of COVID-19.

4.1.4 Inclusion and Protection of the Vulnerable Persons in Societies

While the older people in the society and people with underlying medical conditions⁶ are said to be more likely to develop serious illness as a result of low immunity; the persons with Disabilities (PWDs) remains disproportionately impacted due to environmental and cultural barriers that prioritise on the abled persons giving a second thought to PWDs.

Moreover, the poor whose livelihood is below a dollar per day have suffered economic shocks owing to the slowdown and halt in economic activities; the older and illiterate members of the society faced a higher risk of being left out of communication for the current channels being used are accessible to them and not specific to their needs.

The treatment of COVID-19-19 patients and particularly those who succumbed showed clear discrimination based on class with most needy families being forced to bury their dead at nights while the well to do buried under more favourable circumstances. The patients of CIVID 19 have also been treated to a lot of stigma in the initial stages but the stigma is now reducing as more people declare their status and ably navigate through COVID-19-19 to recovery.

Finally and as the closure of schools in March 2020 saw the introduction of virtual/ online education which left out children with disabilities who require special assisted devices also those from poor backgrounds who cannot afford it. Women were exposed to intensified domestic violence that involved spouses and members of public. This has been triggered by confinements which fostered tensions and frustrations that have been caused by job losses and family instabilities

4.1.5 Responses and Conduct of State Security Agencies

Upon the institution of the 7 p.m. to 5 a.m. curfew to contain the spread of COVID-19, responses by state security agencies were swift, brutal and uncoordinated, leading to many incidents of violence and extra-judicial executions targeted to the citizens. During the first 10 days of the curfew, at least six people died as a result of excessive use of force by the police. Since then, preliminary investigations by IPOA have disclosed that 15 deaths (including that of a 13year old boy-Yassin Moyo⁷) and 31 incidents where victims sustained injuries have directly been linked to actions of police officers during the curfew⁸.

⁶ Such as diabetes, cancer, cardiovascular and chronic respiratory diseases

⁷ <https://www.bbc.com/news/world-africa-53150397>

⁸ <https://www.aa.com.tr/en/africa/15-killed-by-kenyan-police-enforcing-covid-19-curfew/1862803>

Moreover, cases of extortion and bribery⁹ were reported as police allegedly took advantage of the enforcement of the very stringent laws and regulations enacted in the course of the pandemic. Police were also involved in the violent enforcement of evictions¹⁰ and disruption of public protests¹¹.

There was also noticeable laxity in enforcing security especially after curfew was enforced. The period saw an escalation of banditry, cattle rustling, breakings and entering, kidnappings and general insecurity in the country.

4.1.6 Accountability and Transparency by Government

First, there was blatant theft and extortion by both the national and county government officers while enforcing the COVID-19 regulations and utilizing the resources provided¹². Over 7.8 million USD meant for the purchase of PPE's for healthcare workers and hospitals across the country was allegedly misappropriated. Investigators from the Ethics and Anti-Corruption Commission (EACC) stated that preliminary findings disclosed that several laws on public procurement were flouted during the awarding of the tenders¹³.

In addition to this, the police mounted roadblocks for instance at the entrance to Kitale town from all directions. Roadblocks have therefore been turned into bribery and extortion centres and those who fail to pay are accused of having disobeyed COVID-19 regulations.

Second, both the national and county governments are handling the COVID-19 pandemic without any proper transparency and accountability mechanisms in place. There are no deliberate efforts to make information available to the public. In addition, there were and still are no effective mechanisms to receive complains nor feedback from the relevant stakeholders, especially the public.

Related to the above, while most of the counties have established COVID-19 coordination teams, these have inadequate representation from the Civil Society Organizations (CSOs) and the public. The non-inclusion of the key players has led to limited access to relevant information which is critical in holding the respective County governments to account on COVID-19 related funds and policy decisions.

4.1.7 Lived Experiences of Stateless Persons

Already marginalized and the minority before the crisis, the stateless persons face even greater, life-threatening exposure now – with potentially disastrous consequences.

The government on various responses mentions Kenyans and foreigners, but most stateless communities fall under neither categories but increasingly identify as Kenyans. Thus the exclusion faced before now risks turning into threatening as they fight for basic survival.

Moreover, COVID-19 related laws, policies and protocols continue to exclude stateless persons and secondly that stateless communities face unique challenges from one community to another but some challenges are similar on account of being stateless.

⁹ <https://www.standardmedia.co.ke/nairobi/article/2001376335/dodging-virus-roadblocks-motorists-4-police-officers-arrested>

¹⁰ <https://www.hrw.org/news/2020/06/10/nairobi-evicts-8000-people-amidst-pandemic-and-curfew>

¹¹ <https://nation.africa/kenya/news/politics/police-disrupt-saba-saba-protests-in-the-city-1446314>

¹² <https://www.khrc.or.ke/2015-03-04-10-37-01/press-releases/722-institute-immediate-measures-to-guarantee-integrity-transparency-and-accountability-in-covid-19-response-efforts.html>

¹³ <https://www.bbc.com/news/world-africa-54278417>

4.1.8 Exposure of the existing inequalities in the justice system in the wake of COVID-19

This is attested by the fact of the lived realities of Kenyans in accessing redress mechanisms for the injustices they face, as documented in the *Justice Needs and Satisfaction in Kenya Survey Report*.¹⁴

It also points to the opaque processes and inequalities within the formal justice processes that make the majority of the poor and marginalised excluded from accessing justice. Thus COVID-19 has but exacerbated the inequalities the poor and marginalised face in accessing justice.

Moreover, the National Council on the Administration of Justice (NCAJ) directive to scale down operations within the justice sector following the first reported case of COVID-19 in March 2020¹⁵ impacted negatively on access to justice for the poor and marginalized in the society.

¹⁴ The Kenyan Judiciary and World Bank, (2017), Visit, https://www.hiil.org/wp-content/uploads/2018/07/hiil-report_Kenya-JNS-web.pdf, accessed, Thursday October 08, 2020.

¹⁵ By a press statement dated 15th March 2020 the National Council on Administration of Justice

4.1.9 Other Human Rights Issues

Within this category, the following ‘other issues’, but important, and human rights violations have been noted:

- a) *Unemployment*: The pandemic has forced most businesses and companies to shut down. Others have had to adjust to working remotely with a majority of others cutting down their expenses through retrenchment of workers. The horticulture, hospitality, transport, education (especially private schools) and the informal sectors are the most affected.
- b) *Mental Health*: The University of Nairobi shows that “the overwhelming need to restrict physical contact, to wear a mask, and staying at home is likely to result in loss of intimacy and social contact, and hence physical and psychological isolation.”¹⁶ Physical and psychological symptoms include lack of sleep, headaches due to continual wearing of masks, and depression.
- c) *Teenage Pregnancies*: The continued closure of schools and other institutions of learning as part of the measures to reduce the spread of the pandemic has led to this unexpected crisis. According to an article published by the Voice of America (VOA) News.¹⁷ They put it aptly thus: “during three months of lockdown, 152,000 Kenyan teenage girls became pregnant, a 40 percent increase in the monthly average.”
- d) *Surveillance*: To contain the COVID-19 virus, states have implemented different measures in a bid to track and trace people who have been in close contact with those infected with the virus. According to the World Health Organization, this process is known as contact tracing¹⁸ and it consists of three major steps; contact identification, contact listing and contact follow-up. This has in the process provide opportunities for governments to engage in surveillance.

4.2 Key Recommendations

4.2.1 Preparedness and response of the Government

There is need to create a more effective and representative COVID-19 Emergency Response Fund/ Agency, operating both at the national and county levels. Further, there is urgent necessity to also foster human rights-based response frameworks. Such would ensure that all actions by the state and non-state actors will protect and promote the rights of the people involved and negatively impacted. Finally, there is the necessity to continuously enforce and provide adequate hygiene and safety essentials such as masks and hand sanitizers to all vulnerable populations at no cost, especially now that billions of Ksh have been granted to the GoK, in the wake of the phased opening of schools at all levels.

4.2.2 Displacements and Forced Evictions

The government should immediately cease all evictions aimed at different communities during the COVID-19 period. Also, develop mechanisms for supporting and compensating the communities impacted by all displacements and evictions (from the historical to the current ones). Secondly, there is need to sufficiently address all the root causes and manifestation of all the factors which cause the different kinds of displacements and evictions in the country. While the natural factors can be monitored and mitigated, the human-based factors are attributable to social and political factors oftentimes within our control.

¹⁶ <https://uonresearch.org/blog/mental-health-under-the-cloud-of-COVID-19-19/>

¹⁷ <https://www.voanews.com/episode/teen-pregnancies-spike-kenya-schools-remain-shuttered-4344051>

¹⁸ <https://www.who.int/news-room/q-a-detail/contact-tracing>

4.2.3 Impact of COVID-19 on Flower Farms Workers

The government and other actors should ensure companies adhere to the existing laws and that COVID-19 response mechanisms do not push workers further into further destitution. Further, businesses must ensure the health and safety of workers, especially those with significant workplace intervention such as those in the spray department. Finally, employers must ensure access to healthcare and protective equipment for their employees in line with Section 101 (1) of the Occupational Safety and Health Act.

4.2.4 Inclusion and Protection VPS

The government and other actors should put measures in place to offer the requisite support and protection to the old people, persons with disabilities, the poor, children and women whose exposure to violence among other injustices has been increased in the context of COVID-19. Moreover, there should be additional measures to ensure their inclusion and the consideration of their issues in all the decision making processes during and beyond the pandemic.

4.2.5 Responses and Conduct of the State Security Agencies

There is a need for an independent audit of the conduct of state agencies, particularly the security apparatus and how they enforced COVID-19 related regulations. Those found to have taken advantage of their positions to violate rights must be held accountable. In this case, the Independent Policing Oversight Authority (IPOA), the Directorate of Criminal Investigations (DCI) and the Ethics and Anti-Corruption Commission (EACC) and DCI should commence investigations into the alleged acts of killings and violence; laxity in the provision of security; and bribery and extortion. Finally, there is a dire need for thorough training and exposure of our security agencies on accountable and human- rights-centered policing, crowd control and emergency response mechanisms and strict enforcement of that code of conduct.

4.2.6 Accountability and Transparency of Government

The government should initiate measures for awareness creation, information sharing and involvement of the vulnerable groups and the general public in key decisions processes related to COVID-19. Second, the County and National Assemblies together with the EACC and DCI should investigate how the financial and material resources received by both the national and County governments were utilized. Finally, the shameless and blatant loss of resources earmarked for responses to the unprecedented impacts of COVID-19 to the people and the country at large should provide momentum for implementing interventions that would tame the waste and misappropriation of public funds once and for all.

4.2.7 The Lived Experiences of Stateless Persons

The two levels of government should ensure non-discriminatory responses to COVID-19, on any grounds including citizenship, documentation or migration status; and to make every effort to reach the furthest behind first, including the stateless. There should be affirmative action and measures to include stateless persons in COVID-19 prevention, suppression and management processes including access to mental among other health rights. In particular, we call on Treasury to amend their definition of vulnerable to include stateless persons.

As KHRC, we urge the Ministry of interior and the National Assembly to move with speed and enact amendments that will occasion stateless person protection from human rights violations and guarantee them the ultimate and long-desired solution of Kenyan citizenship. We further call on the Taskforce on Statelessness and the Ministry of Interior to move with speed and naturalize all Stateless persons in the country as a way of beginning their journey into integration and leading dignified lives.

4.2.8 Exposure of the Existing Inequalities in Accessing Justice

The National Council on the Administration of Justice (NCAJ), chaired by the Chief Justice but with all stakeholders involved in the justice system, should put in place mechanisms to ensure affordable and effective access to justice for the poor and the general public and continuous protection of the staff involved in the criminal justice chain at this time of the pandemic. Indeed, the National Criminal Justice Reforms Committee of NCAJ needs to expedite the formulation, adoption and implementation of the expected legal, policy and administration changes with the criminal justice system in Kenya. Finally, State and non-State actors need to provide adequate psycho-social support to the different categories of populations impacted by COVID-19 and responses across the board.

1.1.1 Other Emerging Human Rights Matters

To being with, the government should prioritize the most affected sectors such as tourism and casual sectors by introducing a stimulus programme. Innovation should be nurtured and the government should prioritize engaging local vendors and labor for all projects before importing it, this helps create employment by tapping the local talent. Further, the government should implement recommendations by the Mental Health Taskforce¹⁹ by declaring mental health a National Emergency. There should be measures to address the impacts of COVID-19 and the mental health concerns of the different populations at all levels in society.

On the matter of teenage pregnancies, the government should prioritize alternative options such as part-time classes to encourage young parents to continue with their education. There should be more social and economic support to the young parents and awareness on sex education and the necessary protection measures. This is a matter that has been left on the shelves for far too long because of the ‘religiosity agenda’ against sex education.

Finally, the government should adhere to international and local laws and guidelines on data protection by respecting citizen’s right to privacy both online and offline. There should be a multi-stakeholder partnerships especially in projects that involve the deployment of technology enabled solutions.

¹⁹ <https://www.capitalfm.co.ke/news/2020/07/declare-mental-health-a-national-disaster-taskforce/>

5 DETAILED ANALYSIS OF THE SITUATION: PREPAREDNESS AND RESPONSE

5.1 Main Findings

5.1.1 Overview

The levels of preparedness and responses remain wanting owing to lack of political and technical capacities by the different levels of governments to make the requisite decisions towards the suppression and containment of the spread of the virus and its impacts to the vulnerable populations. With projections of the County's peak coming about in September and our test samples averaging significantly lower as compared to other countries, it is safe to say that Kenya's level of preparation is significantly wanting.

There are numerous questions as to the management of the funds that have been allocated to the management of the virus with the Ministry of Health's exorbitant and wasteful spending being the centre of attention. Moreover, the continued opening of social places and places of worship amid the exponential increase in infections whilst still having minimal mitigating measures in place is a highly worrying trend and time continues to be the true test and tell of just how prepared we are as a country. The situation and actions below actions by the national and county levels government attest to this.

5.1.2 National Level Situation and Actions

Since March 2020, when Kenya recorded its first case of the COVID-19, it created a state of panic among the citizens as we had been observing how the virus had rampaged countries all over the world, especially in Europe, North and South America, leaving thousands of people dead. This was particularly alarming for Kenyans as these countries are far more developed and well-resourced in terms of health care and health services far beyond Kenya and yet, the virus had left them completely helpless.

At that juncture, Kenyans only hoped that the government would take the necessary measures to mitigate the spread of the virus through ensuring all Kenyans have access to basic sanitary conditions, hospitals are well equipped to manage what was slowly becoming a global pandemic.

Unfortunately, as the days have turned into weeks and weeks into months, the government of Kenya has made very little gains as far as being prepared for this pandemic is concerned even with billions of shillings being granted and loaned to it to mitigate the spread of the virus. In this Report, we have taken detailed analysis on how various counties have been affected by the virus and how the same has been mitigated through analyzing what the national governments and County government's level of preparedness has been.

At the onset of the spread of COVID-19, most governments opted to lock down their countries in a bid to contain the importation of the virus into their borders and further contain the cases that were already in the country. Countries that had recorded high infection rates went a step further and issued a stay-at-home order to their citizens with only those listed as *essential services* being allowed to remain open and mobile but even then, this was regulated.

On the contrary, Kenya, albeit having not recorded any cases as yet, retained open borders and free flow of international traffic through the Jomo Kenyatta International Airport, an airport that not only serves as a transit route into East Africa from Europe and Asia but also a regional transit route.

What this meant was that at a time when the virus was spreading wildly, Kenya did not restrict entry into the country, nor did it set up any sort of measure to test those who were coming into the country for the Corona Virus as a measure to mitigate importation of the virus from the hot spot regions.

This was further followed an intense backlash from the citizens and the executive stated in early March stating that Kenya had restricted incoming flights from China, which was at the time not only the originating country of COVID-19 but also the country that had the highest number of positive cases. Days after this, footage from the JKIA showed a flight from China landing in Kenya leaked causing both an uproar and panic from the citizens. It was soon after this footage leaked that the President and the Cabinet Secretary in charge of health called for a press conference and announced that Kenya had recorded its first case of the Corona Virus.

From the above, it is plausible to conclude that from the onset, the government has taken a very lax approach to the mitigation of the effect of the Corona Virus in Kenya; a country with a struggling health care system and approximately 70% of its population lacking access to basic sanitary solutions.²⁰

As a first response measure to the presence of the virus in the country, the president gave a stay-at-home recommendation to Kenyans advising that only those involved in *essential services* to remain open and mobile. He further placed the country's borders on lockdown to any incoming flights but remained open to road access to the East African Countries. One could argue that this directive was appropriate given the fact that it is what had been applied in other countries that had reported high cases of the virus.

However, for a country and an economy where 81% of its population derives its livelihood from the informal sector.²¹ However, those who depend their lives on daily wages, the stay-at-home directive was not only ill-processed but also 'classist' and out of touch with the daily realities of millions of Kenyans. It, therefore, did not come as a shock that most Kenyans went about their daily lives as per usual, with some quoted as saying that it is either they die from the virus or die of starvation and they would much rather take their chances with COVID-19.

In the days to come, the rate of infection particularly in Nairobi and Mombasa rose exponentially and saw the president issue two directives on April 6th 2020; first was a lockdown order on the Counties of Nairobi banning any exit or entry into Nairobi, Mombasa, Kilifi and Kwale for 21 days and further imposed a nationwide curfew order that would ban movement from 7 p.m. to 5 am.²²

This order further exposed the lack of preparedness to deal with what had now become a full-blown global pandemic at both the national and county level. We, therefore, took to engage monitors in counties across the country to give real-time on ground reports of how the spread of the virus was being mitigated taking into account that health, following the 2010 Constitution, became a devolved function.

With the rise of infections and the restriction of movement, not only was there a health crisis but also a livelihood crisis where thousands of Kenyans lost their livelihood and would, therefore, be dependent on food aid. The government has since the initial case of the Coronavirus was reported in Kenya, received over Ksh. 100 Billion and continues to receive both donor funding, grants and loans to go towards mitigating and cushioning the effects of the pandemic on Kenyans and the Kenyan economy as well as go towards equipping and preparing the health sector for what is to come with the continued spread of the virus across Kenya.

²⁰ <https://water.org/our-impact/where-we-work/kenya/#:~:text=With%20a%20population%20of%2050,access%20to%20basic%20sanitation%20solutions.>

²¹ https://www.ieakenya.or.ke/number_of_the_week/economic-burden-of-the-informal-sector#:~:text=The%20informal%20sector%20in%20Kenya%20takes%20up%20over%2081%25%20of,total%20working%20population%20in%20Kenya.&text=Today's%20number%20is%2083%25%2C%20which,do%20not%20pay%20income%20tax.

²² <https://www.aljazeera.com/news/2020/04/COVID-19-19-kenya-bans-travel-nairobi-areas-200406163601579.html>

5.1.3 County Level Situation and Actions

At the time of the pandemic hitting the country, Kenya had a total of approximately 518 ICU beds across all 47 counties with some counties such as Bungoma, Bomet and Nyamira among others having not a single ICU bed.²³ The most recent reports show that we are fast approaching full capacity²⁴ and yet medical experts report that Kenya is yet to reach its peak infection rate.

At the onset of the pandemic, counties such as Kwale County, which is one of the counties marked as a hot spot and affected by the cessation of movement order, was still grappling with access to PPEs for medical practitioners and quarantine facilities which were only available in Lunga-Lunga Sub-County. Reports from our monitors showed that quarantine facilities only catered for a bed, a mosquito net and water.

Indeed, everything else had to be provided for by the patient's family, including food. The health practitioners in the County had become informants on the actual situation on the ground but as the weeks have progressed, they have become reluctant to provide any further information as the situation in the hospitals fearing for their job security. The health facilities according to reports have not seen any sort of significant improvement in terms of equipment of personnel.

As for the provision of sanitization facilities such as soap, sanitizers and watering points, reports show that most of these are mainly being provided by corporates in the area such as Base Titanium through the aid of local organizations such as Red Cross and local CSOs. Part of the funds committed towards the mitigation of the effects of the pandemic through the provision of food aid as most of the locals are in the informal sector and the hotel industry, reports of bias and inconsistency in the distribution of these resources and funds have also been reported in the County

For Counties such as Kajiado, however, their response to the entry of the virus into the country was to immediately increase and intensify preventive measures at the border to curb the spread of the virus both at the border point and further importation to the County. The County has its boundaries stretching to border Tanzania through Namanga. Tanzania was and still is reported to have alarming numbers of COVID-19 cases and her neighbors have closed down their borders with Tanzania to mitigate importation of cases from the country.

Kajiado County has further heightened its screening and surveillance with a particular focus at the border due to reported cases of COVID-19 among truck drivers who often have their stopovers within the County. This was informed by confirmation of nine news cases among truck drivers plying the Kenya-Tanzania route through the Namanga and Oloitokitok border points. The Governor reported to have communicated that more than 120 public health officers have been dispatched to various health institutions, public places and road blocks to screen residents.

The County has also identified and equipped isolation points within the County in Kajiado County referral hospital and a few other clinics. It is further noteworthy that the County is said to be producing masks that are being distributed for free to very needy people in the County with a capacity to produce 50,000 masks and sanitizers. The County, which is predominantly pastoralists, has also taken to issue a directive for the closure of all market places. This has however been defied by the livestock traders citing that that is their sole source of livelihood and continue trading at the markets.

For other counties such as Meru, it has taken the increase in positive cases being reported there for their devolved government to take any sort of measure. They have taken a more reactive rather than preventive

²³ https://data.humdata.org/dataset/kenya-number-of-hospital-icu-beds-per-County_/resource/57af4fb4-1141-41aa-a5f8-a92ccd5663c9

²⁴ <https://www.nation.co.ke/kenya/news/top-hospitals-running-out-of-icu-beds-COVID-19-19--1444712>

and mitigating approach to the Corona Virus. It is reported that at the onset of the virus, social and sanitary support in the form of food aid and sanitary equipment was being provided by well-wishers to vulnerable members of the society in a bid to mitigate the risk of exposure. The County government was not seen to take up any sort of sensitization or aid to the residents of the County.

However, when the first case of Corona Virus was reported there, it is reported that the County government began conducting some sorts of training on how citizens can protect themselves. There are however reports that this was done without proper inclusion or transparency and the County government has since been accused of misappropriation of the funds that should otherwise have gone towards mitigation of risk as well as boosting the County's health capacity.

Like Meru County, Taita Taveta County had also taken a passive approach to the pandemic until it began recording positive cases within the County. Further, and similar to Meru County, there have been reports of misappropriation and lack of proper measures to mitigate the spread of the virus and a demand for accountability from the people of Taita Taveta as it increasingly records high numbers of infections.

In counties such as Machakos, although they are yet to record any cases of the virus within the County, it has put in place several measures that indicate certain levels of preparedness should the virus hit the County. They have equipped the Machakos Level 5 hospital with testing facilities and capacity and shall, therefore, serve as the central testing facility in the County. Further, they have set up dome tents at the Kenyatta stadium to serve as the isolation facility in Machakos County. Albeit commendable, the County government has come under heavy criticism from health workers with issues of inadequate PPEs being reported and salaries being delayed thus attracting strike threats from the health workers.

Moreover, it is disappointing to see that although the County government has put in place commendable measures to respond to the virus, it has done little to prevent and manage the contraction and spread of the virus. Reports from the County monitors indicate that the County's populations continue to struggle with access to hygiene and safety supplies such as access to clean water, sanitizers, masks and soaps. The County government is said to have supplied a few masks and sanitizers to *Boda Boda* (motor-bike taxi) operators but overlooked other key populations such as the market attendants, public transport operators and the like. This, therefore, creates apt conditions for the wide spread of the virus should it make its way into Machakos County.

Nakuru County, like Kajiado County, are seen to be handling the threat of the virus with a heightened sense of caution. Following a reported incident of a woman succumbing to corona virus-related complications in Bomet County which borders Nakuru County, the County took measures to increase screening and testing at the border entry points. The police have also taken a keen interest in ensuring that the safety measures stipulated in the Public Health Act, particularly those concerned with the proper wearing of masks when in public are adhered to.

Further, Nakuru County hosts numerous large scale industries and plantations. As such, it is commendable to see that corporates such as Unilever-Kenya had halted all leave schedules for April and May 2020. Workers who were set to take leave in the course of those two months have been asked to suspend their leave plans until further notice. This is to ensure that all workers remain within the company's housing camps with minimal movement outside of the company.

As for employees who are currently on leave and reside outside the counties of Kericho and Bomet, and were due to resume in March and April, they have been advised to hold reporting back for duty until further notice. Nonetheless, they continue to receive their full pay. These measures stem from the need to ensure that the virus is not imported from counties that have registered positive cases of coronavirus and the fact

that hundreds of workers are housed within the company and a single case of coronavirus could have far-reaching ramifications on workers who live together in company houses.

As for Nairobi, the Capital and the hardest-hit City County, it continues to record a majority of the national positive cases. Being at the epicenter of the pandemic in Kenya, it is rather disappointing to see how lax the national and metropolitan government is mishandling and mismanaging the spread of the virus. With accusations of gross misappropriation of funds by the Ministry of Health, hospitals in the capital continue to charge Kenyans for tests with some hospitals turning away Kenyans claiming that they do not have the facilities to conduct the tests, isolate or treat patients exuding symptoms of the virus.

There have been continued reports that health workers are not being provided with PPEs thus increasing the risk of not only exposure but also wider spread of the virus owing to the populations that hospitals found in Nairobi serve daily. This fear was confirmed on 14th July 2020 when Pumwani Hospital, one of the larger hospitals in Nairobi, reported that 41 of its members of staff, out of a sample of 290, had tested positive for the Corona Virus with a significant majority of these being nurses and doctors.²⁵ To date, more than 500 health workers have since contracted the virus with two succumbing to the virus. This is a clear indication of the lax nature in which the government has handled and continues to handle this matter.

5.2 Main Recommendations

It is clear that the government, both at the national and County level, has yet to be adequately prepared to handle, contain and manage the spread of the coronavirus in Kenya. This even having received billions of dollars in aid and loans to mitigate the effects of the virus. We would, therefore, make the following recommendations to go towards improving our level of preparedness at a time when the rate of infection and death from the virus continues to rise exponentially:

- i) A comprehensive audit of all the funds received by the Kenyan government towards the management and mitigation of the virus. This will expose the gaps in the management of the funds that were intended to mainly go towards equipping and reading our health systems and facilities for what is to be unprecedented numbers needing health services.
- ii) Free mass testing to be conducted across the country with a special focus on the counties that have since recorded cases of the virus. Kenya continues to conduct significantly low tests as compared to other counties. This will enable us to have a clearer and more realistic indication of what the numbers are in Kenya. This shall then contribute significantly to how and with what to equip hospitals and health workers across the country at a time when testing centers are closing their doors citing lack of adequate equipment and facilities.²⁶
- iii) A transparent and accountable roll out of the COVID-19 Fund that was set up to aid Kenyans in coping with the ramifications of the virus, mainly loss of income and livelihood as well as provide food aid to vulnerable populations. The reports from the counties indicate that this is either not being done or being done with bias, inconsistencies and with parts of the funds going directly into the pockets of officials tasked with the distribution of the same.
- iv) Consistent and adequate provision of hygiene and safety essentials such as masks and hand sanitizers to all vulnerable populations at no cost. The government reported that the country has the capacity to locally manufacture masks and hand sanitizers²⁷ and yet these remain inaccessible to millions of Kenyans as reported from the counties.
- v) The government to waive all charges related to the testing and treatment of the coronavirus and corona related ailments at all public hospitals, clinics and dispensaries across the country. Many Kenyans have been reluctant to go for testing as this attracts a charge of not less than Ksh. 1000 at public health

²⁵ <https://www.capitalfm.co.ke/news/2020/07/19-medics-among-41-COVID-19-19-cases-at-pumwani-maternity-hospital/>

²⁶ <https://www.nation.co.ke/kenya/news/kenya-s-COVID-19-19-cases-soar-amid-concerns-over-tests-1901070>

²⁷ <https://www.health.go.ke/government-starts-manufacturing-mask-and-ppe-to-prevent-coronavirus-nairobi-friday-april-3-2020/>

facilities, out of pocket charges when required to quarantine and having to pay for the treatment upon the manifestation of the coronavirus symptoms. With thousands of Kenyans losing their livelihood as a result of this pandemic, these charges are grossly unaffordable for the common *mwananchi*.

vi) The government to provide cushioning to insurance institutions to enable them to cover the costs related to the treatment of corona virus related illnesses in private hospitals. As it stands, most insurance providers expressly exclude the provision of cover in the treatment of a pandemic. As such, Kenyans are left to pay for treatment out of pocket with the virus often manifesting in such dire symptoms as to require Intensive Care Unit and High Dependency Unit services.

6 DISPLACEMENTS AND FORCED EVICTIONS: KEY HUMAN RIGHTS CONCERNS

6.1 Main Findings

6.1.1 Understanding Displacement Governance

Displacements, which include forced evictions (also referred to as arbitrary displacement) is one of the gravest injustices which continue to impact on rights of the poor among other forced migrants in the world.²⁸ It is for that reason it is governed by all the major frameworks in the society, all borrowing from international human rights and refugees laws. The UN Guiding Principles on Internal Displacement formulated in 1998 together with the UN Guidelines on Evictions remain the reference points as they restate the principles of international human rights, humanitarian and refugee law applicable to IDPs. Our regional and national frameworks build on this.

The IDPs Act²⁹ in Kenya defines the "internally displaced person" or an IDP as a person or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, large scale development projects, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border. This definition provides the categorization and root causes of displacements and the State's obligations towards the prevention³⁰, protection and assistance to the affected persons up to the point they attain durable solutions³¹.

It also in consideration of the AU Convention introduces the element of large scale development projects and provides for arbitrary displacements which imply "forced evictions" in other sectors, thus creating a conceptual and legal connection between these two interrelated phenomena which have been defined and managed so disparately over time. For while there is a tendency to attribute displacements to natural factors and evictions to human-based initiatives, the above description remains mutually inclusive.

Finally, it is important to isolate the very unique elements of forced evictions from other forms of displacements. According to Amnesty International, this comes with a disproportionate power dynamic where the evictions are carried out by, or at the behest of those who have political power or influence, money and resources – against those who have no money, organizing capability or legal representation³².

6.1.2 Displacements and the Impact to the VPS

Displacements and evictions normally put the impacted communities in more precarious situations due to the fact their habitual residences have been destroyed; the livelihoods shattered and their rights on the edge. Pandemics tend to aggravate the already grace situation for the IDPs and other forced migrants.

²⁸ Forced displacement (also forced migration) is the involuntary or coerced movement of a person or people away from their home or home region

²⁹ http://www.parliament.go.ke/sites/default/files/2017-05/PreventionProtectionandAssistancetoInternallyDisplacedPersonsandAffectedCommunities_No56of2012_.pdf

³⁰ Protection" means all activities aimed at obtaining full respect of the rights of internally displaced persons in accordance with the letter and spirit of the fundamental rights and freedoms under the Bill of Rights of the Constitution of Kenya and applicable regional and international human rights and humanitarian law instruments.

³¹ "Durable solution" means the achievement of a durable and sustainable solution to the displacement of persons through a voluntary and informed choice of sustainable reintegration at the place 2012 Prevention, Protection and Assistance to Internally No. 56 Displaced Persons and Affected Communities of origin, sustainable local integration in areas of refuge, or sustainable integration in another part of Kenya.

³² See <https://www.amnestykenya.org/revive-shabbir-bill-to-end-these-inhumane-evictions/>

It is on this basis that UNHCR notes: “With coronavirus now present in every country worldwide, the world’s 71 million refugees and forcibly displaced people are among the most exposed and vulnerable. For people who fled wars and persecution, the impact on their mostly hand-to-mouth existence and their hosts has been devastating”³³. Displacements caused by forced evictions under the same circumstances expose the state and non-state actors’ insensitivity to the plight of the poor who are already struggling with the socio-economic impacts of the pandemic among other disasters.

6.1.3 Categories of Displacement Experienced and Expected

- *Arbitrary Evictions as a Result of Large Scale Development Projects*

There was forceful and violent removal from and destruction of houses belonging to more than 8,000 residents of Kariobangi (Nairobi) in May 2020 to pave way for an erection of a sewerage system. More than 1,500 residents of Ruai in Nairobi faced related violations over the same period. In July 2020, more than 100 households (around 600 people) from the Ogiek community were evicted from the Mau forest and their houses burnt down by a contingent of the Kenyan police and Forest Service.

Elsewhere, at least five families (around 30 people) living with leprosy and within a compound that also houses the Kenya Medical Training Center – Msambweni(Kwale County) are threatened with evictions. Finally, moreover, more than 2,500 families are facing imminent eviction to pave way for the construction of Koru-Soin dam in Kisumu County. The dam threatens the livelihood of over 100,000 people.

- *Displacements as a Result of Floods, Landslides and Mudslides*

May and part off June 2020 saw rains which were characterized by heavy storms that caused flash floods as well as mud/landslides in several parts of the country. By May 13, 161,000 households were displaced. Moreover, 237 people had lost their lives due to floods. That was a very high number compared to those Kenyans who have lost their lives to COVID-19 who are about 33.

- *Displacement as a Result of Insecurity and Communal Violence*

According to the Internal Displacement Monitoring Centre (IDMC), the number of people fleeing conflict or violence but remaining within their own countries has soared. IDM adds that Cattle rustling, conflict over resources, and land disputes caused new displacements in Kenya in 2019. KHRC noted incidents of displacements and other harms associated inter-communal violence in Narok, Kajiado, Marsabit and Mandera counties. We are still working on the actual figures over those displaced.

- *Other Existing Situations of Displacements*

There are many other cases of displacements in Kenya which have remained unresolved for many years mainly related to politically instigated violence; conflict over resources and development initiatives. According to IDMC, there were 1,800 new displacements in 2019 bringing the total number of IDPs to 162,000 by the end of that year. This means such households having been extremely exposed over time, COVID-19 mainly came in to worsen their already gross human rights and humanitarian situations.

6.1.4 The Impact on COVID-19 Prevention and Human Rights Protection

Displacements and evictions happening during the COVID-19 emergency undermine the efforts by the Kenyan Government to suppress the spread of the virus. Moreover, it exposes impunity among the state and corporate actors as manifested in the following conducts and violations: failure to comply with the existing legal, policy and treaty mechanisms; disregard of court orders; non-existence of adequate notices to and consultations with key populations; use of violence and excessive force against the indigent

³³ <https://data2.unhcr.org/en/situations/COVID-19-19>

communities; threats to human rights defenders who stand in the way of the eviction and massive harms to peoples bodily integrity and livelihoods without any forms humanitarian supports or remedies.

It is on this basis that the Office of the Higher Commissioner for Human Rights (OHCHR) responded to Kenya government's destruction of the houses in Kariobangi and Ruai estates (In Nairobi, May 2020) by noting thus: "Not only does destroying the homes of thousands of persons without any alternative accommodation constitute a grave violation of their right to housing but doing so in the current context of a pandemic violates multiple human rights norms and exacerbates its potential impact on the rights to health and life of thousands of Kenyans."³⁴

Moreover, there has been no mechanisms to protect and support the most vulnerable groups that bear the brunt of displacements in the wake of COVID-19. It is, for this reason, the civil society organizations have argued in response to the evictions being meted against the Ogiek community that such actions will have among others: negative social, economic and cultural consequences which will affect their livelihood, local biodiversity and food security. For the Ogiek culture and the importance of their activity for the protection of their territories has also been recognized internationally (by Slow Food and UN-IFAD). Finally, for displacement caused by natural disasters there seems to be no plans to prevent or provide adequate and timely supports to the affected groups. And in all categories of displacements, there seems to be very limited preparedness and commitment towards offering the requisite protection and durable solutions.

6.2 Main Recommendations

Immediate Recommendations amid COVID-19

- i) Immediately cease all evictions aimed at different communities during the COVID-19 period. Also, develop mechanisms for supporting and compensating the communities impacted by all displacements and evictions (from the historical to the current ones).
- ii) Urgently initiate public and policy conversations to create more understanding of the phenomenon of displacements, the impacts of COVID-19 and the necessary governance frameworks.
- iii) Constantly, ensure all the policies and resources dedicated to COVID-19 responses address the pertinent needs and protects the rights of IDPs among other vulnerable communities.
- iv) Systematically, develop and implement mechanisms for early warning and response on floods, mudslides, landslides, conflicts among others, which cause many displacements.
- v) Unconditionally comply with court orders when it comes to the protection of communities which are the risk of arbitrary displacements or evictions during and beyond the COVID-19 period.

Long-term beyond COVID-19 Period

- i) Fully adopt and enforce Rights-based approach as opposed to charitable or humanitarian initiatives in with the Constitution of Kenya, IDPs Act, regional and international human rights mechanisms
- ii) Dully implement the IDPs Act, which has been technically suspended and at the verge of repeal by the state under the imagination that humanitarian mechanisms are adequate.
- iii) Considerably amend the Land and IDPs Act to provide for guidelines on the resettlement, protection and compensation of communities impacted by different displacements. These should consider special protection of the interests and rights of the marginalized groups and indigenous communities.

³⁴ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25901&LangID=E>. Related positions were taken by the Kariobangi North Member of the County Assembly (MCA) Julius Njoka who condemned the demolitions, accusing the government of being inhumane to the residents at a time when the country is battling the coronavirus pandemic. See for instance: <https://www.nation.co.ke/kenya/counties/nairobi/5-000-families-in-kariobang-homeless-after-houses-pulled-down-288950>

- iv) Continuously advance mechanisms of fostering periodical reporting and compliance with all the regional and international treaties and decisions on displacements and evictions.
- v) Effectively adopt and implement the National Action Plan and Policy on Business and Human Rights, which will domesticate the corresponding UN Guiding Principles for due diligence in projects involving the business actors.
- vi) Critically ensure that development partners-multilateral and multinational agencies that fund different projects exercise due diligence and refrain initiatives which have negative impacts on communities.
- vii) Sufficiently address all the root causes and manifestation of all the factors which cause the different kinds of displacements and evictions in the country. While the natural related factors can be monitored and mitigated, the human-based are attributable to social and political factors a times within our control.

7 IMPACT ON WORKERS

7.1 Main Findings

7.1.1 Suspension of Labour Laws

Flower farm companies are reported to be making arbitrary decisions about employees' continued status of employment. In Vegpro Group, it is alleged that the company terminated workers from employment and later reinstated them on half-pay. The employees that were reinstated were not issued with new contracts. There are also claims that the company does not issue its employees with personal protective equipment (PPE), a situation that is likely to further predispose workers to the risk of contracting the virus.

Because of the risk that the virus portends to elderly persons who contract it, Ol-Njorowa, Longonot Horticulture and Van Den Berg flower companies located in Naivasha are reported to have sent all its employees above fifty years on early retirement. Those that were retained are on half pay and also forced to work overtime with no compensation. There are looming fears of an imminent termination of employment.

The situation of apprehension is also reported in Beauty Line Flowers where more than 300 workers have lost their jobs to the pandemic. Those that have been retained decried the increased workloads and being subjected to continuous work without breaks. This state of affairs is replicated in Bigot Flowers where many employees were forced to go on compulsory leave from June and for which they were not compensated. In Oserian, it is reported that more than 75% of the workforce was declared redundant and replaced almost immediately, causing doubts on the motive of the redundancy decision.

The situation is not any different in Kiambu where Selecta Farm is reported to have terminated nearly 20% of its employees. Just like in Vegpro, the employees who have been retained in employment are said to work without PPEs. A similar picture is painted in Athi River, Machakos, where Harvest-Kenya is reported to have sent more than 70% of its employees on compulsory unpaid leave from 1st April 2020. These employees are said to be paid only a house allowance amounting to Ksh. 2 600.

In early March 2020, all employees who were due for annual leave were advised by the employer to take all their leave days. After expiry of the leave, they were equally advised to continue staying at home on unpaid leave. This decision was extended to expectant female employees who were forced to proceed on unpaid maternity leave, contrary to section 29 of the Employment Act which provides that a female employee shall be entitled to three months maternity leave with full pay. This is replicated in Larmona Farm in Naivasha where it is alleged that maternity leave is currently unpaid.

However, employees are provided with masks and sanitizers. The employer provides transport to and from work for all employees who are picked and dropped at designated points. This is convenient because the workers get home before 9.00 p.m. when the curfew kicks in.

The Afri-organic company in Meru County, in a bid to protect its workers from contracting COVID-19, has halted all leave days for its employees. Workers who were on leave have been advised to hold reporting back for duty until further notice. Like many other companies in the flower sector, the Afri-organic employees are provided with masks, soap and sanitizers.

7.1.2 Floods and Displacement

The heavy rains experienced in the country in May and June led to a significant rise in water level in Lake Naivasha, a result of which communities living around the lake, many of whom work in the flower companies, were displaced. This dealt a double blow to the affected people, many of whom had lost jobs

in the wake of COVID-19. Local leaders together with the Nakuru County government came to the aid of the displaced communities providing them with water and sanitizers.

One of the flower companies, Van Den Berg Roses, was affected by the floods following which the company management released a memo on 8th May 2020 urging the employees to resign voluntarily due to the damage caused by the floods.

Further, a dam in Central Ndabibi was swept away by the floods leading to the displacement of 35 families that have been forced to take shelter at the nearby Central Ndabibi Primary School. It is estimated that a further 250 families in Rhoda Estate, Nakuru, were displaced by floods in May. The local leaders and the Nakuru County Disaster Management Committee donated foodstuff and sanitizers to the affected families.

7.2 Main Recommendations

i) *Enforcement of existing laws*

The varying of employees' contractual terms without mutual consultation points to a dangerous trend of the possible suspension of laws and is a blatant violation of section 10 of the Employment Act. KHRC calls upon the Ministry of Labour and Social Protection and other duty bearers to ensure companies adhere to the existing laws and that COVID-19 response mechanisms do not push workers further into further destitution.

ii) *Health and safety*

Businesses must ensure the health and safety of workers, especially those with significant workplace intervention such as those in the spray department. In addition, employers must ensure access to healthcare and protective equipment for their employees in line with section 101 (1) of the Occupational Safety and Health Act.

Businesses must remember that how they respond to prevent, mitigate and address the human rights impacts of the pandemic will be key to the extent to which they can maintain trust in their own supply chains.

iii) *Response to floods and displacements*

We can upon the government of Kenya and the companies affected to develop mechanisms for effecting timely monitoring and response to disasters related displacements. Such should entail effective strategies for the prevention, assistance and durable solutions along with the provisions of the IDPs Act and other regional and national frameworks on internal displacements.

8 Inclusion and Protection of VPS

8.1 Main Findings

i) Elderly and the Sick

The older people in the society, as well as people with underlying medical conditions like diabetes, chronic respiratory disease, cancer and cardiovascular disease, are said to be more likely to develop serious illnesses as a result of low immunity. As such, the government echoed the need for cessations and lockdowns to minimise the risks involved and exposures to the older persons who are mainly found in the rural parts of the country.

Consequently, the aged population and particularly those with underlying medical conditions, older people rely on caregivers for their daily survival and support. Social distancing may not be a possible scenario in their situation owing to the way they depend on their caregivers.

ii) Persons Living with Disabilities

Persons with Disabilities (PWDs) are disproportionately impacted due to environmental and cultural barriers that prioritise the abled persons giving a second thought to persons with disabilities. Most of them live with previous health conditions that increase the exposure to the virus that would lead to severe symptoms upon infection and higher risks of death. PWDs who are dependants on support for their daily living found themselves unable to survive during lockdown and curfew conditions.

Organisations of Persons with Disabilities were not effective in most of the responses to the pandemic. They complained for instance of the failures by the government to involve them in the establishment of hand-washing points in public areas ending with facilities which do not meet their needs of especially on accessibility and availability. There were also complaints from PWDs in Kilifi County on discrimination in the disbursements of funds which they claimed targeted intellectual disability at a time every person with a disability is affected.

iii) Economic Inclusion

Kenyan and mainly the poor whose livelihood is below a dollar per day, suffered economic shocks owing to the slowdown and halt in economic activities. This was experienced in places like Kibera, Kawangware and other informal settlements in Nairobi where most of people are *Boda Boda* riders, *Mama Mbogas* (women vegetable vendors) and other street vendors. This state of affairs was also replicated in the rural parts of the country within Nyeri Uasin-Gishu, and Kakamega counties. Such has contributed to high rates of crime in the country.

The government developed a government-controlled Emergency Response Fund (ERF). The fund is yet to fully inject any form of support to all these constituencies. The government should have also leveraged available humanitarian work to consolidate all the efforts from all sectors to expand the scope and avoid duplication.

iv) Communicating Inclusion

Older and illiterate members of society face a higher risk of being left out of communication. The current channels being used are not specific to their needs and reduces their chances of accessing information. These constituencies require specific communication as they may not have easy access to online communications and a general understanding of the phenomenon.

Moreover the need to maintain social distance limited chances for them to enjoy the normal support and sharing of information from the close friends and family members. To this regard, residents of Naropi in Turkana County are some of the affected by this situation, in the sense that, they are not connected to any form of internet and the flow of information from local leaders is very limited.

v) Access to Education

After the closure of schools in March 2020, there was a proposal for virtual education that was geared towards addressing the need to continue lessons across the country. Virtual education, being an online system was only available to children and students with a capacity to access the tools of online platforms. This left out children with disabilities who require special assistive devices and those from poor backgrounds who cannot afford.

Basic education is a fundamental human right that promotes inclusion and social cohesion, economic empowerment and resilience. While the government acknowledges this challenge and has delayed resumption of schools till 2021, pupils and students from the afore-mentioned background will have to do a lot more to be at par with others.

vi) Sexual and Gender-Based Violence

Sexual and Gender-based Violence was and still remains so rampant during COVID-19 globally. Since the announcement of the pandemic in Kenya, the country faced intensified domestic violence that involved spouses and members of the public. The triggers of the violence ranged from confinement which fostered tension and frustrations that have been caused by job losses and family instabilities. During COVID-19 period, women have carried the burden of a bitter society. Owing to the above and compounded by the early and long closure of schools and colleges, cases of defilement, early pregnancies and abduction targeted to girls have increased. Cases of defilement affecting boys and rape of men were also noted. There has also been an increase in incidents of underage sex including in groups.

Reports by our monitors showed a pattern and trend of cases around domestic violence that are either not reported due to stigma or compromised by authorities. Most of the cases reported were halted at the police stations where victims were unable to secure the P3 forms which are critical in the processing of their claims. We also noted challenges within the police station which can be attributed to the limited access to courts and prosecutors during this COVID-19 period.

There were reports of Police not keenly following the accused persons or sometimes releasing them on nearly negligible bail because of lack of holding facilities. In other areas community often pressured the victims to drop the case and save the violators from ‘shame’.

Despite these challenges, we also noted incidences of progress based on reports from our monitors. For instance, in Uasin-Gishu County, a Female Genital Mutilation (FGM) crusader handed over his tools to the County government signalling the end of his FGM services.

8.2 Main Recommendations

- i) The national and County governments should invest in monitoring and understanding the increased risks of SGBV associated with the pandemic and identify persons more at risk to develop programmes and initiatives for responding and reducing the risks of SGBV and sexual exploitation and abuse activities. As we respond to COVID-19, the response measures should adequately integrate SGBV support, programs in the healthcare, security and social protections measures rolled out.

- ii)** Government and other partners should invest to provide information in accessible formats about available SGBV support services and support at-risk individuals to access those services. This could include toll-free counselling for all victims of sexual violence and clear referral pathways in every County
- iii)** Isolation and quarantine centres should be adequately resourced with the necessary safety facilities to protect women and girls from sexual violence. The risk of sexual and gender-based violence against women in quarantine facilities, isolation centres should be mitigated.
- iv)** The government and other actors should put measures in place to mitigate risks of all forms of violence against children at home and holding institutions. Children with disabilities are disproportionately vulnerable hence the need to provide regular assistance and build a friendly environment.
- v)** The levels of SGBV cases as reported and highlighted by the heads of the judiciary and the executive are now at alarming levels. There is need for coordination mechanisms for monitoring, prevention and response from the lowest levels of government or the way up by the government. On the other hand, the civil society and members of the public should invest in community action and pressure groups as a way of protecting the dignity and sanctity of our children as well as creating a culture of zero tolerance to sexual violence.

9 Response and Conduct by State Security and Administrative Agencies

9.1 Main Findings

9.1.1 Brutality and/or Excessive Use of Force

Upon the institution of the 7 p.m. to 5 a.m. curfew, the response by State security and administration agencies was swift, brutal and uncoordinated. Several reports were received from the ground of police brutality and excesses. This was witnessed in Mombasa ferry crossing where dozens of people both men, women and children were injured, as paramilitary police tear-gassed and beat passengers trying to board a ferry to make a curfew.³⁵

This behavior was later condemned by government officials and a process of investigation started, but thereafter it seemed like COVID-19 had reared the ugly head that is the Kenya National Police Service. As on 31st March 2020, a 13 year old boy – Yassin Moyo - was shot dead, allegedly by police, on the balcony of his home in Kiamaiko, Nairobi, 20 minutes after the curfew was started.³⁶

On 28th March 2020, three (3) policemen attacked Weru Television Cameraman Mr. Gregory Muriithi as he filmed them brutally enforcing social distancing at the Mitunguu Market in Meru County. The police officers allegedly slapped him and took away his job card.³⁷

In the period 17 deaths in Mathare were reported and documented as arising directly from police excesses with 13 out of the 17 persons being tortured to death. It was also reported that 31 cases were of people admitted to hospital with serious injuries following an assault by police officers. The Independent Police Authority (IPOA) was put to task to explain the reason as to why the concerned police officers had not been arrested.

Citing a case of an 18 year-old *Boda Boda* rider who hit by a stone and admitted at the Kenyatta National Hospital with a severe head injury, it goes to show that the police and other security agencies took advantage of the current situation to mete out their form of justice while enforcing the government regulations, forcing the Ministry of Interior to come out to assure Kenyans that action will be taken against police officer found culpable of gross human violations.

A further report was received from residents of Majengo Slums, in Narok County where Prisons Officers while enforcing curfew went as far as going to residential homes to harass and arrest residents³⁸ and enforce illegal quarantines. Chief, Sub Chiefs, Village Chairmen and Ward Administrators were also accused of discrimination against certain populations identified as needy for purposes of food distribution and enlisted for the national government's cash transfer programme, creating their form of justice and a breeding ground for bribery and extortion.

There was also the case of Mr. Abdallah Mohammed Khamis aged 45 years who was arrested by police during curfew hours at his home on 10th May 2020. The police from Tezo Police Station who were on patrol took to their fists and *rungs* (clubs or batons) in their possession and severely attacked Mr. Khamis leaving him for the dead. He was rushed to the hospital for treatment but unfortunately passed away two days later from the injuries.

³⁵ <https://www.hrw.org/news/2020/04/22/kenya-police-brutality-during-curfew>

³⁶ <https://www.garda.com/crisis24/news-alerts/336271/kenya-authorities-announce-21-day-extension-for-nationwide-curfew-april-25-update-17>

³⁷ <https://www.nation.co.ke/kenya/counties/meru/police-attack-weru-tv-cameraman-in-meru--282904>

³⁸ <https://www.youtube.com/watch?v=X2jrG7beajU>

Cases of police brutality and enforced disappearance were also reported, as police and security agencies opted to interpret the cessation of movement and dusk to dawn curfew in a way unique to themselves. Citing the case of Charles Mwenda who spent the night with his wife's body on 28th May 2020 at Kianjai Police Station after police turned away friends and relative who were transporting the body for burial yet the family had followed all rules and regulations about burials under the current context³⁹.

In Meru at *Maili Saba* (seven miles) area, a *Boda Boda* rider died in a grisly road accident while fleeing from police enforcing the dusk to dawn curfew. The rider rammed into an oncoming lorry while he was trying to escape the police who were in hot pursuit⁴⁰. In responding to regulations on COVID-19 as set by the Government, the journalists from various media houses were not spared either by the police and security agencies.

The political class was not spared either. A political meeting of opposition Members of Parliament in Malava, Kakamega County was violently dispersed by police on Saturday, 20th June 2020. The police used tear gas and force to disperse the meeting of over 20 MPs from the FORD-Kenya party going to the extent of setting up roadblocks to prevent some MPs from attending the meeting. In the same breadth on 7th July 2020 police lobbed teargas canisters at peaceful demonstrators marching to mark the 30th *Saba Saba* (7th of July) day to commemorate the liberation struggle in Kenya leading to the arrest of 57 human rights defenders.⁴¹

9.1.2 ii) Extortion and Bribery

In the period of April to May 2020 cases of extortion and bribery by police escalated which was further compounded by the lack of coordination at both National and County levels security agencies for it seems both were caught unawares by the COVID-19 virus and no sure plans had been put into place to mitigate or contain the consequences that would emerge.

In Uasin Gishu County, Eldoret Town and due to the long queues witnessed at the Malaba Border, many long distance truck driver opted to stop over at *Maili Nane* (eight miles) on the outskirts of Eldoret Town. This proved to be minting point for the police in the area as they took to harassing the drivers and demanding for bribes, even where such drivers had been declared as essential services.

In Kamukunji area of Nairobi, the police saw this as an opportunity to mint money and took to arresting and extorting as little as Kes.50 to Kes.200 from passersby who were not wearing masks. The police would target people living in slum areas and demand bribes for their release, as such persons would opt to pay the little cash they had to avoid being locked up in police cells on trumped up charges.

One such situation in Lessos, Uasin Gishu County led to the shooting of a local cobbler as police tried to arrest and extort money from a motorcycle taxi rider. Angered by the death of the cobbler, residents of the area set fire to the house of the local police chief and attacked a police station, in the ensuing chaos two other people were shot dead⁴².

In other instance, security agencies such as Chiefs, County *Askaris* (security officers), *Nyumba Kumi Wazee* (ten households security officers) and others took it upon themselves while enforcing rules on social distancing and wearing of masks in public spaces to arrest and also ask for bribes in order to release them. This led to illegal arrests and forceful quarantine for those who failed to pay up fines and to some extent meting a form of violence on any person who sought to demand justice. This was reported in Murang'a

³⁹ <https://www.nation.co.ke/kenya/counties/meru/meru-man-spends-night-wife-body-police-post-311618>

⁴⁰ <https://www.nation.co.ke/kenya/counties/isiolo/rider-fleeing-from-police-dies-in-road-crash-in-meru-282894>

⁴¹ <https://www.kenyans.co.ke/news/55052-saba-saba-protestors-teargassed-nairobi-video>

⁴² <https://www.voanews.com/COVID-19-19-pandemic/kenya-3-people-killed-clash-police-over-face-masks>

County, Gatanga Sub County where on Mr. Samuel Ithungu was attacked by *Nyumba Kumi Wazee* and had his leg broken.

9.1.3 iii) Laxity and Insecurity

In the period, there was noticeable police laxity in enforcing security especially after curfew was enforced, leading many to query whether the police were in cahoots with robbers and gangs. The period saw an escalation of banditry, cattle rustling, breakings and entering, kidnappings and general insecurity. In Baringo North and Tiaty Sub Counties it was noted that due to COVID-19 and the engagement of security agencies in management of the virus, banditry had escalated wreaking havoc in a region already affected by continuous cattle rustling and constant clashes between the Pokot and Marakwet ethnic groups.

This led to more than 500 people fleeing their home in the insecurity prone Yatya and Ishakanin villages after armed bandits killed two people. This forced the locals to camp in bushes where they were at risk of contracting the virus. Due to police laxity many cases of breaking and entering were reported in many homes and by shop owners.

In Murang'a County, Gatanga Sub-County a shop owner was attacked by armed thugs as he was closing shop, leading the youths in the area to barricade the main road in protest. The enforcement of the dusk to dawn curfew also led to a rise in number of armed individuals and gangs in the country, with passersby being attacked in broad daylight, with some criminal gangs going to an extent of challenging the security forces by using drones to monitor their movements and activities.

This was reported in Nakuru County where criminal gangs overwhelmed the security agencies in the area leading the National Police Service to form a special unit to investigate and monitor the gangs in a bid to arrest them.⁴³ Further poor vigilance by the security apparatus at the border points of Kwale-Mombasa and Kwale-Tanzania were reported as a critical concern as people commuted freely leading to outcries that COVID-19 cases would escalate.

In conclusion, one can surmise that the coming of COVID-19 gave security agencies in Kenya a blanket cover to violate human rights across board and mete their own form of justice, as they were well aware that the higher echelons of government were overwhelmed in setting up mechanisms and plans to manage and mitigate the effects of COVID-19. In the coming months and as Kenya grapples with COVID-19 it will take all hands on board to monitor, investigate and collate all necessary data to ensure that police and security agencies that are meant to protect the lives of Kenyans and enforce security are brought to book. It would also be good to note that at present the police and other government security agencies are overwhelmed as they also grapple with a situation they had not planned or prepared for and as such all efforts should be made to create linkages and networks for working together to improve the security situation in the country.

9.2 Main Recommendations

- i)** Conduct an independent audit of the conduct of state agencies, particularly the security apparatus and how they enforced COVID-19 related regulations. Those found to have taken advantage of their positions to violate rights must be held accountable.
- ii)** The Independent Policing Oversight Authority (IPOA), the Directorate of Criminal Investigations (DCI) and the Ethics and Anti-Corruption Commission (EACC) should commence investigations into the alleged acts of killings and violence; laxity in the provision of security; and bribery and extortion.
- iii)** Finally, there is a dire need for thorough training and exposure of our security apparatus around accountable and human- rights-centered policing, crowd control and emergency response mechanisms.

⁴³ <https://www.standardmedia.co.ke/article/2001376815/special-police-unit-set-up-to-fight-outlawed-gang-in-nakuru-town>

10 ACCOUNTABILITY AND TRANSPARENCY BY GOVERNMENT

10.1 Main Findings

i) Blatant bribery and extortion

The key issue observed during the period is blatant bribery and extortion by both the national and county government officers while enforcing the COVID-19 regulations. The officers among them police mounted roadblocks for instance at the entrance to Kitale town from all directions. Drivers of both private and public vehicle, including motorcyclists, are required to pay at least Ksh. 50, so to either leave or entre Kitale town.

Roadblocks have therefore been turned into bribery and extortion centres and those who fail to pay are accused of having disobeyed COVID-19 regulations. The most affected categories of people with the problem of extortion and bribery are motorist, *mama mbogas*, fishmongers, travelers who are normally stranded in town due to unavailability of means of transport.

In Nakuru County, police officers from *Bahati* (good luck) Police Station patrol the areas in two vehicles, a GK land cruiser and GK Land Rover in which they arrest people heading to their farms in the rural settlements, for not wearing face masks. The arrested are bundled into the vehicles which carry beyond the requisite capacity, obviously flouting the social distancing requirements. They are taken around the area with police demanding bribes of between Ksh. 500 to Ksh. 1000 without which the arrested are taken to the police station. Here, the bribe shoots to Ksh. 2000 with threats of 14 days quarantine at the cost of the arrested person.

In Migori County, both the chiefs and police are accused of abusing their offices while enforcing the COVID-19 regulations. For instance, they took advantage of the order to enforce curfews to harass citizens instead of seeing this as an opportunity to assist them. If members of the public were late, or into curfew hour, the police officers would ask for a bribe so that they are let go. One such case was in Migori (Suna East and West), where a *Boda Boda* rider was found without a mask. He was forced to part with a bribe of Ksh 3, 000 to avoid being arrested. In Kericho, anyone found without a mask would be arrested and extorted a fee ranging from Ksh. 200 to Ksh. 1000.

ii) Lack of public participation in decision-making processes

Most of the counties have established a COVID-19 coordination team. However, most of these teams have no representation from civil society and the public. What this means is that both the civil society and the public are not involved in the government's decision making process on issues related to COVID-19. As a result of non-inclusion, the civil society and the public has been unable to access relevant information related to the pandemic and thus unable to effectively hold the respective County government to account.

In most Counties, members of the public have not been involved in decision making by both the national and county governments. Actually, until now, the people are not aware of the total amount of funds received by their County governments towards the fight against COVID-19, neither do they know how the received funds have been utilized.

In April, most County government's identification process of the needy people to be supported by the government due to the economic impacts of COVID-19 was conducted in secrecy and without involving the locals and as a result, the really needy and deserving people were left out of the program.

The respective County government have also not involved the vulnerable groups in decision-making processes. For instance, the identification of youths for *Kazi Kwa Vijana* (work for the youth) was conducted in secrecy and without involving the relevant stakeholders at the sub-location level as earlier announced by the County commissioners. The level of accountability to the vulnerable groups and the general public is therefore still very low at the counties.

Besides, it is also important to note that there has been no real sensitization on the policies related to the management of COVID-19. Those who have engaged with these policies, are mainly those with the capacity to access media information through different online platforms, while majority without such capacities unable to access the same. The other channels have been TVs and Radios being used for the daily National briefings.

iii) Lack of transparency and accountability mechanisms

Most County governments are handling the COVID-19 pandemic without any proper transparency and accountability mechanisms in place. There are no deliberate efforts to make information available to the public. In addition, there are no mechanisms to receive complains nor feedback from the relevant stakeholders including the public.

State security and the administrative apparatus (chiefs and assistant chiefs) have been at the forefront of ensuring that citizens comply with numerous government directives and measures that are aimed at containing the COVID-19 pandemic. In doing so, the police have committed numerous human rights violations that include torture, cruel, inhuman and degrading treatment, unlawful arrests and use of lethal force amongst others. For instance, on the first day of the curfew, the police subjected many citizens to brutality through beatings, and unlawfully arrests including motorists found in public places at 7.00 pm. All these atrocities have gone on unchecked.

In Kitui County, there are speculations that most of the masks shared by the County government for distribution are being sold at Ksh. 50, by those who are selected to distribute. This was witnessed in Tharaka ward in Mwingi north where MCA announced to have shared 50 Masks per village as reported by Wilson Nyaga a human rights defender. Additionally, the locals are not being involved in both decision making processes and subsequent implementation process. The most utilized channels for communication remain to be televisions and radio stations.

Accusations are also rife that regional political lords have captured County governments' institutions such as the assembly and the executive. As a result, there is very limited accountability in the utilization of resources by the County to address the COVID-19 pandemic. Most of the projects that were implemented such as the distribution of donations to vulnerable groups, including flood victims, have not been accounted for. We also found that information on the actual beneficiaries is very limited.

10.2 Main Recommendations

- i) Both levels of government (County and National) need to initiate measures for awareness creation, information sharing and involvement of the vulnerable groups and the general public in key decisions processes related to COVID-19.
- ii) Both the County and National Assemblies together with the national anti-corruption agencies should investigate the utilization of all the financial and material resources received by both the National and County governments.

iii) There is a need for an independent audit of the conduct of state agencies, particularly the security apparatus and how they enforced COVID-19 related regulations. Those found to have taken advantage of their positions to violate rights must be held accountable.

11 PUSHING THE MARGINALISED FURTHER: EXPERIENCES OF STATELESS PERSONS

11.1 Overview

Statelessness has for many years been an invisible problem where most administrative policy and legislative action remain non-responsive to statelessness. In Kenya, there was an estimated 100,000 people who were stateless in 2009⁴⁴. In subsequent years it was discovered that a large proportion of that number is at risk of statelessness rather than stateless.

Internationally, a stateless person is a person who is not recognized as a national by any state under the operation of its law⁴⁵. Within the African Union, this definition is proposed to be expanded to include including a person who is unable to establish nationality⁴⁶. Under Kenyan law, the international definition is retained but it is qualified to recognize as stateless, any person who was in Kenya on 12th December 1963 and the descendants of such persons⁴⁷. This definition covers sections of known populations of stateless persons but leaves out others. Stateless persons rarely own any identification documents and they live and die without a legal record of their existence.

Over the years, we have recognized the marginality of stateless communities who also fall in the category of ethnic minorities. We have invested our time, skills and voice at all levels in calling for their recognition as citizens. This resulted in the granting of Citizenship to the Makonde, one family whose parent were descendants of British overseas citizens in Kenya. We have also managed to commence the process for the recognition of the Pemba and Shona communities as well as the descendants from Burundi who live in Taita Taveta. The Shona have the support of the Kiambu County government who have even passed a County assembly resolution seeking their recognition. The Kwale County assembly has commenced a process a County assembly inquiry into the Pemba and the Kilifi County Assembly is debating the Pemba of Kilifi.

As it were the legislation for naturalization of stateless person expired in August 2019 and KHRC petitioned the cabinet secretary for an extension which is yet to be done. In the same month, the cabinet secretary appointed a task force on statelessness with a one year mandate to resolve the known situations of statelessness. It's against this background that over 20,000 stateless persons in Kenya are now living through the Coronavirus pandemic since the first case was announced in March 2020.

11.2 Main Findings

Kenya like other governments across the world has taken the 'citizens first' approach in confronting the COVID-19 pandemic. The focus is on rescuing Kenyans from hunger, economic shock of job and income losses and so on while protecting public health under very difficult circumstances.

Already marginalized before the crisis, the stateless persons face even greater, life-threatening marginalization now – with potentially disastrous consequences. In the Kenyan response, the government on various occasions mentions Kenyans and foreigners, but most stateless communities fall under neither categories but increasing identify as Kenyans. Therefore the exclusion faced before this health crisis now risks turning into threatening as they fight for basic survival.

⁴⁴ KNCHR 2010 Out Of The Shadows Towards Ensuring The Rights Of Stateless Persons And Persons At Risk Of Statelessness In Kenya

⁴⁵ See Article I of the 1954 United Nations Convention relating to the Status of Stateless Persons 1954

⁴⁶ See the Draft Protocol on the right to a nationality https://au.int/sites/default/files/newsevents/workingdocuments/35139-wd-pa22527_e_originalexplanatory_memorandum.pdf

⁴⁷ Sections 15,16, and 17 of the Kenya Citizenship and Immigration act no 12 of 2011

This COVID-19 period and related response measures show that the related laws and policies continue to exclude stateless persons and secondly that stateless communities face unique challenges from one community to another but some challenges are similar on account of being stateless. Three perspectives are therefore critical in analyzing their experiences in the context of COVID-19:

- Analysis of inclusiveness of policy responses to COVID-19 for stateless persons
- Unique experiences of stateless communities in Kenya
- The shared experience of stateless communities in Kenya

11.2.1 Analysis of inclusiveness of policy responses for stateless persons

Under the prevention, control and suppression of COVID-19, we notice the use of any person without any distinction to nationality or lack of it. Whereas other laws on health also don't make such distinction, administrative practice does as most people are required to identify themselves before accessing health services. However, during this COVID-19 period, we have noted that 4 people from the stateless Pemba Community who were quarantined in Lunga Lunga Sub-County and they were able to access the isolation centres on an equal basis as already recognized citizens. They undertook 2 tests during this period and were discharged without paying any fees but their meals were delivered by their families daily.

On the financial cushioning front, the president established the COVID-19 emergency fund and attendant to the fund, the Public Finance Management (COVID-19 Emergency Response Fund) Regulations, 2020 were enacted. These regulations guide who are vulnerable under COVID-19 in Kenya. Vulnerable persons are defined to mean persons with special needs, older 4 persons, pregnant women, orphans, vulnerable children and persons without a clear means of livelihood. This definition doesn't cover the vulnerabilities and marginalities of stateless persons. Though it can be argued that stateless persons can fall under the listed categories.

Experiences by stateless persons living in Nairobi City, Kiambu, Kilifi, Mombasa, Kwale and Taita Taveta Counties show that stateless person (save for those who have illegally acquired identification) are unable to access any cash assistance or food relief from both the national government and County government programs and processes. The Makonde Community in Kwale, Formerly stateless have only been able to access relief from Base titanium as a marginalized group in Kwale but with a fairly good amount of difficulty.

The enforcement of containment that restricted movements in Kilifi, Mombasa, Kwale, Nairobi and parts of Kiambu counties where stateless communities live as well as the curfew measures have adversely affected stateless communities. The Shona rely on hawking of the artistic wares from place to place and other casual jobs to fend for their families. 95% of the Shona live on rented premises and as such a loss of livelihood results in their inability to pay rent.

The Pemba on the other hand, are fishermen and they occupy small parcels of land on the Kenyan coastline. As a result of the containment measures, fishing was no longer feasible because there was no way of selling the fish and locally everyone can fish for their own family. To add to their difficulties of market, surveillance of the Kenyan coast was intensified as a measure of securing people who may be entering the country through irregular borders. This posed a major challenge because most Pemba fishermen do not have fishing permits. They have been faced with the threat of food shortage due to lost incomes.

11.2.2 Uniqueness in experiences of various stateless communities in Kenya

The Pemba Community are very integrated with the recognized Kenyan communities and have deeply intermarried. They, therefore, get some level of support from that relationship. They are however a border community with Pemba's in Kenya and Pemba's in Tanzania. As such, they have close interaction with their relations across the border. They also face heightened surveillance on account of being a border

community. This surveillance and enhanced enforcement of maritime laws, saw a total of 25 Pemba fishermen arrested for using small-sized nets commonly known as link nets or *Chachacha*. The fishermen arrested informed KHRC that they use these nets because they are readily available and more affordable than the other nets. They noted that the arrest seemed to target them yet most fishermen not only at the coast but also the rest of the country use these nets. The matter has been referred to the fisheries department by the magistrate in Kwale County. The Pemba have not received any form of food relief from the national government or the County government of Kilifi, Kwale or Mombasa.

The Shona on the other hand while well-integrated have a lower level of intermarriage. They live well within the Nairobi metropolitan region. Unlike the Pemba, they live on rented property. During this period, they received food relief from the leaders of both the national government and County of Kiambu for the most vulnerable. They were also asked to register the vulnerable categories of elderly persons with the chief but are still awaiting support. It is, however, worth noting that they miss out on food relief by charitable organizations because they lack national identity cards. Seeing their suffering the Gospel of God church (founded by the Shona missionaries) and so the church fundraised some food rations for the elderly and the widows. Again the church only helped by giving food and not house rent. Government to help the youth during this difficult time. The Shona cannot get access to such an opportunity.

11.2.3 iii) The shared experience of stateless communities in Kenya

Just before the advent of Corona, the Shona and the Pemba were very hopeful that their quest for recognition as Kenyan citizens would bear fruit. Unfortunately, the experience of surviving COVID-19 have only served to remind them of their invisibility and marginality in Kenya's policy and response radar. The following are some of the questions they keep posing to themselves and KHRC: "*What really happened to our quest for citizenship?*" "*Yes, while society seems to have accepted us, but has the state accepted us?*" Such like questions have given rise to some scornful "*We told you*" remarks from several Shona who had acquired Identity cards through dubious means.

However even during with the gloom of COVID-19 and related hardships, in the national assembly, legislative proposals have been introduced by the women representative for Kwale County to extend the period for registration of stateless persons and recognize habitual residence. On the other hand, the Ministry of Interior and Coordination of National government is finalizing amendment around the registration of stateless persons as Kenyan Citizens.

In Kilifi County, the Justice and Legal Affairs Committee has called for consultation with the Pemba community to help them get recognized. In Kiambu, a young girl by the name Nosizi has been admitted to the university to study economics at the University of Nairobi something which has become a source of inspiration for all stateless communities. As a measure of caution and proactiveness, the stateless communities have filed a register of themselves with government representatives at the local level at the headquarters

11.3 Main Recommendations

Based on the findings and report from stateless people we recommend:

- i) The government of Kenya and all County governments that have populations of stateless persons to not discriminate in COVID-19 responses, on any grounds including citizenship, documentation or migration status; and to make every effort to reach the furthest behind first, including the stateless.
- ii) In particular that the national government and counties where stateless to immediately take affirmative action and measures to include stateless persons in COVID-19 19 prevention, suppression and management processes including access to health including mental health. In particular, we call on Treasury to amend their definition of vulnerable to include stateless persons

- iii) Human rights actors, including Kenya National Commission on Human Rights and National Gender and equality commission, to maintain a spotlight on enduring discrimination, rising authoritarianism and harmful state practices in response to the COVID-19 pandemic; and to monitor and highlight rights violations faced by the stateless and those whose right to nationality is at risk.
- iv) Humanitarian actors, including the Kenya Red Cross, to identify and target emergency relief and aid to stateless and other vulnerable communities who are excluded from state relief efforts, in consultation with those working on these issues.
- v) All Public health actors, continue responding to the health needs of all persons and ensure equal and adequate access to healthcare and public health information to all, during this time of crisis including stateless and undocumented persons.
- vi) We urge the ministry of interior and the national assembly to move with speed and enact amendments that will occasion stateless person protection from human rights violations and guarantee them the ultimate and long-desired solution of Kenyan citizenship.
- vii) We call on the taskforce on statelessness and the ministry of interior to move with speed and naturalize all stateless persons in the country as a way of beginning their journey into integration and leading dignified lives.
- viii) Finally and joining our colleagues from across the globe, we remind all stakeholders of the need and duty to listen to and be guided by stateless activists and communities, and to be accountable to them for actions and inaction, during this time of crisis.

12 ACCESS TO JUSTICE FOR THE INDIGENT POPULATION IN KENYA

12.1 Main Findings

The Constitution of Kenya under Art. 48 guarantees the right of every person to access justice and obligates the State to take the appropriate policy, statutory and administrative interventions to ensure the efficacy of justice systems. Despite the Constitutional protection, access to justice in Kenya has remained an elusive affair for the poor and marginalised communities since emphasis is placed on the formal justice processes at the expense of other available, preferred and affordable justice processes.

The Justice Needs and Satisfaction in Kenya Survey Report⁴⁸ attest to the lived realities of Kenyans in accessing redress mechanisms for the injustices they face. The survey posits that about 63% of Kenyans have experienced justice problems in various facets of life that required being resolved. Crime, Land disputes, family-related disputes, labour disputes and disagreements on monies are the predominant justice issues amongst Kenyan's. According to this research, ten percent (10%) resolved their disputes through the formal court system while 40% used informal sources to resolve their disputes. The report also points to the opaque processes and inequalities within the formal justice processes that make the majority of the poor and marginalised excluded from accessing justice.

The COVID-19 pandemic has, therefore, exacerbated the inequalities the poor and marginalised face in accessing justice. From KHRC's violations portal, 70% of the claimants who reported incidences of police brutality, evictions and sexual and gender-based violence to state agencies indicated that their matters had not been attended to and/or resolved thus the reason they approached KHRC. KHRC through probono lawyers accompanied some of the clients to the police station to follow up on their matters. 6 out of the 10 clients accompanied to the police station were given a response to the effect that arrests were not being effected during the COVID-19 period due to the directive issued. The inaction by state agencies to respond to violations portrays a picture of a justice system that is completely detached from the needs of its population, especially during a crisis.

Moreover, the National Council on Administration of Justice (NCAJ) directive to scale down operations within the justice sector following the first reported case of COVID-19 on March 2020 impacted negatively on access to justice for the poor and marginalized. By a press statement dated 15th March 2020, NCAJ⁴⁹ announced the scaling down of court operations all over the country in compliance with the government directive to mitigate the spread of COVID-19. This directive stopped the hearing of matters in open court and the suspension of matters that had been fixed for hearing and mentions. Prisoners and remandees could not also be presented in court. Similarly, all cases reported at the police station except the serious ones were to be dealt with at the police station in accordance with guidelines issued by the Inspector General. The foregoing resulted in a delay in determination of matters and thus delays in access to justice.

It is worth noting that guidelines have to date not been issued at the police station on how matters should be handled during this crisis. This may perhaps explain why the numbers of reported cases concerning sexual and gender-based violence and other related criminal acts against the security of persons in various police stations remain unresolved since perpetrators are not being arrested.

Whereas efforts are being made by state agencies within the Justice sector to rapidly transition to digital modes of operation to ensure access to justice, such measures have not been subjected to public participation to assess the efficacy of such processes by the public. For example, the online court hearings that are taking

⁴⁸ (2017), The Kenyan Judiciary and World Bank

⁴⁹ This is comprising of the Judiciary, Office of the Attorney General, Office of the Director of Public Prosecutions, The Inspector General, Ministry of Interior, the Commissioner General of Prisons, the Chief Executive Officer of Ethics and Anti-corruption Commission and the Law Society of Kenya

place are inaccessible to the indigent client representing themselves in court. Statistics within the KHRC legal aid desk points to an indigent population who lack the resources for online platforms and thus are not able to follow the hearing of their matters. It is worse still for clients who are representing themselves since they have not been inducted into the process of digital hearing of cases. It can thus be concluded that the emergence of COVID-19 pandemic and its attendant nuisances attest to the justice gap and existing inequalities within the various justice system.

12.2 Main Recommendations

- i)** NCAJ should put in place mechanisms to ensure affordable and effective access to justice for the poor and the general public and continuous protection of the staff involved in the criminal justice chain at this time of the pandemic.
- ii)** The National Criminal Justice Reforms Committee of NCAJ needs to expedite the formulation, adoption and implementation of the expected legal, policy and administration changes with the criminal justice system in Kenya.
- iii)** State and non-state actors need to provide adequate psycho-social supports to the different categories of populations impacted by the virus and responses across the board.

13 OTHER EMERGING HUMAN RIGHTS ISSUES AMID COVID-19

13.1 Main Findings

13.1.1 Unemployment

The US Bureau of Labour Statistics defines the unemployed as people who do not have a job and have actively been looking for employment in the past four weeks and are currently available for work. The COVID-19 pandemic has forced most businesses and companies to shut down. Major organizations and businesses have had to adjust to working remotely with a majority of others cutting down their expenses through retrenchment of workers. The hospitality industry has been one of the most affected with most businesses forced to close down completely. Another sector that has been hugely affected is the informal sector which includes casual laborers.

An article published by the Daily Nation⁵⁰ revealed that “at least one million Kenyans have lost their jobs or have been put on indefinite unpaid leave as the COVID-19 pandemic morphs into a major jobs crisis.” The article went on to claim that “the massive job haemorrhage from the COVID-19 pandemic has thrown Kenya into one of the worst employment crises it has faced.” This situation is particularly worrying especially because the unemployment rate before the COVID-19 pandemic was at 9.31⁵¹ percent in 2019.

13.1.2 ii) Mental Health

The effects of the COVID-19 pandemic has led to an increase in the mental health cases around the globe. One of the major causes of this has been anxiety. Research⁵² from the University of Nairobi has shown that “the overwhelming need to restrict physical contact, to wear a mask, and staying at home is likely to result in loss of intimacy and social contact, and hence physical and psychological isolation. Physical and psychological symptoms including lack of sleep, headaches due to continual wearing of masks, and depressed affect are not uncommon.”

In a statement⁵³ to newsrooms, the Chief Administrative Secretary Health, Dr. Rashid Aman noted that “Containment measures such as, stay at home, physical distancing and restricted movement directives adversely affect the social and mental wellbeing of healthy individuals by inhibiting social interaction, social connectedness and engagement in healthy lifestyles.”

The mental health impacts on frontline workers and also suspected COVID-19 patients and their families has been devastating. This is partially due to the stigma associated with the disease that has caused major psychological distress among the health workers and also the public. The Ministry⁵⁴ of Health also showed that one in every ten Kenyans suffers from a common mental disorder, and the number increases to one in every four people among patients attending routine outpatient services.

13.1.3 iii) Teenage Pregnancies

The COVID-19 pandemic has forced governments and individuals to take different measures to reduce the spread of the virus. One such measure was closing down schools and other institutions of learning. However, this has introduced another unique pandemic. According to an article published by the Voice of America News⁵⁵ “During three months of lockdown, 152,000 Kenyan teenage girls became pregnant, a 40 percent increase in the monthly average.”

⁵⁰ <https://www.nation.co.ke/kenya/business/over-one-million-rendered-jobless-as-COVID-19-19-takes-toll-on-businesses-494134>

⁵¹ <https://www.statista.com/statistics/808608/unemployment-rate-in-kenya/>

⁵² <https://uonresearch.org/blog/mental-health-under-the-cloud-of-COVID-19-19/>

⁵³ <https://www.health.go.ke/government-prioritize-mental-health-in-COVID-19-19-response-nairobi-saturday-june-20-2020/>

⁵⁴ <https://www.nation.co.ke/kenya/news/growing-worry-over-mental-health-problems-1446762>

⁵⁵ <https://www.voanews.com/episode/teen-pregnancies-spike-kenya-schools-remain-shuttered-4344051>

However, data from the Kenya Health Information Management System (KHIS) shows that the number of girls, aged 10-19 years, presenting with pregnancy in January-May in 2019 and 2020 are not that different, and leaning more towards a decline in 2020. According to AFIDEP⁵⁶, this is hugely due to a decline in the use of health facilities during the COVID-19.

With schools scheduled to reopen in early 2021, these cases can only increase. Previous research done by Plan International⁵⁷ revealed that; “

- 98% of pregnant girls were not in school, and 59% of the pregnancies among girls aged 15-19 years were unintended. 45% of severe abortion complications were also reported among adolescent girls.
- More than half (54%) of sexually active adolescent girls in Kenya did not intend to get pregnant and have an unmet need for modern contraception.”

13.1.4 Surveillance

To contain the COVID-19 virus, states have implemented different measures in a bid to track and trace people who have been in close contact with those infected with the virus. According to the World Health Organization, this process is known as contact tracing⁵⁸ and it consists of three major steps; contact identification, contact listing and contact follow-up.

In Kenya, the government has been tapping phones of citizens to ensure that they adhere to the health guidelines. According to The Standard Newspaper: ⁵⁹ “The State is using electronic surveillance to monitor individuals under self-quarantine after returning from countries ravaged by the coronavirus. The surveillance is to ensure the individuals do not step out of their quarantine locations.” The article continues to further highlight that mobile phones of those who commit to self-quarantine are being monitored to ensure they do not violate the rules. This not only violates the data protection principles but also the right to privacy.

13.2 Main Recommendations

- i) The government should prioritize the most affected sectors such as tourism and casual sectors by introducing a stimulus programme. Innovation should be nurtured and the government should prioritize engaging local vendors and labor for all projects before importing it, this helps create employment by tapping the local talent.
- ii) The government should implement recommendations by the Mental Health Taskforce⁶⁰ by declaring mental health a National Emergency. There should be measures to address the impacts of COVID-19 and the mental health concerns of the different populations at all levels in society.
- iii) On teen pregnancies, the government should prioritize alternative options such as part-time classes to encourage young parents to continue with their education. There should be more social and economic support to the young parents and awareness on sex education and the necessary protection measures. It's also a time to reconsider the existing sexual and reproductive health policies and program for their responsiveness.
- iv) The government should adhere to international and local laws and guidelines on data protection by respecting citizen's right to privacy both online and offline. There should be a multi-stakeholder partnerships especially in projects that involve the deployment of technology enabled solutions.

⁵⁶ <https://www.afidep.org/news-release-teen-pregnancy-in-kenya-verifying-the-data-and-the-facts/>

⁵⁷ <https://reliefweb.int/report/kenya/COVID-19-19-lockdown-linked-high-number-unintended-teen-pregnancies-kenya>

⁵⁸ <https://www.who.int/news-room/q-a-detail/contact-tracing>

⁵⁹ <https://www.standardmedia.co.ke/article/2001365401/state-taps-phones-of-isolated-cases>

⁶⁰ <https://www.capitalfm.co.ke/news/2020/07/declare-mental-health-a-national-disaster-taskforce/>

14 ANNEXURES

14.1 12.1 List of Monitors at the Counties (April to June 2020)

	County	Number (Names withheld)
1	Nairobi	5
2/3	Kiambu and Murang'a	4
4	Meru	2
5	Kitui	2
6	Machakos	
		2
7	Taita Taveta	2
8	Kwale	3
9	Nakuru	3
10	Baringo	4
	Nyanza	
11	Kisumu,	3
12	Migori	1
14	Kakamega	3
15	Garissa	1

---	Victims of mass Atrocities	2
16	Narok	1
17	Kajiado	1
18	Kericho	2
19	Mandera	1
20	Uasin Gishu	1
21	Kilifi	1
22	Trans Nzoia	1
23	Nyeri	1
24	Nairobi	3
25	Kisii	1
26	Tana River	1
27	Turkana County	1
28	Marsabit	1
	Sub-Total	53

12.2 Labor Rights Monitors

15

(May to July 2020)

Overall Total: 68



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